



Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of Argentina

Addendum

Information received from Argentina on follow-up to the concluding observations*

[Date received: 6 August 2014]

1. In line with the recommendation contained in paragraph 56 of the concluding observations on the initial report of Argentina adopted by the Committee at its eighth session, the Government of Argentina wishes to submit the following information.

Recommendation contained in paragraph 22

2. **The Committee urges the State party to ensure that the concept of judicial prohibition does not figure in the proposal for the amendment and standardization of the Civil and Commercial Code and to guarantee the effective participation in the review process of organizations representing persons with disabilities.**

3. At the time that Argentina made its oral presentation to the Committee, in September 2012, a proposal for the amendment and standardization of the Civil and Commercial Codes had been submitted to the National Congress by the Government for adoption, as message No. 884 of 2012.

4. On 4 July 2012, pursuant to a decision by the Chamber of Deputies, a bicameral committee was established on the amendment, updating and standardization of the Civil and Commercial Codes. The committee was tasked with drafting the corresponding legislation and finalizing the text prior to its adoption by the legislature.

5. To carry out its mandate, the bicameral committee held public hearings throughout the country until the end of 2012. At these hearings, interested parties — individuals, civil society organizations and the public sector — were able to make suggestions and express their opinions on the issues covered by the bill, including the legal capacity of persons with disabilities.

6. The bicameral committee's web page contains statements by the Network for the Rights of Persons with Disabilities, by Dr. Francisco Bariffi, a well-known expert on the Convention, by representatives of the General Guardianship Advisory Services of the Autonomous City of Buenos Aires, by the Federal Board of Justice, Mental Health and Human Rights, which is one of the organizations making up the Legal and Social Studies Centre, and by Mr. Leonardo Gorbaz, who drafted the National Mental Health Act (Act No. 26657), among other persons interested in the issue.

* The present document is being issued without formal editing.



7. The bicameral committee received a wealth of contributions and is currently studying the various suggestions with a view to incorporating them in the draft text and offering its concluding remarks on the drafting of the bill.

8. For these reasons, the Government of Argentina cannot yet state precisely what the bill submitted to both chambers of the National Congress for their approval will contain, since its content remains under discussion by the legislature.

9. It may, however, be noted that article 43 of the draft text, as it stands, provides for the establishment of a support system for the exercise of legal capacity and that article 1 stipulates that the bill must be implemented in accordance with the Constitution and the treaties to which Argentina is a party.

10. In addition to this initiative by the Government, it may be noted that the National Mental Health and Addictions Directorate attached to the Ministry of Health is working, in accordance with the National Mental Health Act and the Convention on the Rights of Persons with Disabilities, particularly article 12, to provide interdisciplinary assessments of persons whom the courts have ruled insane or disqualified.

11. Building on these activities, the Directorate's aims are to:

(1) Bring the guardianship model more closely into line with the social model of disability and with the concept of a support system for decision-making, as reflected in the new legislation;

(2) Explore the scope of legal capacity in the daily life of persons ruled insane or disqualified, in view of the fact that it is a poorly understood technical concept that nonetheless has important repercussions for the daily lives of such persons and for their ability to exercise their rights.

12. Lastly, it may be noted that the judiciary have issued the following judgments based on the Convention, which takes precedence over domestic law:

- DE in re insanity and guardianship (Case No. 22.272), Mar del Plata Family Court No. 1. Article 141 of the Civil Code was declared unconstitutional
- BL in re disqualification (Case No. 1863), Mar del Plata Family Court No. 1. Article 152 of the Civil Code was declared unconstitutional
- CSG in re insanity and guardianship. Mar del Plata Court No. 2 authorized CSG to marry a person with a mental disability

Recommendation contained in paragraph 48

13. **The Committee recommends that the State party:**

(a) **Review the Electoral Code and introduce the necessary amendments to bring it into line with the standards set forth in the Convention, particularly with respect to legal capacity and the exercise of the right to vote on an equal basis;**

(b) **Pursue its efforts to ensure that institutionalized persons with disabilities have access to the polls by, for example, devising and implementing a national plan for ensuring that people are able to exercise their right to participation in political life (CRPD/C/ARG/Q/1/Add.1, para. 249) or other alternative solutions.**

14. In addition to the legislative changes and the actions of which the Committee was informed in the initial report, it should be noted, with regard to these recommendations, that, under the National Mental Health Act, article 152 ter was added to the Civil Code, as follows.

15. "Court rulings of disqualification or incapacity shall be based on an assessment of the faculties of the person concerned, conducted by an interdisciplinary team. They shall not be valid for more than three years and shall specify the functions and activities that are restricted, thereby ensuring that the independence of the person concerned is affected as little as possible."

16. In this connection, it may be noted that, although the National Electoral Code retains the historical classification of insanity, as set out in civil law, with an explicit reference to a severe mental state such as insanity, the recent amendment to the Civil Code, with the introduction of article 152 ter, modifies the parameters of this state, stipulating that the functions and activities that are limited must be specified and setting a time frame on rulings restricting a person's legal capacity. Thus, with the introduction of this amendment, if a court ruling imposes a restriction on legal capacity, it must, insofar as it limits political rights, do so specifically. This does not appear very reasonable, inasmuch as the very reason for imposing such a restriction is to protect the person concerned.

17. With regard to access to the polls by institutionalized persons, the Committee has already been informed of the progress achieved with the adoption of Act No. 26571, which amends the National Electoral Code (Act No. 19945) to enable persons living in residential institutions to vote.

18. An example of this may be found in the experience of the Dr. Manuel Montes de Oca National Residential Colony, which adopted various strategies in the primary elections of 2013 to enable persons living in the Colony to exercise their right to vote. Thus:

(a) Training was provided for persons living in institutions or in residential or similar homes in the village of Torres and the city of Luján, both in Buenos Aires province. In addition, all their professional and support services staff were invited to observe and/or participate in the process, in order to encourage their involvement. This training covered various aspects of civics, the basic concepts of a democratic system, citizens' rights and the rights of persons living in institutions, among others. A number of activities were organized, including debates, mock voting and other activities within the patients' capacity. The institution's professional staff, the sign language teacher, the psychologist and the lawyer took part in the same activities;

(b) The relevant data were looked up in registers and polling stations were located. The Department of Statistics helped with the search for the data required to enable the persons involved to exercise the right to vote. Their identity card numbers were also located;

(c) Resources were allocated for transporting such persons to polling stations. As for the question relating to access to the polls by institutionalized persons, vehicles were made available to take such persons to polling stations and staff were trained to accompany them.

19. As a result of the strategies adopted, 10 persons from residential homes and 15 who were engaged in programmes of rehabilitation in the community and living in institutions of a similar kind were enabled to exercise their right to vote at the primary elections of 11 August 2013.

20. At the next general election, to be held on 27 October, provision has been made for an additional number of people to vote, since the number of participants and the resources allocated to improve participation have been increased.

21. No difficulties were experienced in the exercise of the right to vote at the primary elections and we intend to ensure that the same situation will obtain at the elections in October.

22. Lastly, although the Committee did not request this information, an associated development was the adoption in October 2012 of the Argentine Citizenship Act No. 26774, article 94 of which deals with assisted voting.

Article 94 of the Act

23. "Voting. Once inside the polling booth, with the door closed, the elector shall put his or her voting card in an envelope and proceed immediately to the table. The sealed envelope shall be placed by the elector in the ballot box. The presiding officer may, of his or her own motion, or at the request of the Public Prosecutor's Office, order verification of whether the envelope returned by the elector is the same as that which he or she submitted.

In the event that national, provincial and/or municipal elections are held simultaneously, a single envelope shall be used for all the voting cards.”

24. Blind electors and electors with a disability or a permanent or temporary physical condition that impedes or restricts them or makes it difficult for them to vote may cast their vote with the assistance of the presiding officer or a person of his or her choice who has duly certified his or her identity in accordance with the relevant regulations. Such assistance shall be recorded in the register of the presiding officer and in the closing protocol and shall contain the data of the elector and the person assisting him or her.

25. No one, except the presiding officer, may assist more than one elector at the same election.
