

**REPUBLIC OF ARMENIA**

**CIVIL COURT OF APPEAL**

**RULING**

**IN THE NAME OF THE REPUBLIC OF ARMENIA**

Court of General Jurisdiction

Avan and Nor Nork Administrative Districts of Yerevan

Ruling on civil case № “EAND/0895/02/13”

Presiding Judge: E. Amalyan

On December 3, 2013, the Civil Court of Appeal of the Republic of Armenia (hereinafter referred to as the Court of Appeal),

presided by: D. KHACHATRYAN

with associate judges: N. TAVARATSYAN  
S. MIKAYELYAN

upon considering at the public hearing the appeals of Zhuleta Amarikyan and her legal representative Tigran Hayrapetyan, filed against the ruling of the General Jurisdiction Court of Avan and Nor Nork Administrative Districts of Yerevan (hereinafter referred to as the Court) of June 4, 2013 on civil case № ‘ԵԱՆԴ/0895/02/13’ following the application on the compulsory inpatient psychiatric treatment prescribed to Zhuleta Amarikyan (patronymic: Davati) by A. Hakobyan, head of the Avan psychiatric clinic of Psychiatric Medical Center CJSC, Ministry of Health, Republic of Armenia.

**ESTABLISHED:**

**1. Procedural background of the case**

The applicant demanded that the court allow compulsory treatment of Zhuleta Amarikyan.

By its ruling of June 4, 2013, the court upheld the application.

Zhuleta Amarikyan and her representative, Tigran Hayrapetyan, appealed the ruling but has received no response so far.

## **2. Grounds, arguments and claims of Zhuleta Amarikyan's appeal**

Below, the Court of Appeal sets out the grounds and rationale of the appeal, as organized by the Court.

The appellant claimed that the police forcibly took her to the psychiatric hospital and used violence against her, while she neither displayed any illegal behavior nor expressed any strange ideas.

The appellant is involved in a housing dispute with her brother, who is unwilling to sell the inherited property to give out his sister's share and for this reason took her to the psychiatric hospital. As a result, the appellant was illegally deprived of her freedom in violation of her rights provided by the RA Constitution.

The appellant also mentioned that she suffered severe ill-treatment, infringement and humiliation at the hospital.

According to the appellant, the court ruling was illegal.

Based on the above, the appellant asked the Court to reverse the ruling of June 4, 2013 and to reject the application on her compulsory treatment and claimed moral damages.

## **2. Grounds, arguments and claims of the appeal by Tigran Hayrapetyan, Zhuleta Amarikyan's representative**

Below, the Court of Appeal sets out the grounds and rationale of the appeal, as organized by the Court.

The court of general jurisdiction applied Article 174 of the RA Code of Civil Procedure, which is not applicable in this case, while it ignored Articles 3, 14 and 16 of the RA Constitution; Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 6(3)(8), 6(3)(13) and 22 of the RA Law on Psychiatric Care, which are applicable in this case.

The appellant put forward the arguments below in support of his appeal.

The court should have examined whether Zh. Amarikeyan might pose danger either to herself or others and whether her health would worsen in case of discontinued treatment or no treatment at all.

The court should have considered both aspects of the issue above and decide whether the compulsory treatment would not violate the principles of humanity and human rights. According to the opinion by the medical commission submitted to the Court, Amarikeyan posed no danger to herself or others and ordered outpatient treatment under the supervision of the local psychiatrist.

As for the other aspect of the patient's compulsory treatment, i.e. whether the lack of any treatment might worsen her health, there was no mention of it either in the medical opinion or in the court application.

The patient is entitled to demand that a psychiatrist of her own choice take part in the activities of the psychiatric commission. Amarikeyan was unable to exercise this right as she was given no opportunity thereof.

As for the medical opinion, it appears to be formalistic as it lacks any reasoning. Thus, the medical opinion of psychiatrists is unfounded and no other specialist of the patient's choice from any other facility was ever involved.

While the patient is entitled to legal aid, Amarikeyan was denied such aid. At the trial, Amarikeyan had no legal representative of her own choice; the assigned representative expressed positions contrary to her interests, and it was that testimony that served as the basis for the court ruling.

Although the representative assigned to Amarikeyan was not authorized to represent her in the court of law, he was still recognized as such and questioned at the trial, and consequently, the court ruling was supported with his testimony. Had Amarikeyan had a representative of her own choice, the latter might have submitted a motion for rejection of the office by the presiding judge since the latter took a clearly biased approach by initiating proceedings upon an application accepted in violation of the law and by extending indefinitely the terms that the patient should stay at psychiatric hospital for compulsory treatment, that could last several years until the judicial action comes into force.

If it turned out that the patient had to receive compulsory treatment for, say, 10 days, she would have to stay at the psychiatric facilities until the judicial act became effective, i.e. at least several months, if the patient or a representative of the psychiatric facilities appealed the ruling. Moreover, if the presiding judge was convinced at the trial that the patient did not need any compulsory treatment, the patient still would have to stay at the psychiatric facilities until the judicial act took effect. Evidently, this comes to prove that the presiding judge had previously expressed his biased attitude, namely that in his view, the patient should stay at the psychiatric hospital for at least a

month, which is an obvious violation of Article 6(1) of the above Convention to the effect that the judge displayed bias or at least appeared to do so in view of the appellant.

The appellant's legal representative also referred to Council of Europe (CoE) Committee of Ministers Recommendation No. R(83) of February 22, 1983 and precedent rulings of the European Court of Human Rights.

In this case, the medical institution should have provided a medical opinion that a patient may be placed at the psychiatric facilities only if he/she posed a severe danger either to himself/herself or others. While the court received no such position, it still ruled on the compulsory treatment.

Instead, the court failed to pay due attention and even ignored Amarikeyan's statement to the effect that she had no mental disorders, but rather suffered an allergy to medicines and was placed at psychiatric hospital because of a dispute with her brother. Furthermore, the Court failed to order forensic examination to find out whether the medical opinion was credible as it lacked any grounds.

Hence, on the one hand, the court implicitly trusted an opinion lacking any reasoning and on the other, ignored the patient's well-grounded arguments about the real facts of the case.

Based on the above, the appellant demanded either to reverse the court ruling of June 4, 2013 and submit the case to the same court for re-examination, or to reverse and change the court ruling of June 4, 2013 by rejecting the application of A. Hakobyan, head of the Avan psychiatric clinic of Psychiatric Medical Center CJSC, Ministry of Health, Republic of Armenia.

### **3. Essential facts for consideration of the appeal**

1. Based on the reference № 0125-2099 of the Avan psychiatric clinic of Psychiatric Medical Center CJSC dated June 1, 2013, Zhuleta Amarikeyan (patronymic: Davati) /address: 12-85 Svachyan, Yerevan) was taken to the Avan psychiatric clinic of Psychiatric Medical Center CJSC by ambulance on May 30, 2013 with an initial diagnosis of acute delirium syndrome. The patient gave no written consent for her treatment. Zh. Amarikeyan has been registered at the Avan psychiatric clinic since February 2, 2013 with the diagnosis of delirium disorder. On June 1, 2013, she underwent an examination by the medical commission. The patient was extremely tense, expressed delirious ideas of poisoning and persecution, and expressed hostility and threats against her brother's family. According to the opinion of the medical commission, Zh. Amarikeyan in her current mental state posed danger to both herself and others and was in need of inpatient treatment (*See the case, p. 3*).

2. According to the reference № 0125-2099 by A. Hakobyan, head of the Avan psychiatric clinic of Psychiatric Medical Center CJSC, Ministry of Health, Republic of Armenia, dated June 1, 2013, the

patient Zhuleta Amarikyan (patronymic: Davati) /born in 1960/ could not appear before the court and attend the trial due to her current mental state (*See* the case, p. 5):

3. According to the medical opinion № 340/12 of the Inpatient Interagency Forensic Psychiatric Expert Commission under the RA Ministry of Health dated October 4, 2012, "... the Commission hereby concludes that Zhuleta Amarikyan (patronymic: Davati) suffers the chronic mental illness of delirium disorder as evidenced by both the patient's anamnesis, and the findings of the current examination revealing that the patient is obsessed with absurd ideas of prosecution and specific delirious ideas; paralogism; inconsistent, fragmented and incoherent thinking; blunt emotional responses; scarce reactions; intellectual and amnesic disorders; lack of critical thinking skills to the extent that she is unable to realize the danger of her actions and to control them both at the time of committing the offence and currently. Therefore, the patient Zhuleta Amarikyan (patronymic: Davati) must be recognized as legally insane. She needs compulsory treatment and medical supervision by the local psychiatrist. Due to her current mental state, she cannot be involved in the investigation and trial" (*See* the case, pp. 14-18).

4. According to the minutes of the trial of June 4, 2013, the Avan psychiatric clinic of Psychiatric Medical Center CJSC considered the motion of the Psychiatric Medical Center CJSC to prescribe Zhuleta Amarikyan compulsory treatment at a psychiatric hospital (*See* the case, p. 13).

5. According to the minutes of the trial of June 4, 2013, Muraz Amarikyan acted as the representative of Zhuleta Amarikyan (*See* the case, p. 13).

#### **4. Reasoning and conclusion of the Court of Cassation**

Upon considering the grounds and rationales of the appeals above, the Court of Appeal first of all finds it necessary to mention that since both appeals on this case are essentially similar, the Court will consider them together.

Referring to the appeals of the appellant and her representative, the Court of Appeal finds it necessary to mention that before considering any other grounds and rationales of the appeals, it will first of all answer the question below: was Muraz Amarikyan who appeared before the court on behalf of Zhuleta Amarikyan, competent enough to act as Zhuleta Amarikyan's representative under the RA Code of Civil Procedure?

To this effect, the Court of Appeal considers it worth quoting the argument of Zhuleta Amarikyan's representative Tigran Hayrapetyan, that though Zh. Amarikyan's assigned representative was not authorized to represent her, the court still recognized him as her representative, questioned him and later used his testimony to support its ruling.

The RA Constitution declares the human being, his/her dignity and the fundamental human rights and freedoms as an ultimate value and limits the state by fundamental human rights and freedoms as a directly applicable right (Article 3). Also, the RA Constitution stipulates a number of legal safeguards for inalienable and natural rights, with the key right of entitlement to effective legal remedies to protect one's rights and freedoms before judicial as well as other public bodies (Article 18) and the right to legal aid (Article 20). Under Article 14(1) of the Constitution, the safeguards above equally apply to persons with mental disorders.

Guided by the need for uniform interpretation of the law, the RA Court of Cassation referred to the interpretation of the legal provisions regulating the above relations. Particularly, the Court of Cassation noted that the rights of persons with mental disabilities, in their capacity of vulnerable group, are also enshrined in a number of international legal instruments prescribing the effective judicial protection of the rights of such persons as an essential guarantee for ensuring human rights and freedoms (*See* Court of Cassation ruling on civil case No. ԵՇԴ/0938/02/10 dated May 24, 2013, upon Application on Recognizing Vladimir Ohanov as Legally Incapable by the trusteeship and guardianship authorities of Shengavit administrative district).

The principles for the protection of persons with mental illness and for the improvement of mental health care (UN General Assembly Resolution 46/119, December 17, 1991) condemn any discriminatory approaches to person with mental illness and recognize the person's right to be represented by an advocate in the proceedings on recognizing him/her incapable. The Council of Europe Parliamentary Assembly Recommendation 818 (1977) on the Situation of the Mentally ill of 8 October 1977; the Committee of Ministers Recommendation R(83)2 concerning the legal protection of persons suffering from mental disorder placed as involuntary patients of 22 February 1983; the Recommendation R(99)4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults of 23 February 1999 and the Recommendation R(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorders of 24 February 2004 also emphasize that persons with mental disorders must have the opportunity to exercise all their civil and political rights, and the permissible limitations on such rights must strictly comply with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In its ruling on a similar case *Shtukaturvov v. Russia*, the European Court of Human Rights (hereinafter referred to as the ECtHR) stated as follows: "In a number of previous cases (concerning compulsory confinement in hospital) the Court confirmed that a person of unsound mind must be allowed to be heard either in person or, where necessary, through some form of representation (*See*, for example, *Winterwerp*, § 79). In *Winterwerp*, the applicant's freedom was at stake. However, in the present case the outcome of the proceedings was at least equally important for the applicant, since his personal autonomy in almost all areas of his life was in issue, including the eventual limitation of his liberty. Further, the Court notes that the applicant played a double role in the proceedings: he was an interested party, and, at the same time, the main object of the court's

examination. Therefore, his participation was necessary not only to enable him to present his own case, but also to allow the judge to form his/her personal opinion about the applicant's mental capacity (See, ECtHR ruling on *Shtukaturv v. Russia*, No. 44009/05, dated March 27, 2008, §§ 71-72).

According to Article 40 of the RA Code of Civil Procedure, any legally capable citizen duly authorized to present the case in a court of law is entitled to act as a representative of another person in a court of law, except for the cases prescribed under Article 5 of the Republic of Armenia Law on Advocacy.

Under Article 5(3)(1) of the RA Law on Advocacy, the individual legal representation or representation in the form of regular or paid service as prescribed under the same Article may be performed only by an advocate, except for the cases of free legal representation of close relatives, including a parent, child, foster parent, foster child, siblings, half-brother, half-sister, grandfather, grandmother, grandchild, spouse or parent of a spouse, son-in-law or daughter-in-law.

Under Article 41(1) of the RA Code of Civil Procedure, the power of attorney of the citizen is ratified by the notary public or any competent officer authorized to do so by law. The power of attorney is issued to an advocate in written form and is not subject to any ratification.

Under Article 43(1) of the Code, minors and adults recognized as legally incapable or partially incapable shall have their legal interests protected in a court of law by their parents (foster parents), guardians or trustees who submit to the court relevant documents in support of their status.

It follows from the legal regulations above that regardless of whether the person's representative is his/her advocate or close relative, he might act as a legal representative only if he is duly authorized to present the case in a court of law. This being so, the legislature has also prescribed that such authority must be confirmed by a power of attorney which, if issued to citizens, must be notarized.

In this case, Zhuleta Amarikyan was represented by her brother who, however, lacked any notarized power of attorney to the effect of his authority to present the case in a court of law. Also, the Court of Appeal states that the court of general jurisdiction essentially supported its decision of involving Zhuleta Amarikyan's brother, Muraz Amarikyan, as her representative by the fact that Zhuleta Amarikyan was unable to appear before the court in person. Yet, it should be noted, that even considering this fact, Muraz Amarikyan failed to submit to the court any documents in support of his status. Based on this, the Court of Appeal states that the court of general jurisdiction violated Zhuleta Amarikyan's right to protect her rights and legal interests through representation.

Hence, based on its legal position on this last rationale, the Court finds the appeal as well-grounded and sufficient to overturn the ruling of the court of general jurisdiction. The Court also mentions

that it would not refer to any other rationales of the appeals since this case calls for further complete re-examination.

Based on the above and guided by Articles 73, 220 and 221 of the RA Code of Civil Procedure, the Court of Appeal

**RULED AS FOLLOWS:**

1. To uphold the appeals partially; to reverse the ruling of the Court of General Jurisdiction of Avan and Nor Nork Administrative Districts of Yerevan, dated June 4, 2013 and submit the case to the court for further re-examination.
2. To consider the distribution of court costs in its final judicial act upon the re-examination of the case.
3. The ruling shall be effective since the month following its publication and subject to appeal before the RA Court of Cassation within a month before its publication.

PRESIDING JUDGE: D. KHACHATRYAN

JUDGE: N. TAVARATSYAN

JUDGE: S. MIKAYELYAN

This ruling took effect.

Presiding Judge: D. Khachatryan