

Country report **Croatia**

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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

CROATIA

Dr . Branka Rešetar & Dr. Nataša Lucić

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 current legal framework regarding the protection and empowerment of vulnerable adults in Croatia includes as follow:

- The Constitution of the Republic of Croatia*¹
The protection of persons with disabilities is prescribed as a constitutional principle and social right in the Constitution of the Republic of Croatia. The protection of vulnerable adults within the framework of guardianship [skrbništvo]² is based on the following constitutional principles: "Everyone has a duty to protect vulnerable adults."³ "The State devotes special care to the protection of persons with disabilities and their inclusion in social life"⁴
- The Act on the Ratification of the UN Convention on the Rights of Persons with Disabilities*⁵

The CRPD entered into force in Croatia on 3 May 2008 through an act on its ratification a. According to the principle of legal hierarchy, the CRPD is beyond national legislation, including the Family Act 2015

¹ The Constitution of the Republic of Croatia (Official Gazette no. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14).

² Under the Croatian jurisdiction, the term 'guardianship'[skrbništvo] is linked to limitation of legal capacity and substitute decision-making

³ Art. 64 para. 1 of the Constitution.

⁴ Art. 58 para. 2 of the Constitution.

⁵ The Act on confirmation of UN Convention on the Rights of Persons with Disabilities (Official Gazette no 6/07).

that, among other things, regulates guardianship [skrbništvo].⁶ Through systematic interpretation and application of the rules of guardianship in the sense of the modern concept of the rights of people with disabilities, it is possible to avoid any kind of their violation.⁷ The CRPD has encouraged the reform of the Family Act 2015 in the area of guardianship [skrbništvo] as well as the adoption of the Act on the Protection of Persons with Mental Disabilities 2014. (See below the Family Act 2015 and the Act on the Protection of Persons with Mental Disabilities 2014)

c) *The Family Act 2015*⁸

The Croatian legal system traditionally regulates the legal protection of vulnerable adults through family legislation, which limit their legal capacity and provide them with guardianship [skrbništvo]. The protection of vulnerable adults based on the FA 2015 is not in accordance with contemporary protection of the human rights of persons with disabilities.⁹

However, the FA 2015 has introduced a number of novelties in the area of guardianship [skrbništvo] with the aim to improve the protection of vulnerable adults to the greatest extent possible. The reform goal was to fulfil Croatia's international obligations imposed by the CRPD and respect ECtHR judgments as well as to implement respective international guidelines and recommendations.

The FA 2015 has brought the following changes:

- Due to the financial impossibility of reforming the entire system, a compromise solution has been reached and the obligation of partial deprivation of legal capacity (i.e. limitation of legal capacity) is envisaged as a rule, but only when it is necessary to protect the rights of vulnerable adult. The FA 2015 has abandoned the concept of full deprivation of legal capacity.
- The FA 2015 has also abolished the concept of prolonged parental responsibility of an adult child.
- The FA 2015 has introduced a duty to respect the opinion and wishes of a vulnerable adult. An adult with legal capacity can beforehand nominate a person he/she would like to have as a representative or guardian in the event of his/her incapacity. This way, the continuing power of attorney and previously given directives have become a part of the Croatian legal system.
- The FA 2015 defines decisions that can be exclusively made by a vulnerable person under guardianship, in which case a prior approval of

⁶ Art. 134 of the Constitution.

⁷ B. Rešetar, Komentar Obiteljskog zakona 2015 (Commentary on the Family Act 2015), Organizator d.o.o., Zagreb, 2022, pp.43-44.

⁸ The Family Act 2015 (Official Gazette no. 103/15, 98/19, 47/20, hereinafter FA 2015).

⁹ I. Milas Klarić, 2013, p. 94. and B. Rešetar, Komentar Obiteljskog zakona 2015 (Commentary on the Family Act 2015), Organizator d.o.o., Zagreb, 2022, pp. 221-222.

the social welfare centre is required. This Act also lays down health-related issues which are to be dealt with by the court..

- The FA 2015 has introduced a new court procedure in which the court makes extremely important decisions related to the health and life of adults under guardianship (e.g. decision on life support).

- On the basis of the FA 2015, Croatia has established the Centre for Special Guardianship as an independent institution where the so-called “special guardians” are employed. Their duty is to represent vulnerable adults before the court in proceedings relating to legal capacity limitation.¹⁰

d) *The Act on the Protection of Persons with Mental Health Problems 2014*¹¹

The APPMHP 2014 regulates the protection of persons with mental impairments in relation to their medical treatment, particularly their psychiatric treatment. According to the APPMHP 2014, the respective decision-making on measures and medical procedures does not depend on possible limitation of legal capacity, but on the current health status of a person with mental impairments. One person can authorize another person to give or withhold consent to certain medical procedures on her or his behalf as a person of trust (admission, detention and placement in a psychiatric institution and diagnostic procedure and treatment of a person with mental impairments).¹²

e) *The Civil Obligations Act 2005*¹³

The COA 2005 adheres to the Croatian regime of deprivation of legal capacity and guardianship when it comes to the validity of contracts.¹⁴ A person deprived of legal capacity can enter into a contract. However, in order for that contract to be valid, his/her guardian shall previously or subsequently approve it.¹⁵

f) *The Act on Voter Registry 2012*¹⁶

The adoption of the Act on Voter Registry in 2012 made it possible for around 16,000 people with disabilities in Croatia, mainly with

¹⁰ The Government of the Republic of Croatia, Final proposal FA 2015, p 8-9.

¹¹ The Act on the Protection of Persons with Mental Disabilities 2014 (Official Gazette no. 76/14 hereinafter APPMD 2014).

¹² Art. 3 para. 1 item 4 and Art. 68 of the APPMD 2014.

¹³ The Civil Obligation Act 2005 (Official Gazette no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, hereinafter COA 2005).

¹⁴ According to the previous FA 2003 (Official Gazette 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13, 05/15, an adult could be completely deprived of legal capacity.

¹⁵ Art. 276 of the COA 2005.

¹⁶ The Register of Voters Act 2012 (Official Gazette no 144/12, 105/15, 98/19).

intellectual and mental disabilities, to participate, though with support of another person, in social and political life. Their right to vote in Croatia has been enacted mostly under the pressure from the Ombudsmen for Persons with Disabilities and civil society organizations.¹⁷

g) *The Social Welfare Act 2022*¹⁸

According to the Croatian legal and social welfare system, guardianship [skrbništvo] is not only a specific legal issue of classical legal representation of vulnerable adults, but it also encompasses a significantly wider scope of actions in the field of social work. This especially applies to cases where the guardian is a social worker (a guardian can also be another person such as a close relative or other family member).

Social work is an organized profession of public interest, the aim of which is to provide vulnerable persons, as well as persons in unfavourable personal or family circumstances with assistance. Social work includes prevention, help and support intended for individuals, families and groups with the aim to improve their quality of life encourage changes and empower users to get involved in community life.¹⁹

h) *The Act on the Ombudsman for Persons with Disabilities 2007*²⁰

The AOPD 2007 stipulates the scope and method of ombudsman's work, as well as the conditions for the appointment and dismissal of the ombudsman for persons with disabilities.²¹ The ombudsman for persons with disabilities protects, monitors and promotes the rights and interests of persons with disabilities based on the Constitution, international treaties and laws.²²

i) *The case law of the ECtHR*

Due to their authority, several ECtHR judgments related to the protection of the human rights of vulnerable adults in Croatia have influenced the changes in national legislation. Those changes are now contained in the FA 2015. (X v Croatia, App no. 11223/04, 17 July 2008; X and Y v. Croatia, App no. 5193/09, 3 November 2011; A.K.

¹⁷ <https://www.iusinfo.hr/aktualno/dnevne-novosti/14493> (visited 02.08.2022.)

¹⁸ The Social Welfare Act 2022 (Official Gazette 18/22, 46/22, hereinafter SWA 2022).

¹⁹ Art. 3. of the SWA 2022.

²⁰ The Ombudsman for Persons with Disabilities Act 2007 (Official Gazette no. 107/07, hereinafter OPDA 2007).

²¹ Art. 3 of the OPDA 2007.

²² Art. 4 of the OPDA 2007.

and L. v. Croatia, App no. 37956/11, 8 January 2013 and Ivinović v. Croatia, App no. 13006/13, 18 September 2014).²³

- j) *The National Strategy for Equalization of Opportunities for Persons with Disabilities 2021-2027*²⁴

The most important goals of the National Strategy 2021-2027 refers to the expansion of the network of social services in the community and further improvement of the legislative framework for the purpose of improving the quality of life of persons with disabilities as well as of education of employees in the social system. Unfortunately, this strategic document does not include the goal of completely abandoning the concept of limitation of legal capacity and the concept of guardianship, which encompasses a substitute decision-making system.

- 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.**

- *Guardianship* [skrbništvo] is a term used in the Croatian system of the protection of vulnerable adults, linked to limitation of legal capacity and a substitute decision-making process.
- *Limitation of legal capacity* [ograničenje poslovne sposobnosti] An adult who does not have mental capacity to make his/her own decisions is restrained to act by a court decision on his/her legal capacity (e.g. making decisions on his/her property health etc.)
- *Guardian* [skrbnik] is a natural person appointed by a social welfare centre to represent and assist a person with limited legal capacity. The role of a guardian can be played by a family member, a person named in an advance directive or a social worker employed in a social welfare centre. Guardians act on behalf of an adult with limited legal capacity.
- *Ward* [štićenik] is an adult with limited legal capacity under guardianship. Guardians act on behalf of their wards.

²³ See novelties above: c) Family Act 2015.

²⁴ The National plan for equalizing opportunities for persons with disabilities for the period from 2021 to 2027 (Official Gazette no. 143/21, hereinafter National plan 2021-2027).
https://narodne-novine.nn.hr/clanci/sluzbeni/2021_12_143_2440.html (visited 02.08.2022.)

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.

On 9 September 2021, there were 586,153 people with disabilities in Croatia. People with disabilities make up 14.4% of the total population of the Republic of Croatia. The largest share of people with disabilities (45% or 263,526 disabled persons), was of working age (20-64 years of age) while 258,564 of them (44%) were over 65.

According to the Croatian Registry of Persons with Disabilities, 24.4% of all persons with disabilities are persons with mental impairments (i.e. 143,147 persons), and 4.9% of them are persons with intellectual disabilities (i.e. 28,901 persons).²⁵

Adults under guardianship ²⁶					
2015	2016	2017	2018	2019	2020
18,014	17,178	17,918	18,037	18,500	18,966

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.

As a member of the UN, the EU and the Council of Europe as well as a party to all relevant international instruments in the field of human rights, Croatia has undertaken the obligation to protect and promote of human rights of persons with disabilities. The purpose of this obligation is achievement of equal participation of persons with disabilities in civil, political, economic, social and cultural areas of life.

Of the international instruments relevant to the protection of vulnerable adults, Croatia is a party to the CRPD. The CRPD entered into force in Croatia on 3 May 2008. The CRPD has triggered the reform of the Family Act 2015 in the part related to guardianship [skrbništvo] and the adoption of the APPMHP 2014. However, Croatia has not still fulfilled all obligations from the CRPD. Above all, Croatia has not fully abolished the deprivation

²⁵ These data refer to all types of disabilities (physical, mental, intellectual or sensory impairments). Within the framework of the guardianship, we are dealing with persons with intellectual and mental impairments.

Report on persons with disabilities in the Republic of Croatia, Croatian Institute of Public Health, Zagreb, September 2021, pp. 5-7. <https://www.hzjz.hr/periodicne-publicacije/izvjesce-o-osobama-s-invaliditetom-u-republici-hrvatskoj-stanje-09-2021/> (visited 02.08.2022)

²⁶ <https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165> (visited 04.08.2022.).

of legal capacity and substitute decision-making system of adults' protection.

Due to the strength of their authority, several ECtHR judgments related to the protection of the human rights of vulnerable adults in Croatia have influenced changes in the FA 2015.²⁷

Recommendation CM/Rec(2009)11 of the Committee of Ministers to member states on principles concerning continuing powers of attorney and advance directives for incapacity and Recommendation 1993 (2012) on protecting human rights and dignity by taking into account previously expressed wishes of patients have influenced the introduction of advance directives in the Croatian legal system.

However, Croatia has not signed the 2000 Hague Convention on the International Protection of Adults yet.

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

Since the entry into force of the CRPD, it has come to some major changes in the rights of persons with disabilities. First of all, the Act on Voter Registry 2012 has legalized their right to vote. Second, the APPMHP 2014 has provided that the decision-making on medical procedures does not depend on the status of the legal capacity of a person with mental impairments but on his/her actual mental capacity. Last but not the least, the FA 2015 has introduced a number of novelties in the area of guardianship with the aim to enhance the protection of adults.²⁸

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 last Concluding Observations of the CRPD Committee on the initial report of the Republic of Croatia (2015) can be highlighted as follows:

“The CRPD Committee is concerned that substituted decision-making has not been replaced by supported decision-making in law and in social practice, and that legislative amendments that are envisaged still consider the best interest of the person as opposed to his or her will and preferences, and would maintain a modified regime of substitute decision-making. (17)

²⁷ See 1.i).

²⁸ See 1.c).

The Committee recommends that the State party take legislative measures to abolish substitute decision-making regimes, in accordance with the Committee's general comment No. 1 (2014) on equal recognition before the law. It also recommends that the State party introduce legislation to provide a wide range of measures that respect the autonomy, will and preferences of persons with disabilities, including their rights to give and withdraw their individual informed consent for medical treatment, to access justice, to vote, to marry, to full parental rights and to work. It further recommends that the State party take tangible steps to introduce systems of supported decision-making and, to this end, train social workers, legal professionals and public authorities on the rights enshrined in the Convention. Organizations of persons with disabilities and other relevant stakeholders should be involved in these legislative and policy processes.(18)''²⁹

Since the reception of the Concluding Observations of the CRPD Committee, Croatia has adopted FA 2015, embracing some but not all of the recommendations.

A more recent evaluation of the current legal framework dates from 2020. It is the Alternative Report presented by the Coalition of Associations of Persons with Disabilities prior to the adoption by the CRPD.. Its part referring to Croatia includes the following assertion:

“The Republic of Croatia had made a big progress in giving voting right to all persons with intellectual impairment. The substituted decision-making has not been replaced by supported decision-making. Still it is not guaranteed the autonomy and preferences of persons with disabilities, including their rights to give and withdraw their individual informed consent for medical treatment, to access justice, to marry, to full parental rights and to work, and regarding their asset management. Representative organizations of persons with disabilities are not supported to give a mobile peer support system and they are not included in decision-making process.”³⁰

Despite Croatia's obligations accepted based on the CRPD and the latest Concluding Observations, some Croatian authors still advocate the idea of re-introducing the concept of full deprivation of legal capacity. For example, Majstorović and Šimović claim that the abolition of full deprivation of legal capacity is not an effective solution in terms of protecting the rights of persons with disabilities in some exceptional cases. They argue that the absence of deprivation of legal capacity of vulnerable adults who cannot protect their rights and interests (e.g. Alzheimer's disease, dementia or coma) is not a good solution. Therefore, they promote full deprivation of legal capacity in certain cases as the only reasonable way to protect vulnerable adults, believing that this does not imply

²⁹ Concluding observations on the initial report of Croatia, Adopted by the Committee at its thirteenth session (25 March–17 April 2015).

³⁰ The Alternative Report, p. 15.

violation of their human rights or dignity, but on the contrary, it represents the only effective way of protection of such people in exceptional cases.³¹

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

The most important goals of the National Strategy 2021-2027 relate to the expansion of the network of social services in the community and further improvement of the legislative framework for the purpose of improving the quality of life of persons with disability as well as of education of employees in the social welfare system. Unfortunately, in this strategic document, Croatia did not set the goal of completely abandoning the concept of limitation of legal capacity and the concept of guardianship, which encompasses substitute decision-making system.³²

Some authors strongly advocate compliance of the Croatian welfare system with the CRPD, abolition of the system of substitute decision-making and introduction of a system of supported decision-making. A new report of the CRPD Committee is expected as well as is determination of the Croatian government to meet the liabilities assumed through the CRPD. This means complete abandonment of the system of limitation of legal capacity and introduction of a system of supported decision-making.³³

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.

a. on what grounds?

The Croatian legal system allows limitation of the legal capacity of an adult. With the adoption of the new FA 2015, full limitation of the above legal capacity (i.e. deprivation of legal capacity) was abolished.

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

³¹ I. Majstorović and I. Šimović, 2017, p. 47.

³² https://narodne-novine.nn.hr/clanci/sluzbeni/2017_04_42_967.html (visited 09.08.2022.)

³³ Milas Klarić, I., 2012, pp. 75-85 and Tucak, I., and Rešetar, B., Autonomija osoba s duševnim smetnjama in Osobe s invaliditetom u umjetnosti, znanosti odgoju i obrazovanju, Zbornik radova s 1. Međunarodne umjetničke i znanstvene konferencije, Ileš, Tatjana ; Sabljar, Mrina (eds.), Osijek: Akademija za umjetnost i kulturu u Osijeku i Hrvatska akademija znanosti i umjetnosti., 2021., pp 906-931

The FA 2015 prescribes only partial limitation of legal capacity. Two principles prescribed by the FA 2015 are important for understanding the provision on the scope of the limitation of legal capacity: the principle of subsidiarity and the principle of proportionality. According to *the principle of subsidiarity*, the protection of vulnerable adults has to be ensured by other means, especially by social work-related measures and actions. The limitation of legal capacity is foreseen only when it is not possible to protect a vulnerable adult by other means.³⁴ Other measures and activities include social work services like counselling and assistance, psychosocial support, social work mentoring etc.³⁵ However, when it comes to people with mental incapacity to whom guardianship usually applies the problem in practice is the lack and underdevelopment of social services in the community.³⁶

According to *the principle of proportionality*, the limitation of legal capacity must be as restrictive as possible. In accordance with the principle of proportionality, guardianship must limit the rights of adults as less as possible.³⁷

The scope of the limitation of legal capacity is set out in the FA 2015. The court is supposed to limit of the legal capacity of an adult who, due to mental incapacity or other reasons, is unable to protect his or her rights, needs or interests, or who endangers the rights and interests of other persons whom he is obliged to take care of (e.g. childcare). The limitation of legal capacity refers only to the part in which the person is not able to protect his or her rights.³⁸

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

The limitation of legal capacity automatically affects only some of its aspects. For example, the limitation of legal capacity may refer to the management and disposal of property or decision-making on medical treatment or placement in an institution etc.

d. can the limited legal capacity be restored and on what grounds?

According to the FA 2015, limited legal capacity can be restored. The court can assess whether the scope of the limitation of legal capacity should be reduced or whether the limitation of legal capacity should be restored.³⁹ The FA 2015 stipulates that all decisions on full deprivation of legal capacity reached pursuant to the previous regulations shall be reviewed for the purpose of their restoration or

³⁴ Art. 233 para. 1 of the FA 2015.

³⁵ Art. 71 of the SWA 2022.

³⁶ Rešetar, B., Komentar Obiteljskog zakona (Commentary on the Family Act), Organizator d.o.o., Zagreb, 2022, pp 839-841.

³⁷ Art. 233 para. 2 of the FA 2015.

³⁸ Art. 233 para. 1 of the FA 2015.

³⁹ Art. 239 para. 1. of the FA 2015.

reduction. The deadline for the review of all decisions on full deprivation of legal capacity was 1 November 2020.⁴⁰

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

An adult protection measure (e.g. advance directive) does not automatically result in limitation of his/her legal capacity.

- f. are there any other legal instruments,⁴¹ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?**

There is no legal instrument like an adult protection measure, that can lead to limitation of his/her legal capacity. The limitation of legal capacity can only be ordered by a court decision.

9. Briefly describe the effects of a limitation of legal capacity on:

- a. property and financial matters;**
- b. family matters and personal rights (e.g. marriage, divorce, contraception);**
- c. medical matters;**
- d. donation and wills;**
- e. civil proceedings and administrative matters (e.g. applying for a passport);**

In general, a guardian makes decisions on behalf a ward in the part where the legal capacity of the latter is limited. However, depending on the type of a decision, some decisions are made by the ward independently, some decisions are made by the guardian with a prior approval of the competent social welfare center and some important health-related decisions are made by the court. The guardian is always obliged to respect the current or previously expressed will of the ward unless the ward's conflicts with his/her best interests.⁴² The FA 2015 sets forth the general obligation to encourage independent decision-making by the ward and to provide him/her with support in that process.⁴³

- a. property and financial matters;**

⁴⁰ Art. 557 of the FA 2015.

⁴¹ 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

⁴² Art. 233 para. 3 of the FA 2015.

⁴³ Art. 233 para. 4 of the FA 2015.

Property-related actions which shall not be undertaken by the ward independently involve the disposal and management of property, salary or other permanent monetary income.⁴⁴ The court determines the amount of salary that the ward is not allowed to dispose of independently.⁴⁵ The ward can enter into contracts in relation to his property, but the validity of those contracts requires consent of his/her guardian.⁴⁶ In terms of extraordinary property management and representation of a ward in property matters, the guardian needs a prior approval of the competent social welfare centre.⁴⁷ A guardian needs a prior approval of the competent social welfare centre for the following types of extraordinary property management: alienation or encumbrance of real estate, alienation of movable property of greater value, disposition of the ward's property rights.⁴⁸ This provision is interpreted in accordance with the rules of other laws (Property Act, Companies Act etc.)⁴⁹

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

Regardless of the limitation of his/her legal capacity, the ward always makes the following decisions exclusively by himself/herself: recognition of paternity, consent to marry, consent to divorce, consent to register a partnership, consent to adoption, decision on abortion and decision to participate in biomedical research.⁵⁰

Regarding marriage and partnership, it is important to explain the difference between expressing consent and making decision to marry or register a partnership. Marriage shall not legally take place without consent of the woman and the man, which they give personally and orally to the official in front of whom they are getting married. However, in order to enter into marriage, an adult with limited legal capacity in the area of his/her personal matters shall obtain consent or approval of the guardian or the court.⁵¹

c. medical matters;

For decisions on important medical matters affecting the ward, the guardian needs a prior approval of the competent social welfare centre.⁵² Decisions on invasive medical procedures and those that go beyond specialist examinations and administration of regular therapy are considered more important medical

⁴⁴ Art. 234 para 6 of the FA 2015.

⁴⁵ Art. 234 of the FA 2015.

⁴⁶ Art. 276 of the Civil Obligation Act (Official Gazette no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21).

⁴⁷ Art. 259 para. 4 of the FA 2015.

⁴⁸ Art. 261 para. 2 of the FA 2015.

⁴⁹ Rešetar, B., *Komentar Obiteljskog zakona 2015* (Commentary on the Family Act 2015), Organizator d.o.o., Zagreb, 2022, pp.

⁵⁰ Art. 258 of the FA 2015.

⁵¹ Art. 26 of the FA 2015.

⁵² Art. 259 para. 1 of the FA 2015.

matters.⁵³ However, certain decisions can only be made by the ward and if he or she is mentally incapable, then the court shall make them.

Hence, decisions on medical matters are divided into:

- decisions made independently by the ward (abortion and consent to participate in biomedical research,⁵⁴
- decisions made by the guardian (preventive and diagnostic medical matters and regular therapy);
- decisions made by the guardian with a prior approval of the competent social welfare centre (invasive medical procedures, procedures that go beyond specialist examinations and regular therapies,⁵⁵ and
- decisions made by the court (sterilization, tissue and organ donation by the ward and life support measures.⁵⁶

d. donation and wills;

Concerning a valid testamentary disposition, it is not important whether a person has legal capacity or not. What matters here is his/her mental capacity at the time of making a will. There is legal presumption of the person's mental capacity considering that the testator has mental capacity at the time of making a will.⁵⁷

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

In family proceedings, the court allows certain actions to be undertaken by the ward if he/she is able to understand the meaning and legal consequences of the process and those actions. Before issuing a decision on the recognition of the procedural capacity to undertake procedural actions, the court is obliged to request the opinion of the competent social welfare centre thereabout.⁵⁸

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

The limitation of legal capacity does not have retroactive effect.

⁵³ Art. 259 of the FA 2015.

⁵⁴ Art. 258 of the FA 2015.

⁵⁵ Art. 259 para 3 of the FA 2015.

⁵⁶ Art 260 of the FA 2015.

⁵⁷ Art. 26 para 2 of the Inheritance Act (Official Gazette no. 48/03, 163/03, 35/05, 127/13, 33/15, 14/19).

⁵⁸ Art. 364 of the FA 2015.

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

The court is in charge of deciding on the limitation or restoration of legal capacity.

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

Both proceedings can be initiated by the court ex officio, the competent social welfare centre, the spouse or blood relatives of the ward, his/her guardian and the ward himself/herself.⁵⁹

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

The court represents the competent authority for handling the limitation or restoration of legal capacity. It deals therewith in a non-litigious civil procedure regulated by the respective procedural norms of the FA 2015.⁶⁰

a. a requirement of legal representation of the adult;

According to the FA 2015, the special guardian represents every adult in the procedure for the limitation of legal capacity. Since 2015, Croatia has established the Centre for Special Guardianship as an independent institution where special guardians work. Their duty is to represent adults before the court in legal capacity limitation proceedings.⁶¹ However, if an adult has appointed a person who will represent him/her in case of his/her incapacity, that person will represent him/her in legal capacity limitation proceedings.⁶²

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

⁵⁹ Art. 496 and 502 of the FA 2015.

⁶⁰ Art. 496-503 of the FA 2015.

⁶¹ Art. 241 para.1 and Art. 498 para.1 of the FA 2015.

⁶² Art. 236 para. 6 of the FA 2015.

The FA 2015 does not envisage an explicit provision which would regulate the duty of participation of family members or CSOs in court proceedings on limiting the legal capacity of an adult. However, according to general procedural rules, the court can use all appropriate means of evidence to determine the factual situation including hearing of family members or other persons.⁶³

c. requirement of a specific medical expertise / statement;

The court has a legal obligation to request the opinion of a medical expert. That medical expert is obliged to personally and directly examine the adult concerned and prepare a written report and opinion for the court.⁶⁴ The expertise must refer to the health status of the adult and the impact of that condition on his/her ability to protect his/her individual right or group of rights, or on the rights and interests of other persons.⁶⁵

d. hearing of the adult by the competent authority;

The court is obliged to hear the adult. If the adult is in a psychiatric institution, a social welfare institution or in prison, the court shall hear the adult in that institution.⁶⁶ If the court holds that hearing of the adult is not possible due to his/her medical condition and mental incapacity, it shall make a note in the file and state the reasons for such.⁶⁷

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

The court delivers the decision on limiting legal capacity to the person who initiated the proceedings, the person whose legal capacity is thus limited, the special guardian and the social welfare centre. All the mentioned persons have the right to file an appeal against the decision, including the adult whose legal capacity is limited thereby.⁶⁸

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

- a. property and financial matters;**
- b. family matters and personal rights (e.g. marriage, divorce, contraception);**
- c. medical matters;**

⁶³ Art. 440 para. 1 of the FA 2015.

⁶⁴ Art. 499 para. 1 of the FA 2015.

⁶⁵ Art. 234 para. 3 of the FA 2015.

⁶⁶ Art. 496 para. 3 of the FA 2015.

⁶⁷ Art. 498 para. 4 of the FA 2015.

⁶⁸ Art. 501 para. 1 of the FA 2015.

- d. donations and wills;**
- e. civil proceedings and administrative matters (e.g. applying for a passport).**

The FA 2015 does not include a general rule which would deal with mental capacity in respect of certain matters.

However, the Croatian legal system does dispose of few regulations and provisions referring to mental capacity and not just to the legal capacity of an adult.

Among the above listed matters, family matters regarding recognition of paternity and consent to adoption have the closest connection to mental capacity.⁶⁹

In relation to medical procedures for people with mental impairments, they are based on the adult's actual mental capacity and not on his/her legal capacity.⁷⁰ Concerning donation and wills, the capacity to make a will is also assessed based on the person's actual mental capacity and not on his/her legal capacity.⁷¹

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?

In practice, limited legal capacity is very often imposed on adults, just to place them under institutional care against their will. The guardian has authority to consent to the placement of an adult in an institutional facility with an approval of the competent social welfare centre.⁷² Thousands of adults in Croatia live in institutional facilities against their will. In practice, social welfare services do not apply the principle of subsidiarity and do not take other measures to help and support adults before initiating proceedings relating to their legal capacity. In practice, there is still an attitude that it is better to provide a person with guardianship than to leave him/her without such protection.⁷³

One of the goals of the National Strategy for Equalization of Opportunities for Persons with Disabilities 2021-2027 is introduction of a supported decision-making system and abandonment of the concept of the limitation of legal capacity.⁷⁴ As this goal is not accomplished, the Ombudsman for Persons with Disabilities has proposed the same goal for the new National Strategy (2021-2027). Unfortunately, the National Strategy 2021-2027 encompasses neither the

⁶⁹ Art. 63 para. 1 and 188 para. 2 of the FA 2015.

⁷⁰ Art. 3 para 1 item13 APPMD

⁷¹ Art. 26 para 2 of the Inheritance Act.

⁷² Art. 259 para. 2 of the FA 2015.

⁷³ Report of the Croatian ombudsman for persons with disabilities for 2020, p. 58. <https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>

⁷⁴ National strategy for equalizing opportunities for people with disabilities for the period from 2017 to 2020 (Official Gazette no. 42/17, hereinafter National strategy 2017-2020).

goal of complete abandonment of the concept of the limitation of legal capacity nor the goal of introduction of a supported decision-making system.⁷⁵

SECTION III – STATE-ORDERED MEASURES

Overview

- 16. What state-ordered measures exist in your jurisdiction? Give a brief definition of each measure. Pay attention to:**
- a. can different types of state-ordered measures be applied simultaneously to the same adult?**
 - 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?**

In this context, there is only one state-ordered measure in Croatia. That is guardianship [skrbništvo]. There are no other types of state-ordered measures.

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.**

Guardianship is a form of protection of an adult whose legal capacity is limited.⁷⁶ Guardianship ensures protection of the rights and interests specified by a court's decision on the limitation of legal capacity.⁷⁷ Guardians' protection of adults must be proportionate to the need to protect them, which shall be accompanied with respect for human rights and the best interests of adults under guardianship.⁷⁸ Accordingly, the legal grounds for ordering guardianship are set by a court's decision on the limitation of legal capacity of an adult.

- 18. Which authority is competent to order the measure?**

Social welfare centres are in charge of ordering guardianship.⁷⁹

⁷⁵ See 1.j).

⁷⁶ Art. 218 of the FA 2015.

⁷⁷ Art. 219 para. 2 of the FA 2015.

⁷⁸ Art. 8 of the FA 2015.

⁷⁹ Art. 222 of the FA 2015.

19. Who is entitled to apply for the measure?

After the issue of a decision on the limitation of legal capacity, the court delivers the decision to the competent social welfare centre which is obliged to provide the adult with limited legal capacity with a guardian within 30 days after the decision has become effective.⁸⁰ The guardianship measure is applied for *ex offio* by the social welfare centre after the court's decision on the limitation of legal capacity has been received. Therefore, no one is entitled to apply for the measure.

However, court proceedings on the limitation of legal capacity of the ward can be initiated by the court *ex offio*, the competent social welfare centre, the spouse, blood relatives of the ward, the guardian and the ward himself/herself.⁸¹

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?

Social welfare centres are obliged to introduce the adult to the person they intend to appoint as a guardian and ask for his/her opinion about that person.⁸² The consent of the adult is not strictly required. The duty of the competent social welfare centre to hear the views of the ward is derived from the principle of respecting the wishes of the ward.⁸³

When deciding on guardianship, the will of the adult, previously expressed in the advance directive, plays a significant role.⁸⁴ Likewise, the currently expressed will and opinion of the ward about the guardian shall always take precedence if the ward is able to understand the meaning of guardianship and the role of the guardian in his/her future life. Whether the ward has the capacity to understand the meaning of guardianship and the role of the guardian depends on his/her mental capacity.

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.**

⁸⁰ Art. 237 of the FA 2015.

⁸¹ Art. 496 and 502 of the FA 2015.

⁸² Art. 247 para. 9 of the FA.

⁸³ Art. 233 para. 3 – 5 of the FA 2015.

⁸⁴ Art. 247 para. 6 of the 2015.

The procedure for nominating a guardian i differs from the procedure for limiting the legal capacity of the ward . However, these two procedures are functionally related. First, the court conducts the procedure for assessing the adult’s legal capacity and then the social welfare centre nominates a guardian. The procedure for providing the adult with protection is generally initiated by the competent social welfare centre based on its direct knowledge or on the notification of the entities who have a legal duty to inform the social welfare centre about the vulnerable adult:

1. registrar, court, other public bodies,
2. child, spouse, relatives and other family members,
3. other social welfare institutions,
4. health institutions and family doctor.⁸⁵

Most of the questions asked here (question 21) refer to the procedure for limiting legal capacity. However, some questions can be answered in the context of guardianship.

a. a requirement of legal representation of the adult;

In order for an adult to be provided with a guardian, his/ her legal capacity must be limited by a court order.

b. availability of legal aid;

In general, legal aid is provided in all types of proceedings, including in the process of appointing a guardian. However, legal aid is not common in proceedings conducted by social welfare centres.

c. participation of family members and/or of vulnerable adults’ organisations or other CSO’s;

Family members of vulnerable adults, vulnerable adults' organizations or other CSOs can participate in the said procedure. However, the procedure is in principle attended by an adult’s family member.

d. requirement of a specific medical expertise / statement;

A specific medical expertise or statement is not required when social welfare centres appoint a guardian. However, a specific medical expertise is mandatory in court proceedings.

e. hearing of the adult by the competent authority;

⁸⁵ Art. 273 of the FA 2015.

The adult shall be heard when the social welfare centre decides on his/her guardian.

f. the possibility for the adult to appeal the order.

The adult has a right to appeal against the order of the social welfare centre on the appointment of a guardian.⁸⁶

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

Decisions on guardianship are *ex officio* submitted to and entered in the registry of births and the land register if the adult owns real estate.⁸⁷

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?**

Only a natural person can be appointed as a guardian.

⁸⁶ Art. 278 paragraph 1 of the FA 2015.

⁸⁷ Art. 251 of the FA 2015.

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

A guardian cannot be a person:

- deprived of parental responsibility,
- with limited legal capacity,
- whose interests are in conflict with the interests of his/her ward,
- who, given her behaviour, characteristics and relations with his/her ward, cannot be expected to properly perform the duties of a guardian,
- with whom his/her ward has concluded a lifelong support contract and
- whose spouse, registered or de facto adult partner has entered into a lifelong support contract with his/her ward.⁸⁸

b. to what extent are the preferences of the adult and/or the spouse/partner/family members taken into consideration in the decision?

Pursuant to the principle of respecting the wishes and personal views of vulnerable adults, social welfare centres have a duty to take into consideration their opinion about the person they intend to appoint as a guardian.⁸⁹ Accordingly, the previously expressed will of the adult plays a significant role.⁹⁰ The law does not explicitly regulate the duty to take into account the preferences of spouses, partners or other family members.

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?

The issue of a preferred representative bears certain relevance only when it comes to the guardianship of an adult child. Thus, his/her parents always have priority over other candidates for the guardian.⁹¹

d. what are the safeguards as to conflicts of interests at the time of appointment?

⁸⁸ Art. 248 of the FA 2015.

⁸⁹ Art. 233 para. 3 – 5 of the FA 2015.

⁹⁰ Art. 247 para. 6 of the FA 2015.

⁹¹ Art. 247 para 2 of the FA 2015.

The law generally stipulates that the guardian cannot be a person whose interests are in conflict with the interests of the adult. The competent social welfare centre screens the person it intends to appoint as a guardian. The only formal obstacle refers to lifelong support contracts concluded between the adult and his/her potential guardian.⁹²

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

Several persons can be appointed as guardians either simultaneously or as substitutes.⁹³

f. is a person obliged to accept appointment as representative/support person?

If the person appointed as a guardian is a social worker employed in a social welfare centre, he/she shall ex officio accept such appointment.⁹⁴ Otherwise, the person nominated for a guardian is not obliged to accept such appointment.⁹⁵ As guardianship is a voluntary concept, the dismissal of a guardian at his/her request is obligatory.⁹⁶ The competent social welfare centre shall dismiss a guardian if the relations between him/her and his/her ward are unsatisfactory, so it would be in the interest of the ward to appoint another guardian.⁹⁷

During the measure

Legal effects of the measure

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

⁹² Art. 248 of the FA 2015.

⁹³ Art. 247 para. 3-4 of the FA 2015.

⁹⁴ Art. 247 para. 7 of the FA 2015.

⁹⁵ Art. 247 para. 1 of the FA 2015.

⁹⁶ Art. 267 para. 3 of the FA 2015.

⁹⁷ Art. 267 para. 1 of the FA 2015.

Guardians represent their wards in matters affected by the wards' limited legal capacity.⁹⁸

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;**

Depending on a guardian's tasks, his/her legal duties are as follows: 1) protection of his/her ward's personal rights, 2) provision of funds for his/her ward, 3) management of his/her ward's property, 4) legal representation of his/her ward and 5) submission of his/her work reports to the competent social welfare centre. In some cases, guardians do not perform all of the above duties, either because they are not necessary (e.g. the ward has no assets) or because they are supposed to deal only with certain tasks (e.g. only in the part related to the protection of the ward's health).⁹⁹

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

During the representation of their wards, guardians are obliged to accept their opinion and wishes unless such requests are in conflict with the best interest of the ward.¹⁰⁰ This means that the law prescribes both criteria for decision-making: best interests of the adult and his/her preferences. Of course, there are some questions in this light: how guardians evaluate what is in the best interest of their wards or whether their wards have the right to make a wrong decision as adults with legal capacity.

- 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?**

Guardians are bound to submit a report on their work every six months to the competent social welfare centre.¹⁰¹ Depending on their tasks, guardians shall

⁹⁸ Art. 257 para. 1 of the FA 2015.

⁹⁹ Bakarić, A. (1989) according to Rešetar, B., *Komentar Obiteljskog zakona 2015* (Commentary on the Family Act 2015), Organizator d.o.o., Zagreb, 2022, pp. 921-922.

¹⁰⁰ Art. 257 para. 2 of the FA 2015.

¹⁰¹ Art. 262 para.1 of the FA 2015.

include the following elements in their report: how they take care of their wards, their wards' health, protection of their wards' rights and well-being, information on measures for providing their wards with the possibility of independent living, information on the management and disposal of their wards' property, income and expenses and other data relevant to their wards.¹⁰²

Guardians have no legal obligation to inform, consult, account and report to anyone except to the competent social welfare centre.

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

Guardians are particularly expected to obtain an opinion from their wards' doctor about the status of their health once a year.¹⁰³ They are not obliged to live with their wards though. Visiting their wards and providing them with care are understood as guardians' regular duties.

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

A guardian who is employed in a social welfare centre has the right to a monthly remuneration depending on the volume of his/her work and efforts in protecting the rights and well-being of his/her ward. The remuneration is paid from the state budget. Other persons appointed as guardians (e.g. family members) are not entitled to such remuneration.¹⁰⁴

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?

In this sense, the only measure envisaged by Croatian law is guardianship

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)?

¹⁰² Art. 262 para. 4 of the FA 2015.

¹⁰³ Art. 238 of the FA 2015.

¹⁰⁴ Art. 263 of the FA 2015.

The law prescribes only one provision on the distribution of authority between several guardians. The competent social welfare centre can appoint more than one guardian to a ward and decide whether decisions aimed at undertaking specific actions or procedures shall be made jointly or by each guardian independently.¹⁰⁵

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

a. what competent authority is responsible for the supervision?

Social welfare centres are responsible for the supervision of guardianship. Furthermore, the Ministry of Labour and Pension System, Family and Social Policy supervises the work of social welfare centres.

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

Social welfare centres have a duty to catalogue and describe the property of wards as well as to keep a record of guardianship in land registers if the wards have restrictions in the disposal of their property.¹⁰⁶

Social welfare centres are bound to monitor wards' living conditions. As the supervisors of guardians' work, social workers are assigned to visit the wards at least four times a year or when requested by the wards or guardians.¹⁰⁷

Social welfare centres monitor guardians' work and provide them with assistance.¹⁰⁸ They are also obliged to review the need for guardianship in every case every three years.¹⁰⁹

The ward, his/her spouse, relatives, court, public bodies, health and educational institutions, associations dealing with the protection of persons with disabilities, service providers in the social welfare system and the Ombudsman for Persons with Disabilities can all submit a complaint about the guardian's work to the competent social welfare centre.¹¹⁰ On the other hand, all those persons can submit a complaint about the services of social welfare centres to the ministry responsible for social affairs.¹¹¹

¹⁰⁵ Art. 247 para. 3 of the FA 2015.

¹⁰⁶ Art. 274 of the FA 2015.

¹⁰⁷ Art. 277 para 1 of the FA 2015.

¹⁰⁸ Art. 277 para. 3 of the FA 2015.

¹⁰⁹ Art. 238 para. 3 of the FA 2015.

¹¹⁰ Art. 279 para. 1 of the FA 2015.

¹¹¹ Art. 279 para 3 of the FA 2015.

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

In the event of a guardian's malfunctioning, the competent social welfare centre shall dismiss him/her by means of a decision.¹¹² Besides, social welfare centres can initiate criminal proceedings in case of the abuse of a ward's trust, but they can as well take measures in relation to the guardian's employment and initiate disciplinary proceedings depending on the circumstances of an individual case.¹¹³

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

In case a guardian does not meet his/her financial liability, the competent social welfare centre shall initiate the following procedures:

- assesses the amount of damage, invites the guardian to settle the damage and takes measures to secure the ward's claim on the guardian's property, and
- files a lawsuit against the guardian for the damage unless the guardian voluntarily settles it.¹¹⁴

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.

Regardless of the fact that a ward is provided with a guardian, he/she can handle his/her property-related matters enter into appertaining contracts. However, the validity of contract requires consent of the guardian.¹¹⁵ Additional protection of the proprietary rights of the ward is achieved through the activities of the competent social welfare centre, such as inspection of property, property insurance, prior approvals for the management and disposal of property, inspection of guardian's reports.¹¹⁶

According to the general rules of contract law, a contracting party who did not know about the ward's limited legal capacity, can terminate the contract if the

¹¹² Art 267 of the FA 2015.

¹¹³ Art. 240 of the Criminal Act. Rešetar, B., Komentar Obiteljskog zakona 2015 (Commentary on the Family Act 2015), Organizator d.o.o., Zagreb, 2022, p. 970.

¹¹⁴ Art. 265 para 2- 3 of the 2015.

¹¹⁵ Art. 276 of the Obligation Act.

¹¹⁶ Articles 253, 254, 259 para. 1, 261, 262 of the FA 2015.

guardian's consent thereto has not been granted.¹¹⁷ Who is financially responsible for the damage caused by the ward and suffered by contracting parties is not regulated. However, the guardian is generally responsible for the damage caused by his/her ward.

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;**

A ward can enter into a contract with his guardian's previous or subsequent approval.¹¹⁸ In terms of extraordinary property management and representation of a ward in property matters, the guardian needs a prior approval of the competent social welfare centre.¹¹⁹ A guardian needs a prior approval of the competent social welfare centre for the following types of extraordinary property management: alienation or encumbrance of real estate, alienation of movable property of greater value, disposition of the ward's property rights.¹²⁰ In order to enter into marriage, a ward must obtain a consent or approval of his/her guardian or the court.¹²¹ A guardian shall have authority to consent to the placement of his/her ward in an institutional facility if such a decision is accompanied with an approval of the competent social welfare centre.¹²²

- 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;
d. conflicts of interests

(b-d) The law does not prescribe special protective measures in the event of unauthorized or ill-conceived acts of wards and their guardians. The same applies to a possible conflict of interests. In such cases, general rules on contract invalidity or general rules on damage compensation apply.

End of the measure

¹¹⁷ Art. 276 of the Obligation Act.

¹¹⁸ Art. 276 of the COA 2005.

¹¹⁹ Art. 259 para. 4 of the FA 2015.

¹²⁰ Art. 261 para. 2 of the FA 2015.

¹²¹ Art. 26 of the FA 2015.

¹²² Art. 259 para. 2 of the FA 2015.

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

Guardianship ends when the circumstances that led to the appointment of an adult guardian cease.¹²³ Guardianship is terminated based on a decision on the restoration of legal capacity.¹²⁴

Court proceedings for the restoration of legal capacity of a vulnerable adult can be initiated by: the court ex offio, the competent social welfare centre, the spouse and blood relatives of the adult, his/her guardian and the adult himself/herself.¹²⁵ If it rejects the proposal for the restoration of legal capacity of a vulnerable adult, the court may decide that before the expiration of a certain period which cannot be longer than one year, the restoration of his/her legal capacity cannot be petitioned again. Such a decision is possible when based on proceedings, it can be concluded that improvement of the adult's mental capacity cannot be expected in a shorter period of time.¹²⁶ A guardian shall submit a report on his/her work and the condition of his/her ward's property as well as hand over the property to the ward. Such handover shall be attended by the guardian, ward and competent social welfare centre.¹²⁷ Decisions on the restoration of legal capacity of a vulnerable adult, i.e. on the termination of guardianship, have an affect on the adult's status. Therefore, such a decision has to be submitted to the registry of births and land register, depending on circumstances.

The provisions on the judicial proceedings for deprivation and restoration of legal capacity regulate the court proceedings for the restoration of legal capacity.

Reflection

30. Provide statistical data if available.

Restoration of guardianship ¹²⁸					
2015	2016	2017	2018	2019	2020
53	68	91	135	191	203

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?

¹²³ Art. 223 of the FA 2015.

¹²⁴ Art. 239 of the FA 2015.

¹²⁵ Art. 496, 502 of the 2015.

¹²⁶ Art. 503 of the FA 2015.

¹²⁷ Art. 269 of the FA 2015.

¹²⁸ <https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165> (visited 20.08.2022.).

Making a decision on the limitation of legal capacity of a vulnerable adult and thus on the appointment of his/her guardian shall be conducted according to strict procedural rules. Otherwise, it comes to violation of the adult's right to personal life. In one of its cases, the Constitutional Court found the proceedings aimed at limiting legal capacity unconstitutional due to the action of an expert.

“Limitation of adult legal capacity, even partially, is an extremely serious measure that should be reserved only for exceptional circumstances. Limiting an adult of legal capacity represents state interference in the personal life of an adult. Namely, without legal capacity, an adult cannot independently and voluntarily manage his or her life, therefore it should be borne in mind that legal capacity represents the right to life in the full sense. However, in this case, the court decided to limit adult of legal capacity only based on the findings and opinion of the expert, which was based only on the medical documentation of the psychiatric clinic. The expert's duty was to personally and directly examine the adult and, based on such an examination, create a written report and opinion. Such behaviour led to the violation of the adult's right to personal life”¹²⁹.

A vulnerable adult shall participate in a process in which his/her legal capacity is decided upon. A failure of the court to directly and personally deliver a decision on limiting legal capacity to an adult represents violation of his/her right to a fair trial.¹³⁰

One of the practical problems in this sense relates to statistical data. According to the aforementioned Alternative Report, the system does not allow gathering information about persons with disabilities in a proper manner. The bodies responsible for the collection of information on persons with disabilities need to improve and adjust their method of collection. There is a mismatch of data on persons with disabilities across multiple systems. Moreover, there is no exchange of information on persons with disabilities among various systems. The undertaken measures and activities are not satisfactory because it is difficult to follow trends regarding persons with disabilities based on current data. It is also very hard to draw up adequate plans and enforce appropriate measures and strategies. Improving the digital accessibility of existing statistical content on persons with disabilities is a must too.¹³¹

SECTION IV – VOLUNTARY MEASURES

The Croatian legal system recognizes two types of voluntary measures regarding a vulnerable adult's possible future matters. One of them revolves around appointment of self-chosen representatives or support persons and the

¹²⁹ The Constitutional Court, U-III-1239/2020, 2.12.2020.

¹³⁰ The Constitutional Court, U-III-4536/2012, 14.1.2016.

¹³¹ The Alternative Report, p. 25-26.

other one around advance directives [anticipirane naredbe]. In Croatia, two acts envisage voluntary measures (the FA 2015 and APPMHP 2014).

Overview

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

- a) An adult can appoint a person to represent him in proceedings initiated with the aim to limit his/her legal capacity. In such a case, the competent social welfare centre is obliged to respect the previously expressed will of the adult and appoint the chosen person as his/her guardian in court proceedings.¹³²

An adult can name a person who is to be appointed as his/her guardian if his/her legal capacity is limited. In such a case, the competent social welfare centre is obliged to respect the previously expressed will of the adult and appoint the chosen person as his/her guardian.¹³³

An adult can authorize another person who can give or withhold consent to certain medical procedures affecting the former (admission, detention and placement in a psychiatric institution and diagnostic procedure and treatment of a person with mental disorders) as his/her person of trust.¹³⁴

- b) A capable adult can give instructions concerning issues that may arise in the event of his/her incapacity. Advance directives can refer to: sterilization, tissue and organ donation and life support measures.¹³⁵

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

a. the existence of specific provisions regulating voluntary measures;

In case an adult appoints a person to represent him/her in certain matters (special guardian, guardian or person of trust), the FA 2015 and APPMHP 2014 are the acts to be applied. The legal nature of such appointment is a power of attorney. If an adult expresses his/her will regarding medical treatment, the FA 2015 shall apply. A unilateral act or order represents the legal nature of such a statement.

¹³² Art. 236 para. 6 of the FA 2015.

¹³³ Art. 247 para. 5 of the FA 2015.

¹³⁴ Art. 3 para. 1 item 4. and Art. 68 of the APPMD 2014.

¹³⁵ Art. 260 of the FA 2015.

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

In general, there is always 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 first case sheds light on the appointment of a person who is to represent an adult with limited legal capacity. The second case revolves around the obligation to respect the will of an adult in connection with certain medical treatment.

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)?

- a. The appointment of a guardian under the FA 2015 refers to decisions involving persons without legal capacity. Such decisions can touch upon any area of a vulnerable adult's life, property management, family matters, medical matters and others. More precisely, the FA 2015 guardianship-related provisions apply.¹³⁶

The appointment of a support person according to the APPMHP 2014 refers to giving or withholding consent to certain medical procedures (admission, detention and placement in a psychiatric institution and diagnostic procedure and treatment of a person with mental disorders).

- b. Advance directives can refer only to medical matters: sterilization, tissue and organ donation and life support measures.

Start of the measure

¹³⁶ See above the Legal effects of the guardianship.

Legal grounds and procedure

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

Any adult with full legal capacity has the capacity to grant a voluntary measure.

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.

With respect to the adoption of any type of a voluntary measure, the law (the FA 2015 and APPMHP 2014) requires participation of a public notary. Every voluntary measure shall be in the form of a notarial deed.

The Ordinance on Guardianship-Related Affairs and Advance Directives¹³⁷ prescribes the content of voluntary measures. Such a voluntary measure shall contain:

1. information about the adult giving the directive;
2. a statement in which a potential guardian is nominated by the adult concerned,
3. consent of the person appointed as a guardian,
4. a statement describing medical procedures and measures tob undergone by the adult concerned
5. information about the appointed person.¹³⁸

Voluntary measures shall represent an adult's own decision.

Furthermore, they shall not result from persuasion of another person, his/her blackmail, threat or request for any form of monetary or other material compensation.

At the time of making such a statement, the adult must have legal capacity, be informed about the legal consequences of the respective voluntary measure and about the possibility of revoking it. Pursuant to the rules of civil law, everything that applies to the validity of legal action or transaction also applies to voluntary measures. A public notary is obliged to submit a copy of a voluntary measure as well as all of its amendments or revocations to the competent social welfare centre and enter it into the Registry of Voluntary Measures, which is electronically kept by the Croatian Notaries Chamber.¹³⁹

¹³⁷ The Ordinance on Guardianship-Related Affairs and Advance Directives (Official Gazette no. 19/21, hereinafter OGAD).

¹³⁸ Art. 27 of the OGAD

¹³⁹ Art. 28 para. 2-3 of the OGAD.

38. Describe when and how voluntary measures enter into force. Please consider:

- a. the circumstances under which voluntary measures enter into force;**
- b. which formalities are required for the measure to enter into force (medical declaration of diminished capacity, court decision, administrative decision, etc.)?**

(a. and b.) In compliance with the FA 2015, a voluntary measure shall be legally valid if all the relevant legal requirements are met. Those legal requirements include the content and form of a voluntary measure, the person who opts for it and the nominated guardian or support person.

The guardian's duty to represent a vulnerable adult according to the FA 2015 commences with the effectiveness of the decision of the competent social welfare centre which elects a person according to the adult's wishes.

The support person's duty to represent an adult according to APPMHP 2014 begins with the need for psychiatric treatment of the latter, assessed by the adult's attending physician.

The advance directives defined by the FA 2015 become relevant when the adult's attending physician communicates the need for his/her medical treatment.

- c. who is entitled to initiate the measure entering into force?**

Depending on the circumstances, the competent social welfare centre, court, attending doctor, family members and the adult in question are all entitled to initiate the voluntary measure entering into force.

- d. is it necessary to register, give publicity or to any other kind of notice of the entry into force of the measure?**

The rules on the Registry of Voluntary Measures sets forth the obligation to keep a record of all voluntary measures. Public notaries, courts and social welfare centres have a duty to inform each other on all changes related to voluntary measures as well as adults affected thereby and their representatives or support persons.¹⁴⁰

Appointment of representatives/support persons

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

¹⁴⁰ Art. 4. of the OGAD.

- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the grantor, etc.)?**
- b. what are the safeguards as to conflicts of interests?**
- c. can several persons be appointed (simultaneously or as substitutes) as representative/support person within the framework of one single measure?**

The guardianship also apply to representatives/support persons.

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

Only a natural person can be appointed as a guardian. The guardian cannot be a person:

- deprived of parental responsibility,
- with limited legal capacity,
- whose interests are in conflict with the interests of his/her ward, who, given her
- behaviour, characteristics and relations with his/her ward, cannot be expected to properly perform the duties of a guardian,
- with whom his/her ward has concluded a lifelong support contract and
- whose spouse, registered or de facto adult partner has entered into a lifelong support contract with his/her ward who is deprived of parental responsibility.¹⁴¹

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

There are no safeguards in case of a conflict of interests. The only safeguard in this light is the supervision of the competent social welfare centre over the representatives or support persons playing the role of a guardian.

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

According to the general rules on guardianship, several persons can be appointed (simultaneously or as substitutes) as representative/support person within the framework of a single measure.¹⁴²

¹⁴¹ Art. 248 of the FA 2015.

¹⁴² See above question 22. Appointment of representatives/support persons.

During the measure

Legal effects of the measure

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

Voluntary measures and the wishes expressed within their framework are legally binding according to the general rules of civil law, relating to the legality of legal action. The rules that apply to the legality of legal action or transaction apply to voluntary measures as well.

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

Voluntary measures do not affect the legal capacity of the grantor. The only body that can decide on his/her legal capacity is the court.

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

(a – d) Everything affecting the powers and duties of a guardian affects the powers and duties of a representative/support person. The only difference is that the representative/support person does not have the right to receive remuneration.¹⁴³

¹⁴³ See above question 25. Powers and duties of the representatives/support person.

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)?**

a) – b) the law does not clearly stipulate how multiple representatives/support persons interact. In this case, the provision relating to multiple guardians may apply.¹⁴⁴

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?**

a)-b) The law does not govern the interaction between different measures (guardianship, support persons or advance directives). However, there is a provision stipulating that advance directives take precedence over the decisions of a guardian.¹⁴⁵

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**

¹⁴⁴ See above the question 26.

¹⁴⁵ Art. 72 para. 1 of the APPD.

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

The law does not specifically envisage safeguards and supervision related to voluntary measures. In this case, the provisions relating to the safeguards and supervision of guardians may apply.¹⁴⁶

46. Describe the system of supervision, if any, of voluntary measures. Specify the legal sources. Please specify:

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

The law does not specifically denote a system of supervision related to voluntary measures. In this case, the provisions relating to the safeguards and supervision of guardians may apply.¹⁴⁷

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.

According to the FA 2015, the duty of a representative of a vulnerable adult to act as his/her guardian ends when the court makes a decision on restoring his/her legal capacity.¹⁴⁸

The duty of a person supporting a vulnerable adult appointed for the sake of his/her psychiatric treatment according to the APPMHP 2014 ends when the need for the psychiatric treatment ceases.

Advance directives issued according to the FA 2015 shall no longer be effective if it comes to the sterilization, organ donation or death of the adult concerned.

In any case, all voluntary measures cease to exist if they are revoked. A vulnerable adult or his/her representative or support person can revoke this kind

¹⁴⁶ See above the question 27. Safeguards and supervision.

¹⁴⁷ See above the questions 27. and 28. Safeguards and supervision.

¹⁴⁸ Art. 223 of the FA 2015.

of a measure in the office of any notary public who is then obliged to inform the other party and the public notary who notarized the voluntary measure in the first place.¹⁴⁹

The rules on the Register of Voluntary Measures set out the obligation to record all voluntary measures as well as their revocation. Notaries, courts and social welfare centres are bound to inform each other about all changes related to voluntary measures. The aforementioned bodies are also obliged to inform vulnerable adults and their representatives or support persons about the revocation of voluntary measures affecting them.¹⁵⁰

Reflection

48. Provide statistical data if available.

In 2019, only 15 out of 5,489 special guardians and 12 out of 7,123 guardians were appointed on the ground of a voluntary measure in the Republic of Croatia. In 2020, the number of voluntary measures increased and thus 126 special guardians and 27 guardians were appointed based on the previously expressed will of an adult. However, the total number of guardians (7,336) and special guardians (10,768) appointed by social welfare centre grew considerably in 2020 and is disproportionately higher compared to the guardians appointed on the basis of a voluntary measure.¹⁵¹

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 measure been evaluated, if so what are the outcomes?

Voluntary measures in the Republic of Croatia are not sufficiently promoted in the public, so they are unknown to the majority of citizens. Given the fact that they are rarely used, they have not been evaluated yet nor are their effects known.

Regarding the respect for patients' previously expressed wishes, the doctors hesitate to act in accordance therewith, especially if a patient's wish is to avoid medical treatment important to preserve his/her life. The doctors' reluctance is even greater in cases where their patients' will was expressed before the need for medical care. One of the reasons is the incompliance national regulations as well as of international agreements. Patients' decision about their healthcare is binding for their doctors but is not unconditional. Whether the doctors respect their patients' will or not depends on the seriousness and urgency of the situation requiring medical treatment, the patients' awareness, the passage of time between

¹⁴⁹ Art. 4 para 3 of the OGAD.

¹⁵⁰ Art. 4 of the OGAD.

¹⁵¹ <https://mrosp.gov.hr/strategije-planovi-programi-izvjesca-statistika/4165> (visited 04.08.2022.).

the patients' statement and the treatment, and the medical progress that has been made in the meantime. The doctors are more inclined to respect the advance directives of their patients, which refer to the therapy the latter want to have in the terminal stage of their life. The patients shall be informed about the diagnosis of the disease, the course of dying, the prognosis of the duration of their life and the proximity of their death.¹⁵²

SECTION V – EX LEGE REPRESENTATION

Overview

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

The Croatian legal system does not encompass specific provisions for *ex lege* representation of vulnerable adults.

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

¹⁵² Hrستیć, D., Anticipirano odlučivanje pacijenata, Zagrebačka pravna revija, 5(1), 2016., pp. 30-31.

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?

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?

N/A

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

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?

N/A

SECTION VI – OTHER PRIVATE LAW PROVISIONS

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

N/A

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?

The Croatian legal system does not envisage any private law instrument for regulating the representation of vulnerable adults.

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.).

It is difficult to follow trends regarding persons with disabilities based on current data. It is also very hard to draw up adequate plans and enforce appropriate measures and strategies. Improving the digital accessibility of existing statistical content on persons with disabilities is a must too.¹⁵³

Assess your system in terms of:

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

The CRPD Committee expresses concern that substitute decision-making has not been replaced by supported decision-making. The same Committee recommends the Republic of Croatia to amend its legislation, to abolish substitute decision-making and introduce a wide range of measures that should enable respect for the autonomy of vulnerable adults, their will and preferences. The National Strategy 2017-2020 included the recommendations of the CRPD Committee. The changes expected in the period 2017-2020 are highlighted as follows: *"It is necessary to introduce a decision-making system with support in exchange for limitation of legal capacity."* The aim was also to develop different models of supported decision-making. The evaluation shows that the planned changes in family legislation were not implemented and there was no supported decision-making system.¹⁵⁴

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

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

¹⁵³ The Alternative Report, p. 26.

¹⁵⁴ National Strategy 2017-2020 and Report of the Croatian ombudsman for persons with disabilities for 2020.

<https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobranitelja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>

b) and c) According to the 2020 Report of the Ombudsman for Persons with Disabilities, persons with disabilities complain because they believe that the deprivation of their professional capacity was not necessary, given that they can take care of their rights and interests. Social welfare centres had not contributed to the protection of their interests before the initiation of the procedure for the restriction of their legal capacity.¹⁵⁵

In practice, limited legal capacity is very often imposed on adults, just to place them under institutional care against their will. The guardian has authority to consent to the placement of an adult in an institutional facility with an approval of the competent social welfare centre.¹⁵⁶ Thousands of adults in Croatia live in institutional facilities against their will. In practice, social welfare services do not apply the principle of subsidiarity and do not take other measures to help and support adults before initiating proceedings relating to their legal capacity. In practice, There is still an attitude that it is better to provide a person with guardianship than to leave him/her without such protection.¹⁵⁷

One of the goals of the National Strategy for Equalization of Opportunities for Persons with Disabilities 2017-2020 was introduction of a supported decision-making system and abandonment of the concept of the limitation of legal capacity.¹⁵⁸ As this goal is not accomplished, the Ombudsman for Persons with Disabilities has proposed the same goal for the new National Strategy (2021-2027). Unfortunately, the National Strategy 2021-2027 encompasses neither the goal of complete abandonment of the concept of the limitation of legal capacity nor the goal of introduction of a supported decision-making system.¹⁵⁹

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

Assessment of the effect of the measures on the legal capacity of vulnerable adults is not available. However, one problem can be mentioned here. The Ombudsman points to the lack of support for parents - vulnerable adults who are unable to exercise their parental responsibility independently as well as to the lack of parent support depending on their individual needs. The Ombudsman reminds the state of its obligation to provide persons with disabilities with

¹⁵⁵ Report of the Croatian ombudsman for persons with disabilities for 2020, p. 58. <https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>

¹⁵⁶ Art. 259 para. 2 of the FA 2015.

¹⁵⁷ Report of the Croatian ombudsman for persons with disabilities for 2020, p. 58. <https://posi.hr/wp-content/uploads/2021/04/Izvjesce-o-radu-Pravobraniteljja-za-osobe-s-invaliditetom-za-2020.-godinu.pdf>

¹⁵⁸ National strategy 2017 - 2020.

¹⁵⁹ National plan 2021-2027.

assistance in exercising their right to family life. The child should never be separated from his/her family just because of his/her parent's disability. The decision of the Croatian Government, adopted in December 2021, resulted in the adoption of the National Plan for the Development of Social Services for the period 2021-2027 which promotes expansion of social services to support parents with disabilities.¹⁶⁰

e. the possibility to provide tailor-made solutions;

In Croatia, there is no possibility to provide tailor-made solutions. The protection of vulnerable adults is rigid and formalized: first, the limitation of their legal capacity and then the appointment of their guardian.

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

In line with the 2015 Commentary of the UN Committee, related to Article 12 of the KPOSI: *"The Committee is concerned by the fact that the law and practice still provide for the "best interest" of the person instead of his or her will and wishes and maintain a modified regime of substitute decision-making."*¹⁶¹

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.).

Like stated in the answer to the previous question, it is difficult to follow trends regarding persons with disabilities based on current data. It is also very hard to draw up adequate plans and enforce appropriate measures and strategies. Improving the digital accessibility of existing statistical content on persons with disabilities is a must too.¹⁶²

Assess your system in terms of:

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

¹⁶⁰ Report of the Croatian ombudsman for persons with disabilities for 2020, p. 78-79.

¹⁶¹ The CRPD Committee, 2015.

¹⁶² The Alternative Report, p. 26.

The Ombudsman has found that special guardians mostly do not have sufficient or any contact with their wards in the process of limiting the legal capacity of the latter. Such guardians do not often attend the hearings and when they are present thereat, they do not respect the will of their adult wards, but give their opinion based on "what is in the best interest of the adult". Their explanation for such a tendency is that they have an extremely large number of cases and that they invest enormous efforts in fulfilling their obligations. The Ombudsman also indicates cases where appointed special guardians either contacted their parties on the phone or did not contact them at all, but unilaterally confirmed the expert's report.¹⁶³ According to the 2020 Report of the Croatian Ombudsman for Persons with Disabilities, expert examinations also have shortcomings, from their short duration (about 5 minutes) to the situation in which the conclusion was reached based on the existing medical documentation rather than on personal and direct examination of the person concerned, which should lead to evaluation of his/her cognitive mental capacity. Regardless of the expert opinion, the court has the authority to consider whether limitation of a vulnerable adult's legal capacity is necessary or whether there are less restrictive measures that would protect him/her more smoothly and efficiently. Anyway, the court relies exclusively on the provided expert opinion.¹⁶⁴

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

b) – c) In the Croatian legal system, there are no available measures for providing vulnerable adults with support without affecting his/her legal capacity and imposing a guardian on him/her.

¹⁶³ Report of the Croatian ombudsman for persons with disabilities for 2020, p. 71.

¹⁶⁴ Report of the Croatian ombudsman for persons with disabilities for 2020, p. 71-76.