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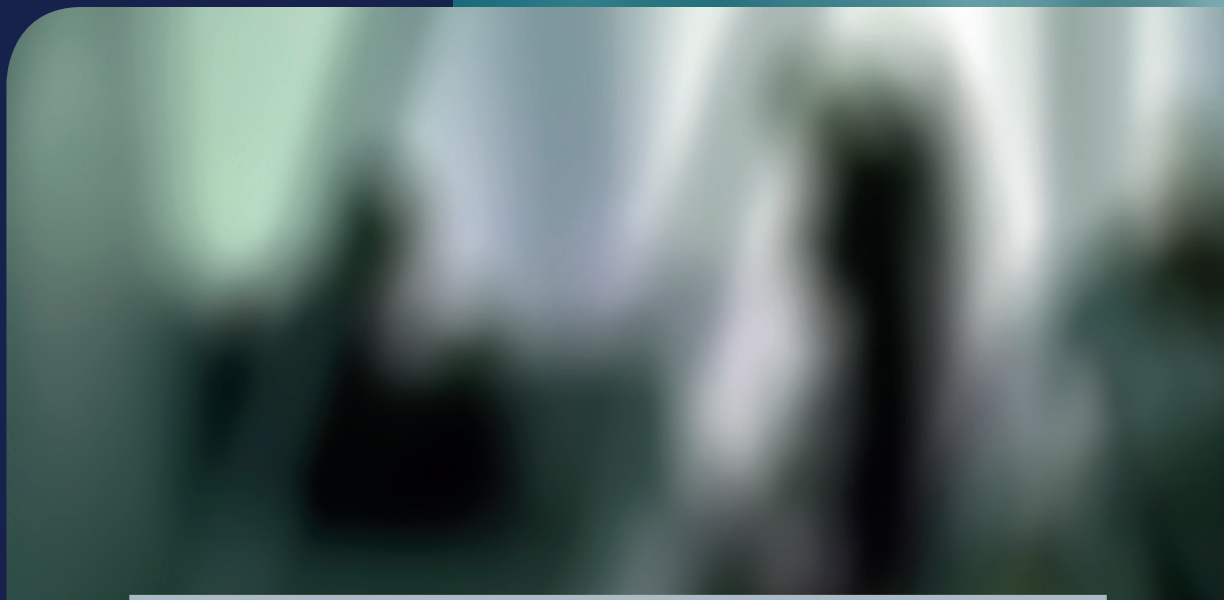

ON THE LEGAL STATUS OF INDIVIDUALS WITH MENTAL HEALTH DISORDERS AT STATE-RUN MEDICAL AND SOCIAL CARE FACILITIES

Shakibaeva A.

“Legal Status of Individuals with Mental Health Disorders at State-run Medical and Social Care Facilities”, Nur-Sultan, 2019

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CONTENTS

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GLOSSARY

De-institutionalization – the policy of downsizing health care institutions into smaller public institutions, the development of alternative services in the local community.

Institutionalization – the process of turning any relations into institutions, into a form of organizing relations with established rules, norms and their self-regulation.

Convention – UN Convention on the Rights of Persons with Disabilities.

A sheltered-care facility for children – a state institution designed to educate and provide medical assistance to orphans and children left without parental care, as well as children with mental and physical disabilities.

MES – Ministry of Education and Science of the Republic of Kazakhstan.

MSI – medical and social institutions.

SSS Centers – Special Social Services Centers in a hospital environment.

INTRODUCTION

This Report is relevant as a result of the growing understanding on the part of the global community with respect to the observance of the right to mental health and non-discrimination of persons with mental health disorders.

According to the World Health Organization, the number of people with mental disorders will grow steadily as a result of the deterioration of the ecological and epidemiological situation, local armed conflicts, unfavourable socio-economic conditions, growing inequality, unemployment, forced migration and other circumstances.

Today, the number of people with mental health disorders in closed medical and social institutions is more than 30% of the total number of people with mental health problems in the Republic of Kazakhstan.

In 2015, Kazakhstan has ratified UN Conventions on the Rights of Persons with Disabilities[1], thereby recognizing the obligations each member state needs to fulfil.

When monitoring facilities, the expert team relied on international legal principles of human rights, namely, the recognition of human dignities, the inalienability of human rights, equality recognition before the law, as well as specific provisions of the UN Convention on the Rights of Persons with Disabilities in particular the right to living independently and being included in the community.

The project's goal was to examine the situation around the respect of rights of individuals with mental health disorders living in special social care facilities and mental health facilities, their active legal capacity and right to independent living in the community, as well as the development of recommendations for the Government of the ROK.

Project objectives include:

- Identifying facilities for monitoring based on geographical location of the region and capacity limit of the facility in question;
- Phased monitoring of facilities for the duration of 6 months of 2019;
- Interviewing with experts and the special social service users;
- Studying of the regulatory framework, statistical data by region, articles and other materials from open sources;
- Analysing the regulatory enforcement practice with respect to the rights of individuals with mental health disorders;
- Identification of general pattern of events and occurrences within the institutions by comparing the received data and information;
- International practice review;
- Development of substantive recommendations.

[1] The Convention on the Rights of Persons with Disabilities was adopted by the UN General Assembly on 13 December 2006 (Resolution A/RES/61/106), ratified by the Law of the Republic of Kazakhstan dated 20 February 2015 "On the ratification of the Convention on the Rights of Persons with Disabilities".

Limitations / scope of study. Due to limited available resources (human and financial), qualitative methods of data collection and analysis were selected. In the process of the Report preparation, we monitored social and healthcare facilities, analysed documents, and personal records of service users, conducted in-depth interviews with 30 individuals with various psychiatric diagnoses, with social workers and psychiatrists of the Special Social Service Centres, as well as Mental Health Centres. The report also included precedent cases on restoring the legal capacity of persons with mental disorders, which took place in January 2020.

Significant part of the work on the report, including monitoring visits, interviews with experts, requesting information from authorized state bodies, as well as an analysis of international practice, carried out long before the start of the coronavirus pandemic and the introduction of quarantine measures in the country.

Therefore, the report does not describe the current situation in the institutions. At the same time, the recommendations presented in this report do not lose their relevance and can be successfully applied to mitigate the consequences of the current crisis, since they focus on systemic problems.

However undoubtedly the situation in state medical and social institutions that has developed now during the spread of the coronavirus pandemic requires a separate study.

Sources. Primary data were collected by means of state regulatory legal acts, official statistics, semi-structured in-depth interviews, and author's observations in the course of monitoring. Secondary data were collected through the use of open-source information: reports from non-governmental and international organizations, local and foreign research, as well as publications in the media.

Study structure: the Report consists of the Introduction, three chapters and Conclusion.

The first chapter on "Legal personality[2] of individuals with mental health disorders in the Republic of Kazakhstan" describes the degree of availability of special social services to said individuals, without the deprivation of civil active legal capacity, as well as describing the procedure of the deprivation and restoration of active legal capacity within the framework of national forensic-psychiatric evaluation and the court system.

The second chapter "Monitoring of the provision of special social services to individuals with mental health disorders" deals with the issues of examining the voluntary nature of commitment and the possibility of leaving psychiatric and social care facilities for children and adults, ability to stay in touch with relatives, powers vested in the director-custodian of a facility, effectiveness of medical care and the level of sophistication of social services, availability of rehabilitation activities, ability to receive social and medical services in the vicinity of place of residence.

The third chapter "Medical care at Special Social Service Centres in 24-hour inpatient settings, and at Mental Health Centres" covers matters of the degree of justification and rationale behind involuntary commitment and involuntary treatment of patients and special social service users at medical psychiatric institutions.

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[2] Legal personality [approximate translation] refers to the ability of a person to have and exercise — directly or through proxy — subjective rights and legal obligations — in effect, being a party to legal relations. Legal personality then branches into passive legal capacity (or legal capacity for rights) and active legal capacity (legal capacity to act).

In general the Report describes instances of abuse related to the deprivation of active legal capacity and the involuntary commitment to a state-run facility imposed upon persons with disabilities — the deprivation of the right to take legal action before the court, participate in court proceedings, lodge a complaint; the absence of the right to choose a custodian, right to leave a facility on one's own volition, right to reject treatment, including psychiatric treatment, deprivation of the right to keep in touch with relatives, among others.

In total, from April through October 2019, 20 monitoring visits were made to Special Social Service Centres (for adults and minors), Mental Health Centres of the cities of Nur-Sultan, Almaty, Shymkent, as well as Almaty, Akmola, Mangistau and Turkestan oblasts (regions).

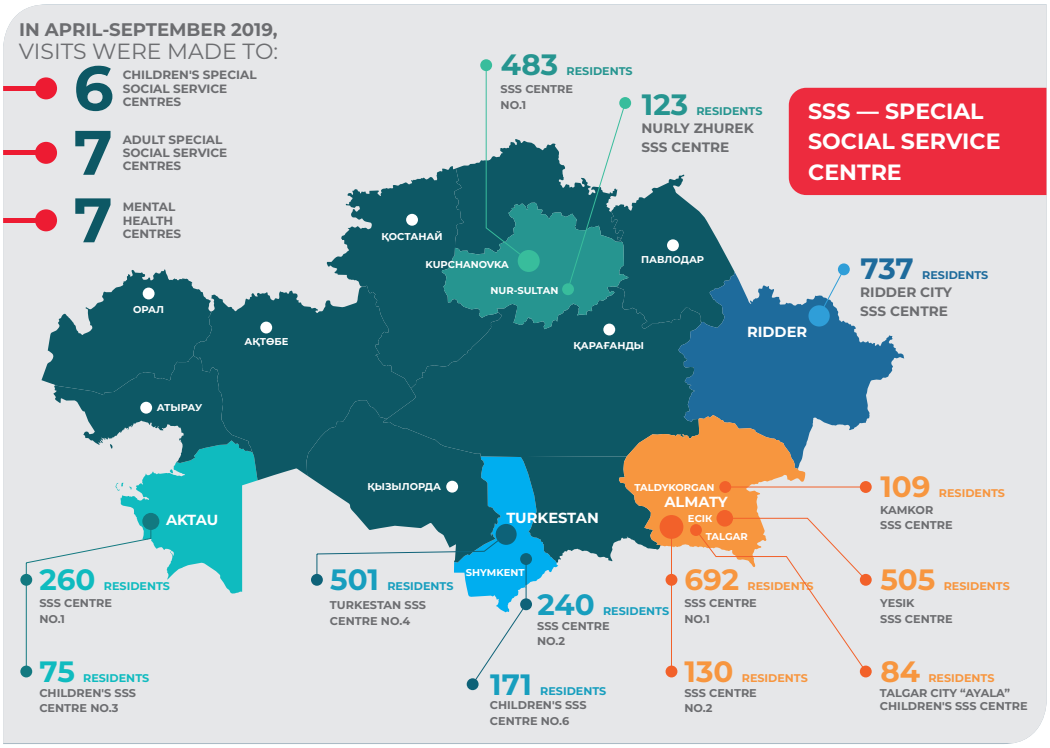

Figure 1 — The number of monitoring visits to state medical and social institutions carried out from April to October 2019

CHAPTER I.
LEGAL PERSONALITY OF INDIVIDUALS WITH MENTAL HEALTH DISORDERS IN THE REPUBLIC OF KAZAKHSTAN

Pursuant to article 13 of the Constitution of the ROK – "Each individual has the right to have their legal personality recognized, and is entitled to defend their rights and liberties using any means not prohibited by the law, including justifiable defence".

1.1. STATISTICAL DATA.

Kazakhstan has **108,817**[3] (16% of the total number of disabled persons) individuals with disability due to mental health disorders, aged 18 and older, and **14,406** (16.57% of the total number of children with disabilities)[4] children with disabilities due to the same cause. Ministry of Labour and Social Protection oversees 16 medical and social care facilities for children with psychoneurological disorders, housing **1,761 children under 18**; the number of psychoneurological medical/social care facilities for adults amounts to 45, housing a total of **13,624** residents.

Number of individuals placed under monitoring (tracking) at healthcare authorities amounts to **188,667**.[5]

There are **17 mental health centres** with a total bed count of **9,049**. Total number of state medical and medical-social care facilities for individuals with mental health disorders amounts to **78**.

According to a response received from the Committee for Legal Statistics and Special Recordkeeping of the General Prosecutor's Office, as of 1 January 2019, **35,941** individuals were placed in the Automated Information System "Special Recordkeeping" as individuals deemed by the court as legally incapacitated (incompetent) or partially actively legally competent/capable.

Official statistics do not differentiate between individuals deemed by the court as partially legally competent and those deemed fully incapacitated.

According to the information obtained from the Supreme Court of the ROK for the period of 9 months of 2019, motions to adjudicate an individual as legally incapacitated were granted in **2,608 cases**; **52** motions were dismissed (0.5% of the total number). Throughout 2018, decisions to grant a motion to deem a person legally incapable were considered in **4,211 cases**; **67 decisions** were dismissed (1.6% of the total number).

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3 Response No. outg.09-1-24/3145 dated 18.02.2019 Ministry of Labour and Social Protection of the ROK.

4 Based on the data provided by the Committee for Statistics of the ROK as at 01.01.2019, 680,025 individuals with disabilities were registered, of whom 86,956 are children under 18.

5 Data for 2018.

1.2. SPECIAL SOCIAL SERVICE USERS COMPARED BY DISABILITY GROUP AND LEGAL INCAPACITY

Analysis of quantitative indicators of service users showed that all the users had been deprived of their legal capacity, and were mainly classified under Disability Group 2.

Disability Group 2[6] is characterized by a persistent and pronounced physiological disorder that gives rise to *moderately* pronounced limitation of the capacity for independent living (self-servicing), mobility, labour activity, learning and other skills. Constituting legal grounds for depriving active legal capacity is the individual's condition, brought about as a result of a psychiatric illness or intellectual disability, that prevents said individual from recognizing the meaning of their actions, or control their actions[7]. There is an obvious discrepancy between moderate physiological disorders and severe limitations in the ability to exercise civil rights of service users.

The only facility that does not practice 100% deprivation of active legal competence for every service user is the SSS Centre No. 1 of the city of Almaty *(more detail in the sections "Independent living facilities" and "Restoration of active legal capacity for individuals residing at Special Social Service Centres").*

Furthermore, the Order of the Ministry of Health and Social Development of the Republic of Kazakhstan No. 165 from 26 March 2015 "On the adoption of special social service provision standards in the area of social protection" prohibits Disability Group 3 individuals from receiving special social services at inpatient facilities or semi-inpatient facilities.

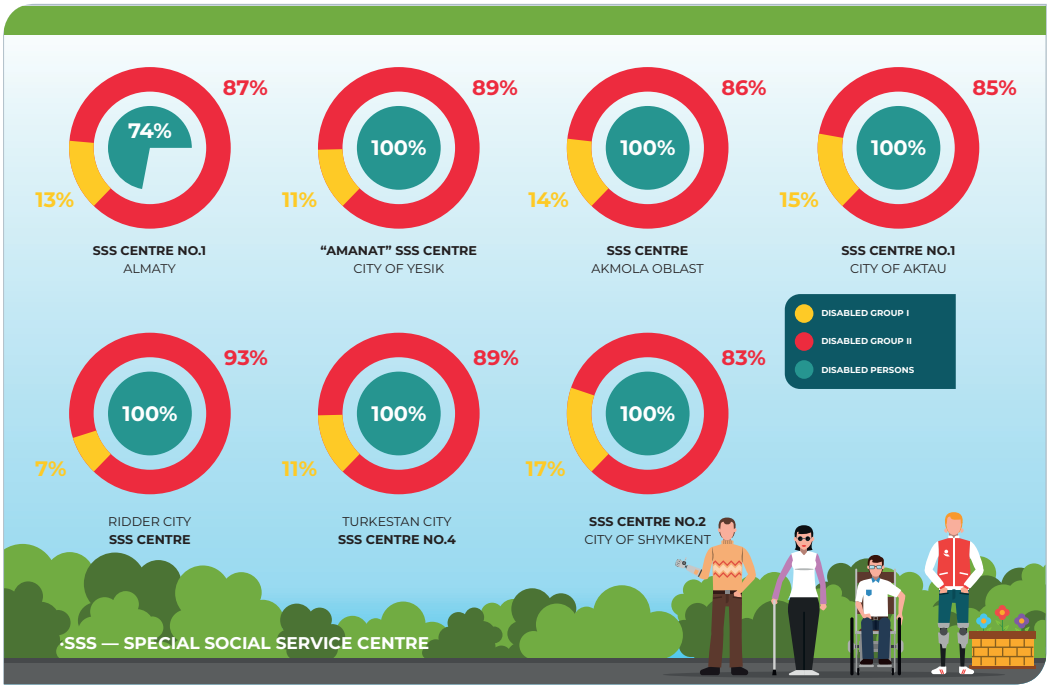

Figure 2 – Quantitative indicators of the disability group and the legal status of special social services users

[6] Order of the Minister of Health and Social Development of the Republic of Kazakhstan dated 30 January 2015, No. 44.

[7] Article 26 "Declaring an individual incapacitated", Civil Code of the ROK

1.3. ACTIVE LEGAL CAPACITY DEPRIVATION PROCEDURE AT SPECIAL SOCIAL SERVICE CENTRES

Pursuant to paragraph 2 article 323 of the Civil Procedure Code of the Republic of Kazakhstan (CPC ROK)[8],a legal action to declare an individual legally incapacitated due to psychiatric illness or psychiatric disorder, intellectual disability or other mental health condition can be initiated in court upon a motion lodged by members of the individual's family, close relatives, irrespective of cohabitation, prosecutor, authority charged with custody or guardianship, psychiatric (psychoneurological) facility.

The following persons pursue legal action to deprive of active legal capacity: SSS Centre director, children's services council at the akimat (regional governor's office), chief mental health physician, parents of individuals that reached the age of 18.

Courts receive motions from prosecutors to declare children residents of children's SSS Centre as legally incapacitated.[9] SSS Centre directors approach the prosecutor's office, and the latter then lodges a court petition.

The individual whose legal incompetence is to be questioned or determined in court must be summoned to the court hearing, provided that their presence at said hearing does not constitute a threat to their own life and health or life or health of others in attendance. The individual is entitled to argue their case in person, or through proxy (article 326 of CPC ROK).

However, upon the examination of court rulings in favour of declaring service users legally incapacitated, it was revealed that said individuals were not summoned to the court hearings. Often the individuals in question learned of the ruling some time later, at a point where the appeal and complaint period has elapsed, or were not informed of the deprivation of their active legal capacity. There were court rulings whereby hearings were not attended even by the claimants themselves.

Civil legislation of the ROK provides that civil *passive legal capacity*, as the capacity for civil rights and duties, is recognized equally in every citizen of the country, and arises the moment an individual is born, and terminates upon their death (article 13 of the Civil Code of the ROK).

Active legal capacity (capacity to act) is defined by article 17 of the CC ROK as the ability to wilfully acquire and exercise civil rights, create civil duties for oneself and fulfil them (civil active legal capacity), and shall arise in full upon reaching majority — that is, at the age of 18.

In civil law and the Code of ROK, the term *"arising of active legal capacity"* of citizens is defined as partial active legal capacity to act (minors aged 14–18) and full active legal capacity (upon reaching the age of 18, or upon marriage prior to reaching 18). *Restriction of active legal capacity* is applied to individuals that abuse alcoholic beverages or narcotic substances, and put their families in a state of material hardship.

Paragraph 3 article 26 of the CC ROK provides that should a legally incapacitated individual recover from illness or should their health improve significantly, the court shall

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8 Code of the Republic of Kazakhstan No. 377-V from 31 October 2015 "Civil Procedure Code of the ROK" (as amended on 22 July 2019)

9 Ruling of the Republic of Kazakhstan dated 5 February 2009 with respect to a motion filed by the Ayagoz district prosecutor to declare Aslan Vasilyev — a resident of the Ayagoz children's SSS Centre — legally incapacitated.

declare them legally competent, following which custody shall be lifted. However, **review of active court ruling with a view to restoring an individual's active legal capacity may only be initiated by a legal custodian, or a state custody and guardianship authority** (paragraph 2 of Article 328 – "Recognition of a citizen as capable" of the CPC ROK).

As such, legally incapacitated individuals are not entitled to choose their custodian (article 26 CC ROK), independently engage in legal contracts, and no consent is required for providing mental health care (paragraph 3 article 116 of the Code of Public Health and Healthcare System[10]); said individuals may be admitted to a psychiatric inpatient hospital and provided medical care without consent (paragraph 2 article 94, paragraph 3 article 125 of the Code), and no consent is required for involuntary commitment of said individuals to a psychiatric inpatient facility (pursuant to chapter 38 of the CPC ROK); said individuals may not take part in court proceedings regarding their involuntary commitment upon clinician's consent (article 337 CPC ROK), and no due process of appealing such rulings is available. Decisions to extend the time of involuntary commitment are made using the same procedure (art. 340 of CPC ROK); additionally, incapacitated individuals are stripped of their right to independently protect their lawful interests, are banned from executing individual employment agreements, are denied their election right, and the right to enter into marriage (article 11 of the Code of ROK "On marriage and family"), deprived of the right to adoption (article 91 of the Code).

1.4. THE LEGAL STATUS[11] OF LEGAL INCAPACITY AS GROUNDS FOR RECEIVING SPECIAL SOCIAL SERVICES AT 24-HOUR SERVICE HOSPITALS

State-funded special social services are provided at inpatient facilities through regional (oblast), and city-based authorities (Nur-Sultan, Almaty and Shymkent) governing social protection (authorized bodies), through employment offices and social programme offices in districts, cities of regional and republican significance (capital cities) ("employment offices") at service users' place of residence. Non-state-owned inpatient facilities accept service users on a contractual basis, with the exception of cases whereby special social services are provided using the national budget funds.

Pursuant to the terms of[12] special social service provision at inpatient facilities, an individual (family) that finds themselves in a complicated life situation may lodge a request with the employment office to receive guaranteed amount of special social services at place of residence, through filing: a written application; an identifying document; medical chart using the appropriate form; certificate of disability; information on measures taken within the personal disability rehabilitation programme; for persons over the age of 18 — court ruling on legal incapacity (if applicable).

The Report's author once lodged a written petition with the Ministry of Labour and Social Protection requesting a clarification on the mandatory nature of the legal status of an individual deprived of active legal capacity when receiving special social services in an

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10 Code of the Republic of Kazakhstan "On public health and healthcare system" No. 193-IV, dated 18 September 2009.

11 Legal status is a legally enshrined position of legal subjects and the totality of their rights and obligations. Legal status comprises legal personality, which, in turn, is composed of passive legal capacity, active legal capacity and delictual legal capacity.

12 Chapter 2 of the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 165 from 26 March 2015 "On the adoption of special social service provision standards in the area of social protection".

inpatient setting. The agency obliged, clarifying that the copy of the court ruling shall only be filed if it is available. Therefore, an individual with psychoneurological disorders and in need of special social services in an inpatient setting with 24-hour surveillance may preserve their active legal capacity status when placed in a facility.

At the same time, the management of a medical-social facility may — should they be so advised — file documents to court to establish legal capacity or incapacity of the individual residing at the facility. Furthermore, according to paragraphs 9, 10 of the Standard, an inpatient facility's primary purpose is to carry out the custody and guardianship duties resting on the facility's management with respect to service users in need of custody or guardianship, under the procedure set out in paragraph 4 article 122, article 125 of the Code of the ROK "On marriage and family" (hereinafter — The Code).[13] In line with paragraph 4 article 122 of the Code, the custodians or guardians of individuals in need of such care and placed in the relevant educational institutions, medical institutions, social service institutions, are the management entities of said facilities[14].

To date, the requirement for a court ruling to declare an individual legally incapable is interpreted differently by different regions of the country.

All children that have reached the age of 18 while residing in a facility shall be deprived of their active legal capacity, as a mandatory prerequisite of transitioning to an adult facility. In line with the national legislation, loss of active legal capacity strips the individual of any and all civil rights, the right to appeal a psychiatric treatment order, freedom of movement, expression and many other rights.

An expert of the Taldykorgan-city "Kamkor" SSS Centre explains: "Disability and legal incompetence are mandatory prerequisites for transitioning an individual from a children's to an adults' SSS Centre."

The only institution that transfers children from the children's facility to the adults' facility without any court rulings is the Special Social Service Centre No. 2 of Almaty. After the enrolment, psychiatrists at the adults' SSS Centre No. 1 in Almaty decide on a case-by-case basis on the issue of declaring newly enrolled residents legally incapacitated. However, during another inspection conducted by the prosecutor's office of Almaty in 2017, it was commented that all service users are required to be deemed legally incapacitated. Director of the SSS Centre No. 1 was able to justify their actions on the grounds of the Special Social Service Provision Standard (in the area of social protection).

Until 2018, Shymkent city prosecutor's office had been compelling the managements of children's SSS Centres **to declare children under 18 as legally incapacitated**, as a prerequisite for receiving special social services in an inpatient setting.

Usually, the medical perspective takes precedence in legal practice. The majority believes that everything ought to be done exactly as psychiatrists instruct. **Legal incompetence only very recently began to be regarded as a problem.** Prior to that it had been believed that it is a kind of a social status that is only needed for a helpless individual, as a formal aid or even care.

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13 Adopted on 26 December 2011, under No. 518 –IV.

14 Written response from the Minister of Labour and Social Protection of the ROK on 11.09.2018 (petition # 513338).

During an interview, employees of the "Ayala" children's SSS Centre in the city of Talgar gave examples from multi-year practice to illustrate that forensic psychiatric examination (FPE) confirms the determination of legal incapacity in 100% of cases.

In the analysis of information obtained from the Forensic Examination Centre of the Ministry of Justice of the ROK[15] it was established that over the course of 2018, only 5,402 examinations out of 9,984 returned positive. Over a period of 9 months in 2019, positive results were obtained in 3,702 out of 6,652 cases. Yet, we did see a discrepancy in the numbers of negative results depending on the region. For instance, in the cities of Oskemen, Uralsk, Taldykorgan, Aktau, over a period of nine months of 2019, no negative determinations regarding legal incompetence were made. Conversely, in the cities of Shymkent, Pavlodar and Almaty negative results outnumber the positive ones.

Employees of the facilities attempted to explain this systemic practice by asserting that subsequent legal status is determined in a forensic psychiatric examination — that is, by physicians. At the same time, they conceded that over their 20-year practice, there had not been a single instance of active legal capacity being preserved for a child resident of the facility.

Judges tend to deliberate on matters of the deprivation of active legal capacity in an excessively formal manner, almost always relying exclusively on the medical examination opinion report, while ignoring the possibility of the existence of other evidence that could be used as a rebuttal. SSS Centre service users are effectively stripped of any right to protection in the process of the deprivation of their active legal capacity: they are not allowed to familiarize themselves with the petition, hire a lawyer, involve witnesses and gather documents. At times, examinations are performed in absentia — that is, the patients themselves are not examined by the members of the expert commission.

Furthermore, the employees attempted to justify this practice by saying that in the event that an individual preserves their active legal capacity, said individual would not be able to be accepted into adults' mental health inpatient facility, and no custodians/guardians could be found for them. Forensic psychiatric experts and judges often face a moral dilemma: if an adult individual is not deemed legally incapacitated, where would this person find themselves in?

At the "Kamkor" SSS Centre in Nur-Sultan, 7 out of 123 residents have the opportunity to visit apprenticeship trade shops. Yet, the students do not receive any credentials or certificates of completion of occupational courses. The management clarified that these individuals do not need the documents, as all of them are "legally incapacitated".

1.5. STATUS OF DIRECTOR-CUSTODIAN AT SPECIAL SOCIAL SERVICE CENTRES

National legislation allows to declare individuals with psychiatric disorders and intellectual disabilities as deprived of active legal capacity, and place them under full custody. The legal status of incapacity robs the individual of the ability to fully participate in civil law relations, employment, marriage, exercise the right to reject or appeal decisions regarding emergency/routine hospitalization, involuntary commitment to mental health facilities.

[15] Response No. 20-05-10\3734 dated 11 November 2019

Civil Code of the ROK, Code of the ROK “On marriage and family", Law of the ROK “On local governance and self-governance in the ROK" provides for granting custody to a natural person.

Paragraph 2 article 119 of the Code of the ROK “On marriage and family" provides for a procedure for protecting property and non-property rights and interests of legally incapacitated or partially incapacitated majors.

The state, under the procedure established in article 120 of the Code of the ROK “On marriage and family", performs its custody or guardianship functions with respect to legally incapacitated or partially incapacitated individuals of majority age through local executive bodies.

Custody or guardianship is established by the bodies that perform custody and guardianship functions at place of residence of the individual in need of custody or guardianship, or at the location of property subject to custody. In certain cases, custody or guardianship may be established at place of residence of the custodian or guardian (article 112 of the Code of the ROK “On marriage and family").

In the event that the individual in question resides in a SSS Centre, the latter is considered official place of residence and registration. Custodians of individuals in need of custody and placed in the relevant educational institutions, healthcare facilities, social care facilities are the management entities (director) of said facilities (article 122 of the Code of the ROK “On marriage and family").

Legislation on custody over individuals with mental health disabilities gives rise an obvious conflict of interests: medical or social facility renders its services and, simultaneously, conducts oversight of the services' conformity to the interests of the legally incapable individual in question.

The head of the facility is simultaneously a client, a service provider, an oversight authority and a custodian. A resident may not voluntarily leave the facility. To do so, one must receive authorization from the facility's director and state custody bodies. It is not uncommon for people to remain there for their entire lives.

On the photo SSS Centre No. 1, city of Aktau, Mangistau oblast (region)

Deprivation of active legal capacity renders the individual unable to choose or change their custodian, should the latter fail to fulfil their duties in a satisfactory fashion, or file a legal action to restore active legal capacity. Assigning a custodian **does not require consent of the legally incapacitated individual**.

Limited requirements are established for the person assigned as the custodian. No requirements are imposed on the speciality or competence of the custodian. Only a limited form of performance monitoring of the fulfilment of custodian's duties is instituted. Official custody and guardianship authorities limit the performance oversight only to quarterly reports to be submitted by the custodian with regard to the expenditure of disability benefits.

The active legal mechanism of guardianship institution in the country does not provide for a custody network or differentiated degree of support. This means that, depending on the level of mental impairment and mental health state, an individual may require either full custody in all social (everyday), economic, legal matters, or only highly specialized aid — for instance, in legal or economic matters *(more detail in the sections "International legal and national analysis")*.

Currently legal incapacity status deprives a person of any rights and effectuates complete custody. For example, when visiting the Esik SSS Centre in the Almaty oblast (region), the director of the institution, as a custodian, did not allow the monitoring group members to conduct confidential conversations with residents, arguing that they were incapacitated.

Deprived of active legal capacity, a resident of a facility receives social-economic, social-legal services not directly, but through a custodian. Life situations exist whereby a sick person becomes a burden for his or her relatives, who have no intention of assuming custody[16]. In such cases, these individuals are committed to SSS Centres.

It should be noted that patients posing a danger to the public amount to no more than 1% of the total number of chronically mentally ill patients, and they only pose a danger in the period of aggravation or decompensation of the condition.[17]. Custody over such individuals comes with a serious burden of responsibility for the relatives.

Among service users — besides individuals with mental health disorders and intellectual disability — there are also people who have fallen victim to fraud and lost their housing, or individuals who lost all their social connections after serving a prison term.

The most suitable option for individuals capable of decision-making and being responsible for their actions is the **guardianship**. Unlike custody, this option allows the individual to choose their guardian.

Article 127 of the Code of the ROK "On marriage and family" provides for the establishment of guardianship upon the request of an adult with active legal capacity, who, due to a health condition, is unable to exercise and protect their rights and fulfil duties. In such cases, the guardian of an adult and legally competent individual may be assigned by an authority engaged in custody and guardianship affairs **only upon receiving consent of the former**. Property owned by the major and legally competent individual under guardianship is managed by the guardian on the grounds of the agency agreement or discretionary asset management agreement entered into between the guardian and their

[16] Examination of medical records of one V. Golutva revealed that he was involuntarily committed to a Mental Health Centre in Nur-Sultan.

[17] From a report by the director of the Republican Psychiatric Research Centre, N.A. Negai, November 2018.

charge. Settlement of everyday or other transactions aimed to maintain subsistence and meet the individual's basic needs, shall be performed by the guardian upon their charge's consent. Guardianship over adult and legally competent individuals may be terminated upon the request of the latter.

1.6. RESTORATION OF ACTIVE LEGAL CAPACITY FOR INDIVIDUALS RESIDING AT SPECIAL SOCIAL SERVICE CENTRES

The monitoring revealed that directors of children's SSS Centres — "Kamkor" SSS Centre in Taldykorgan, "Ayala" SSS Centre in Talgar, SSS Centre No. 1 in Shymkent — intend to restore in a judicial proceeding active legal capacity of certain service users that have reached the age of 18, in order to subsequently move them to facilities for the disabled or the elderly, or to employ them at said facilities.

Directors at adults' SSS Centres are not familiar with this practice, and do not initiate legal action to restore active legal capacity, with the exception of the SSS Centre No. 1 of the city of Almaty. The in-house attorney of the SSS Centre No.1 of the city of Almaty, as of 1 September 2019, had 2 open court petitions to declare active legal competence. 145 legally competent, 547 legally incapacitated. Over the previous years, **3 service users were recognized legally competent.**

SSS Centre No. 1 director, D. Iskakova: "Restoration of active legal capacity is the most challenging issue. In 2019 competency was restored only for 1 out of 6 individuals."

During a monitoring conducted at the Oskemen city Mental Health Centre, forensic psychiatric examination experts identified two instances of active legal capacity restoration in 2018–2019 for former service users of the Zimoviy Centre for Special Social Services. To this end, employees re-registered the custody in their names and brought these people home. Afterwards, in keeping with the requirements set out in article 26 of the Civil Code of the ROK, they filed court petitions to restore active legal capacity for the individuals in question.

Paragraph 3 article 26 of the Civil Code of the ROK provides that, should a legally incapacitated individual recover from illness or should their health improve significantly, the court shall declare them legally competent, following which custody shall be lifted. Review of active court ruling on the grounds of full or partial recovery or improvement of health status can only be initiated by family members, close relatives — regardless of cohabitation status — prosecutor, custody or guardianship body, psychiatric care facility, custodian. The individual that is stripped of their rights may not influence the court decision review. Nationwide there have only been a handful of cases whereby the court restored active legal capacity of an individual. No official statistics is maintained for this case category.

Since 2017 "Psychoanalytic association" NGO of Almaty, "Kamkor Otau" independent living facility have been implementing a legal mechanism referred to as **strategic legal procedure to restore active legal capacity for former users of the services of medical and social care facilities (SSS Centres)**, in order to introduce wider changes in the legislation, regulatory enforcement practice and in the public opinion with a view to improving the status of individuals with mental disorders.

To date, courts of the Almaly district of the city of Almaty have restored active legal capacity of 2 young people out of 4 petitions filed[18]. The process was challenging. The court system and judges face these cases for the first time, and are not prepared — neither morally, nor professionally. All four judges had to familiarize themselves with the relevant articles of the Civil Code right during the court hearing.

As reported by the facility director, psychoanalytic A. Kudiyarova: [19] "In 2017 and 2018, first such cases were lost in court. The judge revoked the passport from the custodian right during the court hearing, in the court room, and returned the document to the group home, saying "For 20 years I have been stripping active legal capacity, and here you are asking me to restore it. This is unacceptable."

Judges tend to rely exclusively on forensic psychiatric examination reports. In other words, if the expert report contains language "is in need of custody", the judge will deny the motion to restore the individual's active legal capacity. Also, proceedings involve discriminatory approaches. For instance, one judge once asked, in presence of the individual in question: "Are you sure this person is right in the head?" Untoward questions have also been directed at the subjects of proceedings themselves: "Why do you need active legal capacity?", "And how is it that you don't need a custodian?", and other degrading questions.

Experts report:[20]- "We are forced to acknowledge the fact that it is very common to see judges use the old approach to mental health — a strictly medical one — and the unwillingness to address issues of people with mental health disabilities from the human rights standpoint. It is safe to say that Kazakhstani judges are in dire need of human rights lectures and trainings. Despite the fact that there are projects aiming to address the issues of persons with psychosocial disabilities, they fail to cover the entire scope and all the relevant population. Pilot projects can become jeopardized, unless joint efforts are made with the state to pursue legislation reforms. Serious work needs to be done in cooperation with NGO representatives, persons with mental and intellectual disabilities, the government. At this stage, we ought to educate judges, representatives of sheltered-care facilities, mental health centres, forensic psychiatric examination on the topics of human rights considerations following the deprivation of active legal capacity."

1.7. LIMITATION OF RIGHTS OF LEGALLY INCAPACITATED INDIVIDUALS WHEN RECEIVING MEDICAL CARE

Pursuant to paragraph 3 article 116 of the Code21 of the ROK "On public health and healthcare system" an individual that the court has declared legally incapacitated (deprived of active legal capacity) shall receive mental health care upon consent of their legal representatives.

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18 Court ruling from 15 January 2020 in the case of V. Nesterov, and the court ruling from 30 January 2020 in the case of N. Klochkova.

19 A. Kudiyarova interview for the Azattyk radio on the restoration of legal capacity for V. Nesterov, January 2020.

20 "Human rights in Kazakhstan. 2019 Review" prepared by the New Generation of Human Rights Defenders Coalition. Section "Legal Personality of Individuals with Mental and Intellectual Disorders", authors: G. Amangeldinova, A. Shakibayeva.

21 Adopted on 18 September 2009 No. 193-IV.

Consent to commitment to a mental health facility and medical care provision without the consent of the individual shall be allowed with respect to a legally incapacitated individual (paragraph 2. article 94, paragraph 3. article 125 of the Code).

Monitoring of 7 Mental Health Centres revealed that the recordkeeping of the commitment of individuals deprived of active legal capacity is not included in the official statistical activities.22 Hospitalization for treatment is performed upon written consent of the custodian, without any regard given to the opinion of the individual that is facing hospitalization.

1.8. INDEPENDENT LIVING FACILITIES FOR PERSONS WITH MENTAL HEALTH DISORDERS

In line with articles 12 and 19 of the Convention, individuals with disability are equal before the law, and have the right to independent living in the local community.

The concept of modernizing the social support system of Kazakhstan[23] provides for the founding of small-capacity homes for persons with mental health disorders, where special social services can be provided both by public and private organizations.

In order to de-institutionalize the current network of sheltered-care facilities and improve the quality of services rendered, as well as for purposes of social adaptation in the community, development of small-capacity homes has been initiated. In the Rules of activity of organizations rendering special social services, adopted by Order of the Minister of Labour and Social Protection of the Population of the ROK No. 379 from 29 August 2018, facilities of inpatient type can be created in the form of houses of small capacity with a design capacity of 10 to 50 beds.

According to the National Plan for Protecting Rights and Improving Quality of Life for Persons with Disabilities in the Republic of Kazakhstan by 2025,[24] small-capacity homes **are not available in 8 regions**: Aktobe, Almaty, Atyrau, Kyzylorda, Mangistau, Turkestan oblasts (regions), as well as in the cities of Shymkent and Nur-Sultan. Currently 71% of social service facilities are located in major cities and district centres. At the same time, **48.7% of individuals with disability live in rural areas** dominated by social services that focus on at-home care. [25] In this regard, measures should be taken to further expand the institutional framework of the system, classification of service users by their individual capabilities, and enhance the targeted nature of services provided.

According to the director of the SSS Centre No. 1 of Almaty, D. Iskakova, **approximately 30% of service users at medical and social care facilities for persons with psychoneurotic disorders, are capable of socialization**. As of 2019, 20 service users were moved to a separate independent living facility under the SSS Centre No. 1 of the city of Almaty.

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22 Written response dated 5 February 2019 from the Ministry of Health of the Republic of Kazakhstan, based on the data provided by the Republican Research Practical Mental Health Centre.

23 Have not come into effect.

24 "National Plan for Protecting Rights and Improving Quality of Life for Persons with Disabilities in the Republic of Kazakhstan by 2025" adopted by the Resolution of the Government of the ROK No. 326 from 28 May 2019.

25 Pursuant to national regulatory legal acts, home care is contraindicated for persons with psychiatric disorders.


On the photo Bedroom (left) and sewing workshop (right) in the Independent living facility, Almaty

Residents of the Independent living facility are free to move around the home and beyond its boundaries, go to grocery stores, barbershops or marketplaces unsupervised. They are entitled to dispose of their personal money as they see fit. In the course of two years, some individuals had their active legal capacity restored. Two women, upon recovering their active legal capacity, were able to become legally and fully employed at the laundry and janitorial services within the SSS Centre itself.

After having successfully restored his active legal capacity in court thanks to the legal experts at the SSS Centre, Nikolay, 50, was able to get legally married to his girlfriend. The newlyweds received their own room at the facility.


On the photo Nikolai and his wife's room (left) in the Independent living facility. In the photo (right) Nikolay with his wife.

By 2020, a new SSS Centre is planned to open in Almaty, for 300 residents. The management intends to make this an Independent living facility.

In 2015, the "Psychoanalytic association" NGO of Almaty first launched the "Training Café" pilot project to provide assisted employment services to persons with psychosocial and intellectual disabilities. Twenty individuals over the age of 18 from the SSS Centre No. 1 of Almaty began their occupational rehabilitation. Over the course of the "Training Café" activities, in 2017 a new independent living project was launched, involving the same 20 residents as participants of a new pilot project launched at the "**Kamkor Otau" Independent Living Facility**. The latest project was supported by the Welfare Administration of the city of Almaty and received 3-year funding.

The independent living project provides 4–5 people an opportunity to live in a rented flat. Project participants do their own cooking, cleaning, laundry, arrive to their places of work without direct supervision. The project provides for participants getting managed and consulted by psychologists, social workers and nurses. These experts teach the participants how to plan their expenses (salary, stipends, disability checks).

In 2019 the number of persons employed at the Training Café increased from 20 to 27, and independent-living residents — from 20 to 22. Following the example, a local organization in Nur-Sultan in 2019 founded an independent living facility, with the support from the UNDP Kazakhstan.

It should be noted that Independent living facilities are opened in the city of Almaty, and their activities are supported by the akimat (mayor's office) of the city.

Essentially, the Ministry of Labour and Social Protection of the ROK delegates all the powers in this area to the regions. However, many regions are subsidized and are either not entitled, and/or not able to disburse additional funds for social protection. In order to develop assisted living, regions must receive additional funds from the national budget.

A similar situation was described by the director of the adults' SSS Centre No. 2 in the city of Shymkent, who explained that different regions have different budgets, therefore, different arrangements are made for those additional opportunities for persons with mental health disorders. Types of smaller social service facilities and the arrangements made for providing comprehensive and specialized services will be defined by the local executive bodies depending on the category of service users and their individual needs.

In 2016 Kazakhstan was visited by the head of a Lithuania's network of parents' organizations "Viltis", and the founder of the movement for the de-institutionalization of sheltered living facilities, Dana Migaleva. In her interview for the Soros Foundation-Kazakhstan expert shared that in Lithuania special social services are provided by non-governmental organizations founded by parents who are personally invested in the result. The expert notes that the standard could be the same, but the quality of services is undoubtedly higher.

D. Migaleva's studies in Lithuania have shown that despite the high costs of living people in state medical and social facilities, systematic work to improve the condition of patients in such institutions is not carried out: "Life of a person born with mental disorders ought to be the same as the life of any other person. They should wake up in the morning, wash their face, enjoy their coffee and go about their business. And it shouldn't matter what level of development they have. One needs to have friends, work, come home at night and then go out and have some leisure time. The only difference is that sometimes such a person requires an assistant. Assistants are specially trained individuals who provide that additional support for a person with a mental disorder. And the earlier we start providing assistant services, the fewer problems these people will have, and the earlier they will get integrated back into the community"[26].

Having visited Lithuania in 2017, the Report's author saw small-capacity facilities and independent living facilities in every city and district of the country, designed for persons with mental disorders. Occupancy never exceeded 12–13 persons. One such facility housed people aged 50–60, with Down syndrome, mental retardation and the like, while other homes had residents whose age averaged 20–40.

[26] Dana Migaleva: "Stop investing in the old system" - https://www.soros.kz/ru/stop_investing/

On the photo Independent living facilities in the cities of Utenis, Siauliai, Panevezys of the Republic of Lithuania

Each resident of the small-capacity facilities of Lithuania had their own room with household and personal items. Full freedom of movement within the facility. Social care facilities do not provide medical treatment — only social services and occupational therapy on the premises. This is due to the fact that the UN Convention on the Rights of Persons with Disabilities strongly recommends that treatment and housing of persons with disabilities not be combined in one location.

An advantage of small-capacity facilities is that they can be opened in each district or city of regional significance. A family member would not be separated from relatives on account of mental disorder or disability. Low capacity living quarters allow for creating a calm and comfortable environment, thereby significantly reducing exacerbations of mental disorders, reliance on periodic treatment at psychiatric hospitals or the use of medications.

1.9. INTERNATIONAL LEGAL AND NATIONAL ANALYSIS

Regulation of the protection of persons incapable of making decisions on their own and defending their own rights and interests has been traditionally regarded as the subject of domestic law — primarily civil law — of a nation. Subsequently, such criticism of existing national systems of legal incapacity and custody was articulated in the UN General Secretary reports,[27] as well as in the reports of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[28] The UN Convention on the Rights of Persons with Disabilities affirms the need for a paradigmatic shift in the protection of the rights of persons with disabilities based on the fact that a disability is "results from the interaction between persons

[27] Report of the UN General Secretary "Progress of efforts to ensure the full recognition and enjoyment of the human rights of persons with disabilities", UN Doc. A/58/181

[28] UN Report E/CN. 4/2005/51, 11 February 2005

with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others."[29]

The core idea of article 12 "Equal recognition before the law" of the Convention that "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity" constitutes the foundation of modern international law interpretation of the state parties' duty to protect persons who are unable to make decisions on their own or defend their own rights.

Passive legal capacity (capacity for rights) is an inalienable right granted to all people, including those with disabilities. Legal capacity is made up of two component. The first is the **legal status** that implies the possession of rights and the recognition of legal personality upon birth. The second component is the **active legal capacity** (capacity to act) to exercise the rights through acts that are recognized by law.

People with disabilities often face derogation and restrictions in this respect. Passive legal capacity means that all people, including people with disabilities, have the legal status and the legal capacity to act solely by virtue of being human.

Two regimes of decision-making are distinguished with regard to passive legal capacity. **Substitute decision-making** has developed in the form of custody and guardianship, in the framework of mental health protection legislation that authorizes involuntary treatment. This approach leads to the deprivation of a fundamental human **right to equal recognition before the law**. Disability and/or inadequate decision-making skills of an individual are treated as legal grounds for depriving said individual of their legal capacity for rights or reducing their legal personality status.

Supported decision-making model accounts for independent will and preferences of disabled people and incorporates various methods of providing support. This model is designed to protect all the rights, including those concerning independence/autonomy (right to passive legal capacity, right to equal recognition before the law, right to choose place of residence, etc.), as well as rights associated with the right to not be subjected to inhuman or degrading treatment (right to life, right to physical integrity, etc.).

An important aspect in this discourse is a recommendation of the Committee on the Rights of Persons with Disabilities (hereafter – Committee) issued for state parties, according to which, the provision of support for the exercise of passive legal capacity should not be contingent upon the evaluation of mental capacity; member states must **"revise laws providing for guardianship and custody, and take measures to develop legislation and policies designed to replace the substitute decision-making with the support decision-making model that would take into account independent will and preferences of people with disabilities".**

Kazakhstan has the substitute decision-making regime active. Mass deprivation of active legal capacity is under-way, targeting persons placed in institutionalized social care facilities, and the legislation permits involuntary treatment. State programmes supporting persons with disabilities do not provide any measures to revise the legislation with a view to developing the support model. Actual active incompetence in its current form spells "civil death" for an individual.

[29] Clause "e" of the Preamble to the Convention on the Rights of Persons with Disabilities.

The approach involving differentiation between active legal capacity and legal incapacity is a relic of the Soviet legal practice. **Non-proportional restriction of personal freedom and rights of a person at that time manifested itself in the excessive custody that the state had over the individual and the citizen.** A disadvantage of such an approach lies in its ubiquity: the law condemns to civil death both actually helpless individuals and those whose development would still allow them to function adequately in certain areas of social life.

Kazakhstani legislation offers no measure of differentiating passive legal capacity. There are no regulations that would have enabled the court to recognize a citizen as partially legally competent as a result of a mental health disorder. **The system fully maintains the principle of substitute decision-making for individuals with mental health disabilities** — the same principle that the Committee actively denounces, and the same principle whose inadequacy is proven by the development trends under the international best practices.

With regard to Kazakhstan this means that the ratification of the Convention should lead to fundamental changes in the existing system of custody over legally incapacitated individuals, due to its failure to comply with the principles of proportionality and minimal restriction of human rights. Ratification of the UN Convention and the nation's forthcoming report[30] on the progress of fulfilling international obligations demand a paradigm shift from the medical model of disability toward a social one, based on human rights.

The Convention pays particular attention to the legal safety of individuals with mental health disorders (illnesses). National legislations of member states need to undergo an evolution of the very meaning of disability and mental health protection[31].

The UN Special Rapporteur on the rights of people with disabilities, Katalina Devandas, following her visit to Kazakhstan, issued a strong recommendation to the Government to bring the national legislation in the area of active legal capacity into compliance with the international human rights standards. Special Rapporteur ***stressed that the state of the legislation governing involuntary commitment into psychiatric facilities or commitment to long-term medical/residential facilities, as well as compelling persons with disabilities to undergo medical treatment without consent, contravenes the provisions of the Convention on the Rights of Persons with Disabilities.***

Recommendation regarding informed consent to medical procedures was issued to Kazakhstan following the second periodic report on the compliance with the International Covenant on Economic, Social and Cultural Rights.[32]

The Committee notes with concern that, pursuant to part 2 article 94 of the Code of the ROK "On public health and the healthcare system", physicians may perform medical interventions on patients declared "legally incapacitated", without getting their informed consent, and, instead, only procuring the consent of their legal representatives.

The Committee is also concerned that, despite the fact that involuntary commitment may be pursued only on the grounds of a court ruling, persons declared legally incapacitated

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30 Kazakhstan's report for the UN Committee on the Rights of Persons with Disabilities is slated for 2020–2021

31 From the materials of the Analysis of provisions of international and national legislations with respect to the declaration of individuals legally incapacitated. Prepared by A. Shakibayeva, Almaty, 2018

32 Recommendations adopted by the UN Committee for Economic, Social and Cultural Rights, during the 65th session, on 29 March 2019

may be committed into psychiatric facilities against their will (article 12). The Committee recommends that the member state: consider amending part 2 article 94 of the Code of the ROK "On public health and the healthcare system" to guarantee that patients declared legally incapacitated will be treated only after obtaining informed consent from them, unless otherwise dictated by special circumstances, taking into account a body of methodological guidelines published by the World Health Organization in 2003 with respect to mental health, legislation and human rights; consider removing from paragraph 5 part 9 article 180 of the Code "On public health and the healthcare system" the exemption from the ban on conducting clinical studies of medical technologies and pharmaceutical products on patients with mental health disorders (illnesses) that have been declared as legally incapacitated by the court; guarantee full respect for the human rights of patients of psychiatric facilities, including through independent and effective monitoring of treatment procedures and arranging for effective court oversight of the issuance of commitment orders.

A detailed review of international experience in reforming of custody over legally incapacitated individuals was prepared by a lawyer D. Bartenev in his article "Implementation of international standards in the area of legal incompetence and custody in Eastern European countries" for Independent psychiatric journal. The author notes that in Eastern European countries, it is prohibited to appoint as custodians heads or workers of institutions where the person with mental health disorder currently resides or is being temporarily detained. Describing the experience of different countries, the author points out that in the Czech Republic and Hungary there are alternative mechanisms to full custodianship. At the same time, Hungary has instituted legislative ban on full custody over a person.

The author is especially interested in the experience of Estonia, where "custody may be established in the event that a citizen, due to a mental health disorder, becomes permanently incapable of making decisions or control their actions; on top of that, the custodian may be appointed upon an application of the citizen in question, or upon an application from other persons, as well as on the initiative of the court. However, a custodian can be appointed only for performing duties that require custody. The law explicitly provides that custody is not necessary whereby the citizen's interests can be protected with the assistance from other persons. The law also compels the court to revisit the justification for custody every three years."[33]

The expected reforms must be accompanied by fundamental changes in the very approach to defending the rights of persons with disabilities to make their own decisions, so as to, above all else, provide them with adequate support in decision-making, without restricting their rights. The success of such reforms hinges on overcoming paternalistic approach to the custody system that prevails in the mentality of domestic lawmaker and law enforcer, who believe that the primary objective of custody is full substitution of the ward's decision with those of the custodian.

In the process of examining international experience in reforming the system of residential facilities and developing home services, authors of the book "Methodology of de-institutionalization of medical and social institutions and models of alternative social services"[34] gave a detailed account of the experience of the United States, Italy,

[33] D.G. Bartenev "Implementation of international standards in the area of legal incompetence and custody in Eastern European countries", Independent psychiatric journal, No. 4, 2009

[34] Methodology for de-institutionalization of medical social institutions and models of alternative social services. Under edition of Ph.D. Khakimzhanova G.D., Almaty, 2015, pp. 11-35

Switzerland, Ireland, Finland, Austria, Sweden, Netherlands, Czech Republic, United Kingdom, Scotland, Croatia, Moldova, Armenia, Lithuania.

All the aforementioned countries began the process of de-institutionalization 10–15 years ago, and the acceleration was often tied to their ratification of the Convention on the Rights of Persons with Disabilities, which co-occurred with the bed cutting at mental health institutions.

To create a vision of de-institutionalization means to create a mental image of a society where people no longer reside at facilities, but, instead, receive care at home or in a home-like environment. This vision can prove to be a powerful source of inspiration and ought to provide the basis for operational decisions required for the successful development of a system of home care. Local management needs to shift its focus and investments from structures to people. This change will require additional funding to cover interim costs of maintaining the facility, while investments are being made into re-training the staff and developing new facilities that will be used as venues for public events.

According to former chief external psychiatrist of the Ministry of Health and Social Development of the Republic of Kazakhstan, doctor of medical sciences, professor S. Altynbekov: "To date, our country has adopted a considerable number of regulatory documents aimed to achieve effective medical and social services; yet, practical implementation of the new provisions has proven inadequate, for various reasons.

Currently, there is no inter-agency cooperation, there is a shortage of personnel in the area of psychiatry, especially in the primary care system; we are also experiencing insufficient evaluation of social indicators of persons with mental health disorders, lack of concrete methodology for de-institutionalization and re-socialization, with consideration to the particular features of mental health disorders and mental functions; furthermore, there is an issue of insufficient state support of civil society initiatives to develop alternative services for protected housing, creating protected jobs for resocialization of persons with mental health disorders at the district and region levels." [35]

When describing human rights violations faced by people with mental disorders, it is important to mention discrimination with respect to the amount and types of state social services and intersectional discrimination.

A Kazakhstani study "Access to justice for women with disabilities in the city of Almaty: current state, issues and recommendations", prepared by N. Prenova and representatives of the NGO "Shyrak" notes that: "The legislation of Kazakhstan is mainly aimed at social protection and rehabilitation of people with disabilities, and is primarily based upon outdated approaches to this issue: the system treats disabled people as a vulnerable population that must be provided with the basic subsistence amount of welfare. This brings about the lack of systemic efforts to achieve non-discrimination and socialization for persons with disabilities as full member of society."[36]

Currently there is no unified and systemically structured anti-discrimination legislation, and neither is there a special comprehensive law (lex specialis) that would prohibit, and — more importantly — provide a liability for discrimination of people with disabilities.

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[35] Interview with the doctor of medical sciences, professor, head of the institute for additional and professional education at the S. Asfendiyarov Kazakh National Medical University, former chief psychiatrist of the Ministry of Health ROK, S.A. Altynbekov

[36] "Access to justice for women with disabilities in the city of Almaty: current state, issues and recommendations", prepared by Nuzhamal Prenova and Shyrak NGO, Almaty, 2011

Article 5 of the specialized Law "On social protection of disabled people in the ROK" provides for a prohibition of discrimination on the basis of disability, yet fails to actually define discrimination on the basis of disability. No legal defence mechanism has been introduced to protect against discrimination on the basis of disability.

As far as discrimination provisions of various laws are concerned, suffice it to cite paragraphs of the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 26 from 22 January 2015 "On some issues of rehabilitation of persons with disabilities", according to which, social services from an individual assistant, a sign language specialist, or therapeutic resort services are medically contraindicated in persons with mental health disorders. An individual receiving special social services may leave the SSS Centre upon filing a written application by the individual's legal representative, or in the event that the disability status is lifted, or disability group III is assigned, or in the event of death.

Intersectional discrimination is a form of multiple discrimination. Existing legislation does not have the concept of intersectional discrimination. Laws tend to resist the shift from the "mono-axial" model. For instance, a person with a disability who does not have a Kazakhstani citizenship is entitled to receive treatment as part of the guaranteed amount of free medical care in the event of an acute condition that pose a danger to the community.[37] At the same time, special social services (at-home care, social services in inpatient, semi-inpatient settings or day-care facilities) and support for individual with disabilities is not possible without the citizenship of the Republic of Kazakhstan.

Conclusions[38]:

Thus, according to the national legislation review, the **state fails to fulfil its obligations to respect the rights of persons with mental health disorders:**

1. No clear legal guarantees of recognizing the right of disabled persons with mental health disorders to enjoy passive legal capacity and active legal capacity on a level playing field with others.

2. Exemptions from legal guarantees apply to some mental health disorders.

3. There is a legal mechanism designed to deprive disabled persons of their active legal capacity on the grounds of their disability, with subsequent assignment of full custody.

4. National laws do not permit disabled legally incapacitated citizens to perform legal actions on the same basis as others (marriage, opening banking accounts, access to bank credit, voting, defending one's rights in court, witnessing in court, possessing and using property, drawing up wills, managing their own treatment).

Pursuant to states parties' **obligation to protect disabled persons from violations of their right to exercise active legal capacity:**

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37 See: Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 194 from 1 April 2015 "On the adoption of a list of acute illnesses posing a threat to the community, in presence of which foreigners and stateless persons on temporary stay in the Republic of Kazakhstan are entitled to receive guaranteed amount of free medical care".

38 Prepared in accordance with the Convention on the Rights of Persons with Disabilities. A series of materials on the issues of professional training, No. 17, UN, New York City, 2010.

1. State party failed to ensure adequate and effective guarantees against misappropriation of support extended to persons with disabilities to ensure their active legal capacity.

2. For persons with disabilities no legal remedies are available in the event that they are declared legally competent members of society. In other words, the service provider — the director of the SSS Centre — refuses to acknowledge the validity of the expression of will of such a person; and in order to receive treatment, a disabled person, in all circumstances, requires consent of the custodian.

3. The Government failed to adopt laws, strategies or programmes, including legally recognized mechanisms, to ensure that disabled persons enjoy supported decision-making in their exercise of passive legal capacity. To date, there exists only the substitute decision-making mechanism.

4. The legal incapacity status forces a person with group I and II disability to reside in a special social facility, because the application on the commitment to said facility is signed by the custodian that represents the interests of the person, and not the person themselves. Subsequently, the custodian yields their powers to the facility director. Should the disabled person wish to leave the facility, consent will have to be obtained from the current custodian.

RECOMMENDATIONS:

1. Improve the current legislation on the passive and active legal capacity of people with disabilities.

2. Amend the Civil Code of the ROK providing for a differentiated approach to legal incompetence. Spread the norm on limited legal capacity for persons with mental and intellectual disabilities.

3. Introduce changes into paragraph 2 article 328 of the Civil Procedure Code of the ROK, so as to enable persons stripped of active legal capacity to take legal action directly or through a proxy, at their own choosing (for instance, organizations involved in disability matters; additionally, it could be possible to consider allowing the ability to lodge such applications). Furthermore, legislative bodies ought to consider setting deadlines for decision-making on legal incapacity and/or introducing mandatory periodical reviews of such decisions.

4. Prevent the appointment of the director of a state social protection organization or a medical organization as a custodian, exclude this provision from paragraph 4 article 122 of the Code of the ROK "On marriage and family". It is necessary to completely abolish the legal relationship between the custodian-director and the ward-service user. The director should only be a service provider, a person with a psychosocial disability is a service user.

5. Consider adopting a law on distributed custody that would allow legally incapacitated disabled persons to have multiple custodians, including non-profit organizations. Such a law would make it possible to introduce other forms of housing for persons with mental health disorders as an alternative to residential (sheltered-care) facilities.

Recommendations at the local level:

1. Develop a mechanism for the initiation of claims by local executive bodies to restore the legal capacity of persons in Special Social Service Centres.

2. Pursuant to paragraph 4 article 122 of the Code of the ROK "On marriage and family" allow giving custody over persons declared by the court as legally incapacitated to the management (director) of a non-governmental organization (engaged in providing special social services), as a legal entity.

3. The procedure of registering custody over persons in need of custody and placed in the relevant educational institutions, medical institutions, social care facilities, to apply in the same manner and under same conditions to the management of a non-governmental organization providing special social services.

CHAPTER II.
MONITORING OF THE PROVISION OF SPECIAL SOCIAL SERVICES TO INDIVIDUALS WITH MENTAL HEALTH DISORDERS

Pursuant to the National Plan for the period of 2015–2019, service users at inpatient facilities has grown by 19.9%, and inpatient facilities have grown in number by 12.4%[39].

2.1. CHARACTERISTICS OF SPECIAL SOCIAL SERVICE CENTRES

SSS Centres receive service users from city- and district-based employment and social programme authorities at place of residence of service users, in keeping with paragraph 2 article 31 of the Law of the ROK "On local governance and self-governance in the ROK", paragraph 2 article 15 of the Law of the ROK "On special social services", Order of the Minister of Health and Social Development of the ROK No. 165 from 26 March 2015 "On the approval of special social service provision standards in the area of social protection of the public" and on the grounds of a report on the evaluation and determination of the need in special social services.

Public policy in the area of providing special social services is based upon the principles of the respect for human rights, humaneness, voluntary participation, confidentiality, targeted nature and accessibility of special social services, as well as non-discrimination.[40]

Form of incorporation/organization of SSS Centres is "state institution" ("public institution")[41]. Institutions financed from the local regional budget.

Director of the "Nurly Zhurek" children's SSS Centre, S. Bupezhanov, expressed his willingness to consider providing paid rehabilitation services for children of the community on the location of the Centre by means of changing the incorporation form of the Centre from "public institution" to "public institution on the right of economic management".

The visit revealed that the largest SSS Centre for adults is the Ridder Special Social Service Centre that houses 737 residents; followed by the Special Social Service Centre No. 1 in Almaty housing 692 residents. Among children's centres, the Special Social Service Centre No. 6 in Shymkent housing 171 children.

[39] Resolution of the Government of the ROK No. 326 from 28 May 2019 "2025 national plan for protecting rights and improving quality of life for persons with disabilities in the Republic of Kazakhstan".

[40] Article 4 "Main principles and objectives of the public policy in the area of special social services" of the Law of the ROK "On special social services" No. 114-IV from 29 December 2008.

[41] Article 34 of the Civil Code of the ROK: public institutions are legal entities that are non-profit organizations and funded exclusively out of the national budget.

2.2. QUALITATIVE COMPOSITION OF SERVICE USERS

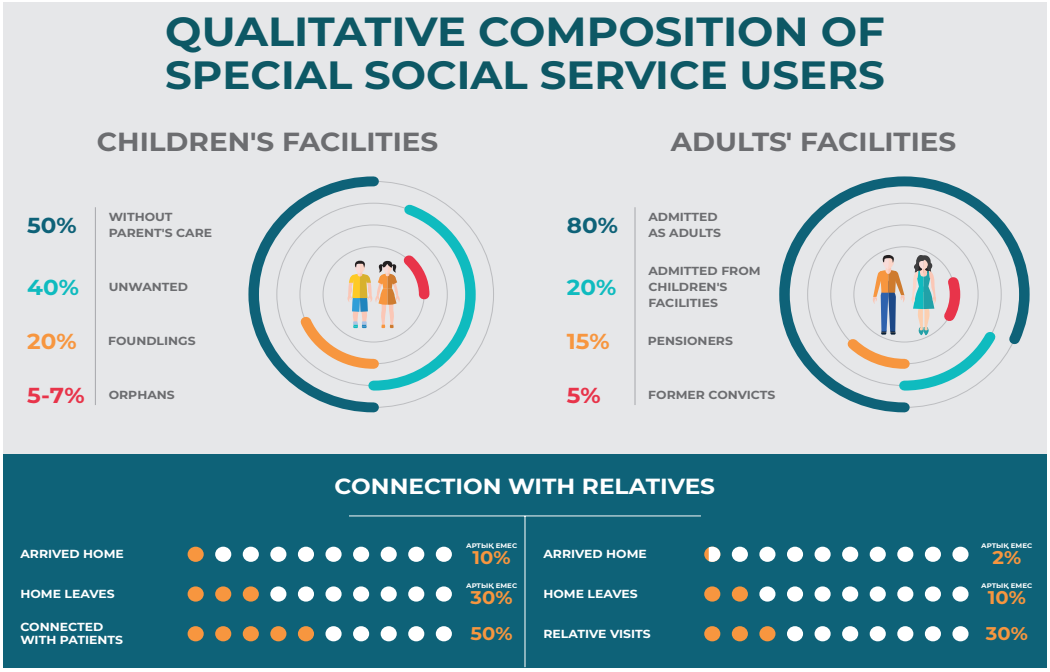

Figure 3 – The qualitative composition of special social services users

As is evident from the Figure 3, children's SSS Centres mainly house children left without parental care and foundlings. A common problem for legal experts working at children's SSS Centres has to do with searching the parents of foundlings. Often, children with various pathologies are abandoned at birthing centres and hospitals, with a note of surrender. Currently, the legal aspects of surrender are not fully governed by the legislation of the Republic of Kazakhstan[42]. This is due to the fact that termination of parental custody rights is done in court in presence of the legal parents. Absence of legal status prevents a child from participating in the adoption process, or the process of placement in queue for state housing fund units.

Approximately 20% of the service users at adults' facilities come from children's SSS Centres and children's sheltered-care facilities under MES. One of the reasons of such a high number of adults enrolling into SSS Centres is the absence of any opportunities to receive social services at home. According to the Order of the Minister of Health and Social Development of the Republic of Kazakhstan "On some issues of rehabilitating disabled persons" dated 22 January 2015, No. 26, social services from an individual assistant, a sign language specialist, or therapeutic resort services are medically contraindicated in persons with mental health disorders.

Less than 30% of residents have the opportunity of leaving the premises of the facility to go on trips, to swimming pools, museums.

There is a group of service users who believe that they are undergoing inpatient treatment at a hospital and are supposed to return home soon. For instance, one

[42] In a study entitled "Medical ethics as a factor of institutionalization of a child with special needs", authors S. Dzhaksylekov and A. Shakibayeva describe the practice of surrendering children with pathologies, Almaty, 2019, p. 13.

Valentina, 67 (has been living in the SSS Centre No. 4, in the city of Turkestan, for 11 years) wants to go home and has been asking why wouldn't they let her go, saying that they could have continued treatment at home; she is convinced that she'd be better off at home. She has been complaining that she couldn't meet with the director.

Also noteworthy is the fact that every facility we visited **expects a queue of new arrivals**. Depending on the region, the number of persons in the queue varies from 50 to 150.

Elderly people, in case of mental health deterioration, are transferred from disabled people's homes to medical and social institutions (SSS Centres). According to the current practice, they must be recognized by the court as legally incapacitated persons. Before the court, hospitalization at the Mental Health Centre is required in order to clarify the diagnosis. After an elderly person is declared incapacitated, the hospital's director/ chief doctor takes custody over him and then, upon transferral to a SSS centre, custody changes hands again.

The author witnessed how a 90-year-old elderly woman was hospitalized at the Central Rehabilitation Center in Ust-Kamenogorsk city to carry out the above-described bureaucratic procedure.

The national social protection system needs to explore options of keeping the individual within their family, by creating a number of services at place of residence.

Family members may have different attitudes toward the patient. In cases whereby the individual has a mental health disorder, close relatives are often forced to resort to seeking special social services at an inpatient setting. As far as children with intellectual disabilities and Down syndrome are concerned, their parents place them into SSS Centres whenever there are no longer any people willing to provide care available.

During the visits, we observed instances whereby parents — often times single mothers — died before they could register their "adult child" with Down syndrome at a facility. In such cases, documents were collected by neighbours.

2.3. CONNECTION WITH RELATIVES

Monitoring results give cause for concern regarding service users' losing touch with relatives following the admission to a SSS Centre.

As the Figure 3 shows, over 70% of service users have lost touch with their relatives. Upon service users' request, social workers make phone calls to relatives. Far too often, relatives — adult children of service users — ask not to be disturbed and show no interest in the fate of their sick relative.

Many service users exhibit **self-stigmatization**. One Bibisara, 60, service user at the SSS centre No. 2 in Shymkent (had lived at the Centre for 38 years, has 4 children) describes herself as follows: "Well, I am sick, so doctors know better; I take whatever they prescribe. Due to household conditions, it is uncomfortable staying home for too long during a leave."

Service users themselves do not have free access to a telephone, computer, social networks, paper, pens, or mail. Upon visit to the SSS Centre in Ridder, it turned out that in 2019, 11 letters had been sent, 7 letters had been received and 11 parcels had been received. Letters are written by wards under dictation or the librarian writes letters for them.

Treatment vacations are taken by no more than 5–10% of service users, depending on the facility, and usually the same people. According to the SSS Centre in Kupchanovka village of Akmola oblast, 170 out of 469 residents are **banned from travelling**.

The absence of instances of escape from the facility is characteristic of all SSS Centres. Director of SSS Centre No. 4 of Turkestan oblast elaborated that many residents are not permitted to be in contact with relatives, as the former are deemed a threat to society, which is why they were committed in the first place. Over the entire history of the facility, there has only been one escape attempt, and it was foiled.

This practice of denying the opportunity of leaving the facility for a limited amount of time is something all adults' SSS Centres share and covers over 70% of service users. The determination on travel restrictions for persons raising concern is made upon recommendation of a psychiatrist and is approved by the SSS Centre director. At the same time, official criteria used to evaluate the state of residents have not been developed by the authorized body.

SSS Centre No. 4 of Turkestan oblast keeps registration logs for visitors, according to which the institution receives an average of 1-2 visitors per day. It is important to note that the facility of this type is the only such major facility in the region and services all districts of the region. As such, the maximum reach is 300 km. Relatives arriving from remote districts can spend the night in the visitors' room. However, this practice is not widespread, other large facilities under monitoring have rooms for short visitations.

On the photo Relative visitation room at an adults' SSS Centre in Aktau city

The distance between SSS centres and oblast districts sometimes reaches 12–15 hours one way.

Children's and adults' SSS Centres have a percentage of children referred from orphanages under the MES ROK. For instance, management of the Almaty city orphanage insisted on referring 3 children to the Almaty city SSS Centre. According to the deliberation of teachers and social workers of SSS Centres, these children did not have indications for commitment to a mental health facility. Yet, the orphanage insisted that the children be transferred. It is noteworthy that the children were about to reach the age of majority, so the referral to a children's SSS Centre implied a subsequent transfer to an adults' mental health institution.

Afterwards, these children were transferred from the SSS Centre No. 2 to the "Kamkor Otau" Independent Living Facility under the Psychoanalytical Association NGO in

Almaty, as part of the "Independent Living" project implemented with the support of the Almaty city akimat.

Currently there is a practice of collecting alimony from parents who surrender their children. Legal experts of children's SSS Centres conduct search for biological parents jointly with police authorities. For example, a legal adviser of the SSS Centre No. 6 of Shymkent found 21 parents over the course of his term since 2012.

In the event of positive search results, the legal representative is compelled to yield parental rights in court; yet this does not relieve parents from paying out child care alimony. Some 5–10% parents that have been successfully tracked down express their willingness to bring the child back home, fearing public condemnation and reproach.

There is a type of parents that surrender a sick child upon a recommendation of physicians regarding non-viability of the newborn. After finding out about their living child currently residing in a children's SSS Centre following several years, parents are left speechless and often make the decision to take the child home[43].

Unfortunately, the society retains a negative practice of giving up a sick child upon birth. The lives of such children are inexorably tied to transfers from institution to institution.

According to the inforgraphic data, half of abandoned children are children with congenital physical and mental disorders.

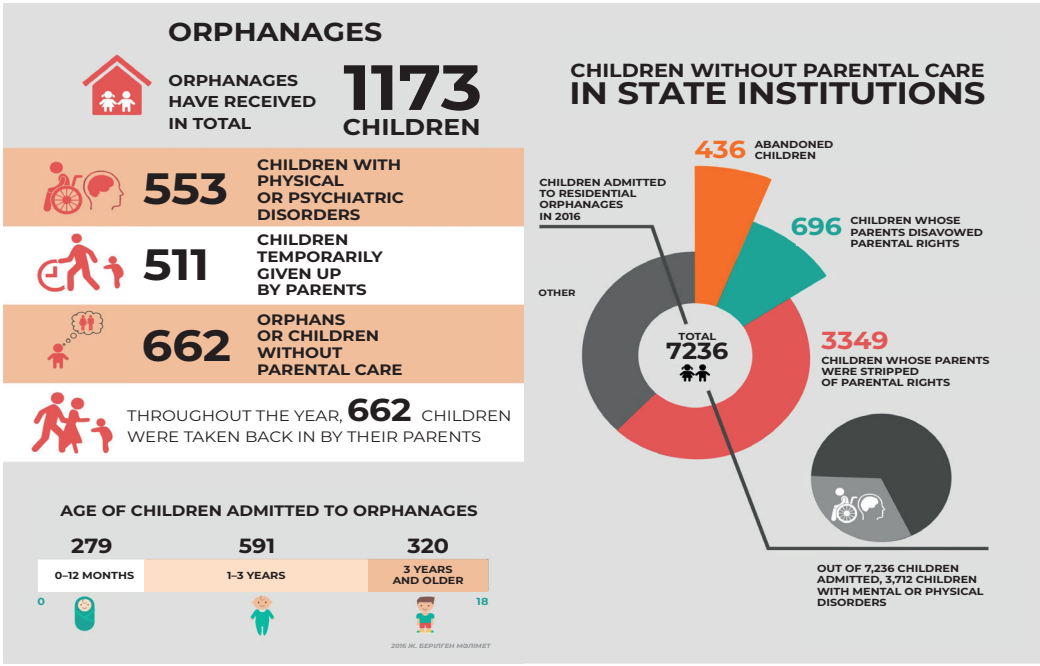

Figure 4 – Social and medical status of children living in children's state institutions

A number of reasons can be given to explain why parents place their children with disabilities under state custody: absence of information regarding future development of the child and available mechanisms of social support; parents' inability to take

[43] Real cases from children's SSS Centres of Shymkent, Taldykorgan, Aktau, describing how 7–10 years ago, maternity clinic medical staff suggested that parents surrender their sick children.

rehabilitation measures, use special methods of training and social adaptation, and foster in their children the necessary everyday skills; inability to spend the requisite amount of time on caring for a child with disabilities (for instance, absence of unemployed members of the family, lack of access to children's institutions or sources of funding); absence of necessary funds[44].

The management of SSS Centres do not always allow parents to see their children. Director of the SSS Centre in Aktau is convinced that *"after the parent leaves, the child descends into stress."*

Transfer of children from children's SSS Centres into an adults' facility is done without the consent of their parents. The highest percentage of home returnees at the "Nurly Zhurek" SSS Centre in Nur-Sultan — 17 children, at the Kamkor SSS centre in Taldykorgan — 9 children.

2.4. AMOUNT OF SPECIAL SOCIAL SERVICES RECEIVED AT SPECIAL SOCIAL SERVICE CENTRES

The current standards provide a list of services. At the same time, no guaranteed amount of services is regulated or provided for. Eventually, this regulation results in a blurred form of responsibility for the quality and amount of services rendered for the client.

Legislative gaps in the area of social protection include the lack of methodological guidelines for establishing individual service plans for service users of SSS Centres' services. The regulating authority itself does not have a methodology office engaged in advisory role. Examination of individual plans revealed a formulaic approach, without any comprehensive measures. As a result, it is challenging to track the progress of individual plans. There are also no sanitary and epidemiological standards for social care facilities. As far as audits are concerned, SSS Centres undergo audits the same way as healthcare institutions.

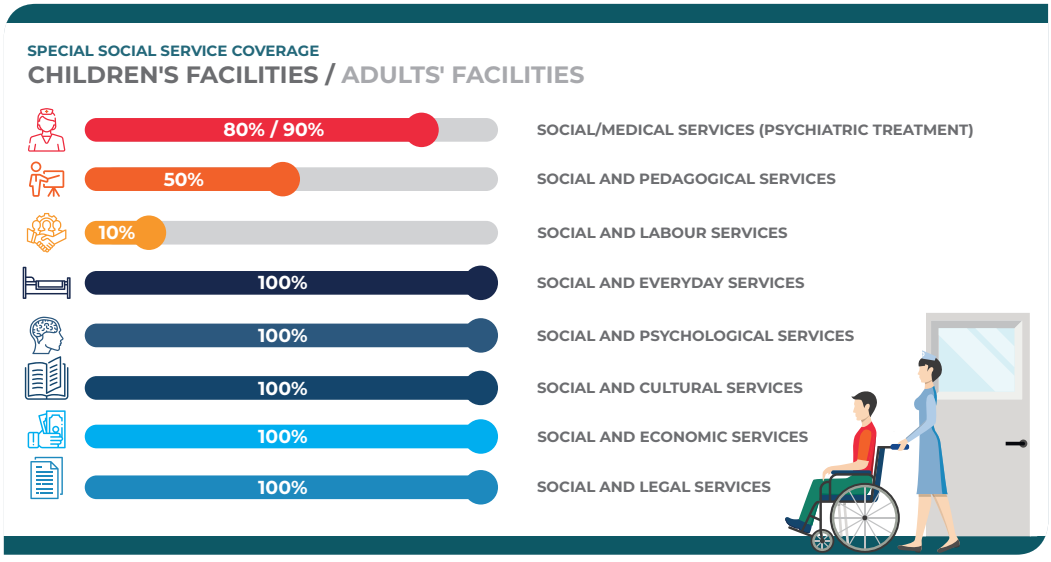

Figure 5 – Special social services coverage of children and adults' facilities

[44] Report of the UNICEF Innocenti research centre entitled: "Issues of children's disabilities in the transitional period in CA/CIS and Baltic countries," 2005.

As is evident from the Figure 5, the most common type of services provided by 8 special social service centres[45]is the social and medical services *(more detailed information in the section "Medical care at Special Social Service Centres in 24-hour inpatient settings, and at Mental Health Centres").*

All SSS Centres comprise several buildings. Service users are placed by degree of illness: the more severe the illness, the less comfortable are the living arrangements.

On the photo Two buildings of the Ridder SSS Centre East Kazakhstan oblast (left)
SSS Centre of Turkestan oblast, acute care unit (right)

Remote buildings house palliative care and acute care units.

For instance, the East Kazakhstan SSS Centre has 18 units, of which 4 are palliative care units (2 women's, 2 men's). Out of 700 service users, 220 reside in palliative care units, 200 reside in acute care units fitted with window grating, 200 live in medium severity care units, and **only 93 persons (6–7% of the total number) reside in self-service units**. It should be noted that this SSS Centre has the lowest percentage of persons with group I disability (7%), the other 93% have group II disabilities with moderate health impairments.

Service users at self-service unit of the SSS Centre No.5 of Turkestan oblast have their identification documents on their persons.

All facilities face a severe shortage of healthcare, cultural and occupational therapy specialists. Director of the Shymkent centre regards the increase in centre staff as an avenue of the improvement of living arrangements. In line with the standard, each palliative care unit only has no more than 2 nurse assistants and 4 nannies.

Pursuant to the standard, there is 1 social worker and 1 speech therapist for every 50 service users. Thus, with the service user base of 170 individuals, the Kamkor SSS Centre of Taldykorgan has 3.5 social worker wage rates.

There are no strict qualification and speciality requirements for the SSS centre director. For instance, over the course of the monitoring, directors of children's and adults' SSS Centres had economic, medical and social educational backgrounds. Directors of SSS Centres are primarily psychiatrists. At the same time, the UN Convention on the Rights of Persons with Disabilities requires states parties not to regard disability as a purely medical special need, and extend the social approach instead.

[45] Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 165 from 26 March 2015 "On the adoption of special social service provision standards in the area of social protection."

2.5. SOCIAL AND EVERYDAY SERVICES

All service users at children's and adults' SSS Centres do not have personal belongings, nightstands, or any opportunity to customize their room interiors, hang up paintings.

Director of the SSS Centre No. of the city of Aktau is convinced that their residents do not need night stands or bed-side cabinets. All service users get short buzzcuts, with the exception of persons residing in self-service units (10% of the total population). Residents of the aforementioned units are allowed to have their own hairstyles (women), use makeup, pick their everyday clothes, attend hobby clubs, participate in amateur arts and crafts. Self-service units are equipped with clothes lockers, clocks, paintings, personal effects and other.

Clothes, including undergarments, are all common. In one of the facilities, monitors observed the process of marking of underwear.

2.6. LODGING OF COMPLAINTS

Children with disabilities tend to be more prone to various forms of abuse — be it psychological, physical or sexual. Residents of children's residential facilities are especially susceptible due to the lack of access to active mechanisms of lodging and consideration of complaints.

During an interview with one Gaziz from "Ayala" children's SSS Centre in Talgar, the boy told us that he helps around at the cafeteria, and carry around potato sacks, and other things. When asked what he gets in return, Gaziz said "they give me something, when I help well". The boy, unfortunately, does not perceive this practice as child labour exploitation, and has not considered complaining about these actions of the staff.

Monitoring involved examination of the complaint and acknowledgement log for relatives of service users. Residents of children's and adults' SSS centres do not always get an opportunity to lodge a complaint, give their account of the problem in a discreet meeting with the director. Usually meetings with the management occur during rounds. For persons unable to speak or with cognition disorders, there are no alternative ways of relaying information (sign language, letter, drawings or other means). Also there is no telephone call log.

On the photo Service user from Ridder SSS Centre, East Kazakhstan oblast

2.7. RIGHT TO EDUCATION

Children residing in an SSS Centre are not covered by pre-school and school education. Specialists also underline that for children with severe or profound intellectual disability, the Ministry of Education and Science of the ROK has no working educational programmes available.

Pursuant to the Order of the Minister of Health and Social Development of the Republic of Kazakhstan No. 165 from 26 March 2015 "On the adoption of special social service provision standards in the area of social protection", SSS centre receive children with intellectual disabilities of all degrees, including severe locomotive system dysfunctions that hinder educational efforts at special (auxiliary) groups of special corrective educational institutions (unable to move on their own, unable to service themselves due to severity of motor disorders, and requiring personal care); blindness (hard of seeing) or deafness (hard of hearing) with an intellectual disability of any degree, including in presence of severe motor dysfunctions **that hinder training at specialized residential schools**; epilepsy (including symptomatic) with attacks that do not occur more than four times per month in presence of intellectual disability; schizophrenia with profound defects without productive symptoms; intellectual disability (mental retardation) after organic brain damage incurred.

Medical contraindications for placing children in inpatient/semi-inpatient settings: schizophrenia with productive symptoms; epilepsy with frequent (more than five times per month) attacks, propensity for serial attacks, epileptic status, clouded state of mind, dysphoria; psychopathic-like symptoms as part of any nosological class; psychiatric illnesses accompanied by gross drive dysfunctions and behavioural disorders posing a threat to children and the community.

SSS Centres are under the remit of the Ministry of Labor and Social Protection of the Population of the ROK, which is why children residents of such facilities are not covered by the educational services and the possibility of subsequent certification of their knowledge with a view of future employment. Currently individual education programmes and professional/occupational training programmes for intellectually challenged children are under development.

Thanks to personal initiative of social workers of the "Ayala" SSS Centre in Talgar, one Mikhail, 20, is a student of secondary school at address of residence. This virtuous initiative became possible after receiving approval from the Education Office of Almaty oblast and the experts of the psychological/medical/pedagogic commission. It should be noted that this initiative that provides school education for children residents of SSS centres is not permanent.

A striking example of the "Nurly-Zhurek" SSS centre's efforts is a successful transfer of 11 children to a correctional school.

In children's SSS centres low coverage of socio-pedagogic services is evident. It is important to point out that children in the palliative and crisis groups are not covered by the services of psychologists, mental defect teachers, physical therapy specialists or speech therapists. **In total, 43 out of 84 children attend corrective training sessions (50% of the total number)** that are used to foster social and everyday skills, train labour skills, develop independence in labour settings, foster employment qualities, cultivate interest in employment.

As far as the failure of the corrective and social services to have 100% coverage of children is concerned, specialists explain this by their insufficient learning capacity. At the same time, Kazakhstani laws exclude the concept of "untrainable children".

To develop social skills and conduct corrective/developing training, "Ayala" SSS Centre of the city of Talgar were broken up into 3 groups based on their age developmental features, social skills and cognitive development: 20 children from palliative care group; 21 children in the crisis group; 43 children in the corrective group.

In children's SSS Centre of Aktau city total number of children is 75, of whom 40 children attended speech therapy sessions, 24 children attended mental defect therapy, 20 attended occupational therapy, all children attended sensory therapy and psychology sessions. In turn, children from the "Dostyk" department, where 9 out of 13 exhibit aggression, 3 children attended mental defect therapist sessions, 1 child attended speech therapy, 1 child attended school, 10 attended physical training, all children attended psychologist sessions.

Some residents of the children's SSS Centre in Aktau attended arts and crafts clubs, and the centre was visited by volunteers to teach children English.

At the SSS Centre No. 2 in Almaty, out of 130 children, 16 attended speech therapists, 36 children attended mental defect therapy, 24 children attended occupational orientation, 38 attended physical education, 16 attended music classes and 70 attended psychology sessions.

Mental defect therapists, speech therapists, psychologists of all children's SSS centres of the nation noted that subordination to different agencies lead to these specialists getting out of touch with the modern educational methodologies, stop attending trainings and professional development courses within the system of corrective special training under the Ministry of Education and Science of the ROK. Eventually, this is reflected in the differences in labour remuneration and payments for treatment leaves for the staff.

Insufficient coverage by socio-pedagogic services is illustrated by the adult's SSS Centre in the city of Yesik, Almaty oblast. Out of 505 residents, 46 are covered by the services of a defect therapist (9,1%); 141 by physical fitness (27%); 157 attend occupational therapy (31%); 131 residents attend cultural and mass events (25%); 56 individuals attend the library (11%).

2.8. SEX LIFE OF SPECIAL SOCIAL SERVICE CENTRES RESIDENTS

All the facilities institute an official ban on any intimate relations between men and women. There are no rooms for intimate contacts, no opportunities for free movements or free access to information. Public places have surveillance cameras. Internal regulations explicitly lay out separate living arrangements. Director of the Ridder city SSS Centre, East Kazakhstan, commented: "The ban on sex life originated from the Office for Employment and Social Programmes of the oblast (region). These matters are dealt with relatives during treatment leaves."

For instance, the SSS Centre No. 1 in Aktau, besides segregated living arrangements, there is a separate entrance to the cafeteria, and walks are separate for men and women. The management recognizes the violation of the residents' rights to sex life, yet, at the same time, notes that there are no conditions made for that. There is also the risk of pregnancy and childbirth.

At the SSS Centre in the village of Kupchanovka of the Akmola oblast, the staff used intrauterine contraceptive devices on all women, and sexual relations are tolerated in this facility. In other facilities, relatives supply women with contraceptives. Specialists note that the SSS Centre standard does not cover this topic in any way.

Turkestan SSS Centre specialists noted that women helped remove the intrauterine devices in an improvised manner, in order to bring about pregnancy. **For female residents of an SSS Centre, pregnancy is viewed as an opportunity to leave the closed facility. Indeed, interviews with service users revealed that all of them wanted to go back home.**

2.9. DAY STAY CENTRES

As mentioned above, day-stay centres under 24-hour inpatient hospitals have not been implemented nationwide. For instance, day-stay centres (semi-inpatient facilities) are opened under SSS Centre No. 3 in Aktau, SSS Centre No. 6 in Shymkent, "Nurly Zhurek" SSS Centre in Nur-Sultan. Children's SSS Centre in Aktau is open since 2009, with 82 children under 18 attending it.

Nur-Sultan's "Nurly Zhurek" SSS Centre is at this point the nation's only social facility where a pilot project has been testing temporary attendance of children aged 18–27 in a semi-inpatient setting. According to the facility's data, as of the end of 2018, the inpatient unit had 121 patients, the semi-inpatient unit for children under 18 serviced 126 patients, and the semi-inpatient unit for adults serviced 27 patients. The semi-inpatient facility includes craft shops, such as pottery, plastering, sewing, etc.

Since 2015, the adults' SSS Centre No. 2 in Shymkent is attended in day-care mode by 6 persons aged over 20.

As a possible avenue of increasing the quality of special social services in inpatient and semi-inpatient settings, director of the "Nurly Zhurek" SSS Centre, S. Bupezhanov suggests the breaking up of children's SSS centres through regional branches.

Over the last years, the Government has made headway towards enhancing the support for the family and developing day-stay centres at places of residence of children with disabilities. Non-governmental organizations have access to state funding out of the national budget[46]. Yet, the need for day-stay centres for individuals aged 18 and over remains a significant problem.

2.10. REHABILITATION AT SPECIAL SOCIAL SERVICE CENTRES

Over the course of the monitoring it was established that the Aktau city SSS Centre has had a rehabilitation centre "Onaltu" functioning since November 2018, servicing up to 40 individuals. Alongside corrective and developmental activities, the centre also provides treatment procedures like UHF, mud treatment, physiotherapy. Children with disabilities from remote communities have the opportunity to enjoy the rehab services by getting a vacation package from the Social Welfare Office of the Mangistau Oblast (region).

"Nurly Zhurek" director proposed that a children's camp be open based on the SSS Centre. It is recommended to implement within 24-hour inpatient facilities also rehabilitation services for all children with disabilities and mental health disorders under home care,

[46] Law "On state social procurement, grants and bonuses for non-governmental organizations in the Republic of Kazakhstan" dated 2005.

because the amount of medical care provided at the semi-inpatient facility (day-stay) is lower than in an inpatient setting. A similar suggestion was voiced by a neurologist of the Shymkent city SSS Centre.

Considering the fact that children, persons with disabilities and mental health disorders are especially vulnerable, for the following reasons:

a) inability to hear, move or get dressed on their own, take baths or use a restroom, increase their susceptibility to abuse on the part of caregivers;

b) living in isolation from parents and other relatives increases the risk of abuse;

c) in case of communicational or intellectual disorders, they can face lack of attention, mistrust or misunderstanding when complaining about abuse.

RECOMMENDATIONS

For the Ministry of Labour and Social Protection of the Population of the ROK:

1. Develop an official de-institutionalization strategy. Adopt a roadmap for national implementation of inpatient-facility-replacing technologies for citizens with mental health disorders, aimed at developing the institution of foster families, education and employment of these individuals.

2. Introduce a moratorium on committing new patients into specialized facilities and re-distribute existing resources allotted for sheltered-care facilities into providing community-based services.

3. Jointly with Ministry of Education and Science of the ROK develop curricula and training programs for the pupils from SSS centres, provide basic general education for persons with mental health disorders from state medical and social facilities and assist them in job hunting, obtaining professional training.

4. Initiate multidisciplinary audits of Ministry of Health of the ROK specialists, conduct individual testing of citizens, with the involvement of psychiatrists, social workers and executive authorities.

5. Facilitate the elaboration of measures of social and financial support to encourage family-based care for citizens with mental health disorders.

6. Enhance social services for citizens with mental health disorders, including trough assisted living options:

- in living quarters owned by said citizens;

- in specialized housing complexes owned by the social welfare system;

- living quarters owned by non-governmental organizations providing social services, in dormitories.

7. For purposes of preparing individuals for assisted living, establish training bases for developing everyday independent living skills.

8. Develop programmes for de-institutionalizing children with disabilities and returning them to their families, transferring to care by extended families or placing

under foster care.[47] Take into account the opinion and wishes of the child when placing them into a specialized facility.

9. In order to enhance inter-sectoral services at district, city, oblast centre levels and effective social work, establish a **National inter-disciplinary system for detecting and evaluating capacities and needs** of **children with disabilities** as soon as possible — from birth, early age.

10. Develop measures of social protection to overcome poverty and reduce social isolation, so as to enable families to effectively support their children in the community.[48]

11. Enhance the management of social services and NGOs engaged in social care, in order to make them transparent and accountable before the children and their families.

12. Institute the conversion of sheltered-care (residential) facilities into inclusive resource centres operating on the basis of a differentiated approach and aimed at the effective integration of persons with mental health disorders into society, including children.

13. Provide ongoing psychological and other support to families raising children with mental health disorders in order to help overcome possible feelings of shame and rejection.[49]

14. Cover teachers and defect therapy specialists with training courses for increasing qualification and professional grades.

Recommendations at the local level:

1. Encourage development and rehabilitation of children with mental health disorders with subsequent transition to corrective and special schools for children with intellectual disabilities.

2. Provide recommendations and training for all the social workers engaged.

3. Provide ongoing psychological and other support to families raising children with mental health disorders in order to help overcome possible feelings of shame and rejection[50].

4. Ensure systemic professional development training of specialists of medical and social care facilities.

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47 Paragraph 49 of the General Comment No. 9 (2006): The rights of children with disabilities. UN Convention on the Rights of the Child, (CRC/C/GC/9).

48 Legislation and policy in the area of inclusive education. De-institutionalization section. UNICEF, 2014.

49 Ibid.

50 Ibid.

CHAPTER III.
MEDICAL CARE AT SPECIAL SOCIAL SERVICE CENTRES IN 24-HOUR INPATIENT SETTINGS, AND AT MENTAL HEALTH CENTRES

3.1. STATISTICAL DATA

As at 1 January 2019, Kazakhstan had **188,667** individuals with mental health disorders that are placed under monitoring by healthcare authorities. 49,987 individuals underwent treatment and rehabilitation voluntary, and 271 — involuntarily. Enrolled into outpatient psychiatric management and treatment were 151 patients. 180 individuals were involuntarily committed to a general psychiatric inpatient hospital, 75 individuals were involuntarily committed to a specialized psychiatric inpatient hospital, 686 individuals were involuntarily committed to a psychiatric specialized hospital with intensive management.

Furthermore, the official authority noted that the number of individuals involuntarily committed to general inpatient hospitals are not tracked in the official statistics. Neither does official statistics track the number of hospitalized patients without active legal capacity on an emergency and routine basis.

According to the information on the consideration of civil cases by district and equivalent courts of the Supreme Court of the ROK over the course of 9 months of 2019, courts sustained **22 claims** on involuntary commitment into a psychiatric inpatient facility, and all these claims were satisfied by the court.

3.2. MEDICAL CARE AT SPECIAL SOCIAL SERVICE CENTRES IN INPATIENT SETTINGS

The monitoring revealed that medical care standards had been developed for SSS Centres. Facility administrators mainly criticise audits. Healthcare authorities and disease control agencies audit SSS Centres as medical institutions, even though those are classified as social care facilities.

At the same time, the whole medical component of these facilities is mainly limited to the use of psychoactive substances.

Serious concern is raised by the use of medications without service user's consent and without periodic revision of the prescribed long-term course of treatment.

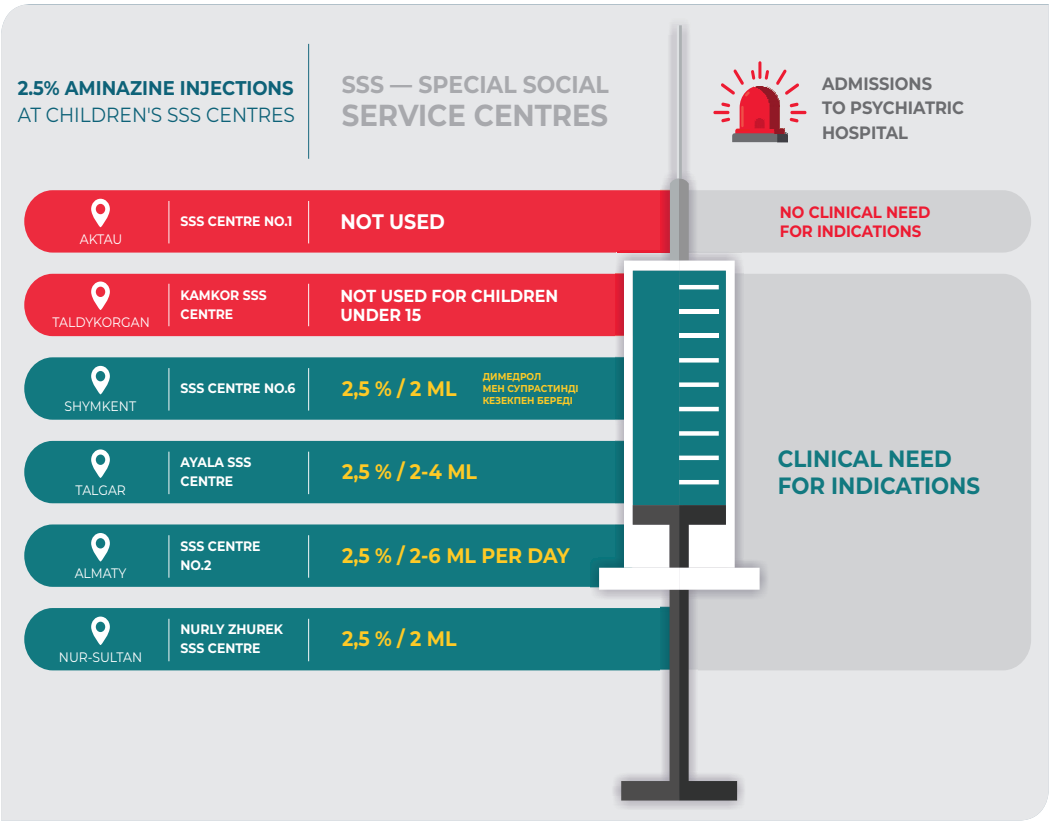
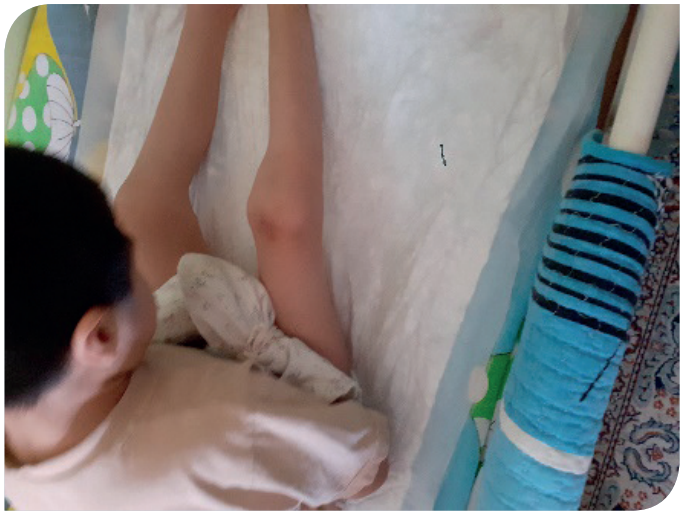


Figure 6 – Use of 2.5% aminazine injections at children's SSS Centers

According to the Figure 6, injected psychoactive medications 2.5% aminazine use practices in various children's facilities vary. The highest dosages of the strongest medication at the Almaty city children's SSS Centre No. 2 from 2 to 6 ml per day. Meanwhile, adults' SSS Centres use this medication intramuscularly and very sparingly, at doses not exceeding 2 cubes per day.

Examination of administration charts of using 2.5% aminazine in SSS Centre No. 2 in Almaty revealed that over the course of 1 month 11 children or 8 % residents out of 130 children were treated with the drug.

The aggressive outbursts of some children with the most complicated diagnoses, profound intellectual disabilities, is caused not by poor mental agility but absence of speech, and the resulting inability to express emotions and wishes. However, in all similar cases at the SSS Centre "Ayala" in Talgar psychoactive substances used, which are not effective and cause even greater harm to the child's health. Thus, **over the course of 1 month of treatment, A. Gusseinov received 186 pills of aminazine at 25 mg dosage. Y. Ybyrai – 118 pills of aminazine, additionaly he received medication such as carbamazepam, depakin chrono.** Y. Ybyrai exhibits auto-aggression towards himself, can scrape himself, harm himself.



On the photo Y. Ybyrai from SSS Centtre "Ayala" in Talgar in improvised gloves worn on him to avoid injuries

Conversely, Aktau city SSS Centre does not resort to injections, as they do not encounter aggressive behaviour in children. It is noteworthy that the Aktau centre was established using the standard social facility design. The centre occupies 9,000 square meters, has spacious hallways, rooms, a gym, treatment procedure rooms, Montessori rooms, sensory therapy rooms, which has a positive impact on the psychoemotional state of the residents. Also, Mangistau oblast (region) has recorded no hospitalizations from the children's SSS centre, as no necessity existed. The Mental Health Centre itself does not have a children's wing. Disability is assigned to children without the need to be admitted to an inpatient facility.

The Shymkent city SSS Centre No. 6 has special rooms for treating children: procedure room, physiotherapy room with electrophototherapy equipment, therapeutic massage room, therapeutic physical exercise room. Medical rooms are outfitted with modern medical appliances: Bioptron PRO-1, electrophoresis, Nuga Best, tourmaniun mattress (Nuga Best), d'Arsonval, UHF, parafine, magnetotherapy, ultrasound. The staff is very warm to the children. According to a neurologist: "*You can trick a child, thereby calming them, without having to administer heavy drugs. Amount of care provided in rehab, day-care and inpatient settings varies. A child that is left at home does not receive the same amount of medical and preventive care.*"

The "Kamkor" SSS centre in Taldykorgan has a ward for bedridden children with severe illnesses, that are unable to move. The management considers installing casters to make it possible to get outdoors — extreme care is required, however, due to the fact that their bones are so brittle that any sudden movement can damage bone integrity. According to the management, odds of achieving any tangible and increasing indicators in terms of rehabilitation are approaching zero, considering the severity of the disease or the inability to learn. At the same time, there was an instance where a child had been taught how to hold a spoon for a year, and following the administration of a drug, his skills disappeared.

This facility administers such psychoactive medications as sonapax, carbamazepine, depakin, aminazine; for seasonal allergies — dolobene, essenciale, bile herbs.

Over the course of the monitoring of an adults' SSS Centre in the city of Yesik, medical staff were interviewed, examined medical charts of patients, drug administration records, psychoactive substances, courses of treatment, etc. Two patients were, according to the psychiatrist, behaving aggressively and had to be placed in a crisis ward. After familiarizing with the doctor's classification of "combative" patients, the compatibility of hard psychoactive drugs (aminazine, carbamazepine, azaleptol, haloperidol, chlorprothixene) and the long-term duration of their administration was found, which is a potential direct harm to the health of patients. Upon examining psychoactive medication administration records, it was established that one user may take up to 5–6 psychoactive drugs simultaneously.

The facility's psychiatrist commented this administration practice as follows: *"It is impossible to restrict 500 people to one facility without using hard drugs. They may be admitted with milder diagnoses, but over time living in large residential facilities tend to exacerbate the diagnoses. Children's facilities provide large amounts of medical care, compared to adults' facilities, and as a result mortality is higher"*.

Social care facilities do not face any financial issues in procuring medications. For instance, in 2019, the Ridder city SSS Centre received 35,772,000 KZT for drug procurement. Drug procurement is done by each facility independently. No adequate monitoring of competent agencies is available.

There were many toothless people. Intense toothache in individuals unable to speak can cause aggression and irritability that physicians could misinterpret as a cause for administering a psychoactive drug. The Akmola oblast's "Kamkor" SSS Centre had 85 patients with tuberculosis in various years.

Facilities practice periodic hospitalization of children and adults to mental health facilities. There is no special schedule in place, but examination of shift-change logs revealed that the same patients get hospitalized.

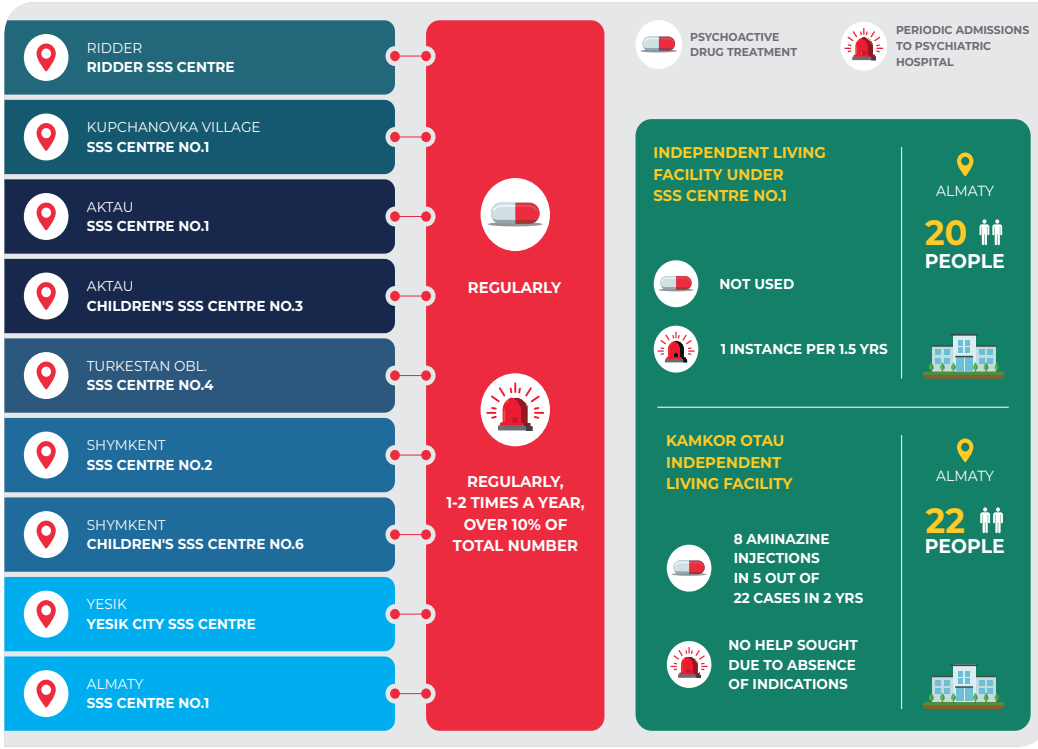


Figure 7 – Comparative indicators of the use of psychoactive drug treatment and hospitalization in SSS Centers and Independent living facilities

An important conclusion to be drawn from this monitoring is the observable improvement in the psychological state of residents upon transfer to independent living facilities, to settings with better living conditions, and observable reduction of combativeness in low-capacity settings. When the residents of the Almaty city SSS Centre No. 1 were transferred to an independent living facility, clinicians noted a steep decrease in the need for administering psychoactive substances and hospitalizations.

According to the records kept by the staff of the "Kamkor Otau" facility, in the period between July 2017 and September 2019, the psychiatrist made 8 aminazine injections for 5 out of 22 children (in the event of psychosis and to avoid hospitalization).

"We never referred them to mental health facilities, because we only had to address the aggression problem. However, children can exhibit aggression continuously and over prolonged periods of time (from a week to a half-year). This is where you need strength to endure their aggression, both physical and psychological. It is difficult. This is probably why psychiatric facilities tend to rely on injections and psychotropic substances. Low-capacity facilities have an easier time dealing with problems, because there is always enough staff that could play both the "good cop" and the "bad cop". Also, the importance of customized therapy. Many of our children were prescribed inadequate drugs, which led to brain function deterioration. Often our residents get prescribed vitamin and sedative courses in the autumn and spring", – noted psychologist of the facility "Kamkor Otau", G. Amangeldinova.

Every SSS Centre has a **crisis room**. There are currently no official procedures for placement and duration of holding in a crisis room. "Everything according to psychiatrist's

instructions" is the most common rationale at all SSS Centres for placing an individual in a locked cell.

Crisis rooms are cells similar to those used in pre-trial detention centres: they are locked, with bars instead of doors. A single room can hold one to four people, without the right to leave. In several institutions author saw a bucket placed in the corner of the room, for relieving oneself. Holding people in crisis rooms constitutes inhumane and degrading treatment.

On the photo Service user from the Yesik SSS Center in crisis room

The photo shows a man in a crisis room, at the time of the visit he was without diapers, in wet underwear. Director of the Yesik city SSS Centre of Almaty oblast prohibited the monitors from interviewing persons held in crisis rooms, claiming that they are "incapacitated".

On the photo Crisis room in the Ridder SSS Centre, East Kazakhstan Oblast

3.3. RIGHT TO INFORMATION ON ONE'S OWN HEALTH STATUS

Patients of SSS Centres and Mental Health Centres are denied the opportunity to obtain any information regarding their health status, in an accessible form. Also there is no opportunity to directly peruse medical records (patient history) or obtain copies of

medical documents or excerpts from the documents. Yet, this right is guaranteed for all patients, regardless of active legal capacity, and applies fully to psychiatric care, as well.

3.4. MORTALITY AT SPECIAL SOCIAL SERVICE CENTRES AND MENTAL HEALTH CENTRES

Over the course of 2018, the highest mortality rate was registered in East Kazakhstan Oblast at 17 cases, whereas in Mangistau Oblast over the last 3 years from 2016 to 2018 there was not a single case.

"Mental illnesses don't kill!" Physicians of mental health facilities in various regions of the country aired grievances regarding the unwillingness of medical hospitals to receive patients with psychiatric illnesses. Patients die of somatic illnesses and complications. For the majority of the deceased, autopsy shows brain oedema as a cause of death.

The most pressing concern is raised by psychiatrists of SSS Centres with respect to persons who have committed a crime and undergone involuntary treatment at intensive care inpatient facilities (Republican Psychiatric Hospital of Specialized Type with Intensive Supervision of the Ministry of Health of the ROK in Aktas village, city of Talgar). Almaty city SSS Centre has 10 residents from Aktas. Residential unit is outfitted with bars. Physicians clarify that residential care facilities are not equipped to protect this category of patients; no special security details are available.

Medical staff also propose that separate living arrangements be made, and medical care be provided for individuals with mental health disorders and persons with intellectual disability. Such a measure, in their opinion, will reduce the number of cases of abuse and conflict among service users.

3.5. PROVISION OF MEDICAL CARE AT MENTAL HEALTH CENTRES OF THE MINISTRY OF HEALTH OF THE ROK

Granting and denying hospitalization of patients

Large stigma of mental health disorders is reflected in low rates of denials in emergency admission. For instance, ambulance crews often arrive at the place of residence of a person with a mental health disorder upon receiving a call from relatives, neighbours or the police. Instances of unconfirmed calls are also being reported. There are also instances whereby relatives or neighbours insist that the person be hospitalized. According to emergency room psychiatrists, there are cases of uncorroborated causes for hospitalization. The highest rate of denials is reported at psychiatric hospitals under the state municipal form of incorporation/organization.

Administration of Mental Health Centre of East Kazakhstan Oblast re-registered the institution from municipal public utilities institution into a state enterprise on the right of economic management (PKhV), in September 2019. Prior to that, since the beginning of 2019 and by the end of September, 131 denials of hospitalization were recorded. PKhV-type institutions do not deny hospitalization, or such denials amount to no more than 1% of the total number, as a result of transitioning to the Mandatory Medical Insurance Fund.

Over the course of 2019, Almaty city Mental Health Centre had 1,767 emergency admissions, and 472 routine admissions. Total number: 2,319, denials: 80. Turkestan city Mental Health Centre had 580 patients, and 15 individuals involuntarily committed.

From the beginning of the year and through 6 June 2019, the facility received 2,637 patients. According to the management, denials occur once in a quarter.

The Mandatory Medical Insurance Fund does not cover inpatient care on social indications. For instance, mandatory state insurance fund deducted 1 million KZT out of the budget of the East Kazakhstan oblast Mental Health Centre for 300 patients that were admitted **on social indications**. This category does not have relatives, documents or place of residence. Transferring such patients to social care facilities is extremely challenging.

It should be noted that the psychiatric outpatient facility of East Kazakhstan Oblast is the largest facility in the country, boasting 1,120 beds. In 2018 the facility treated 5,723 patients, with 17 deaths.

Shymkent city Metal Health Centre had a sizeable patient flow: as of 6 June 2019, over the course of just half-year, the facility had 2,637 admissions. Ward patient count reached 30–40.

Due to the lack of a requirement to track admissions of patients declared by court as legally incapacitated with custodian's consent, this log is not being kept at all in any of mental health centres.

Involuntary commitment to mental health centres

Pursuant to article 336 of the Code of the ROK "On public health and healthcare system", application for involuntary commitment of a citizen into a mental health inpatient facility shall be filed in court **not later than within seventy-two hours of the individual's commitment into a mental health facility.**

Involuntary commitment of a citizen into a mental health inpatient facility, prior to the relevant court ruling, shall be permitted exclusively for purposes of avoiding consequences laid out in sub-paragraphs 2), 3) and 4) paragraph 1 article 94 of the Code of the ROK "On public health and healthcare system".

On each case of involuntary commitment without a court ruling, the facility management shall so notify the prosecutor in writing within forty-eight hours of the commitment.

The Nur-Sultan city Mental Health Centre keeps an involuntary commitment registration log. In total, since the beginning of the year, **75 patients had been involuntarily committed.** Involuntary commitment registration log pertains to internal log of the facility and is not subject to official statistical reporting.[51]

Examination of this log revealed that only 10 out 75 received a court order for involuntary commitment. 25 patients signed a consent form themselves on the second and third days following involuntary commitment. The other 40 patient entries had no signatures or notes.

In this regard, it is critical that we conduct legal evaluation of the involuntary holding of an individual in a closed inpatient facility in the period of time between the moment they were brought from the emergency room to the intensive supervision ward and the moment they signed the informed consent form.

[51] According to a response received from the Ministry of Health of the ROK and the Republican Research Centre for Mental Health No. outgoing: 05-5-5/2609 dated: 28.02.2019

Involuntary treatment at mental health inpatient facilities

Pursuant to the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 8 from 9 July 1999 "On regulatory practice of enforcing compulsory measures of medical nature" healthcare bodies charged with the use of compulsory measures of medical nature and provision of psychiatric care shall, within 6 months of the day of the taking of the compulsory measure of medical nature in question, and then subsequently every 6 months, conduct a legal examination of the patient and based on treatment and management methods used, provide to the court, in pursuance of article 93 of the CC, a substantiated report on the decision to change, extend or terminate the use of the compulsory measure of medical nature. An individual's stay at a mental health inpatient facility without a court-mandated extension of the compulsory measure of medical nature shall be deemed illegal.

Resolutions passed following the consideration of a motion to terminate, change, extend the use of a compulsory measure of medical nature, may be appealed or challenged by individuals specified in article 518 of the CPC[52], provided that the severity of their disease, as specified in the forensic psychiatric evaluation report, does not preclude this.

Existing regulatory practice does not fully adhere to the principles of human rights, the equality of rights before the law and legal remedies. The monitoring of patient records revealed the following:

- patients did not attend case hearings; they did not attend the court hearing on extending the compulsory measure ruling;

- court rulings did not specify term of treatment, or specified language such as "until full recovery" or "per physician's opinion report"; neither does it specify a discharge procedure;

- there are no mechanisms for appealing court rulings to place under or extend involuntary treatment. There is also no practice of appealing court rulings;

- no mechanism is available for appealing court decisions on involuntary commitment or extension of compulsory treatment, especially for individuals deprived of active legal capacity;

- lawyers' involvement in the free state legal assistance programme is *pro forma*. Usually, lawyers see their clients only at court hearings. Such a state of affairs leads to biased hearing of cases and failure to exercise the patient's right to legal defence. Patients are not informed of their right to lodge a complaint or appeal or receive legal aid when drawing up a complaint or motion;

- courts deny transition to outpatient treatment for individuals that had previously been involuntarily committed to a mental health inpatient facility of the specialized kind, with intensive case management.

Physician's opinion regarding the lack of social threat on the part of the patient following treatment, or regarding the possibility of receiving outpatient care, does not get acknowledged by judges. For the most part, judges pay attention to language such as "unserved sentence term".

[52] Article 522, as amended, of the Criminal Procedure Code of the Republic of Kazakhstan No. 231-V from 4 July 2014.

Courts usually deny medical institutions' motions to terminate or change the compulsory measure, invoking the Regulatory Resolution of the Supreme Court of the ROK No. 8 from 9 July 1999 "On regulatory practice of enforcing compulsory measures of medical nature", specifically paragraph 28 which reads: *"Courts need to pay close attention to cases whereby a person declared insane commits an act that is classified as severe or especially severe offence, during the course of their stay at a medical institution, and on such changes in their mental state that are specified in the physician opinion report. Terminating or extended compulsory measures of medical nature towards such individuals shall be contingent upon accurate account of events, from which it beyond a reasonable doubt follows that, following treatment provided or as a result of a change in the mental or physical state, the individual ceased to pose a threat to themselves and others".*

For instance, examination of personal records revealed that involuntary commitment extension decisions reached 6–8. This means that the term of involuntary treatment can extend by up to 2–3 years. Sometimes the involuntary treatment term exceed that of the criminal sentence, whereby the sentence was to be served in a penitentiary institution. It should also be noted that for medium and severe criminal offences there is an opportunity of release on parole. Unfortunately, parole procedure is not provided for under the terms of involuntary commitment.

K. Nagmetzhanov, who was being held at the Nur-Sultan city Mental Health Centre on the terms of involuntary commitment on the grounds of a court ruling, despite an available physician's opinion report regarding the opportunity for continuing treatment in an outpatient setting, the court has for 5 years elected to keep the involuntary commitment ruling without change. Mr. Nagmetzhanov's mother represents his interests in court; also medical case proceedings are joined on his behalf by medical workers with the relevant findings reports proving absence of any reasonable cause for keeping Mr. Nagmetzhanov involuntarily committed. K. Nagmetzhanov himself does not participate in court hearings, and the courts have not explored the possibility of summoning him to a hearing.

Interviews with medical works and the patient himself with regard to this issue makes it apparent that these issues require thorough deliberation by court authorities, by way of legal proceedings involving patients themselves, taking into account their opinions, as well as with due consideration to fundamental international human rights treaties ratified by Kazakhstan, recommendations issued to the country by treaty authorities and special UN procedures with respect to segregation towards persons with mental health disorders, and their integration into the society.

Aktau city Mental Health Centre blocked attempts of monitoring group to initiate a confidential interview with a patient named Bolat, who was involuntarily committed to the facility. Bolat did not participate in the relevant court hearing, and does not know what his term of commitment is, what drug he is being given, and no clarifications on his rights have been made.

Medical and social institutions often refuse to provide special social services to persons who have already undergone involuntary commitment in intensive care hospitals, who have committed a crime, in particular from a psychiatric hospital at the Aktas village, Talgar district, Almaty region. In practice this category of people tend to reside in inpatient facilities for over 5–10 years.

RECOMMENDATIONS

For the Ministry of Labour and Social Protection of the Population of the ROK and Ministry of Health of the ROK:

1. Develop a standard for medical care at Special Social Service Centres.

2. Initiate a multidisciplinary audit of children's and adults' Special Social Service Centres to determine if quality medical care is being provided to service users.

Ministry of Justice of the ROK jointly with the Ministry of Health of the ROK:

1. Develop a mechanism for appealing court decisions on involuntary commitment or extension of compulsory treatment.

2. Adopt a law on psychiatric care[53] regulating the issues of forced hospitalization of incapacitated persons, challenging the legality of their hospitalization in court.

3. Develop a detailed operating procedure on the methodology of expert assessment of active legal capacity, as prescribed in article 283 of the Civil Procedure Code of the ROK. Such an operating procedure must ensure that expert assessment of active legal capacity was based on the following criteria:

- type and degree at which mental state of an individual affects their ability to independently make decisions and exercise one's rights in various specific areas of life;

- existence of causal link between mental health disorders and the restrictions imposed on their ability to make decisions: this is critical for distinguishing between cases of social disregard and insufficient education;

- estimated period of time during which the citizen did not possess functional active legal capacity, and prospects for improving the situation;

- availability and efficacy of other forms of formal and informal support that would not entail restrictions of active legal capacity.

For the Supreme Court of the ROK:

1. Improve judicial practice on cases concerning the rights of persons with mental health disorders, taking into account their state of health, personal opinion, and the possibility of outpatient observation.

2. Oblige the courts to specify in court rulings the time frames for involuntary commitment and a procedure for discharging patients admitted to psychiatric facilities.

3. Do not allow unfounded extensions of the term of involuntary commitment to psychiatric inpatient facilities.

Recommendations at the local level:

1. Develop procedures for holding patients in crisis rooms at adults' special social service facilities. Consider complete abolishment of such closed holding rooms for long-term detention.

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[53] The Law of the ROK "On psychiatric care" became invalid with the adoption by the Code of the ROK "On public health and the health care system" No. 193-IV from 18 September 2009.

2. Take effective measures to reduce the number of hospitalizations of service users into medical psychiatric facilities.

3. Work with multidisciplinary medical facilities to reduce stigma and discrimination against persons with mental health disorders.

Conclusion

When we talk about protecting the rights of people with mental health disorders, it should be understood that their vulnerability is not the result of disabilities, but arises from the barriers and defects of our world. In particular, gaps in legislation and law enforcement practice, institutional weakness, inflexible public spaces and transport infrastructure, discrimination and stigmatization in society lead to the helplessness of people with mental disorders.

As part of this study, the author and employees of the Office of the Ombudsman in the Republic of Kazakhstan identified a number of similar defects in the system of state medical and social service facilities for persons with mental health disorders.

The solution to the problematic issues outlined in this Report is urgent.

First, the authorized bodies and officials need finally determine the direction of activity of medical and social facilities, in particular, their attribution to medical or social institutions; the legality of psychiatric treatment in a special social service facilities; the appropriateness of transferring treatment and rehabilitation to the mental health facilities. If at SSS Centers people receive medical care for 24-hour and there are psychiatrists specialist, what is the reason for the regular hospitalization in a mental health hospitals?

Until now, there are no standards for the medical care in a social institution, guidelines on individual plans for working with service users. In addition, children at SSS Centers are not covered by basic general education. The Ministry of Education and Science of the ROK has not developed special educational programs for children with severe, profound mental disorders.

Given the small number of orphans in children's SSS Centers (from 5 to 10%), it is necessary to take measures to return children with special needs to families, to carry out educational and other comprehensive measures to reduce abandonment of children with pathologies among the parents.

The results of the analysis and observations clearly indicate the need for a complete ban on the use of psychoactive drug treatment at children's special social service facilities, such as 2.5% aminazine injections.

It is critical to move away from the harmful practice of deprivation of active legal capacity of children at the age of 18 when transferred to adult facilities.

It is necessary to abolish the appointment of the director of a social service facility as a custodian for 500-700 people and as special social services provider at the same time. In this context, it is need to develop strict criteria for the qualifications of the director of a social service institution, which would exclude a medical approach when working with service users, as required by the UN Convention on the Rights of Persons with Disabilities.

One of the significant conclusions of the project is the real improvement in the mental state of persons with mental disorders when changing living conditions and transferring

from the SSS Centers to Small-capacity homes, which is confirmed by qualitative and quantitative indicators. Therefore, it is so important to extend the access to the day stay centers and independent living facilities for people with mental disorders over 18 years old in all regions of the country.

Solution of the indicated systemic issues in this area is based not only on humanity, but also on obvious economic and social benefits: inclusive economic development, general well-being, and a greater degree of social security of the citizens.

By changing the world for more unprotected social groups, we are making it a better place for all and each member of society.

We express our gratitude to the central and local authorized bodies for their cooperation and providing access to state medical and social facilities, to documentation and other materials, which served as a ground for writing this Report.