

# KAZAKHSTAN

## SUBMISSION TO THE UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

18 FEBRUARY-8 MARCH 2019

Amnesty International submits this briefing in advance of the examination of Kazakhstan by the Committee on Economic, Social and Cultural Rights during its 65th session in March 2019.

In this document, Amnesty International sets out its concerns about the implementation of the International Covenant on Social Economic and Cultural Rights (ICESCR) by Kazakhstan, focusing on the rights of persons with disabilities.

### DENIAL OF LEGAL CAPACITY (LIST OF ISSUES: NON-DISCRIMINATION ARTICLE 2)

Kazakhstan ratified the CRPD in February 2015, however, it has not yet taken any steps to comply with Article 12 of the CRPD (Equality before the law) which will require it to abolish the guardianship regime for adults and introduce measures to facilitate assisted decision making for persons with psychosocial and intellectual disabilities. In October 2018, Amnesty International launched a report *“We are like dead souls”: Life without legal capacity in Kazakhstan* (EUR 57/9164/2018),<sup>1</sup> and the organization welcomes the openness of employees of the Ministry of Social Welfare and Labour who engaged in in depth discussion about the organization’s recommendations for compliance with Article 12. Currently, in Kazakhstan, persons with psychosocial and intellectual disabilities are denied the ability to take key decisions or actions. They are deprived of legal capacity by a court and a guardian is appointed to make decisions on their behalf.

According to Article 26 of the Civil Procedural Code a “citizen who cannot understand the meaning of his actions or cannot control them because of mental illness or weak-mindedness” may be declared “incapable”<sup>2</sup> by a court. An application to declare an individual “incapable” can be made by relatives, Guardianship and Custody Departments of municipalities, or by municipal psychiatric hospitals (mental health centres). The Supreme Court clarifies in its commentary on the Civil Procedural Code that an application can also be made by a psychiatric institution “to protect the rights and interests of mentally ill people.”<sup>3</sup>

Guardianship in Kazakhstan has no flexibility and once declared “incapable” by a court, individuals are deprived of the right to make any decisions about their lives, to control their finances, to marry, to study or to work. There are no systems for review and it is very rare for the status to be reversed. Once declared “incapable” persons with psychosocial and intellectual disabilities no longer have the right to appeal to a court of law which means that they have no legal recourse against violations of their rights and possible exploitation.

Furthermore, the criteria for depriving persons of legal capacity are vague (“citizen who cannot understand the meaning of his actions or cannot control them because of mental illness or weak-mindedness”) and set a very low threshold considering the devastating consequences of depriving a person of their legal capacity. As a result, persons with a psychiatric diagnosis are at risk of being deprived of legal capacity on the basis of a diagnosis which may be inaccurate. The fact that they are deprived of their rights based on a medical diagnosis is squarely at odds with the CRPD. They can also fall victim to relatives and third parties who want to lay claim to their assets, or simply find them inconvenient.

<sup>1</sup> *“We are like dead souls”: Life without legal capacity in Kazakhstan* (EUR 57/9164/2018), Amnesty International, October 2018, <https://www.amnesty.org/en/documents/eur57/9164/2018/en/>

<sup>2</sup> The Russian term *nedeeposobny* translates as ‘incapable of action’.

<sup>3</sup> Commentary on the Civil Procedural Code of the Republic of Kazakhstan, June 2017, [http://sud.gov.kz/system/files\\_force/verstka\\_poslednyaya.pdf?download=1](http://sud.gov.kz/system/files_force/verstka_poslednyaya.pdf?download=1)

### **Amnesty International calls on the Kazakhstani authorities to:**

- Fully explore alternatives to guardianship for adults and devise a timeline for the establishment of an alternative system based on best practice, in accordance with the CRPD, by closely consulting with and actively involving persons with disabilities, in particular persons with psychosocial and intellectual disabilities, including children with disabilities, through their representative organizations, and experts and practitioners both within Kazakhstan and from other countries;
- Make the necessary changes to legislation to ensure that individuals who have been declared “incapable” have the right to apply to courts to defend their rights, to reverse “capability” decisions and to change guardians.

### **DIRECT DISCRIMINATION AGAINST PEOPLE WITH MENTAL AND PSYCHOSOCIAL DISABILITIES (LIST OF ISSUES: RIGHT TO WORK ARTICLE 6)**

In Kazakhstan, the law directly discriminates against persons with psychosocial and intellectual disabilities and prevents individuals who have been declared “incapable” from being employed, from marrying and from participating in the political life of their society. The Labour Code (Article 57) states that employment contracts drawn up with “incapable” individuals are invalid and if a person is declared “incapable” their employment contract will be terminated.

Article 11 of the Code on Marriage and the Family specifically prohibits marriage with people who have been declared “incapable” in violation of Kazakhstan’s obligations under the CRPD.

Article 33 of the Constitution states that those declared “incapable”, along with convicted criminals cannot vote, participate in referenda or be elected.

### **Amnesty International calls on the Kazakhstani authorities to:**

- Take effective and appropriate measures to ensure that persons with psychosocial and intellectual disabilities are not discriminated against in matters concerning respect for the home and family, including amending Article 11 of the Code on Marriage and the Family which forbids marriage for individuals declared “incapable” to comply with Article 23 of the CRPD;
- Amend, in line with Article 27 of the CRPD, Article 57 of the Labour Code which prevents individuals declared “incapable” from being employed;
- Amend, in accordance with Article 29 of the CRPD, Article 33 of the Constitution which prevents individuals declared “incapable” from voting and standing for election.

### **LACK OF INFORMED CONSENT FOR MEDICAL PROCEDURES (LIST OF ISSUES: RIGHT TO PHYSICAL AND MENTAL HEALTH, ARTICLE 12)**

In Kazakhstan, the Code on Public Health and the Health System (Article 94 part 2) allows doctors to carry out medical procedures without seeking the informed consent of people who have been declared “incapable”. There is no requirement for doctors to seek any input from the concerned person - it is sufficient for them to seek the consent of their guardians. In the case of persons in residential care, the guardian will be the administration of the institution in which they are living. If no guardian can be found then a decision will be taken by a commission of medical workers, and if that is not possible then the doctors themselves will make the decision and inform the guardian.

Forced placement in a psychiatric institution in Kazakhstan requires a court order, but once a person has been declared “incapable” they can be placed in a psychiatric institution against their will on the decision of the Custody and Guardianship Department following the conclusions of a medical commission.<sup>4</sup>

Article 180 part 9, point 5 of the Kazakhstani Code on Public Health and the Health System forbids the carrying out of drug tests or medical-biological experiments on people who have been declared “incapable” “with the exception of clinical research of medical technology and medications aimed at treating psychiatric disorders”.

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<sup>4</sup> Code of the Republic of Kazakhstan on the health of the population and the health system, Article 129. Justification for placing individuals in psycho-neurological organizations.

**Amnesty International calls on the Kazakhstani authorities to:**

- Review the procedures governing consent in the health care system in particular Article 94 part 2, and of the Code on Public Health and the Health System to ensure that individuals who have been declared “incapable” must give their free and informed consent to medical treatment and cannot be hospitalized without their consent;
- Remove the exception to the ban on medical experimentation which allows for testing of medical technologies and medicines for treatment of “mental disorders” on persons with psychosocial and intellectual disabilities who have been declared incapable in Article 180 part 9, point 5 of the Code on Public Health and the Health System.