

Georgian Constitutional Court: The System of Legal Capacity of Natural Persons and its Impact upon the Georgian Legislation

Judgment of 8 October 2014, no 2/4/532, 533

Vakhtang Menabde

On 8 October 2014, the Georgian Constitutional Court adopted a precedential judgment in the case of 'Irakli Qemoklidze and Davit Kharadze, Citizens of Georgia v the Parliament of Georgia'. Provisions of the Georgian law challenged by the plaintiffs concerned issues such as finding natural persons incapable, the impossibility by persons declared incapable to express their intention under civil law and the notion of guardianship. In particular, the plaintiffs were disputing the constitutionality of the provision governing legal incapacity at the material time in several ways. According to their assertion, the existing model contradicted the requirements of the rights to free development and equality. The Constitutional Court partially upheld the lawsuit allowing the State a period of six months to implement a relevant reform. The case served as a starting point for reforming the notion of legal incapacity.

I. Facts of the Case

On 8 October 2014, the Constitutional Court of Georgia handed down a precedential judgment in the case of 'Irakli Qemoklidze and Davit Kharadze, Citizens of Georgia v the Parliament of Georgia'. The Court was to resolve a number of difficult issues in the case. On the one hand, the impugned provisions governed the notion of legal incapacity; on the other hand, this notion had implications upon various specific individual rights such as the right to access the court, the right to marriage, the prohibition of ill-treatment, etc. This article discusses only the first part of the issue.

The object of the dispute was Art 12 para 5 of the Georgian Civil Code that deprived people with psychosocial needs of their legal capacity. According to the Civil Code, the notion of legal capacity means the ability of a natural person to acquire and exercise his/her civil rights in full by his/her free will and action. Depriving a person of their legal capacity virtually meant their 'civil death'. A person with no legal capacity would be rendered unable to make transactions since their expression of will was considered void under Art 58 of the Code. This situation was exacerbated by the fact that a person found incapable would retain this status for an indefinite period. The model in force at that time was not taking into account psychosocial needs of individual persons in relation to specific rights and the affected person was losing all of his/her rights at once.