

Country report Greece

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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

GREECE

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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.**

I) Greek Constitution (grConstitution): (1) Art. 2 I, provides “*Respect and protection of the value of the human being constitute the primary obligation of the state*” (2) Art. 4 I provides that *All Greeks are equal before the law.*, among others vulnerable adults e.g., with disability. (3) Art. 21 I, III, VI do not discrete between vulnerable minors and adults.

II. (1) Greek private law does not provide many forms of protective measures for vulnerable adults. The only institution which aims to the protection of vulnerable adults is the so-called Judicial assistance [*dikastiki symparastasi*, introduced with Law No. 2447/1996]. Judicial assistance is being regulated in Chapter XVI of the 3rd Book of Greek Civil Code [grCC Art. 1666-1688], and Art. 801-806 of Greek Code of Civil Procedure (grCCP) [procedural provisions, *non-contentious proceedings/Jurisdictio Voluntaria*]. According to grCC Art. 1682 provisions on Tutelage (grCC Art. 1589-1654), apply analogously in cases of Judicial Assistance.

II. (2) Special provisions regarding the protection of vulnerable adults can be found in grCC Art. 130-132 [regarding a declaration of will by a person lacking legal capacity]¹ and 170-172 [regarding a declaration of will, addressed to a person

¹ GrCC Art.130.-Declaration of will by someone lacking legal capacity. “A declaration of will by a person lacking the capacity to carry out transactions shall be null and void”.GrCC Art.131.- “A declaration of will shall be null and void if at the time it was made the person concerned was not conscious of his acts or if he found himself in a spiritual or mental disturbance that limited decisively the functioning of his will. The heirs may within five years from the devolution impugn for one of the grounds laid down in the previous paragraph non gratuitous transactions carried out by or for their

lacking legal capacity]². In essence, Articles 130-132 grCC govern the protection of the adult when he or she makes a declaration of his/her will to enter into a legal transaction, while Articles 170-171 grCC regulate the reverse situation, i.e. when the adult becomes the recipient of such a declaration of will.

III) Code of Medical Ethics [Law No. 3418/2005], Art. 12 II b) bb) and Art. 29³.

IV) Law No. 2082/1992 Art 9 III (as amended by Art 65 I, Law No. 2447/1996) provides the institution of *foster care* for adults, according to which a third person assumes the daily care of an adult, who lives under the same roof in a family-like setting. Despite the absence of a detailed legal framework (a presidential decree which should further regulate and specify this institution hasn't yet been issued), the institution has been applied in practice, in a contractual form⁴.

V) Special laws, ratifying international conventions [*see below Question 4*].

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,

(deceased) principal only when: 1. at the time of completion of the transaction were pending proceedings for placing the principal under judicial assistance by reason of spiritual or mental disturbance which proceedings had not been completed timely or if after the completion of the transaction the principal had been placed under judicial assistance on the grounds above referred to 2. the transaction was made while the principal was confined in a special medical unit for the treatment of his psychical condition 3. the disturbance invoked by the heirs results from the self-same transaction which is impugned".

GrCC Art. 132.- "In the case of the preceding section if the declaration was addressed to another who was in non-faulty ignorance of the condition of the person with whom the other entered into the transaction such person may be held liable depending on the circumstances to compensate the prejudice resulting from the nullity if such prejudice cannot be made good in some other way".

² GrCC Art.170.- "Declaration addressed to a person lacking legal capacity. "A declaration of will shall be null if the addressee lacked the capacity to conclude transactions".

GrCC Art.171.- "Shall be null a declaration of will addressed to a person who is not conscious of his acts or who is in a state of spiritual or mental disturbance which limits decisively the functioning of his will.

Such person may according to the circumstances be held liable for the prejudice resulting from the nullity if the declarant had no knowledge without this being imputable to his fault of the addressee's condition and if the prejudice cannot otherwise be made good".

GrCC Art.172.- Declaration addressed to a person with limited legal capacity. "Shall be null a declaration of will addressed to a person with limited legal capacity if such person lacks the capacity required having regard to the transaction envisaged".

³ "1. The doctor, in case of a terminal illness, even if all medical treatment options have been exhausted, shall ensure that provide for the relief of the patient's psychosomatic pain. He offers the patient palliative treatment and cooperates with the patient's relatives to this direction. At any case, he shall support the patient until the end of his life and ensure that the patient's dignity is maintained until this point. 2. The doctor shall take into account the wishes previously expressed by the patient, even if, at the time of the operation, the patient is not in a position to repeat them. [...]".

⁴ E. ZERVOGIANNI, *Non-institutional Care for Seniors from a Civil Law Perspective*, EfADPoID 2018, 1009 *et seq.* (1017).

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.

I) Dikastiki symparastasi / Judicial Assistance: a protective measure for vulnerable adults which leads to a limitation of their legal capacity and requires a court's decision [→ *ex judicio*]. There are four kinds of judicial assistance, namely:

- (1) oliki steritiki / whole and exclusive judicial assistance,
- (2) meriki steritiki / partial and exclusive judicial assistance,
- (3) oliki epikouriki / whole and concurrent judicial assistance, and
- (4) meriki epikouriki/partial and concurrent judicial assistance [*see below Question 8 (I-IV)*].

II) Epitropeia / Tutela / tutelage: a protective institution for minors who are not under *parental care* [e.g. their parents are both dead or neither of them is able to exercise his duties within the framework of parental care], see grCC Art. 1589 *et seq.* The guardian exercises the duties and rights of parental care by acting as the legal representative of the minor. The guardian is assisted by the supervisory board, which approves certain acts and serves to protect the interests of the minor placed under *tutelage*. The placement of a tutor requires a Court's decision.

III) ekousia dikaiodosia / jurisdiction / voluntaria / non-contentious proceedings: a special procedure according to the Greek Code of Civil Procedure, which is equivalent to the German procedural institution of *Freiwillige Gerichtsbarkeit* and serves as the procedural frame in cases regarding Judicial assistance as well as cases regarding institutions for the protection of vulnerable adults, like compulsory treatment. The courts rule upon cases involving judicial assistance under the special procedural rules of non-contentious proceedings, which constitute the procedural “alter-ego” of the institution of judicial assistance. This procedure applies widely in cases of so-called family law (e.g. adoption) and the law of persons (judicial assistance). *Jurisdictio Voluntaria* provides rules that allow the judge to act *ex officio*, unlike other procedures [e.g. on patrimonial disputes] where only the parties introduce evidence. In this regard, Greek procedural law places priority on the search for the essential truth, and this is because the judge must be fully convinced that the prerequisites for limiting a person's legal capacity are fulfilled.

IV. (1) Anilikoi/Minors: Greek law considers a person under 18 as a minor. Minors either lack completely (under the age of 10) of their legal capacity [grCC

Art. 127], or they have a reduced legal capacity [e.g. minors between 10-17 years, see grCC Art. 129(1), 133-137].

(2) Enilikoi/Adults: Every person above 18 years old. Adults have a full legal capacity, but can under certain circumstances be placed under judicial assistance, which will lead to a limitation (whole or partial) of their legal capacity.

V) Dikaiopraktiki ikonotita/Legal capacity: is every adult's ability to conclude judicial acts in order e.g. acquire rights.

- 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.**

No official statistical data are available, except that cases of judicial assistance carried out by the Single-Member Courts of First Instance of the country in the year 2019, were amounted to 3.929.

- 4. List the relevant international instruments⁵ (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.**

I) U.N Convention on the rights of persons with disabilities (30.3.2007), ratified with law No. 4070/2012. Greece has ratified the Convention and the Optional Protocol subject to the provisions of Article 27 I of the Convention → "[...] *shall not apply in respect of employment and occupation in the armed forces in so far as it relates to different treatment on account of disability or a chronic service-related condition, as provided for in the provision of Article 3 V Law No. 4443/2016*". Entry into force of the Convention and the Protocol for Greece on 30.6.2012 (Law No. 4074/2012, Art. 2., as replaced with Art. 74 II Law No. 4488/2017)⁶,

⁵ See further with respect elderly people protection, information provided by A. KOUTSOURADIS, *The (provisional) civil protection on behalf of the elderly and the suffering adults or an alternative to judicial assistance*, in: GREEK SOCIETY OF JURIDICAL STUDIES (ed.), *Modern Trends in Family Law*, Athens 2013, p. 147 *et seq.* (154-157).

⁶ See further KOTRONIS, *Article 12 of the U.N. Convention on the Rights of Persons with Disabilities and its impact on Greek law of Persons. The need for reform of Greek law under the spectrum of the UN Concluding Observations of 29 October 2019*, Pro Justitia (online journal of University of Thessaloniki, Faculty of Law) 2020, 59 *et seq.* 61, footnote 7. [<https://ejournals.lib.auth.gr/projustitia/article/view/7786/7560>, accessed 8.07.2022].

II) *Hague Convention of 13 January 2000 on the International Protection of Adults* (HCCH 2000 Protection of Adults Convention) ratified with Law No. 4898/2022 [mainly providing private international law (conflict) rules, as well as rules defying the international jurisdiction],

III) Oviedo Convention on the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine [ETS No. 164 (04.04.1997)], ratified with the Law No. 2619/1998 [crucial provision Art. 6 III and Art. 9].

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

The origins of Greek Family Law are related to Byzantine-Roman Law. The introduction of the Greek Constitution in 1975, started a conversation about the modernization of Family Law. Greek Civil Code, introduced in 1946, was influenced by previous law, as well as modern codes like the French, German and Swiss Civil Codes. This modernization started in 1982, with Laws No. 1250/1982, 1329/1983, which revised the Spousal relations [*Eherecht*] and Parental relations [->introduction of parental care, which replaced the “old-fashioned” institution of *patria potestas*]. The second major revision of Family was Law No. 2447/1996, which abolished the institutions of Judicial Restriction [*dikastiki apagoreusi*] and Judicial Guardianship [*dikastiki antilipsi*] and revised the law of persons with a reduced legal capacity, with the introduction of a more liberal and anthropocentric legal frame. The keystone of the new legal frame was the Constitutional Principle of Greek Constitution Art. 2 I, providing “*Respect and protection of the value of the human being constitute the primary obligation of the state*”⁷. Law No. 2447/1996 also replaced the institution of mandatory legal Prohibition⁸, which led *ex lege* to a legal incapacity of convicted persons. The previous institution had been considered unconstitutional [Greek Constitution Art. 5 I⁹ (on the *free development of personality*), Art. 25 I in fine ¹⁰(*Principle of Proportionality*)]¹¹. The new law introduced a more liberal institution, as a special

⁷ See further A. KOUTSOURADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd Edition, Athens: P. N. Sakkoulas, 2003, Introductory Remarks on grCC Art. 1666-1688 No.14 *et seq.*; E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, 8th Edition, Athens-Thessaloniki: Sakkoulas, 2021, p. 563.

⁸ See further about the history of the new provision A. KOUTSOURADIS, *supra*, Art. 1688 No. 1-9.
⁹ Text “*All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages.*”.

¹⁰ Text “*Restrictions of any kind which, according to the Constitution, may be imposed upon these rights, should be provided either directly by the Constitution or by statute, should a reservation exist in the latter’s favor, and should respect the principle of proportionality.*”.

¹¹ E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Vol. II, p. 584, especially footnote 267.

form of concurrent judicial assistance, namely the judicial assistance of persons who serve a penalty depriving their freedom. Since then Family Law has entered to constant phasis of partial revision. Since 1982 provisions regarding Divorce, Parental Care, and Family Relationship have been revised. The next step to the modernization of the (private international) Law of incapable persons was the introduction of Law No. 4898/2022 which ratified the *Hague Convention of 13 January 2000*.

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.

I) In legal theory, the importance of compatibility of the Greek legislation with Article 12 of the U.N Convention on the rights of persons with disabilities (30.3.2007)¹², who are essentially a major part of vulnerable adults, is highlighted. According to the Concluding Observations (29.10.2019)¹³ of the UN Committee on the Rights of Persons with Disabilities [CRPD] on the initial Report of Greece (24.11.2015): the Committee expressed its concerns about: “*the lack of measures taken to abolish the denial or restriction of legal capacity, and to ensure that supported decision-making measures are available for persons with disabilities*”, as well as “*the practical obstacles faced by persons with disabilities when exercising their legal capacity due to, inter alia, the absence of specific guidelines and the shortage of officials and service providers trained in the provision of the necessary support to persons with disabilities in decision-making*” (No. 17). Hence the Committee recommended Greece “*to bring its legislation into line with the Convention, replacing substituted decision-making, including judicial support mechanisms, with supported decision-making regimes that respect the person’s autonomy, will and preferences*”. It also recommended to “*take all other appropriate measures to guarantee access by persons with disabilities to the support required to ensure their right to equal recognition before the law and to exercise their legal capacity, including training of officials and service providers across all sectors*” (No. 19). Finally, the Committee requested Greece to submit its further report by 31 June 2026, which should include information on the implementation of the recommendations made in the mentioned above Concluding Observations (No. 54).

¹² KOTRONIS, *supra*, PRO JUSTITIA 2020, 59 *et seq.* (79 *et seq.*).

¹³ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fGRC%2fCO%2f1&Lang=en [accessed 08.08.2022].

II) The above-mentioned recommendations of the Committee raise the issue of reviewing the Greek law for the protection of vulnerable adults so that the latter is in line with the needs and interests of disabled persons¹⁴.

The solution of *supporting the vulnerable adult in decision making both through the institution of concurrent judicial assistance* (see below Question 8.), *as well as through the application of various methods such as support from family, relatives, friends, and competent authorities or health units, should be embraced in praxis*¹⁵. Furthermore, institutions such as Whole and exclusive judicial assistance, which lead to complete/total legal incapacity of the adult in question, should serve as an *ultima ratio*. Finally, it would also be convention-compatible to introduce legislative provisions allowing vulnerable adults to designate the persons who would make decisions for them, e.g. by *mandatum or power of attorney*, in case they will find themselves in a spiritual or mental disturbance¹⁶, like those described in grCC Art. 131 I.

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

Currently, there are no official plans for reform.

SECTION II – LIMITATIONS OF LEGAL CAPACITY

- 8. If your system allows limitation of the legal capacity of an adult, please answer questions 8 - 13; if not proceed to question 14. All reports should address questions 14 and 15.**
- a. on what grounds?**
 - b. how is the scope of the limitation of legal capacity set out in (a) statute or (b) case law?**
 - c. does limitation of the legal capacity automatically affect all or some aspects of legal capacity or is it a tailor-made decision?**
 - d. can the limited legal capacity be restored and on what grounds?**
 - e. does the application of an adult protection measure (e.g. supported decision making) automatically result in a deprivation or limitation of legal capacity?**

¹⁴ Cf KOTRONIS, *supra*, PRO JUSTITIA 2020, 85 (at Footnote 110).

¹⁵ KOTRONIS, *supra*, PRO JUSTITIA 2020, 85.

¹⁶ KOTRONIS, *supra*, PRO JUSTITIA 2020, 86.

f. are there any other legal instruments,¹⁷ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?

Under grCC Art. 34 “*Every human has the capacity of enjoying rights and assuming obligations*”. Adults are capable of conducting any judicial acts¹⁸ e.g. sales or tenancies. However, under strict circumstances, adults’ legal capacity may be totally or partially restrained, through the institution of Judicial Assistance, which appears in certain forms, namely:

- I. Whole and exclusive Judicial assistance: Adults who are under whole and exclusive are not capable of carrying out any judicial act [grCC Art. 128(2)¹⁹ & Art. 1676(1)]²⁰, which will be carried out by their judicial assistant, serving as their legal representative.
- II. Partial and exclusive Judicial assistance [grCC Art. 129(2)²¹]: under which adults are incapable of carrying out only certain kinds of transactions.
- III. Whole and concurrent judicial assistance: under this kind of judicial assistance the adult is able to conduct himself every kind of transaction, with the previous consent [grCC Art. 1683] of his/her judicial assistant [grCC Art. 129(3)], who does not act as his legal representative²², in contrast with exclusive judicial assistance. The grCC Art. 1688 provides a special kind of concurrent judicial assistance, concerning convicted persons. This measure differs from²³ the other kinds: firstly, the convicted himself is the only one who has a right to file such a petition [not even the public prosecutor or the

¹⁷ 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.

¹⁸ Minors above the age of ten may conduct certain judicial acts under specific circumstances, see grCC Art. 127-137.

¹⁹ GrCC Art. 128.- *Persons lacking capacity.* “Those who: 1. Have not completed ten years of age 2. are placed under whole and exclusive judicial assistance are not capable of carrying out any transaction.”

²⁰ See Agg. GEORGIADI, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd Edition, Athens: P. N. Sakkoulas, 2003, Art. 1676, No. 10 .

²¹ GrCC Art. 129.- *Limited legal capacity.* “Have a limited capacity to carry out transactions 1. Minors who have completed ten years of age 2. those who are placed under partial judicial assistance 3. those who are placed under concurrent judicial assistance.”

²² Agg. GEORGIADI, *supra*, Art.1676, No. 14; I. SPYRIDAKIS, *Judicial Assistance*, Athens-Komotini, Ant N. Sakkoulas, 1998, No. 31.3 .

²³ See A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd Edition, Athens: P. N. Sakkoulas, 2003, Art. 1688 No. 19-21.

court *ex officio*²⁴], to be placed under concurrent judicial assistance. Secondly, the court's powers are restricted, as if it cannot oppose further restrictions than those asked with the petition²⁵. This measure has been established in favour of convicted persons, in order to avoid negative influence from other convicts or jail staff²⁶, while the court is not obliged anymore to place them under a status of legal incapacity.

- IV. Partial and concurrent judicial assistance [grCC Art. 129(3)] has the same effect as the whole and concurrent judicial assistance (see above under III.), with the difference that the consent of judicial assistant is necessary for the adult, only in certain kinds of judicial acts.

a. on what grounds?

Under certain circumstances, namely [grCC Art. 1666 & 1667]:

I. [grCC Art. 1666 I (1)] Adult persons as long as they cannot in whole or partially take care by themselves of their affairs, due to spiritual or intellectual disturbance or a bodily impairment²⁷. Spiritual or intellectual disturbance means every spiritual or intellectual inconvenience which leads to a disturbance of a person's judgment or will, e.g. psychosis²⁸, brain diseases [not permanent²⁹], or disorders like dementia, Alzheimer's disease, and bipolar disorder³⁰. A holistic review by the court is required to grant the petition to place a person under judicial assistance³¹. This category may include elderly people who suffer from mental illnesses like dementia or Alzheimer's³². If a person, despite his mental or

²⁴ This measure is not mandatory, but optional. The court decides based on criteria like the serving time, type of prison, the other prisoners etc, see A. KOUTSOURADIS, *supra*, Art. 1688 No. 17, 18.

²⁵ However, the court is entitled to act *ex officio*, as if one of the grounds provided in grCC Art. 1666 is fulfilled at the same time, e.g. the convicted is facing drug or alcohol abuse etc.

²⁶ Cf about the *ratio* of the provision A. KOUTSOURADIS, *supra*, Art. 1688 No. 11.

²⁷ See E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, pp. 563 *et seq.*

²⁸ See further A. KOUTSOURADIS, *supra*, Art. 1666 No. 18.

²⁹ Hence, the whole conversation in legal theory and case law about the so-called *lucida intervala*, has been terminated due to the fact that, in comparison with the former legal status [before Law No. 2447/1996], the present legal regime does not require a permanent decease, see A. KOUTSOURADIS, *supra*, Art. 1666 No. 20; S. KAKATSAKIS, in: A. GEORGIADIS (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1666 No. 5; See also Court of Appeals of Athens 856/2015, *EfAD (journal) 2015, 772*; Single member Court of Appeals of Athens 1589/2015, *Hellenic Justice (journal) 2015, 1429*; Court of Appeals of Dodecanese's 285/2003, *Dodecanese's Case Law (journal) 2004, 663*; Single member Court of first instance of Athens 1425/2010, *ISOKRATES (legal database)*.

³⁰ Single member Court of Athens 1425/2010, *NOMOS (legal database)*; A. KOUTSOURADIS, *supra*, Art. 1666 No. 18; E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, pp. 563-564; S. KAKATSAKIS, *supra*, grCC Art. 1666 No. 3.

³¹ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 564, as well as footnote 218; See further Court of Appeals of Athens 1104/1996, *Armenopoulos (journal) 1996, 1336*.

³² A. KOUTSOURADIS, *supra*, Art. 1666 No. 18; S. KAKATSAKIS, *supra*, Art. 1666 No. 3.

psychical problems, is capable of taking care of his affairs (personal, patrimonial)³³, there is no need for the appointment of a judicial assistant³⁴. About *bodily impairment*, in other words, physical disability (even partial), this wording can be interpreted as any kind of disability. However disabled persons who have to undergo special education, like blind persons who can take care of themselves, are excluded³⁵.

II. [grCC Art. 1666 I (2)] Persons who because of *a character trait*³⁶, namely by reason of prodigality (*asotia*)³⁷, drug abuse or alcoholism³⁸ expose themselves³⁹ to the risk of a life. The mentioned traits do not require to be permanent⁴⁰.

III. [grCC Art. 1666 II (= German BGB § 1908a)] Despite the fact that judicial assistance concerns mainly adults, due to the fact that minors who are under parental care [or tutelage], have already a legal representative, judicial assistance can be granted also in case of a minor⁴¹ in the last year of his/her minority⁴², as long as there is a legal ground provided in the first paragraph of grCC Art. 1666 [see above (I), (II)]. In such case, the results of Judicial Assistance commence by the time of adulthood, namely by the time of the end of parental care [or tutelage]. The last case can be regarded as provisional judicial assistance⁴³, while the judge has a wide power either to accept or reject the petition, even if preconditions of grCC Art. 1666 II (1st passage) are fulfilled⁴⁴. In the other two first grounds of

³³ See further Court of Appeals of Dodecanese's 2285/2003, Dodecanese's Case Law (journal) 2004, 663; A. KOUTSOURADIS, *supra*, Art. 1676 No. 25; S. KAKATSAKIS, *supra*, Art. 1666 No. 4.

³⁴ S. KAKATSAKIS, *supra*, Art. 1666 No. 4, [→ the law requires causation between adult's mental health problems and incapacity of taking caring of his/her affairs]; Sic single member Court of first instance Athens 1425/2010, ISOKRATES (legal database); A. KOUTSOURADIS, *supra*, Art. 1666 No. 24.

³⁵ See E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 564, footnote 219; S. KAKATSAKIS, *supra*, Art. 1666 No. 6.

³⁶ The listing of these traits in law is exclusive, sic A. KOUTSOURADIS, *supra*, Art. 1666 No. 30; S. KAKATSAKIS, *supra*, Art. 1666 No. 9.

³⁷ Character trait according to which a person spends unreasonably in relation to his financial situation, and disregard the needs of his relatives/family, e.g., when some faces gambling addiction; See S. KAKATSAKIS, *supra*, Art. 1666 No. 9, who points out that the law provides also that the adult's gambling addiction should put at risk his property [*ibid* No. 10].

³⁸ The last two character *traits do not have to be permanent*, see A. KOUTSOURADIS, *supra*, Art. 1666 No. 31.

³⁹ Or their spouse [as well as registered partner, sic E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 564] or their family members (ascendants and descendants).

⁴⁰ A. KOUTSOURADIS, *supra*, Art. 1666 No.39.

⁴¹ See E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 565.

⁴² The minor must be seventeen years old at least by the time of the hearing.

⁴³ S. KAKATSAKIS, *supra*, Art. 1666 No. 13.

⁴⁴ A. KOUTSOURADIS, *supra*, Art. 1666 No. 39; S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1666 No. 14.

grCC Art. 1666 I, as if the judge notices the fulfilment of preconditions, he should accept the petition.

IV. Finally, in case of grCC Art. 1688 concurrent judicial assistance, there are two Prerequisites: (1) Actual service of a two years (minimum) sentence (not provisional custody⁴⁵), regardless of the crime. (2) Secondly, a petition must be filed only by the convicted, before single-member first instance court of the place, where he serves his sentence⁴⁶.

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

Greek Law has been reformed recently. The new Law No. 2447/1996 unified previous legal institutions of judicial prohibition and judicial perception into the new institution of judicial assistance⁴⁷. The new provisions have eliminated the interpretational problems of the previous law, that is why the new explicit provisions have been proven successful. The judge should take in consideration, before placing a person under judicial assistance: the principle of Respect and Protection of the value of the human being [grConstitution Art. 2 I], as well the principle of free development of patient's personality [grConstitution Art. 5 I], as well as the fundamental principle of Safety of transactions⁴⁸ and third parties' interests⁴⁹. The mentioned values and principles define the scope of the application of judicial assistance⁵⁰, along with the strict prerequisites of the law, which must be interpreted strictly, especially: (1) the legal grounds to place a person under judicial assistance (grCC Art. 1666), (2) as well as the persons who have a right to file a petition to place a person under judicial assistance (grCC Art. 1667)⁵¹. The primary ratio and scope of grCC Art. 1666 *et seq.*, aims to the protection of

⁴⁵ See A. KOUTSOURADIS, *supra*, Art. 1688 No. 25, who suggests that the prisoner may choose other ways to deal with his affairs e.g., mandatum, power of attorney, contract of work or services, or even negotiorum gestio (*ibid*, No. 25).

⁴⁶ A. KOUTSOURADIS, *supra*, Art. 1688 No. 24 *et seq.* & No. 29 *et seq.*

⁴⁷ Single member Court of first instance of Athens 6154/2010, ISOKRATES (legal database); See further A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, Introductory Remarks on grCC Art. 1666-1688, No. 11; S. KAKATSAKIS, *supra*, Art. 1666 No. 11.

⁴⁸ For example, the need of recordation of judicial decisions concerning cases of judicial assistance [impose or lifting of judicial assistance, appointment or replacement of permanent or provisional judicial assistant, grCC Art. 1675]. The law aims to the avoidance of conducting invalid transactions [S. KAKATSAKIS, *supra*, Art. 1666 No. 5, *in fine*].

⁴⁹ Single member Court of first instance of Athens 6154/2010, ISOKRATES (legal database); A. KOUTSOURADIS, *supra*, Introductory remarks on grCC Art.1666-1688 No. 13 *et seq.*; S. KAKATSAKIS, *supra*, Art. 1666 No. 5.

⁵⁰ S. KAKATSAKIS, *supra* Art. 1666 No. 5.

⁵¹ Listing of persons in grCC Art. 1667 is exclusive according to case law, sic Areios Pagos 1103/2005, NOMOS (legal database); Areios Pagos 1163/2005, NOMOS (legal database); Areios Pagos 1953/2006, NOMOS (legal database); Sic S. KAKATSAKIS, *supra*, Art. 1667 No. 2.

persons' assisted interests (personal and patrimonial). The limitation of legal capacity can be regarded equivalent to the Roman's Law institution of *capitis deminutio*, that is why it should constitute *ultimum remedium*, while the judge may prefer milder forms of judicial assistance, in respect of the principle of Proportionality [grConstitution Art. 25 I]. In any case, the law forbids a person's placement under judicial assistance without a judicial decision⁵².

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

Limitation of legal capacity within the framework of judicial assistance must be correlated with the form of Judicial Assistance [*see above*], namely partial or exclusive judicial assistance. In first case limitation of legal concerns affects all aspects of legal capacity, while partial specific, namely those aspects mentioned in judicial decision [*see further below Question 9*].

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

The limitation of legal capacity can be restored in case of lifting of the judicial assistance [*see below Question 29*].

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

I. Judicial Assistance, along with its legal effects (limitation of legal capacity) do not commence automatically, but *ex judicio* (with the issuing of the first court instance judicial decision) which must be recorded according to grCC Art. 1675 (see grCC Art. 1681). The appointment of the judicial assistant commences as if the judicial decision becomes final. Hence, the time frame until the finality of the decision can be covered with the appointment of an interim appointment of a judicial assistant⁵³, which constitutes a special form of provisional measure.

II. The law provides special rules providing a different time of commencement:

(1) grCC Art. 1719 provides that a person's incapability to confect a will commences even by time that petition is filed, in order to prevent him from

⁵² A. KOUTSOURADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, grCC Art. 1667 No. 3, 18; S. KAKATSAKIS, *supra*, Art. 1667 No. 1, *in fine*.

⁵³ Agg. GEORGIADI, *supra*, Art. 1681 No. 9.

excluding from his will, the persons who filed the petition. In case of denial of the petition, the will is considered valid⁵⁴. The same provision applies analogously in case of revocation of a will [grCC Art. 1768]⁵⁵.

(2) grCC Art. 1720 concerns also a person's capacity to confect a will and provides that if the court has not become final, as well as if the first instance court decision has not been issued, by the time of the adult's death, his incapability of writing a will is being revoked *ipso jure*. For example, if he wrote a will after the petition was filed, but died before the judicial decision becomes final, the will is valid⁵⁶.

(3) [grCCP Art. 803 I] Finally, despite the fact that a person who has been placed with a first instance court decision under judicial assistance, who has no legal capacity anymore[or his legal capacity is reduced, based on the form of judicial assistance], he is entitled to file by himself an appeal versus the first instance decision⁵⁷. The court decision is a *conditio sine que non* for the limitation of legal capacity. However, the law reserves to the person in question the right to appeal the decision in order to re-gain his legal capacity.

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

D) There is another similar to the Judicial Assistance institution, the so-called Compulsory Treatment⁵⁸, which is being regulated in grCC Art. 1687 and may lead to the confinement of an adult to a mental health facility⁵⁹ as if a relevant judicial decision is issued. This institution does not constitute a limitation of a

⁵⁴ Agg. GEORGIADI, *supra*, Art. 1681 No. 5.

⁵⁵ S. KOTRONIS, *supra*, PRO JUSTITIA 2020, 78.

⁵⁶ Agg. GEORGIADI, *supra*, Art.1681 No.6.

⁵⁷ Agg. GEORGIADI, *supra*, Art.1681 no.7; P. ARVANITAKIS, in: K. KERAMEUS, D. KONDYLISS and N. NIKAS (eds.), *Commentary on the Greek Code of Civil Procedure*, 2nd edition, Athens-Thessaloniki, Sakkoulas, 2020, grCCP Art. 803 No. 1.

⁵⁸ See further E. KOUNOUGERI-MANOLEDAMI, *Family Law, Vol. II*, pp. 582-583; A. GEORGIADES, *Family Law*, 3rd edition, Athens-Thessaloniki: Sakkoulas, 2022, pp. 997 *et seq.*; J. DELIYANNIS, *Judicial Assistance*, Athens-Thessaloniki, Sakkoulas, 1998, pp. 103 *et seq.*; A. KOUTSOURADIS, *Observations upon the new procedure regarding the compulsory treatment of mentally ill persons*, in: *In Memoriam of J. KARAKATSANES*, Athens-Komotini: Sakkoulas, 1999, pp. 335 *et seq.*; M. PERTSELAKI, *Compulsory Treatment-substantive and procedural matters*, *Hellenic Justice (journal)* 2021, 1089 *et seq.*; Case law Multi-Member Court of Thessaloniki 7214/1993, Armenopoulos (*journal*) 1994, 465, commented by A. KOUTSOURADIS; Court of Appeals of Athens 10591/1996, *Hellenic Justice (journal)* 1997, 1608.

⁵⁹ This institution applies not only for public but also for private facilities, Ministerial Decision (by the Minister of Finances) No. Γ3α, β/Γ.II. (Οικ) 65047/2020.

person's legal capacity⁶⁰. Adults retain their legal capacity, however, if he is not conscious of their acts (e.g. transactions) or if they find themselves in a spiritual or mental disturbance that limited decisively the functioning of their will, his transactions are regarded *ex lege* as null, and void [grCC Art. 131 I]. Hence a person's placement under compulsory treatment does not exclude his placement - simultaneously- under Judicial Assistance⁶¹. These two institutions can be regarded as concurrent.

II) With regards to the placement of a person under Compulsory Treatment, the law provides certain conditions, namely [see grCC Art. 1687, Law No. 2071/1992, Art. 95]⁶²:

(1) The adult must face a spiritual disturbance [e.g. genuine psychoses, oligophrenia, paranoia, and schizophrenia]⁶³, while just an intellectual disturbance or a body impairment is sufficient for the judge to grant the motion⁶⁴.

(2) The patient must be either incapable to decide in favor of his/her health, on the basis that his/her non-hospitalization may prevent him/her from treatment, or hospitalization can be regarded as necessary to prevent acts of violence against the third party or against the third party itself⁶⁵.

(3) On a procedural basis, the issuing of a judicial decision is also mandatory and constitutes a guarantee of the patient's rights, freedom and personality⁶⁶, besides the whole institution leads to his mandatory hospitalization and constitutes a restriction of personal freedom. The motion must be submitted before the public prosecutor who is responsible about the whole process. The petition must be submitted along with relevant recommendations of at least two doctors, who are in favour of the hospitalization.

⁶⁰ S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code)*, Vol. II, (Arts. 947-2035), Athens: P. N. Sakkoulas, 2013, Art. 1687 No. 1 *et seq.*

⁶¹ S. KAKATSAKIS, *supra*, Art.1687 No. 3

⁶² S. KAKATSAKIS, *supra*, Art.1687 No. 5-8.

⁶³ E. KOUNOUGERI-MANOLEDARI, *Family Law*, Vol. II, p. 582-583.

⁶⁴ Even if this person is already under a judicial assistance, see S. KAKATSAKIS, *supra*, Art. 1687 No. 6.

⁶⁵ E. KOUNOUGERI-MANOLEDARI, *Family Law*, Vol. II, p. 583; Administrative Court of Appeals of Athens 506/2015, *Hellenic Justice* (journal) 2016, 754 *et seq.*

⁶⁶ See Law No. 2071/1992, Art. 98 III: "*In any case and throughout the hospitalization, the patient's personality must be respected.*"; See E. KOUNOUGERI-MANOLEDARI, *Family Law*, Vol. II, p. 582; A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary*, Vol. VIII, *Family Law* (Arts. 1505-1694), 2nd edition, Athens: P. N. Sakkoulas, 2003, grCC Art. 1687 No. 17.

III) Procedural aspects (see grCCP Art. 802): The single-member first-instance court [*monomeles protodikeio*] of the place of patient's domicile [or his residence] is competent to rule on the motion, according to *jurisdictio voluntaria* [grCCP Arts. 740 I, 802]⁶⁷. The court may reach to its decision, with an evaluation of medical reports or police officers' reports. The patient must be subpoenaed at least 48 hours before the hearing⁶⁸ to present himself before the court. The patient over 16 years old, is entitled to represent himself, even without the presence of a lawyer⁶⁹. The issuing of a provisional order [grCCP Art. 781⁷⁰] until the court's judgement is also possible and can be ordered even *ex officio*. The results of the court's decision commence by the time when the first instance decision gets issued, while the patient (as well as the public prosecutor) may also file an appeal or a caveat. A caveat may also be issued by the public prosecutor, as well as from the Head of the mental health facility, that the patient has been hospitalized⁷¹.

IV) Termination takes place either after six months from the time when compulsory treatment started (*ex lege*, Law No. 2071/1992, Art. 99 II 1), however, it can be prolonged under certain and strict circumstances [Law No. 2071/1992 Art. 99 IV], or with the special judicial decision by the Single Member Court of First Instance according to *jurisdictio voluntaria*. In the last case, a psychiatrist or the Head of the mental health facility, or one of the persons who share a right to file a petition for the placement under compulsory treatment, should file a special petition before the public prosecutor⁷², in order for the last one to move the process to terminate the hospitalization. Finally, the compulsory treatment can also be terminated with the discharge of the patient from the mental health facility, on the basis that the circumstances under which he has been hospitalized, have ceased to exist (Law No. 2071/1992, Art. 95 II)⁷³.

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

I) Generally, the court is not restricted from the motion and is entitled to impose⁷⁴ another kind of judicial assistance, other than was asked. This power

⁶⁷ The same procedure applies also in case of judicial assistance [grCCP Art. 802].

⁶⁸ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 583; Single member Court of first instance of Peiraeus 3177/2016, EfADPolD (journal) 2017, 362.

⁶⁹ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 583; Single member Court of first instance of Peiraeus 191/2013, Hellenic Justice (journal) 2014, 253.

⁷⁰ Sic E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 583.

⁷¹ A. DANILATOU, in *DEAK* vol. II [Commentary on the grCC, ed. by G. LEONTIS], Athens: Nomiki Bibliothiki, 2020, Art. 1687 No. 4.

⁷² As if the first three months of the hospitalization have passed.

⁷³ See E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 584.

⁷⁴ Based on criteria like [S. KAKATSAKIS, *supra*, Art. 1676 No. 8] adult's best interest, personality, as well as other third parties (e.g. relatives') interests.

does not apply in the case of grCCP Art. 1667 II and 1688⁷⁵, when only the adult, has the right to file the petition (grCC Art. 1676)⁷⁶, and the court cannot impose further restrictions other than those asked with the petition, e.g. in case of grCC Art. 1688 the court cannot place someone under exclusive judicial assistance, or under whole concurrent, as if the convicted files a motion for a partial, etc⁷⁷. However, the court is entitled to impose fewer restrictions. The whole institution aims to the protection of the convicted⁷⁸. In the other cases of grCC Art. 1666, the court is free to specify the effects *in concreto*, and choose [grCC Art. 1676] based on the kind of judicial assistance, namely:

(1) In case of exclusive whole judicial assistance [grCC Art. 1676(1)] the assisted can be declared incapable of conducting all kinds of judicial acts [grCC Art. 128(2)]. The assistant conducts judicial acts on the adult's behalf and name serving as his/her legal representative] e.g. judicial acts concerning the adult's patrimony, his personal status [marriage is excluded], or raising actions⁷⁹. In case if the adult conducts a judicial act it is regarded *ex lege* as invalid and void⁸⁰, due to his legal incapacity (grCC Art. 130⁸¹). The court should assign the care of the adult to the assistant (grCC Art. 1680).

(2) In case of partial exclusive judicial assistance, the adult is incapable [grCC Art. 129(2)] of conducting certain judicial acts, which must be listed explicitly by

⁷⁵ However, the court is entitled act even *ex officio*, as if one grounds provided in grCC Art. 1666 is fulfilled at the same time e.g., the convicted is facing drug, alcohol abuse etc. According to A. KOUTSOURADIS [in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, grCC Art. 1688 No. 22 *et seq.*], cases provided in grCC Art. 1666 supervene (“*absorb*”) those in grCC Art. 1688.

⁷⁶ S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code)*, Vol. II, (Arts. 947-2035), Athens: P. N. Sakkoulas, 2013, Art. 1676 No. 6, 7, 9, 10.

⁷⁷ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 585, the convicts may refer specifically to the acts, that they should conduct under the consent of their judicial assistant.

⁷⁸ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 585; A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, grCC Art. 1688 No. 11.

⁷⁹ See S. KAKATSAKIS, *supra*, Art.1682 No. 6-7.

⁸⁰ Certain authors regard this nullity as relative in favour of the adult, his/her heirs and assistant [I. SPYRIDAKIS, *Judicial Assistance*, Nos. 32.2, 32.5; A. GEORGIADES, *General Principles of Civil Law*, 5th edition, Athens, P. N. Sakkoulas 2019, pp.133-134], while other as absolute [Prevailing view in legal literature as well as in case law of Greek Supreme Court, see decisions of Areios Pagos 18/2005 (plenum), 430/2016, 8/2013, 1281/2012, published in NOMOS legal database; M. KARASSIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. I, General Principles of Civil Law (Arts. 1-286)*, 1st edition, Athens: P. N. Sakkoulas, 1978, grCC Art. 130 No. 2; P. LADAS, *General Principles of Civil Law*, vol. I, Athens-Thessaloniki, Sakkoulas 2007, p. 392; D. PAPASTERIOU, *General Principles of Civil Law*, Athens-Thessaloniki, Sakkoulas 2009, p. 407, especially footnote 264.

⁸¹ See further grCC Art. 170 [“A declaration of a will shall be null if the addressee lacked the capacity to conclude transactions.”].

the court⁸², and be carried out only by the assistant, as his legal representative. In case the adult conducts a forbidden judicial act it is regarded invalid [*see above*]. If the court does not list the judicial acts, that the adult cannot conduct himself, it is accepted that the adult cannot conduct himself all those judicial acts mentioned in grCC Art. 1678 II, 1624, 1625⁸³ [*see below*].

(3) In case of whole concurrent judicial assistance, the assisted, may conduct by himself all kinds of judicial acts with the previous consent of his assistant [grCC Art. 129(3)], who does not act as his/her legal representative⁸⁴.

(4) In case of partial concurrent judicial assistance: the adult cannot conclude certain kinds of judicial acts, without his assistant's previous consent. The kinds of judicial acts must be listed explicitly in the court's decision. If not, only the transactions mentioned in grCC Art. 1678 II, 1624, 1625 will require the assistant's previous consent.

(5) Finally, the court may decide in favour of the combination of exclusive and concurrent judicial assistance (mixed judicial assistance)⁸⁵.

II) With regards to the assistant's consent within the framework of concurrent judicial assistance [grCC Art. 1683]: consent a constitutes judicial act, namely assistant's declaration of his will to agree with a transaction conducted by the adult⁸⁶, which must be given *a priori* and written, while a notarial deed is not required unless the law provides so e.g. grCC Art. 1033 [*on acquisition of an immovable*]. A subsequent consent as an approval, or an oral consent, are insufficient and the consent will be regarded as it never existed⁸⁷. Hence, the conducted transaction is invalid (relative nullity, with respect of special provisions, e.g. grCC Art. 1352, 1372 I 1, which provides as a legal effect the absolute nullity)⁸⁸. As if the assistant denies without reasonable reasons to consent, the adult may raise a petition before the single- member court of first instance of his/her residence, in order to obtain judicial permission, which replaces the lack

⁸² The list is not indicative but restrictive [sic I. SPYRIDAKIS, *Judicial Assistance*, No. 31.4; Agg. GEORGIADI, *supra*, Art. 1676 No. 11; Contra J. DELIYANNIS, *Judicial Assistance*, p. 81].

⁸³ Agg. GEORGIADI, *supra*, Art. 1676 No. 12.

⁸⁴ I. SPYRIDAKIS, *Judicial Assistance*, No. 31.3; Agg. GEORGIADI, *supra*, Art. 1676 No. 14.

⁸⁵ S. KAKATSAKIS, *supra*, Art. 1676 No. 5. In case of mixed judicial assistant and due to reasons of legal safety, the court should [grCC Art.1679] specify which judicial acts cannot be carried out by the adult himself (exclusive judicial assistance), and which can under the prior consent of the assistant (concurrent judicial assistance). In case of concurrent judicial assistance [grCC Art. 1679, second sentence], the court is entitled to deny the freely disposal or/and management of adult's property, in order to ensure his (patrimonial) interests, see Agg. GEORGIADI, *supra*, Art. 1678-1679 No. 25.

⁸⁶ Agg. GEORGIADI, *supra*, Art. 1683 No. 1-2; S. KAKATSAKIS, *supra*, Art. 1683 No. 1, 2.

⁸⁷ Agg. GEORGIADI, *supra*, Art. 1683 No. 3; S. KAKATSAKIS, *supra*, Art. 1683 No. 3-5.

⁸⁸ S. KAKATSAKIS, *supra*, Art. 1683 No. 6; Agg. GEORGIADI, *supra*, Art. 1683 No. 6, 7.

of consent. The court decides based on the person's assisted interest (arg. grCC Art. 1684)⁸⁹.

a. property and financial matters;

I) In case of whole and exclusive judicial assistance, the adult cannot carry out by himself any kind of judicial act, including those regarding property or financial matters, while in case of whole and concurrent the adult is capable of conducting by himself all judicial acts [including those regarding property or financial matters], as if he has the previous consent of his assistant.

II) (1) Special references must be made on partial concurrent and exclusive judicial assistance. As long as the judicial decision does not provide otherwise, the adult cannot conduct by himself (partial and exclusive) or without his assistant's previous consent (partial and concurrent): (i) [grCC Art. 1678 II] those judicial acts that a tutor cannot conduct without judicial permission [grCC Art. 1624, 1625] and (ii) those mentioned in grCC Art. 1678 III.

(2) With regards to gratuitous judicial acts, *see below Question 9 d*, about donations. It should be pointed out that the mentioned above judicial acts do not release the assistant from his duty of complying with typical formalities [*see Question 25 d.*].

III) Special issues.

(1) With regards to the power of attorney grCC Art. 223 provides that “*unless a contrary deduction can be made, a power of attorney shall cease to exist by reason of [...] the legal incapacity of the person who gave the power of attorney or of the authorized representative*”. The meaning of the law is that it provides not a partial but a whole legal incapacity of the authorized representative, while if, at any case, the person who gave the power of attorney becomes partially or totally incapable of conducting judicial acts, the power of attorney ceases to exist⁹⁰.

(2) With regards to mandatam [see grCC Art. 726], unless a contrary deduction can be made, it ceases to exist, as if any of the parties be placed under any kind of judicial assistance⁹¹ [see, however, grCC Art. 727]⁹².

(3) Finally, in all kinds of judicial assistance⁹³, the judicially assisted adult inherits *ex lege* under the benefit of the inventory [grCC Art. 1678 IV → grCC Art. 1527 → grCC Art. 1901-1912], in order to be liable *cum viribus hereditatis* for the debts of succession.

⁸⁹ Agg. GEORGIADI, *supra*, Art. 1683 No. 4; S. KAKATSAKIS, *supra*, Art. 1683 No. 7.

⁹⁰ Agg. GEORGIADI, *supra*, Art. 1676 No. 28.

⁹¹ Agg. GEORGIADI, *supra*, Art. 1676 No. 29.

⁹² See further Agg. GEORGIADI, *supra*, Art. 1676 No. 31.

⁹³ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 586.

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

I) Marriage: Persons with limited legal capacity due to exclusive Judicial Assistance are not entitled to marry (grCC Art. 1351), as long as the court's decision provides it *expressis verbis*. With regards to persons who are under concurrent judicial assistance, they can marry, as long as the assistant consents. In case of denial, grCC Art. 1352 provides that the court may [after hearing the judicial assistant] grant permission for the marriage as if the interest of the person assisted requires it. A wedding conducted by a person with a limited legal capacity is invalid (grCC 1372 I, first sentence), unless either the judicial assistant or the court [or the spouse himself after regaining his legal capacity] approved the marriage [grCC Art. 1373(4)]⁹⁴.

II) Divorce: Dissolution of a marriage (grCC Art. 1438 et seq.) may take place either *ex judicio* [with a divorce action, grCC Art.1439] or with a consensual divorce, namely an agreement (with a notarial deed, grCC Art. 1441) between the two spouses. In both cases, spouses are exercising their formative right (*Gestaltungsrecht*) to divorce (provision of grCC Art. 1438 *et seq.*), which is why they should have a legal capacity. The right to divorce has a personal legal nature, and cannot be exercised with a representative in first place. However, according to legal theory⁹⁵ a person who is under a whole and exclusive judicial assistance, must not be trapped in an unwilling marriage, that is why the judicial assistant, may exercise his right [judicially or consensual], as long as the supervisory Council approves it (analogous apply of grCC Art. 1621). The same view points out that in other forms of judicial assistance (partial exclusive and concurrent), the court should not list between the forbidden acts the right to divorce, in order for the assisted to exercise by himself his right⁹⁶.

❖ Decision of Areios Pagos 1262/2018^{97, 98}

i) Facts: A and B got married in 2005. B who worked as a doctor was facing since 1999 problems of epilepsy. With the years his situation had deteriorated until 2008 when he was diagnosed with dementia and a bud tumour in the brain. The wife (A) has entered into a yearly fight with B's relatives, about his treatment. B abandoned his marital home in 2008, under the assistance of his relatives (parents

⁹⁴ Agg. GEORGIADI, *supra*, Art. 1676 No. 16-17.

⁹⁵ Sic Agg. GEORGIADI, *supra*, Art. 1676 No. 19-20.

⁹⁶ Sic Agg. GEORGIADI, *supra*, Art. 1676 No. 20.

⁹⁷ Areios Pagos 1268/2018, NOMOS (legal database).

⁹⁸ See an analysis of decision in A. ALEXANDROPOULOU, *Divorce in vegetative state (Paper in Law of Persons course, within the framework of LLM in Civil Law program, University of Thessaloniki, Winter Semester, 2019)*, yet unpublished.

and brother). B after his chemo treatment, managed to improve his health situation and worked again as a doctor between 2010-2011, while in 2012 according to a report from the State Health Committee, he was healthy enough to serve as a doctor. In 2011 he filed a divorce action before Multi-Member Court, on the ground of two years of dissension with A (grCC Art. 1439). His motion was granted in 2013. A filed an appeal based on the grounds that B have been diagnosed (2008) with psychotic and neurological disease, which is why he had a legal incapacity of excreting his rights [e.g. right to divorce] or filing actions. In other words, he was incapable of forming his will to conduct a judicial act, namely, he was lacking of *animus deserendi*⁹⁹ which is a prerequisite according to the law [grCC Art. 1439]. The appeal had been rejected by the Court of Appeals, but A filled a cassation before the Greek Supreme Court of Areios Pagos which was also rejected for the following reasons.

ii) Areios Pagos validated the Court`s of Appeals decision and held that B was an adult and subsequently had a legal capacity by the law (grCC Art. 127 *et seq.*). A could have challenged B`s capacity to realize the meaning of his action of leaving his marital home in 2008 (see e.g. grCC Art. 131)¹⁰⁰ due to his mental situation, but she (A) should have proven with facts and evidence, the mentioned above incapacity. Hypothetically, persons who are in a vegetative state cannot form their will properly and consciously, which is why are incapable of conducting judicial acts [grCC Art. 131]¹⁰¹, even if they`re not under judicial assistance. Hence, Areios Pagos held, that as long as B faced mental disorders but had not been placed under judicial assistance, A should have proven the prerequisites of grCC Art. 131, which she failed to do¹⁰². The misunderstanding of the court`s decision was that on one side the court held that critical time for the start of the dissension was 2008 (namely the abandonment of the marital home), while on the other side the court accepted that B was in a vegetative state at that moment.

⁹⁹ See further about dissension within the framework of grCC Art. 1439 III, A-N. KOUKOULIS, *Grounds of divorce: issues of substantive and procedural law*, Athens: Nomiki Bibliothiki, 2016 , p. 194 *et seq.* (especially p. 197 *et seq.*).

¹⁰⁰ As well as his procedural act of filing a divorce action.

¹⁰¹ Areios Pagos 1178/1994, NOMOS (legal database); Areios Pagos 1993/1999, NOMOS (legal database); See however T. VIDALIS, *Viodikaion* [Bio-Law], vol. II Athens-Thessaloniki, Sakkoulas 2017, pp. 180-181, who shares the view, that this person`s will can be suspected based on his/her "previous" life`s choices.

¹⁰² In case of a person who according to grCC Art. 131 is unconscious of his/her acts and his/her judicial acts are regarded as invalid and void by the law, arises the question of who shall file a divorce action, in case of an absence of judicial assistant? According to legal theory [KOUKOULIS, *supra*, p. 197; V. VATHRAKOKOILIS, *Civil partnership (Law No. 3719/2008) and Modifications of Family Law*, Athens-Thessaloniki: Sakkoulas 2009, pp. 101, No. 6] such an action cannot be filed unless a judicial assistant gets appointed.

iii) To sum up, there is no general legal treatment for the mentioned above problematic. The court should evaluate the suspected will of the patient in such cases, based on certain evidence *of his previous life*^{103,104}. Besides, a living person continues to have rights (grCC Art. 34, 35) until his death, with the difference that vulnerable and unconscious of their acts persons, are able to “conduct” judicial acts with the “assistance” of their judicial assistant, who should evaluate their suspected will¹⁰⁵.

III) Other Family Law rights.

(1) Parental care and tutelage: (i) Judicial assistance constitutes a ground of a person’s incapability to exercise his parental care, which is why the other parent should exercise solely the parental care. In case of both parents’ incapability due to their placement under judicial assistance, a tutor must be appointed (grCC Art. 1589)¹⁰⁶. (ii) Secondly a judicially assisted person as well as any person who has no legal capacity cannot be appointed as a tutor. If he has already been appointed his power ceases to exist.

(2) Adoption.

A person who is under exclusive (whole or partial¹⁰⁷) judicial assistance cannot adopt, while a person under concurrent judicial assistance (partial or whole) is able to adopt as if his judicial assistant has given his consent¹⁰⁸.

(3) Voluntary acknowledgment of paternity.

The law provides even a reduced legal capacity for this kind of judicial act. Hence, a person who is under concurrent judicial assistance may acknowledge the paternity of his child with the previous consent of his assistant¹⁰⁹. The judicial act must take in person, which is why it is excluded for persons placed under concurrent judicial assistance [grCC Art. 1476 third sentence]. The same

¹⁰³ Sic ALEXANDROPOULOU, *Divorce in vegetative state (Paper in Law of Persons course, within the framework of LLM in Civil Law program, University of Thessaloniki, Winter Semester, 2019)*, yet unpublished, on her concluding remarks (§4.)

¹⁰⁴ Argumentum ECHR decision VINCENT LAMBERT VS FRANCE (Judgement 5.6.2015, GC), sic ALEXANDROPOULOU, *supra* on her concluding remarks (§4.).

¹⁰⁵ Sic ALEXANDROPOULOU, *supra* on her concluding remarks (§4., *in fine*)

¹⁰⁶ Agg. GEORGIADI, *supra*, Art. 1676 No. 21.

¹⁰⁷ Unless the adoption is not listed within the forbidden judicial acts.

¹⁰⁸ Agg. GEORGIADI, *supra*, Art. 1676 No. 22; I. SPYRIDAKIS, *Minor’s adoption*, Athens-Komotini: Ant. N. Sakkoulas, 1997, No. 8.2.

¹⁰⁹ Sic Agg. GEORGIADI, *supra*, Art. 1676 No. 24; E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 151. According to another view consent is not required, sic A. GEORGIADES, *Family Law*, 3rd edition, Athens-Thessaloniki: Sakkoulas, 2022, p. 534, 989-990; N. PSOUNI, *The new law of Relation and protection of incapable persons*, Athens-Thessaloniki: Sakkoulas, 2000, p. 63; K. PANAGOPOULOS, *Diagram of Civil Law-Family Law*, Athens-Komotini: Ant. N. Sakkoulas, 1998, p. 126.

provisions apply in the case of juridical acknowledgment [grCC 1479 II and Art. 1475 II]¹¹⁰.

c. medical matters;

I) According to grCC Art. 1680 the court may¹¹¹ entrust partially or in whole the care¹¹² of the adult to his/her assistant. The provision applies regardless of the kind of judicial assistance, while the application of the provision is the rule in exclusive judicial assistance. With regards to the content of the person's assisted *care*, it includes every aspect of taking care of him/her, e.g. home, clothes, health, the obligation of maintenance and education. Moreover, it may include decisions on medical matters.

II) The distinction between acts of care, which do not constitute legal acts, and decisions regarding the care, which may constitute judicial acts (or quasi-judicial acts), is a matter of high importance, because the adult may conduct by himself the first ones [e.g. he may choose what he will eat or his clothes], but not the last ones. These shall be carried out by the assistant¹¹³.

III) The most crucial problems arise in medical matters, where the consent of the patient (namely the assisted person) is mandatory unless the adult is capable of consent by himself. The consent¹¹⁴ of the patient is a quasi-judicial act (declaration of the patient's will), which is why the legal provisions concerning judicial acts do not apply *in toto*, e.g. provisions regarding legal capacity. Hence, the assistant may give his consent¹¹⁵ [sic Greek Code of Medical Ethics (Law No. 3418/2005) Art. 12 II b) bb)¹¹⁶] in such cases, in order to permit medical

¹¹⁰ Agg. GEORGIADI, *supra*, Art. 1676 No. 24.

¹¹¹ The article does not apply automatically at any case, see further K. FOUNTEDAKI, *Lessons on Medical Liability*, Athens, Nomiki Bibliothiki, 2018, p. 83.

¹¹² The meaning of the wording "*care*" is the equivalent to term of "*minors' parental care*", provided in grCC Art. 1518.

¹¹³ Agg. GEORGIADI, *supra*, Art. 1676 No. 3-5.

¹¹⁴ See further for the consent within the framework of medical liability, K. FOUNTEDAKI, *Lessons on Medical Liability*, pp. 80 *et seq.*

¹¹⁵ See also Oviedo Convention on the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164) [04.04.1997], Art. 6 III (= Law No. 2619/1998 Art. 6 III). "*Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.*"

¹¹⁶ "*If the patient lacks legal capacity to consent, the consent to perform medical acts shall be given by the judicial assistant, if appointed. If there is no judicial assistant, consent shall be given by the patient's relatives. At any case, the doctor shall endeavour to secure the voluntary participation, involvement and cooperation of the patient, and in particular of the patient who understands his or her state of health, the content of the medical act, the risks, consequences and outcomes of the act.*"

operations. According to a view¹¹⁷, in case a vulnerable adult is yet to be placed under judicial assistance, he retains his/her right to consent, unless he/she finds him-/herself in a mental incapacity of consciousness of his/her (judicial) acts, like those mentioned in grCC Art. 131¹¹⁸. Normally, the medical treatment contract¹¹⁹ is conducted between the doctor (or clinic) and the assistant, who acts as the legal representative of the assisted person.

d. donations and wills;

I) As regards to donations (grCC 496-512), which constitute of special kind of gratuitous judicial acts: an adult under whole exclusive judicial assistance is totally incapable to conduct any judicial act by himself, including donations in any case. Provision of grCC Art. 1678 III, which refers to partial exclusive or concurrent judicial assistance, provides that unless the court's decision provides otherwise, the adult is incapable of conducting gratuitous judicial acts [e.g. donations¹²⁰], either by himself (exclusive) or without the previous consent of his assistant (concurrent). The court may rule, otherwise, however, practise has not proven such trust from courts¹²¹.

II) As regards to wills/testaments, grCC Art. 1719(2) provides that persons placed under exclusive (partial or whole) or whole and concurrent, lack of their legal capacity and cannot conduct a will, neither by themselves nor represented by their judicial assistant (even under he is prior consent), due to the fact that testaments are highly personal judicial acts. Such testament is invalid, as if it has been written down even after the petition has been filed, unless the adult, died before the decision became final (grCC Art. 1720)¹²².

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

¹¹⁷ K. FOUNTEDAKI, *Lessons on Medical Liability*, p. 84.

¹¹⁸ Moreover, in case of an adult who had not been placed under judicial assistance and finds himself in a condition, like those mentioned in grCC Art.131, the consent shall be given by adult's closed ones e.g. relatives, see critical observations of K. FOUNTEDAKI, *Lessons on Medical Liability*, p. 84, as well as footnote 128. She points out [*ibid*, p. 84-85] as a better solution the appointment of a provisional judicial assistant, due to the urgency of the situation [even with a provisional order, grCCP Art. 805 II]. Finally, in case of extremely urgency, when there is no time for anyone to consent, the doctor shall decide himself [*ibid*, p. 85, see further Code of Medical Ethics (Law No. 3418/2005) Art. 12 III a "Exceptionally, consent is not required: (a) under urgent circumstances, when appropriate consent cannot be given and there is an immediate, absolute and urgent need to provide medical care (...)"]].

¹¹⁹ The distinction between the will to conduct the medical treatment and the will to consent to medical acts is crucial.

¹²⁰ The provision must be interpreted *latu sensu*, as it includes not only donations, but also release of debt, interest-free loan etc, see Agg. GEORGIADI, *supra*, Art. 1678 No. 23.

¹²¹ Agg. GEORGIADI, *supra*, Art. 1678-1679 No. 23-24.

¹²² Agg. GEORGIADI, *supra*, Art. 1676 No. 26-27.

According to Greek Law only a person who has a legal capacity may stand before court or administrative proceedings. As a result, a person under judicial assistance cannot self-represent himself, which is why the judicial assistant may act as his representative (similarly to minor's representation by their parents or tutor). Based on the kind of judicial it should be pointed out the following: (i) Under exclusive judicial assistance [grCC Art. 1676(1)] the adult cannot be self-represented either in all kinds of trials (whole) or in specific trials (partial). (ii) Under concurrent judicial assistance [grCC Art. 1676(2)] the adult must have the previous consent of the assistant either in all kinds of trials (whole), or in specific trials (partial). (iii) Finally, the court may combine the exclusive and concurrent judicial.

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

The court's decision must be registered in a special registry (grCC Art. 1675), and this is not just a typical formality. The law provides that even the first-instance decision has legal effect from the time of its recordation, while the appointed judicial assistant may assume his duties by the time decision becomes final, while in meantime a provisional judicial assistant may be appointed¹²³. However, grCC Art. 1719 provides special rules. With regards to the decision that revokes an already imposed judicial assistance, apply the same rules¹²⁴.

This special registry contains the operative part of the decision, which all the essential information concerning the restriction of the person's in question legal capacity, namely: the kind of judicial assistance [whole and exclusive, partial and exclusive, whole and concurrent, partial and concurrent], the names of the person's assisted as well as of judicial assistant, the types of [judicial] acts which cannot be carried by the person assisted him-/herself. Furthermore, due to the fact that this registry contains sensitive personal data off the judicially assisted person, only persons who have a 'legal interest' are entitled to retrieve or have access to such data.

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

¹²³ P. ARVANITAKIS, *supra*, grCCP Art. 802 No. 4.

¹²⁴ See J. DELIYANNIS, *Judicial Assistance*, p. 49-50.

Judicial Assistance can only be imposed *ex judicio* [the law provides a judicial decision]. The competent court [grCCP Art. 740 I] is the first instance single-member court, of the adult's in question residence (not domicile!¹²⁵).

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

I) The law [grCC Art. 1667] provides explicitly which persons may file such a petition, namely:

- (1) the adult himself; In the case of a bodily impaired adult (without any mental disturbances) the adult is the only one who can file such a petition with respect of the constitutional principles of the free development of his personality¹²⁶, ad of proportionality. Finally, in the case of grCC Art. 1688 the convicted is the only one who can file a petition,
- (2) adult's spouse¹²⁷ as long as they are still married or their marital symbiosis has not been dissolved¹²⁸,
- (3) adult's parents, regardless of the adult's age¹²⁹,
- (4) adult's children, regardless of the question whether they were born within a marriage or not¹³⁰,
- (5) the public prosecutor [*see question 19 under (II)*],
- (6) the 17year old minor or his/her legal representatives, namely his/her tutor/parents in case of grCC Art. 1666 II.

II) It should be pointed out, that: (1) The court may decide *ex officio* (see grCC Art. 1667 I, 1668). (2) In case of death of the person who filed the petition, the hearing must be called off¹³¹. (3) As if a person not listed in the law [grCC Art.

¹²⁵ N. KATIFORIS, *Procedural aspects of Judicial Assistance*, in: *Special Matters concerning Judicial Assistance*, 3rd annual conference of GREEK FAMILY LAW SOCIETY, Athens: Nomiki Bibliothiki, 2016, p. 111 *et seq.* (p. 113).

¹²⁶ [grConstitution Art. 5 I], see A. KOUTSOURADIS, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, grCC Art. 1667 No. 13.

¹²⁷ As well as hir/her registered partner, Sic E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 566; Contra A. GEORGIADIS, *Family Law*, p. 962; *Cf* Court of Appeals of Athens 1435/2015, EfAD (journal) 2015, 774.

¹²⁸ A. KOUTSOURADIS, *supra*, Art. 1667 No. 5, even if the marriage is invalid but has yet to be annulled (*ibid*, No. 6).

¹²⁹ Areios Pagos 1103/2005, *Chronicles of Private Law (journal)* 2005, 51-52; S. KAKATSAKIS, in: A. GEORGIADIS (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1667 No. 8 *et seq.*, who regard's parents' legalization as *independent* (No.9).

¹³⁰ S. KAKATSAKIS, *supra*, Art.1667 No.11, who mentions that in case of minors, a special tutor must be appointed due to the conflict of interests with their legal representative, namely parents, who are to be placed under judicial assistance (*ibid*, No.11, *in fine*).

¹³¹ P. ARVANITAKIS, *supra*, grCCP Art. 801 No. 2.

1667] files a petition despite the fact that it should be rejected due to lack of legalization, the public prosecutor may take under his consideration the petition and file a new petition on his own¹³².

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

All trials related to judicial assistance are being conducted under the special proceeding of *jurisdictio voluntaria* [Introductory Law of grCC Art. 121]¹³³. The law aims to the protection of the person in question, and the hearing takes place behind closed doors (grCCP Art. 114)¹³⁴.

a. a requirement of legal representation of the adult;

Under the provisions of the Greek law, the presence of a lawyer is mandatory before almost all kinds of civil trials [grCCP Art. 94 I].

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

Only the persons (grCCP Art. 802) who are entitled to file independently a petition [grCC Art. 1667]¹³⁵ may intervene in the trial, asking either the rejection or the approval or the appointment of another person as a judicial assistant, as long as they share a legal interest. The petition must be served to the public prosecutor [grCCP Art. 748 II], while his presence is not mandatory in the court hearing¹³⁶.

c. requirement of a specific medical expertise / statement;

The law provides [grCC Art. 1674] that the court shall take into consideration¹³⁷ a report filed by the competent social department [see Presidential Decree No. 250/1999, Art. 1, 2] regarding the necessity of the measure and appropriateness of the person who is to be appointed as a judicial assistant. The report gets issued after the notification of the social service by the court (Law No.

¹³² E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 567; Single member court of first instance of Athens 7405/2009, Review of Civil Procedure (journal) 2010, 394, commented by P. ARVANITAKIS.

¹³³ P. ARVANITAKIS, *supra*, grCCP Art. 801 No. 1.

¹³⁴ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 571; S. KAKATSAKIS, *supra*, Art. 1667 No. 2, *in fine*.

¹³⁵ P. ARVANITAKIS, *supra*, grCCP Art. 803 No. 4; Persons who lack legalization by the law, e.g. brothers, cousins, nephews/nieces etc., cannot intervene to the trial.

¹³⁶ P. ARVANITAKIS, *supra*, grCCP Art. 801 No. 8.

¹³⁷ However the report is not binding for the court, see Agg. GEORGIADI, *supra*, Art. 1674 No.1 *et seq.*

2521/1997, Art. 19 IV), while the report must be filed at least three days before the hearing (grCCP Art. 796 III 2). The court may also take¹³⁸ into consideration an expert report about the health condition of the patient [grCCP Art. 804 II].

d. hearing of the adult by the competent authority;

In case the adult himself filed the petition his right of hearing is fulfilled. As if the petition is filed by any other person, although typically it is not addressed to the adult in question¹³⁹, the adult must be summoned by the court¹⁴⁰, before the hearing in order to become a litigant party¹⁴¹. The adult may be present at the hearing (grCC Art. 802 I) and represent himself as if he is at least 16 years old. According to grCCP Art. 804 the court must hear the adult in order to decide on the petition. The mentioned need for communication between the court and the adult may not take place, as if there is a serious threat to the adult's health¹⁴².

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

I) Firstly, the first-instance court's decision must be served to all litigant parties, e.g. to the adult, in order to be able to appeal or file other legal remedies [→ revocation petition]¹⁴³, as well to social service and the appointed judicial assistant [grCCP Art. 802 IV]. The patient as well as other litigant parties¹⁴⁴ may file legal remedies (appeal, cassation especially, as well revocation – petition). Finally, [grCCP Art. 806 (and Art. 763)] the court's decision does not suspend its effect within the time limit that an appeal can be raised, as well as if an appeal has been filed¹⁴⁵.

II) Moreover [grCC Art. 1677] the court may modify its decision even *ex officio*. The provision applies along with the procedural mean of the revocation-modification petition within the framework of *Jurisdictio Voluntaria* [grCCP Art.

¹³⁸ It is not mandatory: E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 571, footnote 237; Contra G. DASKAROLIS, *Family Law, vol. II*, Athens-Komotini; Ant. N. Sakkoulas 2001, p. 720.

¹³⁹ J. DELIYANNIS, *Judicial Assistance*, p. 32, 69; E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 570; Multi Member Court of Corfu 179/2003, Law Tribune (Nomiko Vima, journal) 2003, 1663.

¹⁴⁰ The appointed provisional judicial assistant must also be summoned, see J. DELIYANNIS, *Judicial Assistance*, p. 70.

¹⁴¹ P. ARVANITAKIS, *supra*, grCCP Art. 801 No. 3.

¹⁴² See Court of Appeals of Athens 2400/2009, Hellenic Justice 2009, 1463.

¹⁴³ As if the assisted is capable of communication with his closed to him [Single member Court of first instance of Lamia 398/2006, Armenopoulos 2007, 229] or the notification would mean no harm to the adult's health (grCCP Art. 802 V), see E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 572.

¹⁴⁴ Third parties, who have not been summoned may file a caveat.

¹⁴⁵ P. ARVANITAKIS, *supra*, grCCP Art. 806 No. 1-2.

758¹⁴⁶]. The provision applies in all cases of judicial assistance: however, the court cannot restrict further the legal capacity of the adult in cases of articles 1667 II and 1688 [see grCC Art. 1676(3)]¹⁴⁷. Such a petition can be raised by the assisted person, as well as by the persons mentioned in grCC Art. 1667. The judicial assistant cannot raise such a petition, while the decision does not a retroactive effect (*ex tunc*)¹⁴⁸.

III) Finally, in case of successfully raised legal remedies [appeal or caveat] the effects of the decision are being overturned *ex tunc*.

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

General remarks:

I) Greek Law provides that every adult person (over 18 years old¹⁴⁹) is *in abstracto* capable of conducting any judicial act, unless firstly the adult has been placed under judicial assistance (*see above Question 8.*), or secondly, the adult attempted to conclude a transaction while finding himself in one of the conditions mentioned in grCC Art. 131. In both cases the law provides (grCC Art.130) that a declaration of will by someone lacking legal capacity to carry out a transaction (as well a declaration of will addressed to a person lacking legal capacity, grCC Art.170) shall be null and void¹⁵⁰.

II) grCC Art. 131 I provides that a declaration of will by a person who was not conscious of his acts or found himself in a spiritual or mental disturbance, that limited decisively the functioning of his will, shall be *ex lege* invalid. The provision initially aims to the protection of adults who have not been placed under

¹⁴⁶ See further about the relations of provisions grCCP Art.758 and subsequent grCC Art.1677 Agg.GEORGIADI, *supra*, Art.1677 No.4.

¹⁴⁷ S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1677 No. 9.

¹⁴⁸ Agg. GEORGIADI, *supra*, Art. 1677 No. 10, 12; S. KAKATSAKIS, *supra* Art. 1677 No.7, 10, according to whom [*ibid*, No. 7] the assistant can only notify the court about the condition of the person assisted.

¹⁴⁹ Minors between 10-17 years have a limited legal capacity, see further provision of grCC Art. 127, 128(1), 129(1), 134-137, which regulate the legal capacity of minors.

¹⁵⁰ Absolute nullity according to prevailing view [Prevailing view in legal literature as well case of Greek Supreme Court of Areios Pagos: Sic Areios Pagos 18/2005 (plenum), Areios Pagos 430/2016, Areios Pagos 8/2013, Areios Pagos 1281/2012, published in NOMOS (legal database); M. KARASSIS, *supra*, Art. 130 No. 2; P. LADAS, *General Principles of Civil Law*, vol. I, p. 392; D. PAPASTERIOU, *General Principles of Civil Law*, p. 407 [especially footnote 264]; Contra A. GEORGIADES, *General Principles of Civil Law*, 5th ed., Athens-Thessaloniki: Sakkoulas, 2019, pp. 133-134; I. SPYRIDAKIS, *Legal (in)capacity*, Athens-Komotini: Ant. N. Sakkoulas, 2000, pp. 103 *et seq.* [→ relative nullity, which stands only in favour of person assisted]; See further Areios Pagos 63/2017, ISOKRATES (legal database), which does not follow the prevailing in case law.

judicial assistance¹⁵¹, and who have a legal capacity (grCC Art. 128). Art. 131 serves as *an ultimum remedium* for the protection of vulnerable adults. It should be pointed out that mentioned above mental conditions provided in grCC Art.131 I, are similar to those of grCC Art. 1666, which is why adults who find themselves under the same mental conditions can also be placed under judicial assistance. In contrast with judicial assistance, the legal incapacity provided in grCC Art. 131 I is temporary and refers only to the transaction in question.

III) Preconditions of grCC Art. 131 I: the provision applies as if: *either* the adult was unconscious of his acts by the time he declares his will [e.g. when the adult is drunk or had high fever, or when the adult is under the influence of drugs]¹⁵², or the adult in question finds himself to be under a psychological or mental disturbance, which limits his/her ability to form his/her will freely due to e.g. paranoia and schizophrenia, epilepsy, etc. The disturbance would have to be decisive to the point where the adult could not perceive his/her actions or will. However Greek legal theory and case law presume (without the need for further proof) that in case of a constant and permanent mental disorder, the adult in question was unconscious of his will and actions at the moment of declaration of his/her will¹⁵³. The mentioned prerequisites apply as well in the case of grCC Art. 171 I, which refers to the reverse situation of declaration of will, addressed to an adult, who finds himself under the same conditions of grCC Art. 131 I.

IV) Interim conclusion: as regards adults, legal capacity is the rule, while incapacity is the exception. The aim of this rule is the protection of transactions and third parties' interests¹⁵⁴.

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

D) As if prerequisites of grCC Art. 131 I (or Art. 171 I) are fulfilled such transaction is invalid *ex lege* (not voidable). These provisions apply mainly in patrimonial transactions.

¹⁵¹ Adults who have been placed under judicial assistance are not capable by the law [grCC Art. 128(2)] of carrying out judicial acts.

¹⁵² See further A. GEORGIADIS, *General Principles of Civil Law*, 5th ed., Athens-Thessaloniki: Sakkoulas, 2019, pp. 132-133, as well the case of footnote 8.

¹⁵³ See further S. KOTRONIS, *supra*, PRO JUSTITIA 2020, 59 *et seq.* (77, as well as the references of footnote 72).

¹⁵⁴ See further S. KOTRONIS, *supra*, PRO JUSTITIA 2020, 59 *et seq.* (77).

II) Special provisions:

(1) With regards to family matters and the conclusion of marriage by an adult who was incapable based on grCC Art. 131 (see grCC Art. 1351), the marriage is invalid (grCC Art. 1372 I), however, this form of nullity requires the issuing of a formative (*Gestaltungsurteil*) final, judicial decision pronouncing the invalidity (grCC Art. 1376). Moreover, this nullity can be cured [grCC Art. 1373(3)], as if the spouse has acknowledged the marriage after he/she regains his/her legal capacity of conducting judicial acts.

(2) With regards to the forming of any kind of testaments, grCC Art. 1719 (3)¹⁵⁵ provides that if a person, who at the time of drawing his/her will, was not conscious of his/her acts, e.g. due to agony of the death, drug influence, drunk, etc, or was under a spiritual or mental disturbance that limited decisively the functioning of his/her will [e.g. psychosis, dementia etc]¹⁵⁶, would be considered as incapable of drawing up a testament which shall be considered invalid.

(3) With regards to non-gratuitous judicial acts¹⁵⁷, grCC Art. 131 II restrains the power of the adult's [who found himself in one of the conditions of grCC 131 I] heirs, to claim their rights arising from the nullity. The article provides strictly certain prerequisites, under which the heirs may claim the invalidity, namely the heirs may impugn non-gratuitous judicial acts, only for one of the following reasons, namely: (1) *at the time of completion of the transaction in question were pending proceedings for placing the adult under judicial assistance by reason of spiritual or mental disturbance, which proceedings had not been completed timely or if after the completion of the transaction the adult had been placed under judicial assistance for one of the mentioned before reasons.* (2) *if the transaction had been concluded while the adult was confined to a mental health facility.* (3) *if the disturbance invoked by the successors results from the self-same transaction which is impugned*¹⁵⁸. Finally, the heirs' rights are prescribed within five years from the devolution of the inheritance.

¹⁵⁵ See among other S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code)*, Vol. II, (Arts. 947-2035), Athens: P. N. Sakkoulas, 2013, Art. 1719 No. 18-24.

¹⁵⁶ The meaning of the law, is that it provides: 1) that the free forming of testator's will has been disturbed by his disorder, and 2) the disturbance influenced decisively testator's will, e.g. he was not able to conceive the content of his testament.

¹⁵⁷ Hence donations and other gratuitous judicial acts are excluded.

¹⁵⁸ This 3rd case can be derived from the special terms of the transaction in question e.g. the selling price or the value of performance and counter-performance, see N. PSOUNI, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. I/B, General Principles of Civil Law (Arts. 127-286)*, 2nd Edition, Athens, P.N. Sakkoulas, 2003, grCC Art.131 No.121-123 .

III) With regards to the protection of the third parties grCC Art. 132 (*cf also* grCC Art. 171 II) provides that, in cases of grCC Art. 131, if the declaration was addressed to another who was non-faulty ignorance of the person with whom the other person concluded the transaction (the vulnerable adult), such person (the vulnerable adult) may be held liable – depending on the circumstances – to compensate the prejudice from the nullity if such prejudice cannot be made good in some other way e.g. from insurance. This compensation is regarded as *lucrum cessans*, which can be adjudicated based on the financial status of the parties, the extent of the damage caused, the mental disorder etc¹⁵⁹.

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

Based on the fact that a person's right to represent himself before courts or administrative procedures, provides his legal capacity for conducting judicial acts, an adult who found him-/herself in one of the conditions mentioned above, can be regarded that while finds himself/herself in such condition he/she is incapable also (temporarily) to stand before civil or other administrative proceedings.

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?

These problematics have been discussed directly in other questions.

SECTION III – STATE-ORDERED MEASURES

Overview

16. What state-ordered measures exist in your jurisdiction? Give a brief definition of each measure.

I) What can be described as state – order measure under Greek Law is *the ex-officio* placement (by the court) of a person under Judicial Assistance (grCC Art. 1667 I 1). This is the one and only institution which leads to a limitation of legal capacity under Greek Law and operates non only after a petition by the person entitled by the law [children, spouse], but also by the state organs [e.g. the court

¹⁵⁹ See about grCC 131 A. GEORGIADES, *General Principles of civil law*, pp.132-135.

ex officio or the prosecutor]. Hence there is one and only measure of limitation of legal capacity [→judicial assistance], which applies under various forms and by different persons' initiative [private or public].

The wide powers of the judge must be correlated with the legal nature of *non – contentious proceedings/jurisdictio voluntaria*. This procedure applies generally in cases of welfare measures and aims for the public interest¹⁶⁰. That is why the court has the power to bring before it *ex officio* cases of persons who must be placed under judicial assistance (grCCP Art. 802 II 2 *in fine* → grCCP Art. 796 II). The hearing takes place after the court issues a special order, which must be served to the public prosecutor, to the adult, as well as to the competent social department. This mentioned above duty does stand in cases when, judicial assistance can only be asked from the adult¹⁶¹ namely grCC Art. 1667 II, 1688.

II) GrCC Art. 1668 provides explicitly¹⁶² that persons, like officials (public or municipal), public welfare instruments, as well as Heads of mental health facilities have a duty to notify (even orally) the single-member court of first instance [*monomeles protodikeio*] about every case, that may entail the placing of a person under judicial assistance. This duty of notification stands only as if the persons mentioned above were informed accordingly while exercising their duties¹⁶³, but not during their personal-out of service life¹⁶⁴. This provision must be correlated with the compulsory treatment of grCC Art. 1687, because the head of the mental health facility, where the patient has been hospitalized, may notify about the need to be placed under judicial assistance¹⁶⁵. Every other person or public instrument is free but not obliged to notify the court, without the need of having a special legal interest¹⁶⁶.

¹⁶⁰ A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, Art. 1667 No. 30.

¹⁶¹ A. KOUTSOURADIS, *supra*, Art. 1667 No. 31-34.

¹⁶² A. KOUTSOURADIS, *supra*, Art. 1668 No. 8; S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1668 No. 2.

¹⁶³ Without further delay, see A. KOUTSOURADIS, *supra*, Art. 1668 No. 17 *et seq.*

¹⁶⁴ A. KOUTSOURADIS, *supra*, Art. 1668 No. 10; S. KAKATSAKIS, *supra*, Art. 1668 No. 2.

¹⁶⁵ See among others A. KOUTSOURADIS, *supra*, Art. 1668 No. 1-2 *et seq.*, who regards this obligation of public instruments *as legal duty*. As a result, in case of breach of this duty, they commit a criminal offense [Greek Penal Code: Art. 259 *Breach of duty*] (*ibid.*, No. 5), as well an illegal act within the meaning of grCC Art. 914 (*on torts*), sic E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 567, footnote 228]. This duty stands only in cases when the court may act *ex officio*. Hence, there is no such duty in cases of grCC Art. 1688 and Art. 1667 II, see A. KOUTSOURADIS, *supra*, Art. 1668 No. 14; S. KAKATSAKIS, *supra*, Art. 1668 No. 2, *in fine*.

¹⁶⁶ A. KOUTSOURADIS, *supra*, Art. 1668 No. 11; S. KAKATSAKIS, *supra*, Art. 1668 No. 5.

III) Finally, the law provides that a public prosecutor is also entitled to file a petition [grCC Art. 1667 I] to place a person under judicial assistance. The procedure, effects, and scope of the measure are the same as mentioned above.

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

Yes, the judge may rule even compulsory treatment after a petition filed by the public prosecutor [grCC Art. 1687], which is concurrent to judicial assistance. However, in praxis compulsory treatment proceeds with judicial assistance [*see further Question 8 f.*],

b. is there a preferential order in the application of the various types of state-ordered measures? Consider the principle of subsidiarity;

No there is no preferential order. However, the judge should rule with respect to the principles of Proportionality (grConstitution Art. 5 I) and free development of the adult's personality (grConstitution Art. 5 I).

c. does your system provide for interim or ad-hoc state-ordered measures?

The law provides [grCC Art. 1672] that the court (according to non-contentious proceedings/*jurisdictio voluntaria*) may appoint [even *ex officio*] a provisional judicial assistant, until the issuing of its judgment on the placement of a person under judicial assistance. Appointment of a provisional judicial assistant is provided in substantive civil law [grCC Art.1672] as well as procedural law [grCCP Art. 805]. The appointment may take place as if there is a need to avoid any danger to the adult's health or patrimony¹⁶⁷. This measure can be imposed whether a petition to place a person under judicial assistance has already been filled or not. The appointment is mandatory in case a first-instance court decision places a person under judicial assistance, in order to cover the timeframe until the finality of the court's decision, as if the permanent judicial assumes his powers only by the finality of the decision of his appointment as if all other results of decision commence even by the time the first instance court's decision is issued (after it's recordation)¹⁶⁸. A provisional judicial assistant may also be appointed with a provisional order (grCCP Art. 781)¹⁶⁹, in case of the existence of a medical

¹⁶⁷ P. ARVANITAKIS, *supra*, grCCP Art. 805 No. 1; Areios Pagos 1736/2017, NOMOS (legal database).

¹⁶⁸ P. ARVANITAKIS, *supra*, grCCP Art. 805 No. 2.

¹⁶⁹ Areios Pagos 1736/2017, NOMOS legal database.

certificate, which certifies the urgency of appointment of an assistant, based on grounds concerning the health status of the adult (grCCP Art. 805 II 1)¹⁷⁰. The law provides that (grCCP Art. 805 II 2) “*The provisional order shall be issued after a hearing of the insisted person as if a report from the competent social service is brought, unless there is an imminent risk of any postponement.*”. The appointment may be asked either by the same persons who are entitled to file a petition to place a person under judicial assistance [*see Question 12*] or *ex officio* by the court¹⁷¹.

II) Procedural aspects: The competent court is the single-member court of first instance of the place, where the main petition (about the appointment of the - permanent- judicial assistant) has been brought, or as if the main petition is yet to be filed, the single member-court of first instance where the patient has his residence. The petition of grCCP Art. 805 is not addressed to the patient. A special report of grCC Art. 1674 must also be brought before the court, while the adult has a right to be heard before the hearing.

III) Court’s decision should be delivered to the President of the local Commission for Mental Health [Presidential Decree No. 250/1999]. The decision may be revoked or reformed¹⁷². The effects of the decision, commence by the time of its recordation in a special public registry, and expire *ex lege* by the time when the decision on the main petition becomes final (grCC Art. 1673, first sentence), or when the court decides, that the adult is not anymore in such need (grCC Art. 1673, second sentence)¹⁷³. Moreover, the duties of provisional judicial assistant cease to exist in case of the lifting of judicial assistance¹⁷⁴.

IV) With regards to the powers of the provisional assistant: he may take any protective measure deemed indispensable for avoiding a serious peril threatening the assisted him-/herself or the adult’s property (grCC Art. 1672, second sentence). A provisional assistant’s powers are restricted in contrast with those of a permanent judicial assistant, e.g., adult’s hospitalization, repair of his property, payment of overdue debts, interruption of prescription, and selling of fragile movable property¹⁷⁵. According to a view, in case the decision does not list the powers of provisional assistant, the assistant may pursue judicial permission for

¹⁷⁰ E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, p. 574; S. KAKATSAKIS, *supra*, Art. 1672 No. 12.

¹⁷¹ Every other person is excluded, see P. ARVANITAKIS, *supra*, grCCP Art. 805 No. 5.

¹⁷² P. ARVANITAKIS, *supra*, grCCP Art. 805 No. 12.

¹⁷³ P. ARVANITAKIS, *supra*, grCCP Art. 805 No. 11.

¹⁷⁴ S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1673 No. 3.

¹⁷⁵ Agg. GEORGIADI, *supra*, Art. 1672 No. 23.

certain controversial measures he wishes to take. The assistant serves as a provisional legal representative of the assisted person¹⁷⁶.

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.

See above Question 8.

18. Which authority is competent to order the measure?

Single member-court of first instance regardless of the kind of judicial or filed the petition.

19. Who is entitled to apply for the measure?

I)The court *ex officio*. This provision (grCC Art.1667 I 1 *in fine*) must be correlated with grCC Art.1668 duty of notification of the court. Persons listed in grCC Art.1668 have a duty of notification, while the court may also be notified by third persons, who cannot file a separate application according to grCC 1667 e.g., friends, distant relatives, neighbors, nephews, brothers etc. These persons are not obligated to notify by the law. The provision aims to avoid the negative effects of the inaction of persons listed in the law¹⁷⁷.

II)The public prosecutor of the court of the adult in question residence (e.g. grCC Art.1668). He/she either file a petition him-/herself or can notify the court to act *ex officio*. In any case, he/she is not permitted to be idle¹⁷⁸. Usually, the public prosecutor will bring before the competent court a report mentioning the

¹⁷⁶ Agg. GEORGIADI, *supra*, Art. 1672 No. 22-29.

¹⁷⁷ S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code)*, Vol. II, (Arts. 947-2035), Athens: P. N. Sakkoulas, 2013, Art. 1667 No. 13.

¹⁷⁸ A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary*, Vol. VIII, *Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, Art. 1667 No. 24-25; S. KAKATSAKIS, *supra*, Art. 1667 No. 12; Single member Court of first instance of Thessaloniki 4065/2010, ISOKRATES (legal database).

real facts, evidence, and the reasons why a person should be placed under judicial assistance¹⁷⁹.

III) In cases of grCC Art.1667 II and 1688, only the person in question is entitled to file the petition¹⁸⁰, which is why the mentioned before (under I,II) scenarios are excluded.

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

The consent of the adult is not provided, with respect to provisions of articles 1667 II and 1688 (2), namely in cases when only the patient is entitled to ask for his/her placement under judicial assistance. Judicial assistance does not require in first place the consent of the adult in question, which means that as if the legal grounds and prerequisites are met and a relevant petition is filled by person entitled under Greek Civil Code the court is entitled to place the adult under judicial assistance. However, the law in articles 1667 II [cases of physical (body) disability] and 1688 II [when the adult is imprisoned] requires a petition to be filled only by the adult in question in order to be placed under judicial assistance. This means that under certain circumstances only the adult in question can be placed him-/herself under judicial assistance. Consequently when the law provides 'a petition filled by the adult' this provides simultaneously his/her consent. This means that the law considers as milder legal grounds the cases of Articles 1667 II and 1688, namely when the adult suffers from a body disability or serves jail-time, that is why it provides a petition [as well as the consent] of the adult.

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

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

[See above question 13 e].

¹⁷⁹ Sic A. KOUTSOURADIS, *supra*, Art. 1667 No. 26.

¹⁸⁰ S. KAKATSAKIS, *supra*, Art. 1667 No. 14.

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

Recordation and publicity of the decision placing a person under judicial assistance [regardless of whom filed the petition or whether the court acted *ex officio*] are being provided in grCC Art. 1675, according to which the first-instance court's decision placing a person under judicial assistance must be recorded in a special register to be kept at the court secretariat. This provision refers to a general institution for all decisions edited according to non-contentious proceedings (grCCP Art.776)¹⁸¹. In generally, decisions of cases being ruled under *jurisdictio voluntaria* rules are being recorded to this public registry. However, regarding the judicial assistance cases, there is no public access to this record, kept at the court secretariat for these cases, except from persons who have a legal interest [namely those entitled to file a petition to place someone under judicial assistance] as well as public authorities. It cannot be regarded certainly as a free access public registry [see above under II. 'Limitation of legal capacity', *Question 8 e*, and *Question 10*].

Appointment of representatives/support persons

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

The answer refers to the appointment of judicial assistant regardless of whether the measure of judicial assistance was imposed after a special petition of persons mentioned in grCC Art.1667, the patient himself, or the public prosecutor or *ex officio* by the court. The following information are related to the question, who can or who cannot be appointed as a judicial assistant.

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

[see below, the answer to b.]

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

¹⁸¹ J. DELIYANNIS, *Judicial Assistance*, p. 723; Agg. GEORGIADI, *supra*, Art. 1675 No. 1, see further *ibid*, No. 2, 5 about the relation between grCC Art. 1675 and grCCP Art. 776.

Provisions of grCC Art. 1669–1671 refer to who can/cannot be appointed as judicial assistant normally, a physical (*argumentum* grCC Art. 1671) person can be appointed as judicial assistant. The judge has the power to decide freely about the person who will be appointed [grCC Art. 1669]. The judge’s power is not unlimited however, as if: (e.g.) a person who has been proposed by the person to be placed under judicial assistance has priority, provided if the patient is at least 16 years old¹⁸² and the proposed person does not belong to the persons who cannot assume the duties of a judicial assistant [grCC Art. 1670, *see below under d.*]. The adult may already have proposed his assistant in a previous time¹⁸³, within [as if the patient gets subpoenaed, grCCP Art. 802 II] or even before the hearing¹⁸⁴. Critical criterion constitutes the relation between the adult and the proposed assistant, while in case law¹⁸⁵ the courts use to appoint the proposed in the petition person. As long as any person has been proposed, the court is free to choose, as if it takes into account the patient’s opinion for the assistant, his relations with his relatives who are possible choices, the legal interests of the adult¹⁸⁶. Finally, in case of impossibility to find a judicial assistant, grCC Art.1671 applies (*see below, under f, in the very same Question 23*).

**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?**

No there is no such ranking. The judge usually appoints the proposed in the petition person.

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

I)The hearing of adult the person in question, in order for the judge to communicate with him. However, this does not mean that the law requires his consent. This is more about of procedural-evidence matter in order for the judge to be convinced that the legal requirements are met.

¹⁸² See further Agg. GEORGIADI, *supra*, Art.1669 No.13,14.

¹⁸³ Court of Appeals of Athens 1088/2007, *Hellenic Justice* (journal) 2007, 1124; Court of Appeals of Thessaloniki 617/2010, *Armenopoulos* (journal) 2011, 959; See further G.-A. GEORGIADIS, *Mandatum and provisional Power of attorney in case of legal incapacity*, *Chronicles of Private Law* 2018, 317 *et seq.*

¹⁸⁴ Agg. GEORGIADI, *supra*, Art. 1669 No. 11-12.

¹⁸⁵ See case law from Single member Court of first instance of Athens (unpublished) 5150/1997, 3577/1998, 3623/1998, 3633/1998, 3687/1998, 3758/1998, 3958/1998.

¹⁸⁶ Agg. GEORGIADI, *supra*, Art. 1669 No. 17.

II) (1) Furthermore the law [grCC Art. 1670] provides explicitly which persons cannot be appointed as judicial assistants, namely: 1. persons who are not capable of carrying out any judicial act (grCC Art. 127¹⁸⁷: regardless of their legal capacity is limited totally or partially). 2. persons in respect of whom a provisional judicial assistant has been appointed according to grCC Art. 1672¹⁸⁸). 3. finally, persons who according to grCC 131 I, *are not conscious of their acts or find themselves in a spiritual or mental disturbance that limits decisively the functioning of their will*¹⁸⁹. Moreover, persons who [grCC Art. 1670(3)] “*are connected in a relation of dependency or by any other close relationship with the unit of mental health in which the person assisted has been introduced for treatment or in which he merely resides*”. According to an opinion¹⁹⁰, the provision should have also included other employees of other facilities like health-care facilities for elderly or disabled persons¹⁹¹.

(2) In case of appointment of a person who belong in first category [grCC Art. 1670 *in fine*] the appointment¹⁹² does not produce legal effects, which means that the illegally appointed assistant has never truly acted as judicial assistant, and his actions are invalid and void. The provisions about *falsus procurator* (grCC Art. 229 *et seq.*) shall apply analogous¹⁹³. Until the appointment of another person as a judicial assistant, a provisional judicial assistant should be appointed¹⁹⁴. As long as person, mentioned in the last two categories, has been appointed, the law provides [grCC Art. 1670 *in fine* → Art. 1596, second sentence and third sentence] that the court must recall even¹⁹⁵ on its own the appointment.

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

Although the law does not provide it explicit, provisions regulating tutelage apply analogous (grCC Art. 1681) within the framework of judicial assistance, e.g.

¹⁸⁷ GrCC Art. 127.- Majority. “A person who has completed eighteen years (of age) shall be (legally) capable of carrying out any transaction.”.

¹⁸⁸ Persons, in respect of whom a permanent judicial assistant has been appointed are covered by the first passage of grCC Art. 1670; see further for the second category Agg. GEORGIADI, *supra*, Art. 1670 No. 4.

¹⁸⁹ Agg. GEORGIADI, *supra*, Art. 1670 No. 1-3.

¹⁹⁰ I. SPYRIDAKIS, *Judicial Assistance*, No. 37.4.

¹⁹¹ See among others Agg. GEORGIADI, *supra*, Art. 1670 No. 5.

¹⁹² Not the placement under judicial assistance *per se*!

¹⁹³ Agg. GEORGIADI, *supra*, Art. 1670 No. 6, especially footnote 26.

¹⁹⁴ Agg. GEORGIADI, *supra*, Art. 1670 No. 6 *in fine*.

¹⁹⁵ This means that the revocation petition may be brought before the court by one of the persons mentioned in grCC Art. 1667. In cases when only the adult is entitled to ask his placement under juridical assistance, he is the only one who may ask the revocation of the appointment, sic Agg. GEORGIADI, *supra*, Art. 1670 No. 7.

grCC Art. 1634. As result it is possible for the court to appoint more than one judicial assistant, who will exercise different duties (see grCC Art. 1605) e.g. the one may take care for the personal and health care of the assisted person, and the other may administer his/her property¹⁹⁶. If the court does not specify the duties of each judicial assistant, they shall act jointly (grCC Art. 1604).

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

No, he is free to deny his duties¹⁹⁷, with the exception of grArt.1671, which provides the possibility of appointment of a legal entity. The normal case is the appointment of a physical person, while legal entities, namely an association or foundation, may also serve as judicial assistants, as if the entity in question have been founded specifically for this cause, as well as it has proper personnel and substructure. In any other case the social services assume the duties of judicial assistant¹⁹⁸. The law provides as an *ultimum refugium* this solution, which is why, the mentioned above entities cannot deny to assume of their duties¹⁹⁹. Furthermore, the adult does not to have to be hospitalized. On the contrary, his/her everyday care may be assigned to a foster family²⁰⁰. Finally, the Judge of Magistrate's court, acts as a supervisory Council (analogous apply of grCC Art. 1635²⁰¹).

During the measure

Legal effects of the measure

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

[See above question 9].

Powers and duties of the representatives/support person

¹⁹⁶ See further K. PANAGOPOULOS, *Judicial assistants with different duties (legal opinion)*, EfADPoID 2020, 130-135 (especially see p. 134-135).

¹⁹⁷ As if he is not being paid, S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1669 No. 2.

¹⁹⁸ See further Agg. GEORGIADI, *supra*, Art. 1671 No. 1-4.

¹⁹⁹ In contrast with physical persons, Agg. GEORGIADI, *supra*, Art. 1669 No. 19.

²⁰⁰ See J. DELIYANNIS, *Judicial Assistance*, p. 37, footnote 3; Agg. GEORGIADI, *supra*, Art. 1671 No. 5.

²⁰¹ Sic Agg. GEORGIADI, *supra*, Art. 1671 No. 7.

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

The judicial assistant exercises a profession of high personal nature (in personam) and of critical function, not to mention morality and honesty in the frame of which the he/she has to carry out their duties (on honorary basis, without any fees)²⁰².

- 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; [see question 9a]**
- c. **personal and family matters; [see question 9b]**
- d. **care and medical matters; [see question 9c]**
- e. **what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**

GrCC Art. 1684 provides two basic principles for the function of all kinds of judicial assistance, namely: (1) all of assistant's acts, as well as of the supervisory council or of the court, should aim at promoting the adult's interests. (2) Before every such act takes place, personal communication (see grCCP Art. 804 I) with the assisted must be sought, and his/her opinion must be fully consistent²⁰³. The last principle provides maturity and perceptiveness of the assisted adult. Moreover, while exercising care within the meaning of grCC Art. 1680 (first sentence), the assistant should (grCC Art. 1680, second sentence) secure the adult's right to handle for himself/herself his/her personal relations in so far he is capable of that. The provision aims to the avoidance of scenario under which the assistant will decide in absence of the adult's personal affairs, as well to the protection of the adult's right to develop without restrictions his personality, for example within the framework of his/her personal matters like clothing, food, education, free time etc²⁰⁴.

So, it would be more appropriate to characterize it as a sort of a 'best interest' approach in first place. However, in order to define the person's in question 'best interest' it is important to also evaluate his opinion after a personal communication with the person assisted. This does not mean however that 'will and preferences' dominate as characteristics as regards with the philosophy of the institution of judicial assistance.

²⁰² S. KAKATSAKIS, in: A. GEORGIADIS (eds.), *SEAK (Brief commentary on Greek Civil Code)*, Vol. II, (Arts. 947-2035), Athens: P. N. Sakkoulas, 2013, Art. 1669 No. 2.

²⁰³ See S. KAKATSAKIS, *supra*, Art. 1684 No. 1-2.

²⁰⁴ Agg. GEORGIADI, *supra*, Art. 1680 No. 6.

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?

See below about the assistant's duties towards the supervisory council.

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

I) There are four major categories of duties-responsibilities of the assistant:

(1) mandatory acts to be taken: (i) Drawing up an inventory of the adult's property before the presence of the supervisory council [judicial inventory may also be asked, grCC Art. 1611], (ii) assistant should cause a decision to be taken by the supervisory council determining the annual disbursements (grCC Art.1612), (iii) assistant should without delay either use productively or place profitably adult's money (cash), as well as place in a safe bank or other appropriate financial establishment adult's valuable movables, shares, bonds etc (grCC Art. 1613, 1614), (iv) rendering account before the supervisory council (grCC Art. 1626). In case of breach of these duties, the assistant may have to pay compensation (grCC Art. 1632), and/or be terminated from his/her duties (grCC Art. 1651)²⁰⁵.

(2) forbidden acts: it is prohibited to the assistant to conclude gratuitous judicial acts (e.g. donations, commodatum, interest-free loan, the release of debt), unless these acts prescribe a special moral duty or reasons of decency (grCC Art. 1618). The Assistant cannot use the adult's money for his/her own cause, but he/she is entitled to conduct bilateral contracts within the framework of managing the estate of the adult. Every act, concluded in contravention with the legal mentioned before provisions is invalid (relative nullity, grCC Art.1630), while the assistant may be terminated of his/her duties (grCC Art. 1651), and/or being held responsible for compensation (grCC Art. 1632).

(3) acts without formalities: as if the law does not provide explicitly the assistant manages freely the adult's property e.g. paying or collecting of his/her debts, conducting of the adult's trials, hiring of legal consultant etc²⁰⁶.

(4) acts with formalities can be divided between²⁰⁷:

²⁰⁵ Agg. GEORGIADI, *supra*, Art. 1682 No. 11-16.

²⁰⁶ Agg. GEORGIADI, *supra*, Art. 1682 No. 20.

²⁰⁷ In case if the assistant conducted acts without following the legal formalities, these acts are invalid [relative nullity, grCC Art. 1630], and the assistant might be count accountable to pay compensation to the adult [grCC Art. 1632]. Finally, he may also be terminated of his duties [grCC Art. 1651].

(4.1) acts which require only the permission of the supervisory council: e.g. (see grCC Art. 1619) lease of the adult's property as well as conducting every other act that exceeds the limits of orderly management [with respect to provisions of grCC Art. 1623, 1624, 1625]²⁰⁸. In case of denial of the council to give its permission, the court shall resolve the case (grCC Art. 1622)²⁰⁹,

(4.2) acts that require general judicial permission and supervisory council's opinion: all the acts of grCC Art. 1619. Moreover, the assistant may take a loan on behalf of the adult, as well as guarantee and take over debts on the adult's behalf, within the framework of managing of the adult's enterprise [grCC Art. 1623]²¹⁰. In contrast with the third category, this judicial permission [accompanied by the council's opinion] is general.

²⁰⁸ GrCC Art. 1623.- *General permission.* "After an opinion given by the supervisory council the Court may grant to the tutor a general permission to effect without restrictions the acts coming under section 1619 in so far as the Court considers that such permission is necessary for or beneficial to the management of the minor's property and in particular as regards the exploitation of an enterprise belonging to the minor. In the same manner and subject to the same preconditions may be granted to the tutor a general permission to borrow in the name of the minor to assume the debt of another and to provide guarantees as may be required for the exploitation of the minor's enterprise".

GrCC Art. 1624.- *Acts with Court permission.* "A tutor without a previous opinion of the supervisory council and the permission of the Court shall not have the right in the name of the minor: 1. to dispose of the minor's property either in whole or in part, 2. to alienate or to acquire for consideration an immovable or real rights on the immovable of another, 3. to assign a claim the subject-matter of which is the transfer of an immovable to the minor, 4. to alienate the securities and the valuable objects referred to in section 1614, 5. to carry out any work on an immovable of the minor the disbursements for which exceed the limit laid down in the third paragraph of this section, 6. to alienate a commercial industrial or other kind of enterprise comprised in the minor's property to decide the dissolution or liquidation thereof as well as to establish a new enterprise, 7. to give on lease an immovable of the minor for a time period exceeding nine years 8. to lend or to borrow, 9. to renounce a guarantee securing a claim of the minor or to reduce such guarantee, 10. to conclude a compromise or an agreement providing for arbitration where the value of the subject-matter involved exceeds the limit laid down in the third paragraph of this section, 11. to guarantee or to assume for a consideration the debt of another under reserve of the provisions of the second paragraph of section 1623. The previous opinion and the permission referred to above when relating to disposals shall also be required for the conclusion of the relevant contractual undertakings.

The permission of the Court may be given conditionally.

The limit beyond which the tutor cannot undertake the acts referred to in items 5 and 10 of the first paragraph of this section shall be equal to the amount of the yearly disbursements applied to the minor's needs as determined by section 1612".

GrCC Art. 1625.- *Inheritance or legacy devolving on the minor.* "A tutor without a previous opinion of the supervisory council and the permission of the Court shall not have the right in the name of the minor: 1. to refuse an inheritance or to renounce the compulsory share in an inheritance devolving on the minor, 2. to accept a legacy or a donation encumbered with charges, 3. to refuse a legacy devolving on the minor.

As regards the acceptance of an inheritance devolving on the minor shall be applicable the provisions of section 1527".

²⁰⁹ Agg. GEORGIADI, *supra*, Art. 1682 No. 22.

²¹⁰ Agg. GEORGIADI, *supra*, Art. 1682 No. 23.

(4.3) acts that require judicial permission and supervisory council's opinion: this judicial permission is special, and concern's all types of acts mentioned in grCC Art. 1624-1625²¹¹.

II) Regarding the care of the adult in case the care has been assigned to the assistant [grCC Art. 1680], grCC Art. 1609-1610 apply analogously. According to these provisions, the adult can be institutionalized in an authorized facility, as if: (1) the supervisory council agrees, (2) the court gave its permission, after taking into account a medical report and a report of the competent social service. The supervisory council and the social services supervise his stay at the institution.

III) It is should also be mentioned, that the judicial assistant²¹², after judicial assistance resumes (for any reason) or in any case of the ending of his duties, should deliver the adult's property to him-/herself or his/her heirs or the newly appointed assistant. Assistant or his/her heirs are also obliged to render²¹³.

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

Normally judicial assistance is unpaid, however, under certain circumstances, the court may grant a salary for the services [grCC Art. 1631 I, first sentence, which applies analogously based on grCC Art. 1682, first sentence]²¹⁴. *The judicial assistant may claim payment to him of any disbursement for the implementation of his duty in accordance with the provisions governing mandatam* [grCC Art. 1631 II].

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?

Judicial assistance can be imposed simultaneously with compulsory treatment. Under compulsory treatment, the adult neither abolishes his/her legal capacity nor

²¹¹ Agg. GEORGIADI, *supra*, Art. 1682 No. 25-38.

²¹² Or assistant's heirs.

²¹³ See further S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code), Vol. II, (Arts. 947-2035)*, Athens: P. N. Sakkoulas, 2013, Art. 1683 No. 10.

²¹⁴ See E. ZERVOGIANNI, *Non-institutional Care for Seniors from a Civil Law Perspective*, EfADPoID 2018, 1009 *et seq.* (1012).

has a legal representative. Two different institutions, with different structures, serve the interests of the patient. Normally the person to whom a compulsory treatment is imposed finds himself in conditions of grCC Art. 131. As result, there are usually enough legal grounds to be placed under Judicial Assistance

- 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)?**

For the case of appointment of more than one judicial assistant [*see above question 23 e*].

Safeguards and supervision

27. Describe the organisation of supervision of state-ordered measures.

Pay attention to:

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

I) The supervisory council, which should act in respect of the person's assisted interests (grCC Art. 1684). The council consists of three up to five persons [normally adult's friends and relatives], who are being appointed by the court to supervise the assistant [grCC Art. 1682 (second sentence)]. Provisions regarding tutelage apply analogously²¹⁵ [grCC Art.1682 (first sentence)], unless the law provides it differently. In the case of a provisional judicial assistant, the Magistrates Court Judge exercises the duties of the supervisory council²¹⁶.

II) The court, does not constitute supervisory authority, however, it has the power either to change the kind and extent of the imposed judicial assistance [grCC Art. 1677] or to lift it [grCC Art. 1685], or to terminate the assistant's duties, as well as it resolves the disputes between the assistant and the council [grCC Art. 1642]²¹⁷.

²¹⁵ Regardless of the kind of judicial assistance (exclusive or concurrent), prevailing view Sic Agg. GEORGIADI, *supra*, Art. 1682 No. 45 *et seq.* (47); G. DASKAROLES, *Family Law*, vol. II, p. 750; Contra J. DELIYANNIS, *Judicial Assistance*, p. 47.

²¹⁶ S. KAKATSAKIS, in: A. GEORGIADES (eds.), *SEAK (Brief commentary on Greek Civil Code)*, Vol. II, (Arts. 947-2035), Athens: P. N. Sakkoulas, 2013, Art. 1682 No. 15.

²¹⁷ Agg. GEORGIADI, *supra*, Art. 1684 No. 5-7.

III) Social services, even though they do not constitute a typical instrument of the institution, serve it from the beginning to the end²¹⁸.

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

The council (along with the court) is responsible to give permission to the judicial assistant in order to conduct economically significant acts upon the property of the assisted adult. The council supervises the assistant's acts [grCC Art.1642, 1643]²¹⁹. According to a view, the court may specify the actions for the conductance of which, the assistant must act, only if the council permits it²²⁰.

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

Provisions on Tutelage (grCC Art. 1650-1651) apply analogously [grCC Art. 1682 (first sentence)]²²¹. These provisions lead to cessation of judicial assistant: firstly [grCC Art. 1650] *ex lege* in case the assistant loses his capacity of conducting judicial acts, or if he/she is placed under provisional judicial assistance, or if he is declared absentee, or if has been ordered the placing of his affairs under judicial custody [grCC Art. 1689 et seq.]²²². Secondly, [grCC Art.1651] *the court shall at the request of the supervisory council or even on its own initiative, decide the cessation of the assistant's functions on serious ground, in particular, if the Court considers that the continuation of his assistance might imperil by reason of neglect of his duties or on some other ground the interests of the person assisted*, e.g. in case of bankruptcy of the assistant, neglect of his/her duties (e.g. lacking compassion versus the assisted, alcoholism) or illness or old age of the assistant, etc²²³. Within the framework of exclusive judicial assistance, the decision can be issued either after a petition filed by the supervisory council or *ex officio*, as well as – according to one point of view²²⁴ – the adult himself, who is entitled by the law (grCCP Art. 802 I) to be present before the court hearings. As regards concurrent judicial assistance, where the law does not provide the precedence of a supervisory council, persons mentioned in grCC Art. 1667

²¹⁸ Agg. GEORGIADI, *supra*, Art. 1684 No. 8.

²¹⁹ Agg. GEORGIADI, *supra*, Art. 1684 No. 3-4 & Art. 1682 No. 48.

²²⁰ Sic G. DASKAROLIS, *Family Law*, vol. II, p. 753; Agg. GEORGIADI, *supra*, Art. 1682 No. 48.

²²¹ Legal theory applies grCC Art. 1650-1651 also in concurrent judicial assistance, Sic I. SPYRIDAKIS, *Judicial Assistance*, No. 37.9; J. DELIYANNIS, *Judicial Assistance*, p. 44; Agg. GEORGIADI, *supra*, Art. 1669 No. 20.

²²² Agg. GEORGIADI, *supra*, Art. 1669 No. 21.

²²³ Agg. GEORGIADI, *supra*, Art. 1669 No. 22-23. See further J. DELIYANNIS, *Judicial Assistance*, p. 46.

²²⁴ Agg. GEORGIADI, *supra*, Art. 1669 No. 24.

have a right to notify the court, whether there is a legal ground for cessation of the appointed assistant. However, the social services can substitute in this case, the absent supervisory council [arg. grCC Art. 1645, which applies analogously in judicial assistance, grCC Art. 1682 (first sentence)]²²⁵. According to this view²²⁶, the social services may ask for the cessation of the assistant. The petition must be raised before the single-member court of first-instance of the place where the adult has his/her residence, while it is crucial to file also a petition of appointment of another person as a judicial assistant. The adult must be subpoenaed, while persons mentioned in grCC Art. 1667 may intervene in the trial²²⁷. The decision must be recorded according to grCC Art. 1675, which according to an opinion marks the moment that the legal effects of the decision commence (arg. grCC Art. 1681)²²⁸. After cessation, the judicial assistant, abolishes his/her powers, while it is mandatory for him/her to be informed²²⁹.

**All mentioned before information, apply also in the case of the provisional judicial assistant*²³⁰.

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

According to grCC Art. 1632 (first sentence), analogous applied, the assistant is responsible for any damage he caused to the adult while exercising his/her duties as if he/she is charged with at least *slight abstract negligence*. In case more than one assistant has been appointed, they shall be counted responsible jointly, unless they were acting independently on their separate duties (grCC Art.1632, *in fine*).

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.

I) The placement of a person under judicial assistance leads to the adult's legal incapacity which means any adult's attempt to conclude a judicial act by him-/herself (or without the assistant's consent) will lead to the invalidity of the transaction. As a result, in case of contractual liability the adult cannot assume obligations, as if he/she is legally incapable.

²²⁵ See Agg. GEORGIADI, *supra*, Art. 1669 No. 25.

²²⁶ J. DELIYANNIS, *Judicial Assistance*, p. 46-47; Agg. GEORGIADI, *supra*, Art. 1669 No. 26.

²²⁷ Agg. GEORGIADI, *supra*, Art. 1669 No. 27-28.

²²⁸ J. DELIYANNIS, *Judicial Assistance*, p.49-50; Agg. GEORGIADI, *supra*, Art. 1669 No. 30-31.

²²⁹ Third persons who concluded transactions with him are protected, see Agg. GEORGIADI, *supra*, Art. 1669 No. 34.

²³⁰ Agg. GEORGIADI, *supra*, Art. 1669 No. 35.

II) Firstly persons placed under judicial assistance cannot be held liable for paying compensation, as the law considers them *non-responsible* (grCC Art. 915 *et seq.*) Furthermore, in case of torts committed by the person assisted, the judicial assistant shall be liable to pay compensation versus third persons (grCC Art. 923) under certain circumstances. The law provides the conductance of an illegal act (→ grCC Art. 914, tort) by the adult, as well as culpable neglect of supervision of the assisted adult by the assistant (however, there is no such judicial precedent in Greek case law, and this view depicts more a theoretical doctrinal analysis of the problematic). The law provides also causation between the neglect and the committed tort. The assistant may raise objections, claiming that he/she performed properly his/her duties of supervision or that the avoidance of the tort was not possible. The provision refers only to the liability of the assistant versus third parties²³¹.

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

a-b. See above *Question 25 d (under I.), Question 26 a-b, Question 23 e.*

In case the assistant conducted acts without the legal formalities, these acts are invalid [relative nullity, grCC Art. 1630], and the assistant might be held accountable to pay compensation to the adult [grCC Art. 1632]. He may also be terminated from his/her duties [grCC Art. 1651]²³². Finally, in case of judicial acts concluded by the legally incapable adult either by him-/herself in case of exclusive judicial assistance or without assistant's consent (concurrent judicial assistance), shall be null and void *ex lege*.

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

I) As regards the adult placed under judicial assistance, he/she lacks a legal capacity which is why he/she is incapable to assume obligations or conclude contracts, and if he/she does the law provides nullity of such judicial acts. This nullity stands *ipso jure* and does not provide a formative judicial decision (*Gestaltungsurteil*) [See further about torts/delicts committed by the vulnerable adult, *Question 27 e, under II*].

²³¹ See about grCC Art. 923, A. GEORGIADIS, *General part of Law of obligations*, 2nd edition, Athens, P. N. Sakkoulas 2015, pp. 698-702.

²³² Provisions on tutelage apply analogously (grCC Art. 1681) in case of judicial assistance.

II) As regards the representative there are no special rules concerning ill-conceived acts. See the information mentioned above [*Question 28 a-b*] about unauthorized acts.

d. conflicts of interests

In case of conflicts of interests between the assistant and the person assisted, or his wife, relatives (children), as well as in cases of a need of substitution, the court may appoint of special assistant (grCC Art. 1627, 1628).

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

End of the measure

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

Note: The following information refers to any kind of judicial assistance, which is why they also apply for the Part. II of the questionnaire.

D) Termination of judicial assistance takes place in the following ways;

(1) *ipso jure* in case of death of the adult or his/her declaration as absentee [grCC Art. 40 *et seq.*].

(2) Judicial assistance may be lifted²³³, based on grCC Art. 1685-1686. The difference with the termination of the judicial assistant's duty is that in the last case a new assistant will be appointed. Moreover, lifting differs from amendment according to grCC Art. 1677, in the fact that the adult remains legally incapable²³⁴. With regards to the lifting of judicial assistance and according to grCC Art. 1685 the court [*ex officio* or at the request of the persons of grCC Art. 1667] may abolish the judicial assistance, as long as the legal grounds on account of which it has been imposed, ceased to exist. The abolition of judicial assistance means the abolition of the adult's legal incapacity. It is required that the adult either has been healed from his spiritual or intellectual disturbance or bodily impairment, or he/she is not exposed anymore to a risk of life (him-/herself or his/her closed ones) due to

²³³ See among other E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, pp. 580-581.

²³⁴ I. SPYRIDAKIS, *Judicial Assistance*, No.50.1.,50.3. · Agg.GEORGIADI, *supra*, Art.1685-1686 No.1, see further No.2-4 about assistant's obligations to render after the Lifting.

dilapidation (*asotia*), drug abuse or alcoholism, etc²³⁵. In other words, the restoration of the patient's health (physical, psychical, mental).

II) The law provides the issuing of a judicial decision [according to non-contentious proceedings, grCCP Art. 739, 740 and Introductory Law of grCC Art. 121], in order to protect third parties²³⁶. The competent court is the single-member court of the first instance of the place where the adult has his/her residence. The petition should not be addressed to the adult or someone else, however, the adult must be subpoenaed to the court hearing, in order for the judge to communicate with him/her and decide based on his/her best interest²³⁷. As regards procedural matters of evidence, grCCP Art. 804 applies, while the procedure follows the same rules with the placement of a person under Judicial assistance. The petition can be filed only by the following persons, namely the adult, the adult's spouse (registered partner), the adult's children, the public prosecutor, or the court *ex officio*. In case the adult filled the petition the court shall rule in its free appreciation²³⁸. In the case of a disabled person (grCC Art. 1667 II) a petition asking for his/her placement under judicial assistance, only the same person has a right to ask the lifting of the judicial assistance²³⁹.

III) Although judicial assistant is not listed in grCC Art. 1685, the following rule of grCC Art. 1686 provides that when *he/she has knowledge of events that justify any amendment to the status of the judicial assistance, the assistant should notify the court accordingly and without further delay*, in order for the court to act *ex officio* [→ lifting of the judicial assistance²⁴⁰]. The court is entitled to accept the application, or to reject it, or to modify [arg. grCC Art. 1677] the current status of the adult, e.g. to modify the exclusive judicial assistant to concurrent, or the whole to partial, etc²⁴¹.

IV) Provisions about the lifting of the judicial assistance (grCC Art. 1685) shall apply in case of judicial assistance, provided in grCC Art. 1688. As if the legal ground of the imposed measure [actual serving of his sentence] ceases to exist due to e.g. pardon, amnesty, release on license, etc]. In this case, the free assessment by the court is completely limited, since this kind of judicial assistance is subject

²³⁵ Agg. GEORGIADI, *supra*, Art. 1685-1686 No.7.

²³⁶ Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 9.

²³⁷ J. DELIYANNIS, *Judicial Assistance*, pp. 96-97; Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 10.

²³⁸ See further J. DELIYANNIS, *Judicial Assistance*, p. 91.

²³⁹ See E. KOUNOUGERI-MANOLEDAKI, *Family Law, Vol. II*, pp. 580-581.

²⁴⁰ Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 12.

²⁴¹ J. DELIYANNIS, *Judicial Assistance*, p. 94; Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 15 [*argumentum majore ad minus*].

to the free assessment of the applicant's choice²⁴². Judicial assistance can be lifted either *ex officio*, by the court [analogous apply grCC Art. 1685 I], or at the request of the convicted person. The convicted may file such a petition, even if he/she is still serving his sentence²⁴³.

V) Court's decision shall be recorded according to grCC Art.1675²⁴⁴. With regards to the time that the effects of the decision commence, a first view²⁴⁵ is in favor of the time of the recordation of the first-instance court's decision [arg. grCC Art. 1681]. A second opinion argues on the basis of *argumentum a contrario*, and more specifically to the fact that the law does not provide exceptionally about the time the effects of the decision commence [in contrast with the decision placing someone under judicial assistance], it means that the decision, in this case, must be final and not just first instance decision²⁴⁶. This view is based on the argument that the law aims to the interest of the assisted, which must be placed under assistance as soon as possible [even with a first instance decision], but the reverse situation, namely the lifting of the judicial assistance should take place at a later time, namely finality of the decision²⁴⁷.

Reflection

30. Provide statistical data if available.

No statistical data are available.

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?

Interpretational problems have already been mentioned below each question.

²⁴² See A. KOUTSOURADIS, in: A. GEORGIADES and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VIII, Family Law (Arts. 1505-1694)*, 2nd edition, Athens: P. N. Sakkoulas, 2003, Art. 1688 No. 38-41.

²⁴³ See A. KOUTSOURADIS, *supra*, Art. 1688 No. 42-44.

²⁴⁴ Ratio [→ *the protection of third parties' interests*], Sic Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 13.

²⁴⁵ K. PANAGOPOULOS, *Time of commencement of Judicial Assistance's effects*, EfADPoID (journal) 2017, 297 *et seq.* This view has been mainly expressed under the previous legal regime of grCC (anc.) Art. 1693 (= grCC Art. 1681), sic G. BALIS, *Family Law*, 2nd edition, Athens-Thessaloniki: P. Sakkoulas, 1961, p. 444; G. MICHAELIDIS-NOUAROS, *Family Law*, Athens-Thessaloniki, P. Sakkoulas, 1978, p. 431.

²⁴⁶ Sic J. DELIYANNIS, *Judicial Assistance*, p. 100; G. DASKAROLES, *Family Law, vol. II*, p. 759; E. KOUNOUGERI-MANOLEDAMI, *Family Law, Vol. II*, p. 581; A. GEORGIADES, *Family Law*, p. 983 *et seq.*, 991 *et seq.*, 993 *et seq.*; Agg. GEORGIADI, *supra*, Art.1685-1686 No. 17. See also Areios Pagos 1298/2014, NOMOS (legal data base).

²⁴⁷ See further Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 17.

SECTION IV – VOLUNTARY MEASURES

Overview

❖ Questions 32-49, based on the mentioned above information are not relevant as regards Greek Law.

General remarks

I) On medical matters: there are no special rules providing the adults' opportunity to decide *a priori* about personal or medical matters like the so-called institutions of *health care proxies*²⁴⁸ or *living wills* (*Patientenverfügung*), in contrast to other jurisdictions: e.g. German Law (BGB § 1901a I), or French Law (Code de la santé publique L.1111-10, 11, Loi Leonetti-Clayes, 2.2.2016)²⁴⁹. The problem of *advance directives* arises in the case of medical operations and acts, on the basis that consent must be provided at the time of medical operation [Code of Medical Ethics, Law No. 3418/2005, Art. 12]. The Code provides [Art. 29 II], similar to *Oviedo Convention* [Art. 9] that, *the doctor shall take into account the wishes previously expressed by the patient, even if, at the time of the operation, the patient is not in a position to repeat them*. These provisions do not relate only to cases regarding terminal illness but apply further. The crucial point is that these wishes of the patient are not mandatory²⁵⁰ for the doctor, for example: even if a person had already prepared a document providing which medical acts will he consents to do so, in case of possible incapability in the future. This *lacune* (*latu sensu*) of the Greek Law may be covered by the mentioned above institution of judicial assistance²⁵¹ to whom the court may assign also the care of the adult (grCC Art. 1680), who (the adult) may [grCC Art. 1669] have proposed previously (e.g. when he was in better mental condition) his assistant²⁵², which seems similar to the *care proxy institution*. Ever again the judicial assistant should also consider the interest (grCC Art. 1684), as well as the (suspected) will of the assisted, but he is not obligated to follow any previous (advance) directives of the assisted.

²⁴⁸ Cf. Law No. 4898/2022 [which ratified Hague Convention] Art. 15, 16, which-however- provide mainly (conflict) rules of international law.

²⁴⁹ See K. FOUNTEDAKI, *Lessons on Medical Liability*, p. 106, as well as footnote 152.

²⁵⁰ As long as the law does not provide it, see K. FOUNTEDAKI, *Care proxies and living wills. Regulatory deficit of Greek Law*, in: LABORATORY FOR THE RESEARCH OF MEDICAL LAW AND BIO-ETHICS (ed.), *Patient's wishes and medical decisions in the end of life*, Athens-Thessaloniki: Sakkoulas, 2016, pp. 13 *et seq.* (26-27).

²⁵¹ In case of persons who are under one of the conditions of grCC Art.131, the appointment of a provisional judicial assistant (grCCP Art. 805), will be a practical solution in many cases.

²⁵² Agg. GEORGIADI, *supra*, Art. 1685-1686 No. 12; Cf K. FOUNTEDAKI, *supra*, p. 22.

Moreover, with respect only to medical matters in case of lack of judicial assistant of a person, who cannot give his consent, the Code of Medical Ethics (Art. 12 III a) provides that "*Exceptionally, consent is not required:(a) under urgent circumstances when appropriate consent cannot be given and there is an immediate, absolute and urgent need to provide medical care [...]*".

II) Recent developments in legal theory: According to a recently proposed view in legal theory²⁵³: It is valid and legally binding for the court, which will decide upon the placement of an adult under judicial assistance, an adult's granting²⁵⁴ of a *mandatum* or power of attorney (proxy) to another person for the management of his/her affairs, in the event of future adults in question incapacity. As result, judicial assistance is excluded to the extent that the management of the adult's affairs, is possible based on this *mandatum* or proxy. This view points out that provided if a person is entitled to provide about his patrimonial as well as certain personal-family affairs²⁵⁵ after his death, with an (irrevocable) *post-mortem*²⁵⁶ power of attorney, why not the person be permitted to take of his affairs for the timeframe of his possible-future legal incapacity (*argumentum a fortiori*). This view points out that the imposition of *ex judicio* institutions, like judicial assistance, must be preceded by *ex voluntatis* institutions²⁵⁷, like *mandatum*²⁵⁸ and power of attorney. Even if the law does not provide it *expressis verbis*, the mentioned potential must not be precluded, however, the introduction of special provisions might be useful for the regulations of special aspects like typical formalities (e.g. notarial deed²⁵⁹ of the *mandatum* or power of attorney), publicity, regulatory measures or safeguards etc²⁶⁰. As result, this view points out that judicial assistance must have a supporting role, in order for the adult to provide himself with *anticipatory measures* (*a priori*) about his patrimonial and personal affairs in case of a possible future loss of capacity. *Judicial assistance will be*

²⁵³ A. KOUTSOURADIS, *The (provisional) civil protection on behalf of the elderly and the suffering adults or an alternative to judicial assistance* in: GREEK SOCIETY OF JURIDICAL STUDIES (ed.), *Modern Trends in Family Law*, Athens 2013, pp. 147 *et seq.* (especially pp. 179 *et seq.*); Cf S. KOTRONIS, *supra*, PRO JUSTITIA 2020, 80.

²⁵⁴ At a time prior to adult's being in a state of permanent mental or psychological disorder.

²⁵⁵ As if representation is permitted about the transaction in question.

²⁵⁶ It should be pointed out, that Greek law provides that a power of attorney may be still valid, even if the person who provide it has died (grCC Art. 223).

²⁵⁷ A. KOUTSOURADIS, *supra*, p.175.

²⁵⁸ Cf French Civil Code Art.477-497 on *Mandat de protection future*, se A. KOUTSOURADIS, *supra*, p.180.

²⁵⁹ Normally the law does not require special formalities (like notarial deed), unless in cases of power of attorney, namely the provisions on Representation: as if the transaction in which the adult will be represented by his (appointed by him) representative, requires a notarial deed, power of attorney should be provided also with a notarial deed (see grCC Art.217 II), see further A. KOUTSOURADIS, *supra*, p. 181.

²⁶⁰ A. KOUTSOURADIS, *supra*, p. 179-180.

called upon to carry out its task either when the person has not manifested or when the person has failed to do so²⁶¹.

III) To sum up, the mentioned above (under II.) has prevailed yet, neither in legal theory nor in case law, which is why clear legislative provision would be proven useful, e.g. when will the power of attorney effects shall begin, which transactions or judicial acts will be carried out with the power of attorney or mandatum, which safeguards will ensure adult's interests, how and by whom will power of attorney or mandatum be revoked etc. Until the establishment of an explicit legal framework, the mentioned above suggestions will *stand de lege ferenda*.

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

Please answer the following questions [33 - 47] for each (if there are several) voluntary measure.

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

- a. the existence of specific provisions regulating voluntary measures;
- b. the possibility to use general provisions of civil law, such as rules governing ordinary powers of attorney.

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

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)?

Start of the measure

Legal grounds and procedure

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

²⁶¹ Sic A. KOUTSOURADIS, *supra*, p. 183.

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

Appointment of representatives/support persons

39. Who can be appointed representative/support person (natural person, public institution, CSO's, private organisation, etc.)? Please consider:
- a. what kind of requirements does a representative/support person need to meet (capacity, relationship with the grantor, etc.)?
 - 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?

During the measure

Legal effects of the measure

40. To what extent is the voluntary measure, and the wishes expressed within it, legally binding?
41. How does the entry into force of the voluntary measure affect the legal capacity of the grantor?

Powers and duties of the representative/support person

42. Describe the powers and duties of the representative/support person:
- a. can the representative/support person act in the place of the adult, act together with the adult or provide assistance in:

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

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)?

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?

Safeguards and supervision

45. Describe the safeguards against:

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

c. conflicts of interests

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

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

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.**

Reflection

- 48. Provide statistical data if available.**

No statistical data available.

- 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)? Have the measures been evaluated, if so what are the outcomes?**

[See above, especially question 31].

SECTION V – EX LEGE REPRESENTATION

Overview

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

I) Greek Law does not provide such institutions. Provisions like of grCC Art. 1389 *et seq.* providing the mutual trust and obligation of spouses to contribute jointly, as well as the obligation maintenance obligations [between spouses, parents and descendants etc, grCC Art. 1485 *et seq.*], even they can also be fulfilled *in natura*, it is regarded that the *ratio*, the meaning and the philosophy of these articles cannot be interpreted as a legislative basis for *ex lege* representation by the other spouse, or by the (vulnerable) adult's in question children, due to its' strictly scope of application²⁶².

II) A special provision can be found in Art. 12 of the Greek Code of Medical Ethics [Law No. 3418/2005], concerning urgent situations of persons who cannot consent to medical operations and have not been placed under Judicial Assistance. This provision provides that in this case the consent shall be given by the close relatives²⁶³ of the patient [Art.12 II b) bb)], and this is the only case of *ex lege* representation of vulnerable adults under Greek Law, which applies only in medical matters and cannot apply analogous e.g. in patrimonial matters. The law provides under extremely urgent circumstances as if persons who are entitled to consent on behalf of the patient deny to do so, consent is not mandatory and the medical operation may take place legally, without consent [Art. 12 III *in fine*].

III) To sum up there are no general provisions under Greek Law, which provide *ex lege* representation for vulnerable adults. The mentioned lacunae can be covered in case of urgent situations within the framework of medical matters by Art.12 of Code of Medical Ethics. At any case the law provides (see above) that a provisional judicial assistant may be appointed with provisional order (grCCP Art. 781). Hence, Greek law does not provide *ex lege* representation provisions, as if it regulates the protection of vulnerable adults mainly with judicial imposed institutions, that is why questions 51-61 are not relevant.

Start of the ex-lege representation

Legal grounds and procedure

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

²⁶² E. ZERVOGIANNI, *Non-institutional Care for Seniors from a Civil Law Perspective*, EfADPoID 2018.1009 *et seq.* (1011)

²⁶³ Cf however the last passage of the same provision "At any case, the doctor shall endeavour to secure the voluntary participation, involvement and cooperation of the patient, and in particular of the patient who understands his or her state of health, the content of the medical act, the risks, consequences and outcomes of the act."

Greek Law does not provide such institutions that is why questions 51 and 61 are irrelevant.

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

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

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.

During the ex-lege representation

Powers and duties of the representatives/support person

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

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?

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

Safeguards and supervision

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

End of the ex-lege representation

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

Reflection

- 60. Provide statistical data if available.**
- 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)?**

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?**

Under the legal matrimonial regime of separation of assets, every spouse has his own patrimony (movable, immovable property or any other right), while every spouse's assets after the conclusion of the marriage are not to be shared and belong to the acquirer's spouse separate property. Every spouse administers his own property: however, the administration of the other's spouse property may be carried out by the other spouse. According to grCC Art. 1399 one spouse's patrimony may be entrusted to the other after the conclusion of a contract (e.g. mandatam or service contract), even tacitly. Unless it has been agreed differently the spouse who assumed the management of the other's patrimony has no obligation to render an account or to hand over the income²⁶⁴ derived from the management (grCC Art. 1399 I, first sentence, *jus dispositivum*)²⁶⁵. Furthermore, according to the law (grCC Art. 1399 I, second sentence) *the income is considered as part of the obligation of contribution to the family's needs*. The other's spouse management may be revoked any time, while a resign of the right to revoke the granting of the management is considered null (grCC Art.1399 II, *jus cogens*)²⁶⁶.

²⁶⁴ However the entrusted patrimonial assets must be handed over to the other spouse by the end of the management.

²⁶⁵ See A. GEORGIADES, *Family Law*, 3rd edition, Athens-Thessaloniki: Sakkoulas, 2022, p. 185-187.

²⁶⁶ See A. GEORGIADES, *Family Law*, 3rd edition, Athens-Thessaloniki: Sakkoulas, 2022, p. 188-189.

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.

According to the law, if the spouses have not chosen the contractual system to govern their patrimonial marital status [namely community property system [*Gütergemeinschaft*, grCC Art. 1403 *et seq.*], the law provides couple's patrimonial status shall be governed by the legal system of separation of assets [(*Gütertrennung*), grCC Art. 1397]²⁶⁷. In the last 40 years, very few couples have chosen²⁶⁸ the community property contractual system. As regards the management of the community property of the couple, it must be carried out by both of them while the conveyance of patrimonial assets of the community property is valid only if both spouses consent. According, to the special provision of grCC Art. 1407 *transactions regarding community property assets (normally carried out by both spouses or by one of them with the consent of the other) may exceptionally be carried out validly by one of the spouses with judicial permission based on certain grounds. More precisely the law provides that such permission may be granted only if the other spouse is in a physical or legal impossibility (e.g. a medical illness which may also lead to legal incapacity) or refuses unreasonably to consent to a transaction, which is of compelling interest [→ unbestimmter Rechtsbegriff] to the family*²⁶⁹. The legal effect of the decision is that it substitutes *ex lege* the lack of the other spouse's consent to the transaction in question, so it can be conducted only by one spouse validly.

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 so, does this instrument have any practical significance in cases involving vulnerable adults?

²⁶⁷ See further about the Greek Matrimonial Regimes [Patrimonial Spousal Law] the national report [(August 2008), *Commission on European Family*] by A. KOUTSOURADIS [in collaboration with S. KOTRONIS and F. HATZONTONIS] <http://ceflonline.net/wp-content/uploads/Greece-Property.pdf> [accessed 07.10.2022].

²⁶⁸ Namely within the period between 1989-2014, only 32 contracts have been registered in the special record about the community property contracts, see A. PAPACHRISTOU, *Family Law*, Athens: P. N. Sakkoulas, 2014, p. 123.

²⁶⁹ PAPACHRISTOU, in: A. GEORGIADIS and M. STATHOPOULOS (eds.), *Civil Code commentary, Vol. VII, Family Law (Arts. 1346-1504)*, 2nd Edition, Athens: P. N. Sakkoulas, 2007, Art. 1407 No. 5 *et seq.*

Greek law of Obligations provides special rules on *negotiorum gestio*, namely the provision of grCC Art. 730-740. These general provisions may also apply in cases within the framework of Family law or of the Law of persons, like the protection of vulnerable adults. In the past, Greek courts and Greek legal theory used to apply these rules in cases concerning medical matters of persons who have not been placed under judicial assistance but were not capable to decide themselves on urgent medical matters. Since the enactment of the Greek Code of Medical Ethics [Law No. 3418/2005], the aforementioned provisions have rarely been applied. In any case, the provisions on *negotiorum gestio* are general, concern mainly property matters and cannot provide practical solutions to issues such as the protection of vulnerable adults, which requires a special legal treatment, e.g. Art. 12 II of Greek Code of Medical Ethics (Law No. 3418/2005).

SECTION VI – OTHER PRIVATE LAW PROVISIONS

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

Greek Law does not provide such institutions is why questions 65 and 66 are irrelevant.

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

- 67. Provide an assessment of your system in terms of *empowerment of vulnerable adults* (use governmental and non-governmental reports, academic literature, political discussion, etc.). Assess your system in terms of:**
- a. the transition from substituted to supported decision-making;**

Greek Law does not provide special institutions concerning supported decision-making, as it emphasizes the substituted decision-making of the adult in question by his/her judicial assistant. However, a possible legislative reform of concurrent judicial assistance may eventually improve the current legal status of

vulnerable adults in a way that they become more active regarding decision-making on their matters, e.g. medical or other highly personal matters.

Such legislative reform might be proven important for the compatibility of Greek legislation with Article 12 of the U.N Convention on the rights of persons with disabilities (30.3.2007). More precisely the UN Committee on the Rights of Persons with Disabilities [CRPD] recommended Greece to “*replace substituted decision-making, including judicial support mechanisms, with supported decision-making regimes that respect the person’s autonomy, will and preferences*” [see above *Question 6* under (I); see also *Question 6* under (II) for further analysis].

Furthermore, provisions on institutions like mandatum or power of attorney must be revised, in order to serve also as provisory-voluntary measures, which will permit the adult in question to decide *a priori* about his/her matters and affairs, in case of a potential mental or spiritual disturbance in the future.

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

Not relevant as Greek law does not provide such provisions.

One could notice that here we have two diametrically opposed legislative choices, which reflect the doctrinal opposition between autonomy and heteronomy (paternalism), which governs the protection (especially) of adult persons. However, a functionally equivalent legislative measure (ex ante – as it can be considered as prejudicing the morbid condition, before it manifests its effects in whole or in large part), is the provision of Art. 1669(1) grCC, which allows the adult person (sufferer) himself (except of the ex officio action of the court or the recognition to the prosecutor of a relevant right) to propose bindingly to the court, under certain conditions, the person of his judicial assistant, both at an unsuspected time (which is apparent from the wording of the provision, but also reflects the will of the historical legislator) and (more commonly) in the context of the procedure for placing him under judicial assistance or appointing a temporary judicial assistant²⁷⁰.

Except of the provision of grCC, an example of a preventive precautionary measure, also taken by the person himself, but which specifically concerns medical care issues, is the regulation of Article 29 II of the Code of Medical Ethics

²⁷⁰ D. PAPASTERIOU, *General Principles of Civil Law*, Athens-Thessaloniki: Sakkoulas, 2009, p. 401; A. KOUTSOURADIS, *Initiation of judicial assistance proceedings at the request of the sufferer adult himself and an order to conduct a psychiatric expert opinion*, EfAD 2011, 787 *et seq.*, 790 note 26.

(Law No. 3418/2005)²⁷¹ and the related provision of article 9 of the Oviedo Convention (Law No 2619/1998), which allows the patient (and not only) to express in advance his wishes in relation to the future²⁷².

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

It is true that within the framework of Greek Law in cases that may lead to the placement of a person under judicial assistance, measures like whole and exclusive judicial assistance which lead to a total legal incapacity should serve *as ultimum remedium*, with respect to Constitutional provisions [see above *Question 1* (under I), *Question 5*, *Question 8 b*, *Question 12* (under I., 1.) and *Question 16* (under I) and *b.*].

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

The legal incapacity of vulnerable adults (either in cases of grCC Art.131 or in cases of judicially assisted persons) not be held responsible for their actions (e.g. nullity/invalidity of judicial acts), constitutes an effective means of protection of vulnerable adults. However, as we have already mentioned above (*see Question 6*) Greek law should be in line with the needs and interests of disabled persons in the light of Article 12 of the U.N. Convention on the rights of persons with disabilities (30.3.2007).

e. the possibility to provide tailor-made solutions;

The fact that Greek law provides the institution of partial and concurrent judicial assistance as well as partial and exclusive judicial assistance along with the judge's authority in the context of *jurisdictio voluntaria*, makes possible a wide range of tailor-made options depending on the specific circumstances of each case.

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

²⁷¹ “The doctor shall take into account the wishes previously expressed by the patient, even if, at the time of the operation, the patient is not in a position to repeat them.”. See also above, under I. General, *Question 1*, and references in footnote 2.

²⁷² A. KOUTSOURADIS, *The (provisional) civil protection on behalf of the elderly and the suffering adults or an alternative to judicial assistance*, in: GREEK SOCIETY OF JURIDICAL STUDIES (ed.), *Modern Trends in Family Law*, Athens: Nomiki Bibliothiki, 2013, p. 147 *et seq.*, 160.

Provisions on Judicial Assistance provide as a fundamental principle the best interest of the adult in question. However, a possible legislative of Greek Law towards a direction of priority of the so called ‘previous wills and preferences’ might be proven important for the compatibility of Greek legislation with Article 12 of the UN Convention on the rights of persons with disabilities (30.3.2007). More precisely the UN Committee on the Rights of Persons with Disabilities [CRPD] recommended Greece to “*replace substituted decision-making, including judicial support mechanisms, with supported decision-making regimes that respect the person’s autonomy, will and preferences*” [see further *Question 6*]. With regards to the present legal framework, grCC Art. 1684 might be proven also useful in order to also evaluate the personal opinion [as well as will and preferences] of the person assisted. This article provides that “*All acts undertaken by the judicial assistant, the supervisory council, or the court must aim at promoting the interest of the person assisted. Before any action or the making of a decision must be sought as personal communication with the person and his opinion be dully considered.*”. This provision may also be interpreted in the essence of the need to respect person’s assisted opinion, namely his/her wills or preferences. However, a legislative reform might be proven unavoidable in order to establish as an explicit legislative principle the protection of adult’s in question previous wills or preferences.

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

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

Legal institutions of provisional judicial assistance until the finalization of the decision of the first instance court, as well as the fact that the adult’s in question placement under judicial assistance, does not require a final decision prove the efficiency of Greek provisions.

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

Greek law provisions can be regarded efficient, see further above (*Question 29*).

c. protection during the operation of adult support measures:

Not relevant.

d. protection of the vulnerable adult against his/her own acts;

The nullity(*nullité/Unwirksamkeit*) of judicial acts concluded by a legally incapable adult either placed under judicial assistance or under the preconditions of grCC Art. 131 [see above] can be considered as an effective means of protection of the adult. Furthermore, in cases of torts, the law considers most cases of vulnerable adults as non-responsible for compensation, while the interests of third parties may be protected by establishing *ex lege* liability for compensation of judicial assistants under certain circumstances [see further *Question 27 e*].

e. protection of the vulnerable adult against conflict of interests, abuse or neglect by the representative/supporting person;

The current legislative framework can be considered efficient [*see further Question 23 d*].

f. 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;

Not relevant.

g. protection of the privacy of the vulnerable adult.