

EHRAC

Bulletin



Rights in psychiatric care: implementation of *Shtukaturov v Russia*

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In March 2008, the ECtHR issued a judgment in the case of *Shtukaturov v Russia* (No. 44009/05) 27.3.08, finding violations of Arts. 5, 6 and 8. The judgment broke new ground for the rights of persons with psycho-social (mental health) disabilities in respect to both guardianship and detention in a psychiatric hospital.

In April 2011, three years after the judgment, legislative amendments to the Code of Civil Procedure and the Psychiatric Care Act implemented some aspects of the judgment. These amendments came about as a result not only of the ECtHR judgment, but also of a Russian Constitutional Court judgment that addressed many of the same issues. However, the most ground-breaking and substantive aspect of the ECtHR judgment relating to Russian guardianship law was not addressed by the Constitutional Court and has yet to be implemented.

The ECtHR judgment found that Mr Shtukaturov had been stripped of his legal capacity and placed under guardianship in judicial proceedings from which he was deliberately excluded. He learned about the court decision declaring him legally incapable only after it came into force. Having been found legally incapable, he was a non-person in the eyes of the Russian courts and had no standing before them; he could not even appeal against the decision that took away his rights. Later, despite his unequivocal objections, he was detained in a psychiatric hospital with no judicial review because, under Russian law, placement in a psychiatric hospital by a guardian was considered voluntary.

The judgment found that Mr Shtukaturov's treatment violated Art. 6 (right to a fair trial), Art. 8 (right to respect for private and family life) and Arts. 5(1) and 5(4) (right to liberty and security). For the first time the Court looked into the substance of guardianship rather than only examining the procedural safeguards attending its imposition, criticising total guardianship as a disproportionately intrusive measure which was not adjusted to a person's individual needs.

Russian law allowed no alternative to plenary guardianship—if a person was judged to lack capacity in any area of decision-making (managing finances, for example), they were stripped of their right to make or even be included in any decisions, including decisions regarding such fundamental matters as place of residence, medical treatment and marriage. The Court recognised that the violations of the applicant's rights did not arise merely from flawed practice but were actuated by Russia's legal capacity laws. Thus it was clear that the Russian government was required to go beyond individual measures and implement amendments to a number of legislative acts including the Civil Code, the Code of Civil Procedure and the Psychiatric Care Act. While it did not provide a blueprint for legislative change, it laid down some general principles, such as proportionality and a tailor-made approach to guardianship measures, and gave some guidance on other relevant issues. The task of developing those principles into effective legislation is clearly that of the Russian law-makers.

MDAC followed up its application to the

ECtHR with a complaint to the Russian Constitutional Court on behalf of the same client and in respect of the same facts, with the aim of achieving an explicit finding striking out the impugned provisions of the law head-on. The arguments were similar but somewhat narrower in scope as they did not raise the issue of the proportionality of legal incapacity per se. In February 2009, almost a year after the ECtHR decision, the Russian Constitutional Court gave its judgment.¹

The Constitutional Court judgment had a direct legal effect insofar as it struck down a number of legislative provisions that had already been criticised in the ECtHR's decision. The Russian legislature was left with no choice but to take steps to introduce new legislation to fill in the resulting gaps in the law. Politically, too, this judgment demonstrated that the guardianship system not only did not comply with international law, but failed to comply even with Russia's own Constitution. Finally, the Constitutional Court decision generated considerable media interest in Russia which led to increased awareness of the abuses characteristic of the legal incapacitation system and the vulnerability of persons placed under guardianship. The Constitutional Court decision resulted in two legislative proposals that were introduced in the Russian parliament to address two discrete points: the right to be heard in person in legal incapacitation proceedings and the procedure of hospitalisation of persons under guardianship.

Advocacy for implementation of the *Shtukaturov* judgment presented particular challenges. First, mental disability is very low on the list of government priorities (this is by no means exclusive to Russia). Secondly, the mental disability rights movement is still relatively weak, as is public interest in the rights of persons with

mental disabilities. As a result, there is hardly any pressure on the authorities to reform mental disability laws, or policies emanating from civil society in general. Thirdly, the relevant policy-makers do not necessarily have a grasp of the human rights aspects of legal capacity and guardianship, let alone technical expertise.

MDAC, the organisation that represented Mr Shtukaturov, and its Russian legal monitor, Dr. Dmitri Bartenev, who litigated the case, have been directly involved in advocating for law reform to implement the ECtHR judgment. MDAC actively sought allies and provided capacity building to other NGOs. Dr. Bartenev held meetings with members of parliament and wrote policy papers to bring attention to the issue and provide an international human rights focus for law-makers and other policy-makers.² MDAC also organised roundtables which brought together a wide range of stakeholders, including State officials, parliamentary representatives, lawyers, psychiatrists, human rights NGOs and disability activists. As a result of these activities, a strong coalition of Russian human rights and disability NGOs was formed. The coalition has gained the support of the Russian ombudsman and the Inter-Party Parliamentary Group on Disability Issues.

The advocacy was successful in that the law amending the Code of Civil Procedure and the Psychiatric Care Act which came into force in April 2011 considerably broadened the rights of persons under guardianship, thus paving the way for future advocacy to change the very substance of guardianship in Russia. The amendments introduced the right of the person concerned to take part in guardianship proceedings, a requirement for judicial review of involuntary placement of persons under guardianship in psychiatric hospitals, the right of the person under guardianship to consent to or refuse any

mental health intervention, the right to refuse placement in a social care home,³ the right of the court to summon a person deprived of legal capacity to any type of civil proceeding and the right of the person concerned to apply to the court for restoration of their legal capacity.

These amendments represent significant advances in procedural protections for persons with intellectual and psycho-social disabilities. However, as long as deprivation of legal capacity is the only alternative in cases where persons with disabilities may require some assistance with decision-making, procedural measures cannot serve as safeguards to violations of rights. In the same year that the ECtHR decided the *Shtukaturov* case, the UN Convention on the Rights of Persons with Disabilities (CRPD) came into effect, which sets a new international standard for protection of the rights of persons with disabilities. Referring to the CRPD, the ECtHR has recognised a universal and European consensus on the need to protect persons with disabilities from discrimination.⁴ Russia has signed but not ratified the CRPD. Therefore, while continued advocacy for full implementation of the *Shtukaturov* judgment is still necessary, advocacy for legal capacity law reform must also include advocacy for ratification of the CRPD and full compliance with current international law.

1 Constitutional Court judgment No. 4-P of 27.02.09.

2 MDAC also advocated at the international level by submitting a report to the United Nations Human Rights Committee for its review of Russia in 2009. The Committee's Concluding Observations called on the Russian government to reform its guardianship laws. CCPR/C/RUS/CO/6, 24.11.09.

3 Constitutional Court judgment No. 114-O-P of 19.1.11.

4 See *Glor v Switzerland* (No. 13444/04) 30.4.09.