

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



## GYLA will challenge constitutionality of the applicable legal incapacity model before the Constitutional Court

June 14<sup>Th</sup> is the day for protecting persons with limited capacities. This group also includes mentally retarded persons, who jointly with individuals who have mental disorder are considered to be the most vulnerable among the persons with limited capacities, since legislation deprives them of legal capacity completely. Full legal incapacity entails prohibition to make decision of legal importance (simple sale and so on).

According to the Georgian model of legal incapacity, from the moment of its establishment mentally retarded person is deprived of opportunity to make any decision regarding him/herself independently. Persons without legal capacity have guardians appointed, who make all decisions alone, independently from legally incapable person.

Certainly, mentally retarded persons cannot make adequate decisions in all cases regarding their private life. Moreover, they are vulnerable and may become subject of manipulation if they act independently. Obviously they are in need of persons to assist them, they require some other individuals who will help them realize the situation adequately and express their will. This approach is something different from the applicable

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model of guardianship. It envisages substitution of the will of legally incapable person, rather than their assistance in revealing determination.

In Georgia instead of assessing realization of importance of certain actions (procurement of certain thing, sale, lending, gift, entering into marriage) experts make general evaluation to identify legal incapacity.

Therefore, applicable legal incapacity model deprives individuals of the right to make any independent decision without assessing his/her ability with regard to the certain issue. Such approach is condemned in European as well as North American countries and is substituted by functional incapacity to act. It implies individual assessment of all human's skills and restriction of capacity only in the field where this individual is deprived of the ability to make independent decisions.

GYLA will challenge constitutionality of the provisions provided for it the Civil Code and Civil Procedure Code of Georgia, that violate constitutional rights of persons without legal capacity and that favor institutional approach to functional one.