

Country report **Hungary**

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In the new series National Reports at the Family & Law forum (<https://www.familyandlaw.eu/>) a first series of national reports is published.

FL-EUR (<https://fl-eur.eu/>), Family Law in Europe: An Academic Network, was established at a Founding Meeting in Amsterdam on 1-2 February 2019. FL-EUR currently unites over 35 prominent experts, both academics and public officers, in the field of family & law from 32 European jurisdictions. The purpose of FL-EUR is close academic cooperation amongst the experts, and between the experts and other stakeholders in the field of family and law, aimed at:

1. accumulation and dissemination of knowledge of both family law in the books and in action;
2. promotion of comparative and multidisciplinary research and education in the field of family and law;
3. learning from one another's experiences; and finally,
4. providing up-to-date comparative data for European, supranational and national bodies.

The FL-EUR members selected 'Empowerment and Protection of Vulnerable Adults' as its first working field, since this is a highly topical field of law. Ageing societies in Europe are confronted with an many legal issues arising out of the empowerment and protection of vulnerable adults. Based on initial quick scans of all jurisdictions, FL-EUR's coordinating group has drafted a questionnaire in close cooperation with the FL-EUR's members. The coordinating group consists of Prof. Masha Antokolskaia, Prof. Nina Dethloff, Prof. Jane Mair, Prof. Maria Donata Panforti, Prof. Wendy Schrama, Dr. Katrine Kjørheim Fredwall, Prof. Frederik Swennen, Prof. Paula Távora Vítor, Dr. Velina Todorova and Prof. Michelle Cottier. They are supported by the Secretary Rieneke Stelma-Roorda.

Country reports for all jurisdictions have been produced by country reporters. The country reports have been reviewed by at least one Member of the Coordinating Group. Language and contents of the countries reports fall under the responsibility of the country reporters. The reports are representing the law as it stands in 2022.

THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

HUNGARY

Prof. Orsolya Szeibert

SECTION 1 - GENERAL

- 1. Briefly describe the current legal framework (all sources of law) regarding the protection and empowerment of vulnerable adults and situate this within your legal system as a whole. Consider state-ordered, voluntary and *ex lege* measures if applicable. Also address briefly any interaction between these measures.**

The protection and empowerment of vulnerable adult is built upon the regulation in the Hungarian Civil Code, the Act No. V of 2013 (in the following, HCC). The Second Book on 'The Individual as Subject of Law' regulates the natural persons' capacity to act. Art 2:8 states that everyone has capacity to act, unless his capacity is partially or fully limited by the HCC or by a court judgment on placement under guardianship. Capacity to act means that every natural person may enter into a contract or make other legal acts on their own. There are two cases when the HCC limits the concerned persons' capacity to act. One is the case of minors and the other is when the person is lacking the ability required to take care of his own affairs at the time of making a legal act. If a person factually and completely lacks the ability required to take care of his own affairs, her judiciary act shall be null and void.

The court places under guardianship the vulnerable adult and the HCC contains the main rules aiming to protect vulnerable adults and some regulations which emphasize their self-determination and autonomy. The vulnerable adult's placement under guardianship is a state-ordered measure. It belongs exclusively to the court's competence, while the appointment of the guardian is the task of the public guardianship authority. The court has to examine in the course of a proceeding on placement under guardianship whether the vulnerable adult has ability to take care of his own affairs. If the vulnerable adult does not have full capacity to act, she is going to be placed under guardianship either partially or fully limiting her capacity to act. These two institutions, namely the placement under guardianship partially limiting or that of fully limiting the vulnerable adult's capacity to act, exist next to each other.

The HCC has introduced two voluntary institutions when it entered into force in 2014. One is the ‘prior legal act’ [előzetes jognyilatkozat], by which a person having full capacity to act may make some statements in a public deed, a private deed countersigned by an attorney at law, or in person before the guardianship authority, concerning future partial or full limitation of her capacity to act. A person may be suggested to be appointed as a guardian or excluded from being as a guardian and some specifications concerning the acting of the guardian may be made. If the court places the vulnerable adult under guardianship later, the guardianship authority has to take into account the content of the prior legal statement. However, that is not the case if the statements in the prior legal act are contrary to the interests of the vulnerable adult, or the named person cannot be appointed as a guardian.

A similarly new institution is ‘supported decision-making’ [támogatott döntéshozatal] without the limitation of the vulnerable adult’s capacity to act. The supporter [támogató] is appointed by the guardianship authority at the request of the vulnerable adult and the supporter’s appointment does not affect the person’s capacity to act. The basis of this institution is that the vulnerable adult is not entirely of sound mind but there is no need to limit her capacity to act even partially. The supporter helps the vulnerable adult to administer her affairs.

Concerning the state-ordered measures exclusively the court has competence to place someone under guardianship and the procedural regulations are contained in the Act No CXXX of 2016 on the civil procedure (hereinafter, HCP). An independent chapter, Chapter XXXII of the HCP regulates the guardianship proceedings as a special type of proceedings. It includes different types of proceedings processes, namely for the placement under guardianship, for the modification of the placement under guardianship, for the supervision of the placement under guardianship and for the supervision of the prior legal act. When the HCC was accepted it became necessary to reconsider the then existing registry of the adults being under guardianship. A new system was established by the Act No CLXXV of 2013 on the registry of adults under guardianship and prior legal acts. The registration certifies that the vulnerable adult is under guardianship and its aim is according to the legal text is to support her in exercising her own rights and in the interests of the protection of third parties’ rights. The data of the adults being under guardianship is administered by the National Office for the Judiciary. The Act No CLV of 2013 on the supported decision making was also accepted and promulgated in late 2013 with the aim to regulate several issues of supported decision-making, as the HCC contains only the main rules. The Act CLV of 2013 regulates the procedure of the supporter’s appointment, the tasks of the supporter, the review of the supporter’s appointment, the termination of the functioning of

supporter, the professional supporter and the registry on the supporters and supported persons, As the supported decision-making does not affect the vulnerable adult's capacity to act the detailed rules were planned not to be included in the HCC but in an independent Act. A further regulation to be mentioned is the Governmental Order No. 149/1997 (IX. 10.) on the public guardianship authorities, and the child protection and guardianship proceedings as the public guardianship authority has to appoint the guardian and supervise the appointment of guardianship, such as to appoint the supporter and supervise it. Besides, the public guardianship authority supervises the activities of the guardian and governs it.

- 2. Provide a short list of the key terms that will be used throughout the country report in the original language (in brackets). If applicable, use the Latin transcription of the original language of your jurisdiction. [Examples: the Netherlands: *curatele*; Russia: *oneka - opeka*]. As explained in the General Instructions above, please briefly explain these terms by making use of the definitions section above wherever possible or by referring to the official national translation in English.**

In Hungary the legal capacity [jogképesség] and capacity to act [cselekvőképesség] are sharply distinguished. The HCC regulates the placement under guardianship [gondnokság alá helyezés] which has two types, the guardianship partially limiting the vulnerable adult's capacity to act [cselekvőképességet részlegesen korlátozó gondnokság] and fully limiting her capacity to act [cselekvőképességet teljesen korlátozó gondnokság]. Until March 2014 the earlier HCC, the Act IV of 1959 (hereinafter, HCC 1959) regulated the guardianship abolishing the vulnerable adult's capacity to act [cselekvőképességet megszüntető gondnokság]. The HCC has introduced two new institutions, the prior legal act [előzetes jognyilatkozat] and the supported decision-making [támogatott döntéshozatal].

- 3. Briefly provide any relevant empirical information on the current legal framework, such as statistical data (please include both annual data and trends over time). Address more general data such as the percentage of the population aged 65 and older, persons with disabilities and data on adult protection measures, elderly abuse, etc.**

In 2021 the number of the Hungarian population was 9,730,772 and the number of people age of 65 and older was 1,976,636 (the number of people older

than 65 was 1,832,141). The number of adults being under guardianship has been continuously increasing during the last twenty years. 40,838 persons were under guardianship in 2000, this number was 52,317 in 2010 and 58,153 in 2019. (In 2020 57,327 persons stood under guardianship and in the years of 2016-2020 it was always between 57,000 and 58,242.)

The number of persons living with disabilities is listed in the statistics according to the different categories of disability. All persons living with one or more disabilities are contained in the statistical table and if a person lives with more than one disability, she is included in all categories of disabilities. The numbers are listed according to age-groups The number of the persons from 15 to 29 years old with disabilities was 577,006 in 2001 In 2011 this number (from age 15 and upwards) was 490,578 and in 2016 408,021. There are two other age groups, namely the age group between 60 and 74 and from the age of 75 upwards. In 2016 this number was 100,728 between the age of 60 and 74, and 100,728 from the age of 75 and upwards.

The Act No III of 1993 on social administration and social care regulates the methods of residential care for persons who cannot take care of themselves or can manage it only with permanent help. The total number of persons being institutionalized has been increasing since the early 1990s. This number was 89,904 in 2019 including persons getting both long-term and permanent care and including children being taken care for in disabled persons' homes. In 2019 55,500 persons lived in elderly homes, 8,277 persons in psychiatric patients' homes and 14,465 persons in disabled persons' homes. If we have a look at persons living in long-term residential care, a clear tendency is that an increasing number of these persons who may take care of themselves at least in part live in dwellings with accommodation. In 2000 37,698 persons lived in elderly homes, 8,117 persons in psychiatric patients' homes and 15,322 persons in disabled persons' homes. The number of the persons living in dwellings in accommodation was 9 among the 8,117 persons and 123 from the 15,322 persons. In 2020 47,701 persons lived in elderly homes, 7,780 in psychiatric patients' homes (181 of them in dwellings with accommodation) and 13,642 in disabled persons' home and 1,465 of them in dwellings with accommodation.

One of the vital findings of Microcensus 2016 is that the Hungarian population is ageing. The proportion of the elderly population has increased since the most recent census in 2011. While in 2011 16.9 % of the population was 65 or older, in 2016 that number had increased to 18.6 %. Regarding the working age population (15-64 years old) the decrease is even more significant. While in 2011 68.6 % of the population belonged to the working age population, in 2016 it was

only 66.9 %.. While in 2011, the year of the latest census, it was 116, according to Microcensus 2016 it became 128, some 10 % higher. The average age of the population has been constantly increasing: in 2016 the average age was 42 years, which was almost one year higher than five years before.

Currently, and for some years now, the ageing population and potential incentives to have more children are issues that are dealt with in conferences and through primary research. Increasing the fertility rate is a constant issue, resulting in several governmental measures. These measures affect some allowances for parents having children.

4. List the relevant international instruments (CRPD, Hague Convention, other) to which your jurisdiction is a party and since when. Briefly indicate whether and to what extent they have influenced the current legal framework.

Hungary ratified and signed the United Nations Convention on the Rights of Persons with Disabilities (hereinafter, UNCRPD). Actually, Hungary was the second state that ratified it. It was promulgated in Hungary by the Act No XCII of 2007 on the promulgation of the UNCRPD and its Optional Protocol. The UNCRPD has influenced the regulation of the protection and empowerment of vulnerable persons as those are contained in the HCC. Although Hungary has not acceded to other international conventions, the Recommendations of the Council of Europe, such as the Recommendation R(99)4 on principles concerning the legal protection of incapable adult are mentioned in the commentaries to the HCC as a document which affected an important modification of the rules concerning vulnerable adult in 2001.

5. Briefly address the historical milestones in the coming into existence of the current framework.

The rights and obligations of vulnerable adults had already been regulated in the HCC 1959 when a huge modification affected it in 2001. Until 2001 the rules on vulnerable adults were rigid and inflexible. When the court ascertained that the adult concerned had limited capacity to act in a proceeding for placement under guardianship, it could choose between the limited capacity or the incapacity of the vulnerable adult. If the adult proved to be having limited capacity to act, she was placed under guardianship limiting her capacity to act and in case of incapacity the vulnerable person was placed under guardianship restricting capacity. The legal consequences of both types of guardianship were strictly determined and no

discretion was provided either for the court or for the public guardianship authority when appointing the guardian to deter from those rigid consequences. The unique position of the vulnerable adult could not have been taken into attention. Besides, only slight difference was between the legal consequences of the two types of guardianship and there was no statutory review of the decision on placement under guardianship at all.

The modification of the regulations of civil law on vulnerable adults was adopted in April 2001 and the Act No XV of 2001 modified the HCC 1959. The new rules were pushed and strongly supported by the Hungarian civil organizations dealing with vulnerable adults and based upon the Recommendation R(99)4 on principles concerning the legal protection of incapable adult. The modification's aim was to take into attention the autonomy of the concerned adults and establish a differentiated and more flexible system which contains the proper legal guarantees to protect the vulnerable adults and to limit their personal freedom and autonomy to decide in their own personal and property affairs only when it is necessary. The categories of affairs concerning which the autonomy of the concerned vulnerable person having limited capacity to act could have been maintained were introduced at this time such as the statutory review of the court decision on the placement under guardianship. However, the two types of the guardianship, namely that of limiting and terminating capacity to act were maintained.

Although the then new rules provided the possibility for an individual treatment, the judiciary accommodated itself to the new requirements very slowly. The courts were reluctant to apply the legal rules flexibly enough e. g. they could not apply the limitation of capacity to act to categories of affairs properly and upon an individual treatment of each vulnerable adult.

The recodification process of the HCC began in the meantime, in 1998. In the early 2000s the protection of the vulnerable adults was debated especially in the context of the human rights' requirements, but no special modification was suggested in the codification proceeding. The recodification process was not a linear one during its almost fifteen-year-long history and it took a curve when the government lodged a bill to the Parliament and the Parliament adopted the Act No. CXX of 2009 on the Civil Code in November 2009. Some provisions of this Act would have entered into force in 2010, while some others in 2011 but the Act never became an effective one as the Act No LXXIII of 2010 ordered that the Act No CXX of 2009 would not take effect. Although this 'Civil Code' meant to be a short and unsuccessful episode in the story of the HCC's recodification, it has some implications precisely for the rules empowering vulnerable adults. This 'Civil

Code' contained innovative provisions with the aim to meet the requirements of the UNCRPD and the proposed new regime has become a basis of the discussions going on even today, especially because the Act No CXX of 2009 never entered into force and its 'successor', the HCC being in force nowadays meant a step backwards on the field of the protection and empowerment of vulnerable adults.

The Act No CXX of 2009, which never entered into force, aimed at a paradigm shift from the paternalistic protection of the vulnerable adults to their empowerment by applying the modern international and European standards and the requirements of the UNCRPD. This Act regulated the support of vulnerable adults in making judiciary act and decision-making and emphasized the support in-stead of protection. The represented decision-making would have been replaced by the supported decision-making. One of the conceptional innovation of the new rules would have been the elimination of the guardianship abolishing capacity to act. While earlier the HCC 1959 made it possible to place the vulnerable adult under guardianship limiting the capacity to act generally, the Act No CXX of 2009 would have made it possible to order the placement under guardianship limiting the capacity to act only concerning defined categories of affairs. Furthermore, two absolutely new institutions, the prior judiciary act and the supported decision-making would have been introduced. Three legal institutions would have helped the vulnerable persons on the whole, the prior judiciary act, the supported decision-making and the guardianship partially limiting the capacity to act and those could have been applied together in justified cases. There would have been space for taking into account the unique situation of the vulnerable person e.g. by appointing a guardian for one of the categories of affairs and supportive person for another one. Both the prior judiciary act and the supported decision-making would have been regulated in an exhaustive and detailed way. While the guardianship would have affected the vulnerable adult's capacity to act concerning certain categories of affairs, the prior judiciary act and the supported decision-making would not have affected the capacity to act at all.

The positive aim of these regulations was recognized by the professionals, but many opinions were published questioning whether this was a convenient time to introduce very new solutions which were totally unknown in Hungary. Principal problems were also discovered such as the mixture of tools affecting and non-affecting the vulnerable adult's capacity to act and the probably ineffective protection of these adults. The critics argued for the fact that it would serve the interests of the vulnerable adult if a guardian could decide in all affairs of the person under guardianship as the establishment of categories of affairs would be too huge a challenge for the court. Some of these viewpoints underlined the inapplicability of this approach.

Despite some positive evaluations of the above-mentioned protocols, the proposed regulations aimed at the empowerment and support of vulnerable adults were not maintained when the recodification process and the elaboration of the normative rules continued. Although the HCC, which is in force nowadays, has preserved some innovative solutions, the effective rules on vulnerable adults focused on their protection rather than empowerment and meant to be a connection to the traditional rules of the HCC 1959. The critical voices which could be heard in the last twenty-five years pro and contra the protection and empowerment of vulnerable adults have not disappeared and there is a continuous debate primarily in legal literature.

The discrepancy between the wording and real meaning of the HCC's concerning regulations may be discovered in the light of the decision No 11/2014 (IV. 4.) of the Hungarian Constitutional Court in 2014. The Hungarian Ombudsman (the Commissioner for Fundamental Rights of Hungary) initiated a proceeding before the Hungarian Constitutional Court referring to the fact that the Articles 2:22(1)-(2) were contrary to the Fundamental Law of Hungary and contrary to international law. Article 2:22 has the title 'Legal acts of an adult having no capacity to act'. According to Art 2:22(1) legal acts of an adult having no capacity to act shall be null and void and her guardian shall act on her behalf. Art 2:22(2) contains an exception under the main rule, as it states that contracts of minor importance concluded and performed by an adult having no capacity to act shall not be null and void for the lack of capacity to act if their conclusion is widely practiced in everyday life and does not require special consideration. Before analysing the decision of the Hungarian Constitutional Court some light has to be shed to the exact meaning of the referred articles and its context. While the HCC 1959 – even after its modification in 2001 – gave the possibility to the guardianship abolishing the capacity to act, the HCC did not maintain this institution but regulated only the guardianship limiting the capacity to act. (The HCC 1959 used the terminology 'guardianship abolishing the capacity to act', the effective HCC uses the phrase 'guardianship fully limiting the capacity to act. It has remained a point even today whether this difference has a deeper and real meaning with legal consequences, or the different terminology cover the same legal institution in the reality. Although the guardianship fully limiting the vulnerable adult's capacity to act became regulated as the most restrictive institution instead of that of abolishing the capacity to act, the change of the terminology did not mean a change in the content of the legal institution. The doubleness of the used terminology can be discovered even today concerning the phrases of the HCC. Article 2:21 has the title 'full limitation of the capacity to act' but it says that 'an adult shall have no capacity to act' if the court places under

guardianship fully limiting his capacity to act. Its legal consequences limit the opportunity of the vulnerable adult as only her guardian may make a valid act and it is an automatic consequence of this type of guardianship. The initiation of the Hungarian Ombudsman focused on the fact that the full limitation of the capacity to act was contrary to the Hungarian Fundamental Law which guaranteed the right to dignity, to Art 12 of UNCRPD and Art 8 of the ECHR. (The Ombudsman may initiate the review of the harmony of the legal rules with the Fundamental law before the Constitutional Court in Hungary.) The Hungarian Constitutional Court analysed the initiation, the questioned wording of the HCC and the human rights' requirements contained in the Hungarian Fundamental law and the international and European instruments. It evaluated whether the restriction of the fundamental right to self-determination and dignity was necessary to reach the constitutional aim and proportional to that. It drew the conclusion that the restriction of the capacity to make a valid judiciary act did not mean the unjustified restriction of the personal liberty of the concerned vulnerable adult and the legal proceedings provided the guarantees for the vulnerable adult. In relation to the right to private life, the Hungarian Constitutional Court referred to the fact that it was obligatory for the court to protect the vulnerable adults' private life in the course of the guardianship proceeding. It was also analysed whether the concerned regulating system of the HCC was in harmony with the UNCRPD and the conclusion was that this system made proper differences among the different situations and made it possible to apply institutions which empower and assist vulnerable adults via the prior legal act and the supported decision-making. The argument of the initiation concerning Article 8 of ECHR was dismissed by referring to the HCC's rule ordering an obligatory supervision also in case of the guardianship fully limiting the capacity to act. The Hungarian Constitutional Court dismissed the initiation.

Hungary presented its initial report on the implementation of the Convention on the Rights of Persons with Disabilities in October 2010. The Hungarian Civil Caucus made a parallel report which was published by some NGOs, namely the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége], the Mental Disability Advocacy Center and the National Council of Associations of Persons with Disabilities [Fogyatékos Emberek Szervezeteinek Tanácsa] under the title of 'Rights of Disabled Persons or Disabled Rights?' in 2010. The alternative report emphasized that the Hungarian legal rules use the principle of active participation and integration instead of inclusion. They were on the opinion that persons with disabilities were considered to be a burden on the society parallel with the finding that the medical approach of disability seemed to be the governing principle.

6. Give a brief account of the main current legal, political, policy and ideological discussions on the (evaluation of the) current legal framework (please use literature, reports, policy documents, official and shadow reports to/of the CRPD Committee etc). Please elaborate on evaluations, where available.

The Committee on the Rights of Persons with Disabilities considered this report and adopted the concluding observations at its eight's session in September 2012. Beside the positive aspects the Committee denoted several fields where concerns and recommendations were listed. Concerning Article 12 on equal recognition before the law the Committee welcomed the planned introduction of supported decision-making into the new HCC but underlined that the substitute decision-making seemed to be unfortunately maintained in the HCC. It was recommended that the recodification process of the HCC should have been used effectively in order to establish the regime of supported decision-making instead of a substitute one.

In May 2017 the Committee presented the document 'List of issues prior to submission of the combined second and third periodic reports of Hungary'. It requested for information on the Hungarian legislation concerning the rights and equal opportunities of persons with disabilities, the participation of persons with disabilities and the implementation status of the action plan (2015-2018) for the implementation of the national programme on disability (2015-2025). In February the alliance of advocacy and civil society organizations submitted a document to the Committee 'for consideration when compiling the List of Issues Prior to Reporting for the Second Periodic Report of Hungary'. This document emphasized that 'The human rights model of disability has not yet been introduced as the conceptual basis for disability in domestic laws, policies and programmes. The medical approach prevails and, especially in the case of psychosocial disability, there has been no universal definition accepted. Eligibility criteria to access to services and benefits (especially under article 28) arbitrarily operate on 'residual health' thresholds, disabling persons with lower support needs to access support.' The document mentioned that although the HCC introduced the institution of supported decision-making, it maintained both types of guardianship and the number of person declared having no capacity to act has not decreased. Furthermore, according to the statistical data by 31 December 2015 only 91 persons asked for the appointment of supporter. The NGOs urged for the questioning about the maintenance of substitute decision-making and the governmental steps towards the support of the effective use of supported decision-making.

In September 2020 the Committee submitted the report on the ‘Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention’. The Committee referred to the fact that it had received information on allegations of ‘grave and systematic violations of the rights of persons with disabilities in Hungary’. It gave an overview on the Hungarian legal and societal changes and policies concerning disabled persons. The Committee admitted that several reforms happened in Hungary, but the ‘medical and paternalistic’ approach had been retained and prevailed. The Committee referred to the HCC as in 2013 when it was adopted it was foreseen that the ‘full guardianship’ (the guardianship fully limiting the capacity to act) would be continuously limited and become exceptional, but it actually did not. I have to remark that the official publications of the professionals taking part in and being responsible for the recodification process have not let us draw the consequence that the supported decision-making would evolve towards a legal institution determining the life of vulnerable adults. The solution of the HCC for protecting and empowering vulnerable persons was established as a result of the compromise between the legal professionals and advocacy organizations. Another statement of the Committee was upon the basis of the submitted data and information that the HCC’s aim was to modify partially limiting guardianship in a way that it should affect only certain categories of affairs, but this idea did not come true. Many judgments for placement under guardianship were taken which partially limited the capacity to act in a general manner, concerning all categories of affairs.

The Committee stated that the violation of the rights of persons with disabilities proved to be systematic and they are ‘widespread and habitual, resulting from deliberate patterns of structural discrimination entrenched in legislation, policies, plans and practices, including resource allocation’. Committee’s recommendations concerned the equal recognition before the law according to Art. 12 of UNCRPD and recommended to Hungary that it should eliminate the rules of the HCC which fully or partially limit the vulnerable adult’s capacity to act. It was recommended to adopt the regime of supported decision-making being fully in harmony with the requirements of the UNCRPD and involve concerned adults in the process of elaborating the legal norms on the rights and obligations of vulnerable adults. Furthermore, the Committee urged to restore the right of person with disabilities to have an active and passive right to elect.

7. Finally, please address pending and future reforms, and how they are received by political bodies, academia, CSOs and in practice.

There is no reform at the moment. However, a group of judges and experts for the analysis of the judicial practice in guardianship procedures was established by the president of the Hungarian Curia (Hungarian Supreme Court) in 2019. The aim of the coordinated work of the judge and experts which lasted for five years with some intermittences caused by the COVID-19 was to receive a wide overview about the judicial practice, its possible shortcomings and about the connecting practice of the guardianship authority such as that of the psychiatric experts in guardianship procedures. The summarizing opinion of the analysing group was adopted by the Civil Department of the Hungarian Curia in May of 2023. The short summarizing opinion includes some suggestions for the future too. Beside some suggestions aiming slight modification of the procedural provisions, changes expected from the judges and expectations for all participants of the procedure (such as the guardianship authority) have been incorporated in the summarizing opinion. All involved lawyers are expected to ignore the formalism strictly and consequently and support the person affected by the guardianship. The need of this expectation has been emerged in the course of the work of the group when the petitions of the guardianship authorities, the expert opinions of the involved psychiatric experts, the judgments and their reasonings were envisaged and the general conclusion could be drawn that several of them are very formalistic and too general. Likewise, the lack of proper communication could be recognized on all levels and parts of the procedure. The expectations towards the judges and courts are about the need to elaborate detailed information which is easily understandable by vulnerable persons and to develop a unified protocol on the hearing of the persons affected by guardianship (https://kuria-birosag.hu/sites/default/files/joggyak/2019.el_ii_jgy_p.1_kivonat.pdf). Even if the summarising opinion is rather short, it gives a signal about some procedural issues which have to be changed in the future and means a step forward.

SECTION II – LIMITATIONS OF LEGAL CAPACITY

8. Does your system allow limitation of the legal capacity of an adult? N.B. If your legal system provides such possibilities, please answer questions 8 - 15; if not proceed with question 16.

The Hungarian legal system allows limitation of the legal capacity.

a. on what grounds?

The ground of the limitation of legal capacity is that the concerned person is not able or only partially able to take care of her own affairs.

b. how is the scope of the limitation of legal capacity set out in (a) statute or (b) case law?

It is set out in a statute, namely the Hungarian Civil Code. The court shall place an adult under guardianship partially limiting his capacity to act, if, due to his mental disorder, his ability required to take care of his own affairs is significantly reduced, permanently or in a temporarily recurring manner, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under guardianship is justified with regard to specified categories of affairs [Articles 2:19(2)]. The court shall place an adult under guardianship fully limiting his capacity to act if, due to his mental disorder, he permanently and completely lacks the ability required to take care of his own affairs, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under guardianship is justified [Article 2:21(2)].

c. does limitation of the legal capacity automatically affect all or some aspects of legal capacity or is it a tailor-made decision?

The full limitation of legal capacity automatically affects all aspects of legal capacity. The partial limitation of legal capacity is a tailor-made decision as it does not affect the legal capacity in itself. In case of partial limitation of capacity, it is limited with regard to specified categories of affairs.

d. can the limited legal capacity be restored, can the limitation of legal capacity be reversed and full capacity restored and, if so, on what grounds?

The placement under guardianship can be modified and terminated according to the HCC [Articles 2:30(1)-(4)]. Guardianship affecting the capacity to act shall be terminated by the court if the grounds for ordering it no longer exist. It can be requested by the vulnerable adult, the spouse, cohabitant, lineal relative, sibling of the vulnerable adult if they live with him, the guardian, the guardianship authority or the prosecutor. These persons may also request the modification of the placement under guardianship. In this context, they may request changing the guardianship partially limiting capacity to act to guardianship fully limiting capacity to act or the other way around, or, with regard to guardianship partially limiting capacity to act, for modifying the categories of affairs in which the vulnerable adult under guardianship is not allowed to act independently.

- e. does the application of an adult protection measure (e.g. supported decision making) automatically result in a deprivation or limitation of legal capacity?**

Yes, it is an automatic effect.

- f. are there any other legal instruments,¹ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?**

No, the only way to limit someone's legal capacity is to place herself under guardianship fully or partially limiting her capacity to act.

- 9. Briefly describe the effects of a limitation of legal capacity on:**
a. property and financial matters;

If the vulnerable adult's capacity to act is partially limited, it is important to distinguish between the categories of affairs in which the capacity to act is to be limited and all other categories of affairs. This person may make valid legal acts in all affairs which do not belong to those categories of affairs in which the court has limited her capacity to act. If the vulnerable adult having partially limited capacity to act makes a legal act belonging into the categories of affairs specified by the court it shall be valid only with the consent of her guardian. However, even in these categories of affairs the vulnerable person may make special legal acts being valid without the guardian's consent. These are the following: entering into a low-value contract covering common everyday needs, disposing of her income to a proportion specified by the court and she may make commitments to that extent, may enter into contracts by which she obtains only advantages; and may give gifts up to a commonly accepted degree. The effects of the limitation of legal capacity on property and financial issues depend upon the category of affairs. If the vulnerable person's capacity to act is fully limited, any legal act of this adult is null and void and only her guardian may act on her behalf. This concerns the property and financial affairs, as well. There is only one exception regarding the property and financial matters: contracts of minor importance concluded and performed by an adult having no capacity to act shall not be null and void for the lack of capacity to act if their conclusion is widely practiced in everyday life and does not require special consideration.

¹ Rules that apply regardless of any judicial incapacitation, if that exists, or of the existence of a judicially appointed guardian which might affect the legal capacity of the person or the validity of his/her acts.

b. family matters and personal rights (e.g. marriage, divorce, contraception);

Concerning family matters the vulnerable person whose capacity to act is fully limited, cannot act on her own. If the vulnerable person's capacity to act is partially limited, her capacity to act depends upon the category of affairs [see 9a)].

c. medical matters;

The effects of limitation of legal capacity are regulated in Act No CLIV of 1997 on Health and patient's rights depend upon the fact whether she is placed under full or partial guardianship. When the partial limitation includes affairs concerning the health issue, the person has no legal capacity to act in this domain. There are some patients' rights where the rights of the patients who are under full guardianship or partial guardianship limiting the vulnerable adult's capacity concerning to act in affairs concerning the health issue are regulated. The patient shall have a right to self-determination, which may only be restricted in the cases and in the ways defined by law. Unless otherwise provided by the Health Act, a person who has full capacity to act may name the person having full capacity to act who shall be entitled to exercise the right to consent and refuse in his stead and who is to be informed and exclude persons from exercising the right of consent and refusal in his lieu, or from obtaining information. In case if the patient has no capacity to act and there is no person entitled to make an above-mentioned statement, the Health Act enumerates the persons in a given order who are entitled to exercise the right of consent and refusal. In case of contrary statements made by the individuals qualified in the same line to make statement, the decision that is likely to impact upon the patient's state of health most favourably shall be taken into account. The statement of these persons shall be made exclusively following the provision of information, and it may refer to giving consent to invasive procedures recommended by the attending physician and the declaration may not unfavourably affect the patient's state of health. The patient shall be informed of such statements immediately after he regains his full capacity to act. In making decisions on the health care to be provided, the opinion of a patient with no capacity to act or under partial guardianship limiting the vulnerable adult's capacity concerning to act in affairs concerning the health issue shall be taken into account to the extent professionally possible also in cases where the right of consent and refusal is exercised by another person.

What concerns the right to refuse healthcare, if a healthcare qualified as life-supporting or life-saving intervention is refused concerning the patient who

has no capacity to act or under partial guardianship limiting the vulnerable adult's capacity concerning to act in affairs concerning the health issue, the healthcare provider shall institute proceedings for obtaining the required consent from the court.

The person who has full capacity to act may refuse in a public deed for the event of his eventual subsequent incapacity, certain examinations and interventions, life-supporting or life-saving interventions and certain life-supporting or life-saving interventions if he has an incurable disease and as a consequence of the disease is unable to care for himself physically or suffers pain that cannot be eased with appropriate therapy. A person with full capacity to act may name in a public deed, for the event of his eventual subsequent incapacity, the person with full capacity to act who shall be entitled to exercise these rights. This statement can be withdrawn by the patient at any time without regard his capacity to act.

In connection with the right to become acquainted with the medical record in case of a patient having no capacity to act the person who was named by the patient when he had capacity to act, or the persons enumerated in the Health Act is entitled to exercise this right. If the patient is under partial guardianship limiting the vulnerable adult's capacity concerning to act in affairs concerning the health issue, he is entitled to exercise this right, such as the person who was named by the patient when he had capacity to act, or the persons enumerated in the Health Act. Concerning the right to information, the patient has no capacity to act and the patient who is under partial guardianship limiting the vulnerable adult's capacity concerning to any act, has a right to information corresponding to his age and mental state. Only the patient who has full capacity to act may waive of the right of being informed.

The patient shall have a right to leave the healthcare facility, unless he threatens the physical safety or health of others by doing so. If the patient has no capacity to act this right may be exercised with the agreement of the legal representative.

What concerns the patient's right to have contact, if the patient in a severe condition has no capacity to act the person who may stay with him may be designated not only by the patient but also the person who was named by the patient when he had capacity to act, or the persons enumerated in the Health Act. The Health Act provides the right to the patient that an 'assisting person' shall stay with him in certain cases (e.g. he is in the continuous need of help). If the patient has no capacity to act, this assisting person can be named by the patient and also the person who was named by the patient when he had capacity to act, or the persons enumerated in the Health Act. (In all cases when the Health Act uses the

phrase “having no capacity to act’ it means that the concerned vulnerable adult is under full guardianship.

d. donations and wills;

Concerning donations and wills the vulnerable person whose capacity to act is fully limited, cannot act on her own. If the vulnerable person’s capacity to act is partially limited, her capacity to act depends upon the category of affairs for which the limitation applies [see 9a)].

e. civil proceedings and administrative matters (e.g. applying for a passport).

Concerning civil proceedings and administrative matters the vulnerable person whose capacity to act is fully limited, cannot act on her own. If the vulnerable person’s capacity to act is partially limited, her capacity to act depends upon the category of affairs [see 9a)].

10. Can limitation of legal capacity have retroactive effect? If so, explain?

There is no retroactive effect if the vulnerable adult’s capacity to act is partially or fully limited.

11. Which authority is competent to decide on limitation or restoration of legal capacity?

Only the court has competence to decide on it.

12. Who is entitled to request limitation or restoration of legal capacity?

Limitation of capacity to act may requested from the court by the vulnerable adult’s spouse or cohabitant living with him or the vulnerable adult’s lineal relative or sibling, the statutory representative of the child, the guardianship authority and the prosecutor. The modification or termination of legal capacity can be requested by the vulnerable adult, the spouse, cohabitant, lineal relative, sibling of the vulnerable adult if they live with him, the guardian, the guardianship authority or the prosecutor.

13. Give a brief description of the procedure(s) for limitation or restoration of legal capacity. Please address the procedural safeguards such as:

a. a requirement of legal representation of the adult;

The vulnerable adult has full procedural capacity in the proceeding. According to the general rules of the civil proceeding the person who has full capacity to act, the person who is under partial guardianship and his capacity to act is not limited to the subject of the proceeding or the procedural actions may act in person or through its authorized representative as he has procedural capacity. If the party has no procedural capacity his legal representative may act in the proceeding.

b. participation of family members and/or of vulnerable adults' organisations or other CSO's;

It is a civil proceeding so the participation of family members and civil organisations are not regulated in a special way. If they witness the provisions for witnesses are to be applied for them.

c. requirement of a specific medical expertise / statement;

The court has to appoint a forensic psychiatric expert to examine the defendant's state of mind. The evaluation of the forensic psychiatric expert's professional opinion is the task of the court as the tasks of the expert, namely examining the vulnerable adult's state of mind and describe it in an opinion, and the tasks of the court, namely drawing conclusion from the proofs including the forensic expert's opinion and stating whether the vulnerable adult's ability required to take care of his own affairs is reduced are sharply distinguished.

d. hearing of the adult by the competent authority;

There is no special rule concerning the vulnerable adult's hearing. According to the general rule the party's personal appearance at the hearing is mandatory and the court has to hear them personally except if the party is in an unknown location or his hearing encounters an insurmountable obstacle.

e. the possibility for the adult to appeal the decision limiting legal capacity.

The decision can be appealed by the vulnerable adult.

14. Give a brief account of the general legal rules with regard to *mental capacity* in respect of:

- a. property and financial matters;**
- b. personal and family matters;**
- c. care and medical matters.**

(a.-e.) The mental capacity in itself does not affect the rights of the concerned person. However, the HCC limits the capacity to act of a person lacking the ability required to take care of his own affairs at the time of making a legal act. An adult may be considered as having limited capacity to act if she factually lacks the ability to take care of his own affairs or if she is placed under guardianship.

15. What are the problems which have arisen in practice in respect of your system on legal capacity (e.g. significant court cases, political debate, proposals for improvement)? Has the system been evaluated and, if so, what are the outcomes?

The issue itself is debated and the evaluation of the judiciary concerning proceedings for placement the vulnerable adult under guardianship fully or partially limiting her capacity to act has been analysed and evaluated by an expert group of the Hungarian Curia. The crucial point is the contradiction between the requirements of the CRPD and the regulation of the Hungarian Civil Code making the guardianship fully limiting the vulnerable adult's capacity to act possible.

SECTION III – STATE-ORDERED MEASURES

Overview

16. What state-ordered measures exist in your jurisdiction? Give a brief definition of each measure.² Pay attention to:

- a. can different types of state-ordered measures be applied simultaneously to the same adult?**

² Please do not forget to provide the terminology for the measures, both in English and in the original language(s) of your jurisdiction. (Examples: the Netherlands: full guardianship – [curatele]; Russia: full guardianship – [опека]).

- b. is there a preferential order in the application of the various types of state-ordered measures? Consider the principle of subsidiarity;**
- c. does your system provide for interim or ad-hoc state-ordered measures?**

(a.-c.) The starting point of the HCC is that everyone has the capacity to act, unless it is limited by the HCC or by a court decision on placement under guardianship. The HCC limits the capacity to act of a minor and a person lacking the ability required to take care of his own affairs at the time of making a legal act. An adult may be considered as having limited capacity to act if she factually lacks her ability to take care of his own affairs or if she is placed under guardianship.

There are two types of guardianship for adults which may be ordered by the court, the guardianship partially limiting the capacity to act and the guardianship fully limiting the capacity to act. A court places the adult under partial guardianship if the following requirements are met in a conjunctive way. The adult has a mental disorder, due to this disorder her ability required to take care of her own affairs is significantly reduced, permanently or in a temporarily recurring manner, and having regard to her personal circumstances, family ties and social relations, her placement under guardianship is justified with regard to specified categories of affairs. The court places an adult under full guardianship if, due to her mental disorder, she permanently and completely lacks the ability required to take care of her own affairs, and consequently, having regard to her personal circumstances, family ties and social relations, her placement under guardianship is justified.

The different state-ordered measures cannot be ordered simultaneously as there is a structure of the measures according to the requirements of necessity, proportionality and graduality. An interim measure is not possible.

Start of the measure

Legal grounds and procedure

17. What are the legal grounds to order the measure? Think of: age, mental and physical impairments, prodigality, addiction, etc.

The factors being listed in the HCC and mentioned above have to be envisaged and the requested court can place – and also have to place – the concerned vulnerable adult under guardianship if the conjunctive requirements are met. One of the factors is the mental disorder. The court has to appoint a forensic

psychiatric expert to examine the defendant's state of mind. The evaluation of the forensic psychiatric expert's professional opinion is the task of the court as the tasks of the expert, namely examining the vulnerable adult's state of mind and describe it in an opinion, and the tasks of the court, namely drawing conclusion from the proofs including the forensic expert's opinion and stating whether the vulnerable adult's ability required to take care of his own affairs is reduced are sharply distinguished. If the court is convinced that the vulnerable person's capacity to act is limited and the extent of this limitation, the concerned person's personal circumstances, family ties and social relations have to be envisaged as it may happen that there exists a social net which can protect the vulnerable person. The clear requirement of the HCC is that the placement under guardianship shall be only an ultima ratio, as the court places the vulnerable adult under guardianship only if this decision is justified by the person's limited capacity to act and her factual personal circumstances, family ties and social relations. This requirement is stated in the HCC, 'Capacity to act may not be limited, not even partially, if protecting the rights of the person concerned can be ensured by other means not affecting his capacity to act.'

If the court finds that the concerned vulnerable adult's ability required to take care of her own affairs is significantly reduced, permanently or in a temporarily recurring manner as a consequence of her mental disorder (and the other requirements mentioned above are met, as well) the court decides about the person's partially limited capacity to act and it has to specify the categories of affairs of a personal or property nature in which the capacity to act is to be limited in the decision on the placement under guardianship. If the vulnerable person permanently and completely lacks the ability required to take care of her own affairs because of her mental disorder (and the other requirements mentioned above are met, as well) the court places this vulnerable person under guardianship fully limiting her capacity to act.

The placement under guardianship may be initiated only by persons enumerated in the HCC. Those are the adult's spouse or cohabitant living with him or the adult's lineal relative or sibling, a statutory representative of the minor, the public guardianship authority and the prosecutor.

18. Which authority is competent to order the measure?

Only the court is competent to order this measure.

19. Who is entitled to apply for the measure?

Limitation of capacity to act may be requested from the court by the vulnerable adult's spouse or cohabitant living with him or the vulnerable adult's lineal relative or sibling, the statutory representative of the child, the guardianship authority and the prosecutor.

20. Is the consent of the adult required/considered before a measure can be ordered? What are the consequences of the opposition of the adult?

The consent of the adult is not requested. If she opposes the decision of the court the judgment may be appealed.

21. Provide a general description of the procedure for the measure to be ordered. Pay attention to:

- a. a requirement of legal representation of the adult;**
- b. availability of legal aid;**
- c. participation of family members and/or of vulnerable adults' organisations or other CSO's;**
- d. requirement of a specific medical expertise / statement;**
- e. hearing of the adult by the competent authority;**
- f. the possibility for the adult to appeal the order.**

See the answers for question 13.

22. Is it necessary to register, give publicity or any other kind of notice of the measure?

A system for registration for vulnerable adults under guardianship was established by the Act No CLXXV of 2013 on the registry of adults under guardianship and prior judiciary acts. The registration certifies that the vulnerable adult is under guardianship with the aim to support her in exercising her own rights and in the interests of the protection of third parties' rights. The data of the adults being under guardianship is administered by the National Office for the Judiciary.

Appointment of representatives/support persons

- 23. Who can be appointed as representative/support person (natural person, public institution, CSO's, private organisation, etc.)? Please consider the following:**
- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the adult, etc.)?**
 - b. to what extent are the preferences of the adult and/or the spouse/partner/family members taken into consideration in the decision?**
 - c. is there a ranking of preferred representatives in the law? Do the spouse/partner/family members, or non-professional representatives enjoy priority over other persons?**
 - d. what are the safeguards as to conflicts of interests at the time of appointment?**
 - e. can several persons be appointed (simultaneously or as substitutes) as representative/support person within the framework of a single measure?**
 - f. is a person obliged to accept appointment as representative/support person?**

If the court places the vulnerable adult under guardianship, the public guardianship authority has to appoint a guardian for this person. The adult person having capacity to act has the right to make a prior legal act for her future partial or full limitation of capacity to act. The content of the prior legal act has to be taken into consideration by the public guardianship authority as a main rule when appointing the guardian for the vulnerable person.

There are some substantial and formal requirements. The prior legal act may be made in a public deed, a private deed countersigned by an attorney, or in person before the public guardianship authority. The adult may make several kinds of statements. She may name one or more persons whom she suggests being appointed as her guardian and even may name the persons whom she wants to exclude as a guardian. Furthermore, she may determine how the guardian should act in her certain personal and property affairs.

A guardian has to be a person of full age having capacity to act and she has to undertake the task of being a guardian. There are some further requirements as a person cannot be appointed as a guardian if the vulnerable adult raises objection against this person or the appointment would be contrary to the vulnerable adult's interests.

In the first place the public guardianship authority has to appoint the person who was designated in the prior judicial act by the vulnerable adult or during the process before the public guardianship authority for appointing a guardian as a guardian, provided that this is not contrary to the interests of the vulnerable adult. The guardianship authority gathers all evidence before the appointment of the guardian and in addition to persons who have to be heard the affected vulnerable adult is heard if his mental state allows. The guardianship authority hears the person living in one household with the affected vulnerable adult, and, in justified cases, a relative not living in the same household as the vulnerable adult. As the environmental study is prepared or obtained before the appointment of the guardian, the guardianship authority has the opportunity to get to know the interests of the vulnerable adult. If it is not possible, the public guardianship authority appoints the vulnerable adult's spouse or cohabitant living together with the vulnerable person. (Although the registered partner living together with the vulnerable person is not listed, the rules applicable to spouses are to be applied to registered partners analogously.) If the vulnerable person has no spouse or cohabitant, or if the appointment of the spouse or cohabitant would mean a threat to the interests of the vulnerable person, a suitable person will be appointed as guardian after taking all the circumstances of the case into consideration. A preference has to be given to the vulnerable adult's parents or the person who had been designated by the parents for the case of their death. In the absence of these persons a relative of the vulnerable adult who may provide personal care for her is appointed.

If there is no such person, a professional guardian has to be appointed. A legal person taking care for persons with mental disorder may be appointed, as well. In such case the legal person shall designate the individual person who will fulfil the tasks of the guardian. Both the professional guardian and the person designated by the mentioned legal person has to satisfy some special requirements for a professional guardian.

The public guardianship authority may appoint two (or multiple) guardians exceptionally. This is the case if both parents of the concerned vulnerable person or two close relatives undertake the office of guardian or special expertise is needed for administering the property of the vulnerable adult or some of her other affairs. An assistant guardian may be appointed for the vulnerable adult if the guardian is hindered or for a case of need.

The guardianship authority shall remove the guardian from office, if he does not fulfil his obligations, he does not act according to the prior legal act or he commits acts seriously harming or threatening the interests of the individual under

guardianship.

During the measure

Legal effects of the measure

24. How does the measure affect the legal capacity of the adult?

The measure affects the adult's legal capacity to act. It limits this capacity fully or partially with regard to the categories of affairs.

Powers and duties of the representatives/support person

25. Describe the powers and duties of the representative/support person:

- a. can the representative/support person act in the place of the adult; act together with the adult or provide assistance in:**
- b. property and financial matters;**
- c. personal and family matters;**
- d. care and medical matters;**

The guardian is the statutory representative of the person whose capacity of act is fully or partially limited. The guardian represents the vulnerable person either fully or partially concerning the denoted categories of affairs. If the court places the person under full guardianship, the guardian administers the person's assets. If the court restricts the vulnerable person's capacity to act concerning the disposal over her income or property, the guardian administers her assets. The guardian performs her tasks in the interest of the vulnerable person, and he is obliged to transfer the assets of the vulnerable person if those have not to be reserved for running expenses to the public guardianship authority. In case of disposing over these assets, the approval of the public guardianship is also needed.

It is not an obligation for the guardian to provide care for the vulnerable person but in justified cases the guardian may undertake this task. If the vulnerable person defined in her prior judiciary act the method how the guardian should perform the tasks, the guardian has to take it into consideration. According to a general rule concerning the legal acts prior to making a legal act that affects the adult having no capacity to act, if the vulnerable adult is able to express his views, the guardian shall hear his requests, and shall take such requests into account if possible.

The activities of the guardian are supervised by the public guardianship authority. The guardian has to report about her activities and the condition of the vulnerable person to the public guardianship authority in any time but at least once a year when she presents the annual report. The person under guardianship has the right to access to the records on the activities of the guardian and her own assets.

The guardian is obliged to report on the administration of the vulnerable person's assets annually to the public guardianship authority. If she is a close relative of the vulnerable person it is enough to submit a simplified report. Even a simplified report has not to be submitted to the public guardianship authority if the vulnerable person has no assets, her income does not exceed an amount specified in the legal act and the guardian is not a professional one. The guardian may be obliged to perform an ad hoc report in justified case also upon the request of the vulnerable person. The guardian's decision-making, let it be an act on the behalf of the vulnerable adult having fully limited capacity to act or a consent to the legal act of the person having partially limited capacity to act is controlled in several ways.

e. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?

According to the HCC the guardian's has to administer the vulnerable adult's assets in the interest of the vulnerable person. There is one further special rule on the decision-making of the guardian. If the vulnerable person under guardianship has specified in a prior legal act the way the guardian should act in some of his personal or property affairs when his capacity to act is limited, the guardian shall take this into account when fulfilling these tasks.

f. what are the duties of the representative/support person in terms of informing, consulting, accounting and reporting to the adult, his family and to the supervisory authority?

The guardian has to 'consult' with the vulnerable adult having fully limited capacity to act and if she is able to express her views, the guardian has to hear the requests of this person prior to making a legal act that affects this adult and has to take such requests into account if it is possible. Although the person having partially limited capacity to act makes the legal acts independently, the guardian's consent is needed for the validity of these act, and it may generate dispute between the guardian and the vulnerable adult. These disputes shall be adjudicated by the public guardianship authority. The guardian may make a legal act for the vulnerable adult having partially limited capacity to act independently if the protection of the interests of this adult or her protection from any damage requires

immediate action. In such case the guardian is obliged to inform both the vulnerable adult and the public guardianship authority of acting so without any delay.

g. are there other duties (e.g. visiting the adult, living together with the adult, providing care)?

As it is mentioned above.

h. is there any right to receive remuneration (how and by whom is it provided)?

There is no special right to receive remuneration. There are some legal acts for the validity of which the approval of the public guardianship authority is also needed, independently of the fact whether it concerns full or partial guardianship. The approval of the public guardianship authority is needed if the legal act concerns the maintenance of the vulnerable adult, the rights or obligations of the vulnerable adult acquired through an inheritance relationship, the acquisition by the vulnerable adult of not unencumbered real estate, or the transfer of ownership of real estate or encumbrance in any other way of real estate that belongs to her, the property of the vulnerable adult transferred to the guardianship authority or any other asset having a value exceeding the amount specified in the decision appointing the guardian that belongs to the vulnerable adult. According to the practical experiences there is a typical case of encumbering the real estate of the vulnerable person by which there is no need for the extra protection provided by the public guardianship authority. This happens if the vulnerable person' real estate at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted to the person giving the benefit free of charge.

The practical experiences and needs of the families having a family member with fully or partially limited capacity to act have resulted in some special regulations primarily with the aim that the vulnerable adult might support financially her own child. The public guardianship authority may approve that certain defined expenditures should be covered by the property of the vulnerable adult upon the joint request of the person having partially limited capacity to act in financial affairs and her guardian or the upon the request of the guardian of an adult having fully limited capacity to act in exceptional and duly justified cases. Such an expenditure is a support for the descendant of the vulnerable person to establish and maintain an own household or to achieve some other important objective. However, this support may not exceed half of the share of the inheritance under intestate succession, in a condition and of a value prevailing at

the time when the approval is granted. In case of an adult having partially limited capacity to act in financial affairs, the public guardianship authority may approve that the vulnerable adult should give donation free, waive of rights without consideration or offer for public purposes, if this transaction does not mean a threat to the subsistence of the concerned adult.

26. Provide a general description of how multiple representatives/support persons interact, if applicable. Please consider:

- a. if several measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the framework of these measures, coordinate their activities?**

There is no special provisions. If multiple guardians are appointed, the guardianship authority may provide for the allocation of their tasks. In the absence of that allocation, guardians shall have the same powers; they may act jointly and independently as well.

- b. if several representatives/support persons can be appointed in the framework of the same measure, how is authority distributed among them and how does the exercise of their powers and duties take place (please consider cases of concurrent authority or joint authority and the position of third parties)?**

No further provision is provided.

Safeguards and supervision

27. Describe the organisation of supervision of state-ordered measures. Pay attention to:

- a. what competent authority is responsible for the supervision?**

The guardianship authority is responsible for supervision.

- b. what are the duties of the supervisory authority in this respect?**

The placement under guardianship has to be reviewed in an obligatory way. When the court brings a decision on the order, maintenance or modification of the restriction of the capacity to act, the court has to specify the date of the beginning of the proceeding on the statutory review of the placement under guardianship. Its beginning cannot exceed five years from the date when the judgment on the full

restriction of the capacity to act became final and ten years from the date when the judgment on the partial restriction of the capacity to act became final.

c. what happens in the case of malfunctioning of the representative/support person? Think of: dismissal, sanctions, extra supervision;

The proceeding on the statutory review is initiated by the public guardianship authority ex officio. It may aim at the termination of the placement under guardianship, to its maintenance, to change the partially restricting guardianship to fully restricting guardianship, the fully limiting guardianship to partially restricting guardianship or in case of partially restricting guardianship to the modification of the categories of affairs. If a proceeding is initiated by the guardianship authority the vulnerable adult and his guardian have to be heard before the court and the psychiatric expert's opinion has to be obtained. What happens in the case of malfunctioning of the representative/support person? Think of: dismissal, sanctions, extra supervision;

The guardianship authority discharges the guardian from office, if the court has terminated the placement under guardianship; the individual under guardianship has died; the guardian asks for his discharge for an important reason; or grounds for exclusion have arisen later which would have constituted an obstacle to the appointment of the guardian. The guardianship authority removes the guardian from office, if the guardian does not fulfil his obligations, the guardian does not act according to the prior legal act or the guardian commits acts seriously harming or threatening the interests of the individual under guardianship. If immediate action is required, the guardianship authority shall suspend the guardian from office before ordering his removal.

The guardianship authority shall supervise the activities of the guardian. Guardians shall either any time when called upon by the guardianship authority or otherwise together with the annual report, report to the guardianship authority on their activities and on the condition of the individual under guardianship. The vulnerable adult who is under guardianship is entitled to have access to records on the guardian's activities and on his property and to make copies of such records.

d. describe the financial liability of the representative/support person for damages caused to the adult;

There is no special rule for the financial liability of the guardian.

- e. describe the financial liability of the representative/support person for damages caused by the adult to contractual parties of the adult and/or third parties to any such contract.**

HCC regulates special cases of extra-contractual liability, one of them is the liability for damage caused by non-culpable persons. These rules may be applied for the concerned case. According to the rules of liability for damage caused by non-culpable persons a person whose sound mind is limited to such an extent that he is unable to evaluate the consequences of his actions in connection with causing damage shall not be liable for damage caused by this person. The person who is considered by law to be the caregiver of the non-culpable person shall be liable instead of the non-culpable person. The person exercising supervision over the nonculpable person at the time of causing damage shall also be considered a caregiver. The caregiver shall be exempted from liability if he proves that he cannot be at fault with respect to education and supervision. The rules on causing damage jointly by several persons shall apply to the liability of several caregivers. The contract of the vulnerable person whose liability is fully or partially limited is invalid. In case of partial limitation of capacity to act the invalidity depends upon the category of assets.

28. Describe any safeguards related to:

- a. types of decisions of the adult and/or the representative/support person which need approval of the state authority;**

There are some legal acts of the guardian for the validity of which the approval of the public guardianship authority is also needed, regardless of whether it concerns partial or full guardianship. The approval of the public guardianship authority is needed if the legal act concerns the maintenance of the vulnerable adult, the rights or obligations of the vulnerable adult acquired through inheritance, the acquisition by the vulnerable adult of not unencumbered real estate, or the transfer of ownership of real estate or encumbrance in any other way of real estate that belongs to her, the property of the vulnerable adult handed over to the guardianship authority or any other asset having a value exceeding the amount specified in the decision appointing the guardian that belongs to the vulnerable adult. (If the vulnerable adult's capacity to act is limited in full, or partially concerning property affairs, the guardian shall, when called upon by the guardianship authority, transfer the assets of the vulnerable adult under guardianship to the guardianship authority, if he does not need to have them in reserve for running expenses. According to the practical experiences there is a typical case of encumbering the real estate of the vulnerable person. This happens

if the vulnerable persons real estate at the time of its free-of-charge acquisition, encumbered with the right of usufruct being granted to the person giving the benefit free of charge.

The practical experiences and needs of the families having a family member with fully or partially limited capacity to act have resulted in some special regulations primarily with the aim that the vulnerable adult might financially support her own child. The public guardianship authority may approve that certain defined expenditures should be covered by the property of the vulnerable adult upon the joint request of the person having partially limited capacity to act in financial affairs and her guardian or the upon the request of the guardian of an adult having fully limited capacity to act in exceptional and duly justified cases. Such an expenditure is a support for the descendant of the vulnerable person to establish and maintain an own household or to achieve some other important objective. However, this support may not exceed half of the share of the inheritance under intestate succession, in a condition and of a value prevailing at the time when the approval is granted. In case of partial guardianship, regarding financial affairs, the public guardianship authority may approve that the vulnerable adult should give donation freely, waive of rights without consideration or offer for public purposes, if this transaction does not mean a threat to the subsistence of the concerned adult.

- b. unauthorised acts of the adult and of the representative/support person;**
- c. ill-conceived acts of the adult and of the representative/support person;**

The unauthorised act has the consequence of invalidity of the act as the legal act of a person having partially limited capacity to act is valid in the categories of affairs specified by the court judgment with the consent of his guardian. The legal act of the vulnerable adult having fully limited capacity to act shall be null and void. The general rules of invalidity are to be applied here.

d. conflicts of interests

In case of conflict of interests, the above-mentioned measures are available with special regard to the fact that the guardian is under the supervision of the guardianship authority. If the guardian does not perform his obligations, the guardianship authority discharges the guardian from office.

End of the measure

29. Provide a general description of the dissolution of the measure. Think of: who can apply; particular procedural issues; grounds and effects.

The termination of the placement under guardianship may be initiated by the vulnerable adult, the spouse, cohabitant, lineal relative, sibling of the vulnerable adult if they live with him, the guardian, the guardianship authority or the prosecutor. There is no particular procedural issue, as the same rules are to be applied as in the proceeding of placing the vulnerable adult under guardianship according to the HCC and HCP.

Reflection

30. Provide statistical data if available.

In 2021 the number of the Hungarian population was 9,730,772 and the number of people age of 65 and older was 1,976,636 (the number of people older than 65 was 1,832,141). The number of adults being under guardianship has been continuously increasing during the last twenty years. 40,838 persons were under guardianship in 2000, this number was 52,317 in 2010 and 58,153 in 2019. (In 2020 57,327 persons stood under guardianship and in the years of 2016-2020 it was always between 57,000 and 58,242.)

31. What are the problems which have arisen in practice in respect of the state-ordered measures (e.g. significant court cases, political debate, proposals for improvement)? Have the measures been evaluated, if so what are the outcomes?

The only analysis and evaluation have been implemented by the Hungarian Curia (Hungarian Supreme Court) recently, the opinion is summarized in I.7.

SECTION IV – VOLUNTARY MEASURES

Overview

32. What voluntary measures exist in your jurisdiction? Give a brief definition of each measure.

The prior legal act and the supported decision-making is known in Hungary.

33. Specify the legal sources and the legal nature (e.g. contract; unilateral act; trust or a trust-like institution) of the measure. Please consider, among others:

The prior legal act is a unilateral act

a. the existence of specific provisions regulating voluntary measures;

It is regulated in the HCC as prior legal act [*előzetes jognyilatkozat*] and supported decision-making [*támogatott döntéshozatal*].

b. the possibility to use general provisions of civil law, such as rules governing ordinary powers of attorney.

34. If applicable, please describe the relation or distinction that is made in your legal system between the appointment of self-chosen representatives/support persons on the one hand and advance directives on the other hand.

The adult having capacity to act may make a prior legal act for her future partial or full limitation of capacity to act. The content of the prior legal act has to be taken into attention by the public guardianship authority as a main rule when appointing the guardian for the vulnerable person. A formal requirement has to be satisfied, so the prior legal act has to be made in a public deed, a private deed countersigned by an attorney at law, or in person before the guardianship authority. Several statements may be made in a prior legal act. The adult person may name one or more persons who he suggests be appointed as her guardian, may exclude one or more persons from this task and also may determine how the guardian should act in certain personal and property affairs. A register has been established for the prior legal acts. Although they have to be registered, the validity of the prior legal act is not affected if there is a failure to registration. The prior legal act can be modified and also withdrawn and if it is withdrawn it has to be deleted from the register.

In the course of the court proceeding for the placement under guardianship the court takes into account the prior legal act and order its application. However, the court will not order its application if it is definitely contrary to the interests of the vulnerable adult or the person designated as guardian does not undertake the office of a guardian or there is a ground specified in law for the exclusion. The fact that one provision of the prior legal act cannot be applied does not affect in itself the applicability of other provisions. The prior legal act has to be taken into attention not only by the court in the court proceeding but also by the public guardianship authority when it appoints a guardian.

The prior legal act needs to be reviewed. If the capacity of the vulnerable adult was partially or fully limited and the application of some provisions of the prior legal act was taken into attention by the guardianship authority and the circumstances change and the implementation of the provisions of the prior legal act would be contrary to the interests of the vulnerable adult, the court might be requested not to apply the concerned provisions. The request may be presented by the vulnerable adult, her guardian, the public guardianship authority or the prosecutor.

Supported decision-making without the restriction of the capacity to act was introduced in Hungary in 2013. Although the institution exists its regulation is very short, and almost no practice has been evolved yet. The supported decision-making is available voluntarily and the demand is extremely low. There has been no research on the grounds of it. The guardianship authority has to appoint a supporter at the vulnerable adult's request if this person due to not being entirely of sound mind needs help in administering some of her affairs or making decisions. The appointment of the supporter does not affect the vulnerable adult's capability to act. According to the HCC if the court draw the conclusion after its proceeding for placement under guardianship affecting capacity to act, that even the partial limitation of the vulnerable adult's capacity to act is unnecessary, but the vulnerable person needs help in administering some of his affairs, due to not being entirely of sound mind, the court notifies the public guardianship authority of this decision. The HCC's rule connects the rejection of the request for placement under guardianship and the appointment of the supporter to each other and ordered that the public guardianship authority appoints the supporter upon the basis of the court decision and the vulnerable person's agreement, the issue about the procedural connection between these two decisions emerged soon.

Even the Advisory Board concerning the interpretation of the new HCC dealt with the connection between guardianship and supported decision-making. This Advisory Board was set up by the then president of the Hungarian Curia in 2016

to provide interpretation of provisions of HCC and functioned until 2021. The opinions of the Advisory Board were not obligatory but are available on the webpage of the Hungarian Curia (<https://kuria-birosag.hu/hu/ptk>).

The Advisory Board adopted an opinion in relation to the connection between the judicial rejection of the request to place the vulnerable adult under guardianship and the measure aimed at the judicial appointing of the supporter. The opinion stated that the placement under guardianship and the supported decision-making do not connect to each other and even their aims and functions are different. The supported decision-making is not a lower level of the limitation of capacity to act and even is not its antecedent but a separate legal institution. If the court is convinced that the vulnerable person has to be placed under a guardianship at least partially limiting her capacity to act, the request for placement under guardianship cannot be rejected. However, if the court is convinced that the placement under guardianship is unnecessary, the request has to be rejected. According to the opinion the court has to envisage only whether the placement under guardianship has to be ordered or not. The decision about the supported decision-making is not the court's competence. The Advisory Board adopts the decision upon the questions asked by practicing lawyers. This opinion proves that there are some issues to deal with as this voluntary measure is a new one.

35. Which matters can be covered by each voluntary measure in your legal system (please consider the following aspects: property and financial matters; personal and family matters; care and medical matters; and others)?

The voluntary measure does not affect the adult's capacity to act.

Start of the measure

Legal grounds and procedure

36. Who has the capacity to grant the voluntary measure?

It is the task of the public guardianship authority.

37. Please describe the formalities (public deed; notarial deed; official registration or homologation by court or any other competent authority; etc.) for the creation of the voluntary measure.

It is the decision of the guardianship authority.

38. Describe when and how the voluntary measure enters into force. Please consider:

- a. the circumstances under which voluntary measure enters into force;**
- b. which formalities are required for the measure to enter into force (medical declaration of diminished capacity, court decision, administrative decision, etc.)?**
- c. who is entitled to initiate the measure entering into force?**
- d. is it necessary to register, give publicity or any other kind of notice of the entry into force of the measure?**

It enters into force according to decision of the guardianship authority and no registration is needed for that. According to the Act No CLV of 2013 the guardianship authority operates a registry of the ‘supported decision-making’ but it is not an official registry like the one of adults under guardianship and prior legal acts (established by Act No CLXXV of 2013 on the registry. The registry of adults under guardianship and prior legal acts is an official one, operated by the National Office for the Judiciary. The guardianship authority hears the vulnerable adult and the person to be appointed as his supporter possibly together and it may get an expert’s opinion about the vulnerable person’s mental status.

Appointment of representatives/support persons

39. Who can be appointed representative/support person (natural person, public institution, CSO’s, private organisation, etc.)? Please consider:

- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the grantor, etc.)?**

The supporter can be a natural person. The person who is denoted by the supported adult personally before the guardianship authority as a future supporter has to be appointed as his supporter by the guardianship authority. A person cannot be appointed as a supporter if the vulnerable adult raises objection against this person or the appointment would be contrary to the vulnerable adult’s interests, who is under full or partial guardianship and who is himself a supported person. If

no person can be appointed as a supporter and the supported adult consents to the appointment of the professional supporter, the so-called professional supporter is appointed who may be a natural or a legal person. Professional supporter can be the natural person who performs the tasks of the professional supporter or professional guardian. The legal person dealing with persons with mental disorders may be also appointed as a professional supporter. In this case this legal person is obliged to denote the natural person who performs personally the tasks of the professional supporter.

b. what are the safeguards as to conflicts of interests?

The guardianship authority reviews the appointment of the supporter in every five years. An extraordinary review is held by the guardianship authority if other authority notifies the guardianship authority that there is a conflict of interests between the supported adult and his supporter.

c. can several persons be appointed (simultaneously or as substitutes) as representative/support person within the framework of one single measure?

The public guardianship authority may appoint maximum of two supporters.

During the measure

Legal effects of the measure

40. To what extent is the voluntary measure, and the wishes expressed within it, legally binding?

41. How does the entry into force of the voluntary measure affect the legal capacity of the grantor?

It enters into force according to decision of the guardianship authority and no registration is needed for that. This voluntary measure does not affect the vulnerable person'.

Powers and duties of the representative/support person

42. Describe the powers and duties of the representative/support person:

- a. can the representative/support person act in the place of the adult, act together with the adult or provide assistance in:
- b. property and financial matters;
- c. personal and family matters;
- d. care and medical matters?
- e. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?
- f. is there a duty of the representative/support person to inform and consult the adult?
- g. is there a right to receive remuneration (how and by whom is it provided)?

The vulnerable adult's capacity to act is not affected by the supported decision-making so the support person cannot make any decision in the place of the vulnerable adult.

- 43. Provide a general description of how multiple representatives/support persons interact, if applicable. Please consider:**
- a. if several voluntary measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the framework of these measures, coordinate their activities?
 - b. if several representatives/support persons can be appointed in the framework of the same voluntary measure how is the authority distributed among them and how does the exercise of their powers and duties take place (please consider cases of concurrent authority or joint authority and the position of third parties)?

No regulation is provided.

- 44. Describe the interaction with other measures. Please consider:**
- a. if other measures (state-ordered measures; *ex lege* representation) can be simultaneously applied to the same adult, how do the representatives/support persons, acting in the framework of these measures, coordinate their activities?
 - b. if other measures can be simultaneously applied to the same adult, how are third parties to be informed about the distribution of their authority?

The limitations of capacity to act and the supported decision-making are measures which exclude each other.

Safeguards and supervision

45. Describe the safeguards against:

- a. unauthorised acts of the adult and of the representative/support person;**
- b. ill-conceived acts of the adult and of the representative/support person;**
- c. conflicts of interests**

Please consider the position of the adult, contractual parties and third parties.

The only special institution is provided by the obligation of the guardianship authority to review the appointment of the supporter in every five years. However, an extraordinary review is held by the guardianship authority if other authority notifies the guardianship authority that there is a conflict of interests between the supported adult and his supporter, or any other fact or circumstance comes to the attention of the guardianship authority that justifies the review of the appointment of the supporter. In the course of the review procedure the public guardianship authority is satisfied that the supported person still requires the supporter to help him manage some of his affairs and make decisions, the supported person agrees that the appointed supporter will continue to perform the supporter's tasks, and whether the supporter acted in the interest of the supported person. Both the supporter and the supported person are heard personally in the proceeding.

46. Describe the system of supervision, if any, of the voluntary measure.

Specify the legal sources. Please specify:

- a. is supervision conducted:**
- b. by competent authorities;**
- c. by person(s) appointed by the voluntary measure.**
- d. in each case, what is the nature of the supervision and how is it carried out?**
- e. the existence of measures that fall outside the scope of official supervision.**

There is no further regulation for the supervision.

End of the measure

- 47. Provide a general description of the termination of each measure. Please consider who may terminate the measure, the grounds, the procedure, including procedural safeguards if any.**

The guardianship authority discharges the support person from office, if a) it is initiated by the support person or the supported person; b) the supported person has died; c) grounds for exclusion have arisen later which would have constituted an obstacle to the appointment of the support person. The guardianship authority removes the support person from office, if a) he does not fulfil his obligations or he commits acts seriously harming or threatening the interests of the supported person.

Reflection

- 48. Provide statistical data if available.**

There is no available data.

- 49. What are the problems which have arisen in practice in respect of the voluntary measures (e.g. significant court cases, political debate, proposals for improvement)? Has the measures been evaluated, if so what are the outcomes?**

No practice has been developed yet.

SECTION V – EX LEGE REPRESENTATION

Overview

- 50. Does your system have specific provisions for *ex lege* representation of vulnerable adults?**

No ex-lege representation exists.

Start of the ex-lege representation

Legal grounds and procedure

51. What are the legal grounds (e.g. age, mental and physical impairments, prodigality, addiction, etc.) which give rise to the ex lege representation?

N/A

52. Is medical expertise/statement required and does this have to be registered or presented in every case of action for the adult?

N/A

53. Is it necessary to register, give publicity or to give any other kind of notice of the ex-lege representation?

N/A

Representatives/support persons

54. Who can act as ex lege representative and in what order? Think of a partner/spouse or other family member, or other persons.

N/A

During the ex-lege representation

Powers and duties of the representatives/support person

55. What kind of legal or other acts are covered: (i) property and financial matters; (ii) personal and family matters; (iii) care and medical matters. Please specifically consider: medical decisions, everyday contracts, financial transactions, bank withdrawals, application for social benefits, taxes, mail.

N/A

56. What are the legal effects of the representative's acts?

N/A

Can an adult, while still mentally capable, exclude or opt out of such ex-lege representation (a) in general or (b) as to certain persons and/or acts?

**57. Describe how this *ex lege* representation interacts with other measures?
Think of subsidiarity**

N/A

Safeguards and supervision

58. Are there any safeguards or supervision regarding ex lege representation?

N/A

End of the ex-lege representation

59. Provide a general description of the end of each instance of ex-lege representation.

N/A

Reflection

60. Provide statistical data if available.

N/A

61. What are the problems which have arisen in practice in respect of ex lege representation (e.g. significant court cases, political debate, proposals for improvement)?

N/A

Specific cases of ex lege representation

ex lege representation resulting from marital law and/or matrimonial property law

62. Does marital law and/or matrimonial property law permit one spouse, regardless of the other spouse's capacity, to enter into transactions, e.g. relating to household expenses, which then (also) legally bind the other spouse?

N/A

63. Do the rules governing community of property permit one spouse to act on behalf of the other spouse regarding the administration etc. of that property? Please consider both cases: where a spouse has/has no mental impairment.

N/A

ex lege representation resulting from negotiorum gestio and other private law provisions

64. Does the private law instrument negotiorum gestio or a similar instrument exist in your jurisdiction? If yes, does this instrument have any practical significance in cases involving vulnerable adults?

SECTION VI – OTHER PRIVATE LAW PROVISIONS

65. Do you have any other private law instruments allowing for representation besides *negotiorum gestio*?

No.

66. Are there provisions regarding the advance planning by third parties on behalf of adults with limited capacity (e.g. provisions from parents for a child with a disability)? Can third parties make advance arrangements?

No.

**SECTION VII – GENERAL ASSESSMENT OF YOUR LEGAL SYSTEM
IN TERMS OF PROTECTION AND EMPOWERMENT**

67. Provide an assessment of your system in terms of *empowerment* of vulnerable adults (use governmental and non-governmental reports, academic literature, political discussion, etc.). Assess your system in terms of:

In the Hungarian legal system the transition from substituted decision-making to supported decision-making has not been realized yet.

a. the transition from substituted to supported decision-making;

As I detailed above an attempt was made to shift the focus towards the supported decision-making but the basis of the ‘protection’ of vulnerable adults has remained the substituted decision-making despite the consequences of the CRPD report and.

b. subsidiarity: autonomous decision-making of adults with impairments as long as possible, substituted decision-making/representation – as last resort;

The Hungarian system implements the principles of proportionality, necessity and graduality but the scale of the measures is too wide and also the guardianship which fully limits the capacity to act is applied too often. Although the supported decision-making as a new institute has been introduced, it has almost not been applied yet. The guardianship partially limiting the vulnerable adult’s capacity to act is applied. However, the categories of affairs have been the object of disputes. The HCC requires that the categories of property and personal affairs shall be applied case by case according to the principle of subsidiarity, but it seems to be not too easy to be implemented in the judgments as they seem to ignore the requirement to tailor the measure to the unique needs of each vulnerable adult.

c. proportionality: supported decision-making when needed, substituted decision-making/representation – as last resort;

Substituted decision-making should be the last resort but it is applied too often.

d. effect of the measures on the legal capacity of vulnerable adults;

There has been no study analysing the effects of the substituted decision-making on the concerned vulnerable adults.

e. the possibility to provide tailor-made solutions;

The HCC provides the possibility of applying tailor-made measures in case of the guardianship partially limiting the concerned person's capacity but there are doubts whether the judgments are too severe towards the vulnerable persons.

f. transition from the best interest principle to the will and preferences principle.

It has not been discussed yet.

68. Provide an assessment of your system in terms of *protection* of vulnerable adults (use governmental and non-governmental reports, academic literature, political discussion, etc.). Assess your system in terms of:

a. protection during a procedure resulting in deprivation of or limitation or restoration of legal capacity;

The procedural rules concerning the deprivation, limitation and restoration of legal capacity protect the person and interests of the vulnerable adult. The guarantees are provided for that.

b. protection during a procedure resulting in the application, alteration or termination of adult support measures;

Both the substantial rules and the procedural rules give guarantees for the support of the vulnerable person. The regulation is not detailed enough. It is a problem that the task of supervision belongs into the competence of the guardianship authority, but the decisions of the guardianship authorities are not published so those are not transparent enough.

c. protection during the operation of adult support measures:

- **protection of the vulnerable adult against his/her own acts;**

- **protection of the vulnerable adult against conflict of interests, abuse or neglect by the representative/supporting person;**
- **protection of the vulnerable adult against conflict of interests, abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions;**
- **protection of the privacy of the vulnerable adult.**

There is not enough research concerning the life and acts of the vulnerable adults being under guardianship.