The courts' case-law on legal actions for awarding curatorship

Act number V of 2013 on the Civil Code (hereinafter referred to as the Civil Code) has introduced a number of changes to the previous rules on the judicial restriction of the legal capacity of adults with mental disabilities. The relevant legislation and the procedure for awarding curatorship primarily aim at ensuring an appropriate protection for persons under curatorship who have a limited capacity of dealing with their personal affairs and at safeguarding them from the adverse consequences of legal statements made by them contrary to their will and interests.

In accordance with the Fundamental Law of Hungary and the relevant international instruments, there is a set of basic principles which govern the limitation of a person's legal capacity: necessity, proportionality, individualisation, differentiation and regular reviewing. An individual's right to make legal statements on his own may be limited only to an extent and for a period that are strictly necessary, and such limitation has to be adjusted to the life situation, personality, family circumstances, environment and living conditions of the person concerned.

The Civil Code provides for two methods as to how the natural persons' legal capacity can be limited: i. partial limitation which concerns only certain categories of cases and ii. total limitation. As new legal instruments, advocated decision-making and prior legal statements make it possible to avoid placement under curatorship and to take the will of a person with limited legal capacity into consideration to the fullest extent.

The limitation of a person's legal capacity is based on the latter's mental disabilities. The term "mental disorder" used by the Civil Code includes all kinds of psychological illnesses the diagnosis of which requires special expertise. An expert in psychiatry needs to be involved in the process of verifying the existence, nature and severity of such an illness, but his expert opinion in itself is not sufficient for placing the person concerned under curatorship with the limitation of the latter's legal capacity. An additional requirement is that the mental disorder in question has to induce a reduction, to an extent defined by law, in the capacity of discernment of the person concerned. The latter's rights may be restricted only if such restriction is absolutely necessary and is proportionate for the purpose of achieving the aim pursued. No partial limitation as to an individual's legal capacity may be ordered if the protection of the rights of the person concerned can be guaranteed by any other means not affecting his legal capacity. A partial limitation may be ordered only if it is justified by the personal circumstances, family and societal ties of the person concerned. A more severe limitation may be applied as an exceptional measure if a more lenient limitation would not be sufficient for the protection of rights.

Based on section 13/A, subsection (1) of Act number XXXVI of 2013 on the Election Procedure, the court ordering the limitation of a person's legal capacity has to decide on the exclusion or non-exclusion of the latter's electoral rights as they do not fall within any of the categories of cases defined by the Civil Code.

It is essential in terms of the achievement of the Civil Code's objective that the courts appropriately interpret and apply the provisions thereof and ensure, in individual cases, the equality before the law and the protection of the rights of citizens with mental disabilities.

The jurisprudence-analysing working group aims at examining the practical enforcement of the relevant substantive and procedural rules by the analysis of 415 litigious cases that had been finally disposed of by the country's various courts between 1 January 2018 and 31 December 2019, exploring and investigating the courts' case-law in a comprehensive manner, and, if necessary, harmonising the judicial practice by the elaboration of a common set of criteria.

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