

Country report **Slovenia**

Authors: **Prof. Dr. Barbara Novak**



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

SLOVENIA

Prof. Dr. Barbara Novak, University of Ljubljana

SECTION 1 – GENERAL

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

The most important regulations in the field of the protection and empowerment of vulnerable adults in the Republic of Slovenia (hereinafter RS) is the Family Code (*Družinski zakonik*, Uradni list RS (Official Gazette of the RS), no 15/2017, 21/2018, 22/2019, 67/2019, 200/2020, 94/2022 – hereinafter FC), which arranges the protection of adults. It is supplemented by regulations: Regulation on the inventory and evaluation of the assets of persons in guardianship and on the composition and content of the guardian report in a civil proceeding (*Pravilnik o popisu in ocenitvi premoženja oseb pod skrbništvom in o sestavi in vsebini skrbniškega poročila*, Uradni list RS (Official Gazette of the RS), no 22/2019). A court decides on placing under protection and the determination of a guardian in a non-litigious procedure, which is regulated by the Non-litigious Procedures Act (*Zakon o nepravnem postopku*, Uradni list RS (Official Gazette of the RS), no 16/2019 - hereinafter ZNP-1).

From the point of view of the protection of vulnerable adults, the Patients' Rights Act (*Zakon o pacientovih pravicah*, Uradni list RS (Official Gazette of the RS), no 15/2008, 55/2017, 177/2020 – hereinafter PRA) and the Mental Health Act (*Zakon o duševnem zdravju*, Uradni list RS (Official Gazette of the RS), no 77/2008, 46/2015, 44/2019 - hereinafter MHA) are also important. PRA regulates the consent of a patient to a medical intervention and the conditions for substitute decision-making, while MHA regulates the rights of adults during treatment in a department under the supervision of a psychiatric hospital, treatment in a secure department of a home for the elderly and supervised treatment. On protective measures, which MHA carries out without consent, a court decides in a non-litigious procedure, which is regulated by the already mentioned ZNP-1.

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

Guardianship (*skrbništvo*).

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.**

Slovenia is third in the ranking of European countries with the fastest aging population and one of the ten countries in the world with the oldest population. In Slovenia, every fifth resident is over 65 years of age and by 2050, every third resident of Slovenia is expected to be over 65 years of age.¹ It is therefore particularly important that Slovenia has adopted new family legislation, which pays special attention to the protection of vulnerable adults. The new regulation eliminates the removal of business capacity and protects elderly persons who are not capable of taking care of their rights by themselves only by placing them under guardianship and appointing a guardian only in the areas and to the extent that they need protection and assistance. When the conditions for placing an adult under guardianship are met by law, a person cannot be appointed a guardian for special cases, which does not mean comprehensive protection and care. However, guardians are hard to come by in practice, because their work is responsible and demanding, and the reward and reimbursement of expenses is questionable. The new regulation also abolishes the institution of extending parental rights beyond the age of majority, which treated an adult as a child even at a late age. According to the new rules, such a person is placed under guardianship. The new legal guardianship regulation has only been in use since April 15, 2019, so there is no empirical information about this institution yet.

Slovene law does not recognise the institution of appointment of a representative in the case of loss of sound judgment of an individual. The Code of Obligations (*Obligacijski zakonik*, Uradni list RS (Official Gazette of the RS), no 83/2001, 28/2006, 40/2007, 64/2016, 20/2018 – hereinafter CO) stipulates that in the event of the loss of legal capacity of the principal, who is a natural person, and whose authorization is based on a mandate

¹If the dynamic of population aging continues, the share of people over 65 will already be 25 percent of the Slovene population in 2030 <[https:// www.rtvsl.si/slovenija/staranje-slovenskega-prebivalstva-ze-cez-20-let-bo-povprecen-slovenec-star-50-let/496172](https://www.rtvsl.si/slovenija/staranje-slovenskega-prebivalstva-ze-cez-20-let-bo-povprecen-slovenec-star-50-let/496172)> accessed 17.09.2020.

relationship between the principal and the agent, the mandate terminates, and upon termination of the mandate, which was the basis for the authorization, the written authorization must also be returned (art. 785 and 786 of CO). Authorization for an elderly person is often based on a mandate relationship, making it impossible for the authorization to apply precisely in the case of a loss of capacity for independent expression of will. The question is whether such a provision is still appropriate and proportionate in terms of modern civil law, considering the general legal framework, where authorization does not necessarily terminate upon the death of the principal as a natural person if the business started cannot be interrupted without damage, and if the authorization is intended to apply even in the event of death according to the will of the principal (para 3 art 79 of CO). There seems to be no reason why authorization according to the will of the principal should apply in the case of death but not in the case of a loss of capacity for independent decision-making.

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

RS signed the CRPD and the Optional Protocol to the CRPD in 2007 and ratified it in 2008. The approach to this document had a significant impact, above all, on the abolition of the institution of deprivation of business capacity and contributed to the creation of guardianship, which can adapt to the extent of an individual's need for protection and assistance.

RS has not signed the Hague Convention on the international protection of adults.

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

The adoption of the Mental Health Act in 2008 was an important milestone for the protection of vulnerable adults, which, in accordance with human rights standards, modernised the regulation of detention and treatment in a ward under the special supervision of a psychiatric hospital, established the conditions for treatment in a secure ward of a home for the elderly and in supervised treatment. The law was adopted on the basis of a decision of the Constitutional Court of the RS,² which annulled in entirety the regulation of forced hospitalisation at the time (art 70-80 of the then valid Non-litigious Civil Procedure Act (*Zakon o nepravdnem postopku*), Uradni list SRS (Official Gazette of the SRS), no 30/1986 and Uradni list RS (Official Gazette of the RS), no 87/2002, 1312003, 77/2008, 10/2017, 16/2019 – hereinafter ZNP). The court stated as the main reasons for the annulment that forced

²Decision of the Constitutional Court RS, no U-I-60/03 of 04.12.2003, Uradni list RS (Official Gazette of the RS), no 131/2003.

treatment is not designed as a measure to be used only in cases in which the danger cannot be eliminated by other measures outside a (closed ward) of a psychiatric hospital; that the law makes no provision for other measures outside a (closed ward of a) psychiatric hospital; that the detained person is not guaranteed the right to an advocate and to be informed of the reasons justifying the need for detention when the procedure is initiated; that the hospital is not obliged to state the reasons for the detention even in the notification to the court, which must test the legality of the detention; that the deadlines for testing the legality of detention are suggestions; that the law does not provide for appropriate forms of control mechanisms over the use of coercive measures.

The next important milestone in the field of the protection of elderly vulnerable persons was set by the FC, which in 2019 abolished the deprivation of business capacity and the extension of parental rights beyond the age of majority, and created guardianship as an institution that can be adapted to the needs of the individual (see section I. 3.)

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.

MHA was prepared on the basis of instructions of the Constitutional Court in decision no U-I-60/03 of 4 December 2003 (see section I.5).³ Even before the decision of the Constitutional Court RS, the literature highlighted controversial issues, and then welcomed the new regulation in MHA. On this, see the contributions in particular: D. WEDAM-LUKIĆ, 'Forced hospitalisation of psychiatric patients (Prisilna hospitalizacija psihijatrijskih bolesnika)' (1989) 5-6 *Zbornik Pravnog fakulteta u Zagrebu*, Pravni fakultet, Zagreb, pp. 893-910; A. Galič, 'Forced hospitalisation of mental health patients (Prisilna hospitalizacija duševnih bolnikov)' (1996) 6-8 *Pravnik*, pp. 345-59; A. Galič, 'Legal regulation of involuntary hospitalisation in psychiatric hospitals (Pravna ureditev neprostovoljne hospitalizacije v psihiatrični bolnišnici)' in A. POLAJNAR-PAVČNIK and D. WEDAM-LUKIĆ (eds), *Law and Medicine (Pravo in medicina)*. Cankarjeva založba, Zbirka Pravna obzorja no 9, Ljubljana 1998, pp. 285-309; A. Galič, 'Forced hospitalisation of a psychiatric patient (Prisilna hospitalizacija psihiatričnega bolnika)' in J. REBERŠEK GORIŠEK, V. FLIS and V. RIJAVEC (eds), *Medicine and Law: selected chapters (Medicina in pravo: izbrana poglavja)*. Splošna bolnišnica, Maribor, 2001, pp. 47-58.

The FC follows the proposal of regulations for the reform of family law that the Institute for Comparative Law at the Faculty of Law of the University of

³Decision of the Constitutional Court RS, no U-I-60/03 of 04.12.2003, Uradni list RS (Official Gazette of the RS), no. 131/2003.

Ljubljana delivered to the client, the Ministry of Labour, Family, Social Affairs and Equal Opportunities RS in early 2005 (*Ministrstvo za delo, družino, socialne zadeve in enake možnosti RS*); then still the Ministry of Labour, the Family and Social Affairs - *Ministrstvo za delo, družino in socialne zadeve*). The author of this contribution was a member of the working group at the Institute for Comparative Law, where she was also in charge of preparing a new guardianship arrangement. The results of the project were published in: K. Zupančič (ed), *Reform of Family Law – proposal of new regulations with commentary (Reforma družinskega prava – predlog novih predpisov s komentarjem)*. Uradni list RS, Ljubljana (2005) and 2009 (2nd amended and supplemented edition). Based on this proposal for new regulations, the Ministry then prepared several FC proposals, but these were generally abandoned before they were submitted to Parliament because there was no consensus regarding the legal regulation of same-sex partnerships. With respect to the reform of guardianship for adults, there was always a consensus that reform was necessary. On the necessity of this reform, see in particular the contributions: B. NOVAK, ‘Physical persons and their capacities (Fizična oseba in njene sposobnosti)’ in M. JUHART (ed), *Introduction to civil law (Uvod v civilno pravo)*. Uradni list RS, Ljubljana 2011, pp. 74-82; B. NOVAK, ‘The position of an adult with limited capacities for independent decision-making in civil law (Civilnopravni položaj polnoletne osebe z omejeno sposobnostjo za samostojno odločanje)’ (2003) 9-12 *Pravnik*, pp. 579–592; B. NOVAK, ‘Capacity of an adult with disturbed mental development for independent decision-making (Sposobnost odraslih z motnjo v duševnem razvoju za samostojno odločanje)’ in A. ŠELIH and B. NOVAK (eds), *The legal and social position of persons with disturbed mental development (Pravni in družbeni položaj oseb z motnjo v duševnem razvoju)*. Slovenska akademija znanosti in umetnosti, Ljubljana 2019, pp. 13-24.

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

At the moment, there are no pending or future law reforms for protection and empowerment of vulnerable adults in the field of civil law.

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, can the limitation of legal capacity be reversed and full capacity restored and, if so, 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?**
- f. **are there any other legal instruments,⁴ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?**

N/A

9. **Briefly describe the effects of a limitation of legal capacity on:**
- a. **property and financial matters;**
 - b. **family matters and personal rights (e.g. marriage, divorce, contraception);**
 - c. **medical matters;**
 - d. **donations and wills;**
 - e. **civil proceedings and administrative matters (e.g. applying for a passport).**

N/A

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

N/A

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

N/A

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

N/A

13. **Give a brief description of the procedure(s) for limitation or restoration of legal capacity. Please address the procedural safeguards such as:**
- a. **a requirement of legal representation of the adult;**
 - b. **participation of family members and/or of vulnerable adults' organisations or other CSO's;**
 - c. **requirement of a specific medical expertise / statement;**
 - d. **hearing of the adult by the competent authority;**

⁴Rules 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

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

N/A

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

a. property and financial matters;

A court that places a person under guardianship also determines what business the person can still perform on her or his own, for which she or he only needs the guardian's consent and in which matters the guardian is the sole representative. Legal transactions entered into by a person without the necessary consent of the guardian are contestable, and legal transactions made by a ward for which the guardian is sole representative are null and void.

The guardian is independent in her or his work, except in the case of more important property transactions, which go beyond regular operations and administration, for which she or he needs the consent of a centre for social work (art 247, 248 of FC). Such transactions are considered to be alienation or encumbrance of the ward's real estate, alienation of movable property of greater value, disposal of property rights of greater value, relinquishment of inheritance,⁵ renunciation of the legate, rejection of a gift and submission of a motion to establish or challenge paternity (art 248 of FC).

The court must also inform the payment organisation with which the person has a transaction or other account, and the member of the central depository company with which the person has an account for dematerialised securities, about the placement under guardianship and the termination of guardianship. In addition to the notification, the court must also send the payment organisation and the central depository company a copy of the final decision on placing a person under guardianship and the final decision on termination of guardianship, without reasons (para 2 of art 69 of ZNP-1). However, ZNP-1 does not specify the purpose of sending this notice and decision or what duties the payment organisation and the member of the central depository company have after receiving such a notice and decision. ZNP-1 only stipulates that the court is obliged to send the payment organisation and the member of the central depository company notice and a copy of the final decision on placing a person under guardianship and a copy of the unreasoned final decision on the termination of guardianship, but not that the payment organisation and, on receipt of a decision, the member of the central depository company, is obliged to secure the benefits of an adult person or that they are

⁵Renunciation of an inheritance, for which the consent of the centre for social work is required, is considered not only renunciation of the inheritance, but also renunciation of the claim to a necessary share - decision of the Supreme Court RS, no. II Ips 32/2020 of 28.08.2020 – SOVS database.

obliged to secure them in a certain way.⁶ This kind of unclear regulation can fatally affect the property-legal position of a vulnerable person, so it is imperative that the legislator clearly and unequivocally defines the cases about which it is necessary to inform the organisation for payment transactions and the member of the central depository company and the legal consequences of these notifications and decisions.

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

Placing an adult under guardianship does not automatically affect their ability to make decisions about strictly personal matters. As a rule, sound judgment⁷ is sufficient for them at the moment when the person makes decisions. An adult under guardianship can still recognise paternity, enter into a marriage, make a valid will and decide on medical interventions. Only if it turns out that the person is not of sound judgment, and the law allows substitute decision-making (this is not admissible when recognising paternity, entering into a marriage, making a will), the guardian is competent to make the decision. Such matters are, in particular, medical interventions (deciding on a specific operation, contraception). A special regulation applies to cases in which the law wants to protect an elderly person who is not of sound judgment and therefore allows the decision to be made only by the court; for example, a decision to place a person in a secure ward of a home for the elderly, admission of a person for treatment in a ward under special supervision of a psychiatric hospital, admission of a person into supervised treatment (art 75 of MHA).

Procedural capacity is required for an adult under guardianship to appear in proceedings. A person has procedural capacity only if, in the case to which the procedure relates, she or he can enter into a legal transaction her or himself. If a person has the discretion to enter into a marriage, she or he also in principle has the discretion to file a request for divorce. The law does not give an explicit answer to the question of whether such a request can also be submitted by a person's guardian. Due to the strictly personal nature of the matter, however, it is considered that this is not admissible. This is also indicated by the provision that after the death of a spouse, her or his heirs may only continue the procedure for divorce or annulment of marriage, but not initiate it.

⁶For example, record of the District Court in Lendava, no N1/2020 of 10.01.2020 – unpublished.

⁷ Legal capacity is an actual ability that is not defined by the law. The court determines it with the help of an expert.

c. medical matters;

See section II.14.b.

d. donations and wills;

On the ability to make a will see section II.14.b.

A person placed under guardianship can her or himself make a donation or conclude another appropriate contract by which she or he disposes of her or his property in the event of death (e.g., a donation contract in the event of death, a contract of maintenance for life, a contract of usufruct, a contract on the distribution of assets in case of death among her or his descendants) only if the court, when placing her or him under guardianship, determined that she or he may conclude such transactions her or himself (see section II.14.a). Contracts that mean disposal in the event of death are otherwise personal legal transactions, in which the law does not exclude the possibility that a person may conclude them with the consent of the guardian or that the guardian may conclude them on her or his behalf. If the ward is represented by a guardian, the guardian requires the consent of the social work centre for transactions that involve the alienation or encumbrance of the ward's real estate, alienation of movable property of greater value, disposal of property rights of greater value, or renunciation of inheritance.

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

Procedural capacity is required for an adult under guardianship to appear in such proceedings. A person is legally competent only if, based on a court decision, she or he can still act on her or his own in that matter (e.g. enters into a contract that is subject to litigation, see section II.14.a).

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?

Business capacity took over only completely or partially the previously valid ZNP. This resulted in placement under guardianship. A person who has been completely deprived of legal capacity had the same legal status as a younger minor (a minor who had not yet reached the age of 15). All the legal business she or he conducted her or himself were void. This resulted in the fact that she

or he could no longer act independently in legal transactions. Therefore, from the point of view of the protection of human rights, the complete deprivation of business capacity was appropriate only if the person did not have the capacity to make independent decisions in any area of legal life. If this was not the case, the measure of complete deprivation of business capacity was excessive, since the law did not allow the court to determine that a person in certain cases is only partially deprived of business capacity, or that she or he can still carry out certain matters on her or his own.

A court partially deprived a person of business capacity who had partial capacity for independent decision-making. This meant that the consent of the guardian was required for all legal transactions of this person to be valid. The centre for social work, however, was able to supplement the court decision on the partial deprivation of professional capacity in a special procedure for placing a person under guardianship by "determining, if necessary, legal transactions that a person with partially deprived capacity may enter into independently". There were no reasonable and well-founded reasons for such a division of powers between the court and the centre for social work.⁸ This is especially so because the centre generally needed an expert opinion to determine the legal status of a person with partially deprived business capacity, and the court was also obliged to provide this opinion. The question thus arose as to why the court, which has the necessary information, does not have the authority to define the transactions that a person can still conclude on her or his own after the deprivation of legal capacity. This would already be useful because a comprehensive court decision in the process of revocation of legal capacity would significantly contribute to a more extensive and complex explanation of the decision on revocation of legal capacity, which is not negligible from the point of view of the protection of an individual's procedural rights, especially the right to legal remedy. The division of powers between the centre for social work and the court was later reprimanded by the Supreme Court of the RS, which took the position that legal transactions that a person can conclude on her or his own must be at least roughly defined by the court.⁹ Despite this decision, the regulation of partial revocation remained flawed, since it did not allow the guardian to conclude transactions for a person who has already completely lost the ability to make decisions in individual matters. The FC remedied these shortcomings by removing revocation of legal capacity and the power to place under guardianship and entrusting the appointment of a guardian entirely to the court. According to the FC, the court must determine which business a person may still perform on her or his own, which require the guardian's consent and which the

⁸Decision of the Constitutional Court RS, no U-I- 273/98 of 01.07.1999, Uradni list RS (Official Gazette of the RS), no 60/1999. Žnidaršič V. (V. ŽNIDARŠIČ, 'The institution of revoking business capacity in the light of changes to Slovene legislation (Institut odvzema poslovne sposobnosti v luči sprememb slovenske zakonodaje)' (2001) 4 *Kaljenje* 7, 15) also points out that the above-mentioned procedure, whereby the tasks are divided between the court and the centre for social work, is irrationally designed.

⁹Decision of the Supreme Court RS, no II Ips 306/2011 of 01.12.2011 –SOVS database.

guardian decides for them. Guardianship has thereby become a flexible system that provides a person with help only when she or he needs it.

The FC also abolished the institution of extension of parental rights, which limited business capacity not only to persons of unsound mind, but also to persons who were only physically disabled. After the extension of parental rights, the person's position was generally the same as before. This meant that the individual had the status of a minor who had reached the age of 15. In order to conclude a legal transaction, she or he needed the consent of her or his parents if the transaction was so important that it had a significant impact on her or his life. Minors over the age of 15 could enter into other legal transactions on their own. However, it was not foreseen that the court would determine more important transactions, which an adult may still conclude alone. The legislation thus created the danger of excessive interference with an individual's right to self-determination. The same danger also existed when the court, when extending parental rights, placed a person in the position of a minor who had not yet reached the age of 15. Such a person could no longer validly enter into any legal transaction by her or himself, although she or he might still be able to enter into some less important legal transactions by her or himself. With the extension of parental rights, the parents gained not only the right to representation, but also the entire parental right. An adult could thus be treated and raised as a child until a late age, instead of allowing her or him to live according to her or his own desires and ideas. The FC therefore abolished the institution of extension of parental rights. According to the FC, a person who has mental health problems as a minor is placed under guardianship upon reaching the age of majority, just like all other adults.

SECTION III – STATE-ORDERED MEASURES

Overview

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

An adult who is unable to take care of her or his rights and benefits by her or himself without harming her or himself, due to a disturbance in mental development or mental health problems or another cause that affects the ability to judge, is placed under full guardianship. Full Guardianship includes comprehensive care and means both care for the person and property.

Partial guardianship differs from guardianship because it only means help in a specific matter or conflict situation and because it provides protection not only to a person who is not capable of taking care of her or his own rights, but also to a person who at some point simply does not have the opportunity

to protect her or his rights, because, for example, she or he is absent (para 3 of art 239 of FC). Partial Guardianship does not mean placement under guardianship, but only the placement of a guardian in a specific matter or situation.¹⁰ Examples of appointing a partial guardian are not exhaustively listed in the law. Such a guardian is appointed whenever it is necessary to protect the rights and interests of an individual (general clause for the appointment of a guardian for special cases, art 267 of FC). The types of partial guardian also include a temporary guardian, temporary representative and conflict guardian.

A temporary guardian is appointed for a person for whom the court has initiated the procedure of placing an adult under guardianship (art. 265 of FC). The temporary guardian serves only until a full guardian is appointed.

A temporary representative is also appointed for a person in certain other procedures when it is necessary to protect her or his rights quickly, for example, a defendant in a civil procedure, if the procedure for appointing a full guardian would take too long (art 82 of Civil Procedure Act (*Zakon o pravdnem postopku*), Uradni list RS (Official Gazette of the RS), no 26/1999, 96/2002, 58/2003, 2/2004, 69/2005, 90/2005, 43/2006, 52/2007, 45/2008, 111/2008, 121/2008, 57/2009, 12/2010, 50/2010, 107/2010, 75/2012, 76/2012, 40/2013, 92/2013, 6/2014, 10/2014, 48/2015, 6/2017, 10/2017, 16/2019, 70/2019, 1/2022, 3/2022 – hereinafter CPA).

A conflict guardian is appointed for a person who cannot be represented by a full guardian due to a conflict of interests (art 269 of FC, art 45 of ZNP-1). The legal representative of the guardian is also appointed for an adult ward in the event of a dispute between her or him and the guardian, for the conclusion of legal transactions between them and in other cases when their interests are in conflict.

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

Full guardianships and partial guardianships cannot compete. If a temporary guardian was appointed before the appointment of a full guardian, the function of the temporary guardian ends with the appointment of a full guardian. If a full guardian is appointed, then there is no longer any need to appoint a partial guardian. An exception is the appointment of a conflict guardian due to a conflict of interests between the guardian and the ward in a specific matter. If there is a general conflict of interest between the full guardian and the ward, the guardian must be replaced.

¹⁰K. ZUPANČIČ, *Family Law (Družinsko pravo)*, Uradni list RS, Ljubljana 1999, p. 171.

Exceptionally, there could be several guardians for different specific matters at the same time. However, if there are many of these special matters, the person should be taken care of comprehensively and placed under guardianship and a full guardian appointed. Precisely because of the excessive use of the institution of partial guardian when a person should be placed under guardianship, the FC stipulates that a partial guardian cannot be appointed in cases in which the conditions for placing an adult person under guardianship are met (para 2 of art 267 of FC).¹¹

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

A person who needs comprehensive protection must be placed under full guardianship and a full guardian must be appointed. If a full guardian is appointed, then there is no longer any need to appoint a partial guardian (see section III.16.a).

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

When the rights of a person who does not have a full guardian need to be quickly protected in a procedure, or if the appointment of a full guardian would take too long, a temporary representative is appointed for the person (art 82 of CPA, see section III.16.a).

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.

An adult is placed under full guardianship who, due to disturbed mental development or mental health problems or another cause that affects the ability to make judgments, is unable to take care of her or his rights and benefits by her or himself without harming her or himself.

¹¹A partial guardian is not intended for persons who need comprehensive personal protection - decision of the High Court in Ljubljana, no IV Cp 1192/2020 of 22.07.2020; decision of the High Court in Ljubljana, no II Cp 2172/2020 of 28.12.2020 – SOVS database.

A partial guardian is appointed for a person whenever it is necessary to protect her or his rights and interests (see section III.16.a).

18. Which authority is competent to order the measure?

A court is competent to place an adult under full guardianship and to appoint a guardian in a non-litigious procedure.

A partial guardian is appointed by the centre for social work, but it can also be another body before which a procedure is ongoing and there is a need to appoint such a guardian.

19. Who is entitled to apply for the measure?

The procedure for placing an adult under full guardianship begins on the proposal of a centre for social work, the state prosecutor, the spouse or a person who lives with the person to be placed under guardianship in a long-term community of life, or her or his relative in a straight line and in side lines to the second degree. A motion to initiate the procedure can also be filed by the person who will be the subject of the procedure, if she or he is able to understand the meaning and legal consequences of her or his motion. The court can also start the procedure *ex officio* if it becomes aware of circumstances from which there is a valid reason for placing a certain person under guardianship (art 57 ZNP-1).¹²

¹²A court of first instance *ex officio* initiated the procedure of placing an adult under guardianship based on notice from the enforcement department about the existence of a well-founded fear that the enforcement procedure would end with the auction of an apartment that was the applicant's only home, and the existence of circumstances that indicated a suspicion of mental illness as a result of which the appellant was unable fully to realize the long-term consequences of his actions and to take care of his own benefits without causing serious damage to himself - decision of the High Court in Ljubljana, no I Cp 556/2021 of 05.05.2021 - SOVS database.

If a court receives information from which can be understood the reasons for initiating the procedure *ex officio*, it can only obtain additional information through inquiries to determine whether the conditions for initiating the procedure are met. However, before the initiation of the procedure, it does not provide evidence, for example by questioning the parties, witnesses and presenting experts. With a contested decision to initiate *ex officio* the procedure for placement under guardianship, the establishment of the conditions for placement under guardianship is just beginning - decision of the High Court in Ljubljana, no II Cp 680/2021 of 20.05.2021; decision of the High Court in Ljubljana, no II Cp 1498/2020 of 29.09.2020; decision of the High Court in Ljubljana, no II Cp 129/2021 of 24.02.2021 - SOVS database.

Partial guardians are appointed *ex officio* by the centre for social work or another body before which the proceedings are ongoing, if it becomes aware of circumstances from which it follows that this is necessary.

Administrative and other state authorities, holders of public authority, public service providers, local community authorities, employers and non-governmental organisations must inform the social work centre or the court about the need to place someone under full guardianship or to appoint a partial guardian, when during the exercise of their powers or performance of their work, they become aware of such a case. In addition to them, a spouse, common-law partner, relatives, members of the household and other persons who know about such a case also have the duty to inform the social work centre or the court (art 275 of FC).

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 person to be placed under guardianship or the appointment of a guardian for special cases is not required for placement under full guardianship or the appointment of a partial guardian. A person can only express a wish regarding the person who will perform the duties of guardian.

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

Special rules are established only for the procedure of placement under full guardianship; for the appointment of a partial guardian, the general rules of the procedure in which there is a need to appoint a full guardian are used. Only the rules of the procedure for placement under full guardianship will therefore be described below.

a. a requirement of legal representation of the adult;

A court appoints a temporary guardian for a person to be placed under guardianship. The proposer or a person employed by the proposer, or another person whose interests conflict with the interests of the person to be placed under guardianship, cannot be a temporary guardian. The temporary guardian explains to the person in an appropriate manner the purpose and course of the procedure, the rights and duties that the person has in the procedure, the consequences of the person's non-cooperation and the content and consequences of the court's decisions.

b. availability of legal aid;

ZNP-1 does not foresee, nor does it exclude the possibility, that the person's temporary guardian should be a legally qualified person. An interpretation that a temporary guardian is a legally qualified person can be arrived at with the argument that a temporary guardian is a type of temporary representative and by meaningful application of the provisions of the CPA, where it is stipulated that a lawyer or other professionally qualified person shall be appointed as a person's temporary representative (para 4 of art 82 of CPA).

The requirement for the mandatory representation of a person by an authorized person who is a lawyer is expressly provided only for non-litigious civil proceedings, which are regulated in the MHA and are also explicitly listed there: the procedure for admission to a psychiatric hospital for treatment in a ward under special supervision without consent based on a court order; the procedure for admission to a psychiatric hospital for treatment in a ward under special supervision without consent in emergency cases; the procedure for admission to a secure ward of a home for the elderly without consent based on a court order; the procedure for admission to supervised treatment without consent based on a court order (art 30, 31 of MHA).

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

According to the law, the proposers of the procedure for placing an adult under guardianship (see section III.19) are also automatically participants in the procedure. Under the law, a centre for social work is a participant in the procedure even when it is not the proposer. Persons who did not propose the initiation of the procedure can still express their opinion regarding the selection of a guardian. If this is to the benefit of the ward, the court also takes into account the wishes of the spouse, extramarital partner or relatives of the ward regarding the choice of guardian (art. 243 of FC). Above all, when choosing a guardian, the wishes of the ward must be taken into account, if a ward of sound judgement has expressed them and if this is to the benefit of the ward.

d. requirement of a specific medical expertise / statement;

In the process, the court orders that the person who is to be placed under guardianship be examined by a medical expert. If, in the opinion of the expert, it is absolutely necessary for the person to be examined in a psychiatric hospital in order to determine the person's state of health and a certain amount of time is required for this, the court can order that the person be

detained in a psychiatric hospital for a maximum of two days (art 61, 62 of ZNP-1).

e. hearing of the adult by the competent authority;

A hearing is mandatory in the guardianship procedure. The court must interrogate the person who is to be placed under guardianship, unless, after attempting to interrogate the person, it finds that an interrogation would harm her or his health or that an interrogation is not possible due to her or his state of health. A person who cannot attend a hearing due to her or his health condition is heard where she or he lives. If a person who was properly invited does not attend the hearing and does not excuse her or his absence, the court may order that she or he be brought. The police make the arrest. In the invitation, the person is warned of the consequences of unexcused absence (art 61 of ZNP-1).

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

The court allows a participant who is an adult placed under guardianship, to perform individual procedural actions her or himself for the purpose of asserting her or his rights or legal interests, if it considers that she or he is capable of understanding the meaning and legal consequences of such actions (art 45 of ZNP-1).

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

The court must inform the administrative unit about the placement under guardianship, the appointment of a (new) guardian or the termination of guardianship and, for this purpose, send it its decision within 15 days of its finality. Placement under guardianship and termination of guardianship for adults shall be entered in the civil registry. In the case of a guardian who is a natural person, the personal name of the guardian and her or his personal number (*EMŠO*) are entered in the register. When guardianship is performed by a legal entity, only the name of the legal entity is entered in the register (art 277 of FC). This entry in the register, since the entry into force of the Register of Deaths, Births and Marriages Act (Official Gazette of the RS, no 37/2003, 39/2006, 106/2010, 67/2019 – hereinafter ZMatR), no longer serves to protect participants in legal transactions, since the civil registry is no longer a database that can be accessed by any interested person, but a database on the

civil status of an individual, which can only be accessed by the person to whom the entry relates.¹³

In the case of a person who owns real estate, the initiation of a procedure for placing a person under guardianship, the decision on placement under guardianship and the decision on the termination of guardianship are recorded in the land register. For this purpose, the court must send the land registry court the notification on the initiation of the procedure for placement under guardianship, the notification and final decision on the placement of a person under guardianship, as well as the notification and final decision¹⁴ on the termination of guardianship (para 1 of art 69 of ZNP-1, art 278 of FC). The start of the procedure for placement under guardianship is marked in the land register only on the basis of the court's notification of the initiation of the procedure, while for the registration of placement under guardianship and the termination of guardianship, in addition to the notification, an attached court decision is required (para 1 of art 66 of the Land Register Act (*Zakon o zemljiški knjigi*), Uradni list RS (Official Gazette of the RS), no 58/2003, 37/2008, 45/2008, 28/2009, 25/2011, 14/2015, 69/2017, 11/2018, 16/2019, 121/2021 - hereinafter ZZK-1).¹⁵

According to FC, the introduction of a guardianship procedure, the guardianship decision and the guardianship termination decision can also be entered in the public books or records that are kept by law in relation to other property of the ward. In this case, the court must send to the relevant authority or organisation notification on the initiation of the procedure for placement under guardianship, the notification and final decision on placing a person under guardianship, and the notification and final decision on the termination of guardianship (para 1 of art 69 of ZNP-1). The facts of the initiation of the procedure for placement under guardianship, placement under guardianship

¹³ZMatR also sets the same conditions for viewing the collection of documents (para 1 of art 29 of ZMatR).

¹⁴The land registry court *ex officio* notes the placement of the holder of the right to the real estate under guardianship in the land registry. It does so on the basis of a court notice, which must also be accompanied by the final decision on placement under guardianship. It then deletes the notice of placement under trusteeship *ex officio* if it receives a court notice that the guardianship over the holder of the right to the real estate has ended. The notification on the termination of guardianship must be accompanied by the final decision on the termination of guardianship (para 2 of art 66 and para 3 of art 67 of ZZK-1).

¹⁵The land registry court *ex officio* deletes the entry on the initiation of the procedure for placing under guardianship, if it allows the entry that a person has been placed under guardianship or if it receives notification from the court that the procedure has been legally terminated without the holder of the right to the real estate being placed under guardianship. The notification that the procedure has been legally terminated must be accompanied by the final decision on the termination of the procedure (para 1 and 2 of art 67 ZZK-1).

and termination of guardianship are entered in public books or records only if the law specifically provides this.

The regulation also provides that the court must also notify the payment organisation with which the person has a transaction or other account, and the member of the central depository company with which the person has an account for dematerialized securities, of the placement under guardianship and the termination of guardianship (see section II.14.a).

Appointment of representatives/support persons

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

Guardianship can be performed by any natural person who consents to perform guardianship and has the necessary qualities and skills to perform guardianship (art 240 of FC). A person who has been deprived of parental care, a person who does not have business capacity, a person whose interests conflict with the interests of the ward, and a person from whom, due to her or his personal characteristics and relations with the ward or her or his parents, does not have the qualities and skills from which it can be expected that she or he will adequately perform guardianship duties, as well as a person who has entered into a life support contract with the ward or whose spouse or common-law partner has entered into such a contract with the ward (art 241 of FC).

A centre for social work can propose to the court that it will perform the task of guardian with its own employee and the court appoints the centre as guardian. The court appoints the centre for social work as the guardian even if it does not propose a guardian as the initiator of the procedure and does not supplement the proposal until the decision is issued, even at the request of the court. The court appoints the social work centre as guardian even if the centre, which is not the applicant, does not give its opinion on the person of the guardian at the request of the court (art 64 of FC).

The court can limit a guardian's rights by decision and decide that only individual duties of the guardian will be performed by the centre for social work (art 244 of FC). With the exception of the case just described, when the tasks of guardianship are shared between an employee of the social work centre and a guardian, the law does not envisage that the powers of guardianship can be shared among several persons.

It is also permissible to entrust the guardianship to a relevant legal entity, which then appoints a responsible person to carry out the guardianship (para 2 of art 242 of FC). In practice, the legal entity entrusted with guardianship is often an institution, for example an institution for senior citizens.

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

See section III.21.c.

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?

A spouse, extramarital partner or a relative of the ward may be appointed guardian, if this is possible and if it does not conflict with the interests of the ward. If there is no such person, a social work centre is usually appointed as guardian, which performs guardianship tasks through its own employee.

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

The court must test the suitability of a person as guardian each time, since the law stipulates that a person whose interests are in conflict with the interests of the ward does not have the appropriate qualities and skills to perform the duties of a guardian. The law assumes that a conflict of interest exists for a person who has entered into a life support contract with the ward or whose spouse or extra-marital partner has entered into such a contract with the ward (art 241 of FC). The court must also obtain the opinion of the centre for social work on the suitability of a specific person as guardian.

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

The law does not give an explicit answer to the question of whether it is permissible for several guardians to be appointed for a ward, even outside a case in which the court decides that the social work centre will perform the tasks of an individual's guardian (art 244 of FC, see section III.23.a). As a rule, a single guardian is appointed for the ward, who is then responsible for all matters relating to the ward. Before the enactment of DZ, though, in practice there were more and more frequent requests for guardianship to be carried out by more than one person. Decision-making bodies thus appointed a procedurally incompetent person as guardian for both her children as a

special case.¹⁶ The law should therefore resolve the issue of whether a person can have more than one guardian. When searching for an answer to this question, the following possible complications should be taken into account in particular: for several guardians, who would decide about the ward successively (one after the other) according to a predetermined order (for example, if guardian A is detained, sick, guardian B should decide)), in principle no reservations are seen, although even here a dispute may arise as to whether trustee A was really detained. There are also no restrictions if different guardians are responsible for different areas of the ward's life. The guardians each have their own powers, so as a rule there are no disputes between them. A problem arises if a single decision is so extensive that by its nature it also affects other areas of life, for which another guardian or guardians are also responsible. In such a case, several trustees must co-decide, and if a dispute arises between them, there must also be rules on how to resolve such a dispute. These rules are not in the current legislation. Precisely because of possible disputes and uncoordinated behaviour among several guardians, which may endanger the ward's benefits, the appropriate solution for the time being is that, outside of a case defined by the legislation (see section III.23.a), it is not allowed to divide the guardianship authority among several guardians.

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

The guardianship function is voluntary and honorary, so a person is not obliged to accept it.

During the measure

Legal effects of the measure

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

A court can determine that a person under guardianship can still conclude certain transactions on her or his own, that for others she or he needs the consent of the guardian and that she or he may not conclude a third by her or himself but shall be represented by the guardian. The validity of legal transactions concluded by the person her or himself, even though she or he should be represented by a guardian, and legal transactions concluded by

¹⁶Judgement of the Supreme Court RS, no I Up 1373/2002 of 28.10.2004 – Ius-info database.

the person without the necessary permission of the guardian, is assessed according to the rules of the law of obligations (art 263 of FC).

The legal transactions entered into by an adult person alone, although she or he should be fully represented by a guardian, are void,¹⁷ as such a person is considered incapable of independently conducting any legal affairs as determined by the court. This has the consequence that she or he can no longer act independently in legal transactions. A void legal transaction is invalid from the outset, and therefore does not bind either the legally incompetent person or the other party. No void legal transaction can be validated. This means that it does not become valid even if the prohibition or cause of nullity later ceases (art 90 of CO). A legal transaction of a legally incompetent person therefore does not become a valid even if is later approved by a legal representative.

Legal transactions entered into by an adult person alone, even though they should require the permission of a guardian, are contestable according to the law of obligations if concluded by a vulnerable person without the necessary consent of the guardian. According to the general rules of the law of obligations, the right to contest a legal transaction belongs to the person in whose favour the contestability is determined (para 1 of art 95 of CO). The law protects the ward through the challengeability of a legal transaction, into which the person as a ward entered without the necessary consent. Contestability is thus determined for the ward, who is therefore a contestable beneficiary in this case. A legal transaction is contested by the guardian on behalf of a ward.¹⁸ The guardian must file the lawsuit within one year of becoming aware of the reason for contestability, i.e., for a legal transaction concluded by the ward without her or his consent (para 1 of art 99 of CO), but no later than three years from the conclusion of the contract (para 2 of art 99 of CO).¹⁹

If the function of the guardian ceases because the ward is again of sound judgement and therefore capable of business, the guardian is no longer entitled to request the annulment of the legal transaction that the ward

¹⁷S. CIGOJ, *Theory of obligations, General part of Obligational Law (Teorija obligacij, Splošni del obligacijskega prava)*, Časopisni zavod Uradni list SR Slovenije, Ljubljana 1989, p. 109; B. NOVAK, 'A physical person and their capacities (Fizična oseba in njene sposobnosti)' in M. JUHART (ed), *Introduction to Civil Law (Uvod v civilno pravo)*, Uradni list RS, Ljubljana 2011, p. 80.

¹⁸S. CIGOJ, *Theory of obligations, General part of Obligational Law (Teorija obligacij, Splošni del obligacijskega prava)*, Časopisni zavod Uradni list SR Slovenije, Ljubljana 1989, p. 111.

¹⁹B. NOVAK, 'A natural person and their capacities (Fizična oseba in njene sposobnosti)' in M. JUHART (ed), *Introduction to Civil Law (Uvod v civilno pravo)*, Uradni list RS, Ljubljana 2011, p. 77.

entered into without her or his consent, even if the above-mentioned deadlines for contesting have not yet expired. From the termination of the guardian's function, a special period begins to run for the ward, who may, within three months from the termination of the guardian's function, challenge legal transactions concluded without the guardian's consent (art 44 of CO). This provision protects those wards whose guardians have been passive, rather than seeking the reversal of unhelpful or even harmful legal dealings for the wards. The described rule will rarely come into play in the case of elderly persons, since in elderly persons who have lost the ability to make reasonable decisions, as a rule, there will no longer be an improvement in their condition and the resulting removal of guardianship. Due to the annulment of a legal transaction, the other party may only demand compensation for the resulting damage if the protégé has tricked them into believing that she or he is capable of doing business (art 98 of CO).

Legal transactions entered into by a ward without the necessary consent of the guardian remain valid if the guardian later approves them. Another party who wants to eliminate the uncertainty of a contested legal transaction as soon as possible can ask the guardian to approve the legal transaction. If the guardian refuses to approve the transaction, or if the transaction is not approved within thirty days of the request, the legal transaction is considered void (art 43 of CO).

CO also gives the other party to the legal transaction the opportunity to resolve an uncertain legal transaction as soon as possible by withdrawing from the legal transaction. She or he can use this option only if she or he did not know about the ward's incapacity, or if she or he knew about it, but the ward tricked her or him concerning the guardian's consent. This right of the other party expires in thirty days from the day after the other party became aware of the ward's limited business capacity or the fact that the ward does not have the guardian's permission, or earlier, if the guardian approves the legal transaction before the other party exercises the right to withdraw from the legal transaction (para 3 art 42 of CO).

Powers and duties of the representatives/support person

- 25. Describe the powers and duties of the representative/support person:**
- a. can the representative/support person act in the place of the adult; act together with the adult or provide assistance in:**
 - b. property and financial matters;**

Whether the guardian concludes a legal transaction on behalf of the ward or merely gives her or his consent to it is decided by a court in the procedure of placing a person under guardianship. About the legal consequences of this decision see section III. 24.

c. personal and family matters;

See section II.14.a.

d. care and medical matters;

See section II.14.b.

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

The will and preferences of the adult have decisive weight but are not taken into account at all costs, only if they benefit the ward. When appointing a guardian, for example, the centre for social work and the court take into account the wishes of the ward, if she or he has expressed them and if she or he is able to understand their meaning and consequences, and if this is to the benefit of the ward. They also take into account the wishes of a spouse, extramarital partner or relatives, if this is to the benefit of the ward (art 243 of FC).

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?

When dealing with and managing the ward's property, the guardian must consult with the ward before any important task. She or he must take into account the ward's opinion, if a ward with sound judgment has expressed it (para 2 of art 247 of FC). In order to protect the interests of the ward, this must also apply to the adoption of more important decisions about the person of the ward, although the law does not explicitly stipulate this.²⁰

The guardian must report on her or his work to the social work centre every year. The report must contain information regarding the person and property of the ward. The guardian's report must show what the guardian has done to protect the ward's person (in particular, what she or he has done with regard to the ward's health, upbringing and

²⁰ B. NOVAK in K. ZUPANČIČ (ed), Reform of family law – proposal of new regulations with commentary (*Reforma družinskega prava – predlog novih predpisov s komentarjem*). 2nd amended and supplemented edition, Uradni list RS, Ljubljana 2009, p. 311.

education, and what her or his care has been for everything else that is necessary for the ward). The report must also contain information on the management of the ward's property and its disposal, on the ward's income and expenses, and the final state of this property. The guardian must submit an annual account of the management of the ward's property to the centre for social work. She or he must also provide invoices if the social work centre asks her or him to do so (art 250 of FC).

A ward with sound judgment can object to the work of the guardian or the centre for social work, as can her or his relatives, competent authorities and professional institutions (for example, a home for the elderly), spouse or extramarital partner. Objections to the work of the guardian are resolved by the centre for social work, and objections to the work of the centre for social work are resolved by the ministry responsible for the family. The FC stipulates that the body that resolves objections must test their validity, determine what action should be taken, and inform the person who objected (art 256 of FC).

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

The guardian is not obliged to live with the ward, but she or he is obliged to take care of the ward's person by taking into account the reasons for which the person was placed under guardianship, and to enable the ward to shape her or his life according to her or his own wishes and ideas within her or his abilities.²¹ The guardian must strive to eliminate the reasons for which the person was placed under guardianship by implementing medical measures and so that the ward is able to live and work independently as far as possible and for as long as possible (art 264 of FC). In this care, the guardian must also visit the ward, although the law does not explicitly stipulate this duty.

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

The guardian has the right to reimbursement of justified expenses, the centre for social work can also determine an honorarium if the guardian requires special qualifications due to the complexity and responsibility of the work (art 252 of FC). In practice, even before the entry into force of the FC, there were no funds for the payment of costs and honoraria, although the law already stipulated that the expenses for the implementation of care measures should be covered from the ward's

²¹The right to family life also includes the right to contact family members. The first proposer is therefore free to visit the opposing participant. However, if it turns out that the contacts are not beneficial to the opposing party, the administrator does not have the authority to limit the contacts, but must initiate appropriate procedures - decision of the High Court in Ljubljana, no I Cp 835/2020 of 02.06.2020 - SOVS database.

income, from the funds of persons who are obliged to support the ward, from the ward's property and from the state budget. The result of the arrangement is that relatives and close family members prefer to avoid guardianship tasks, since they are not paid for them, but they can be held responsible for the damage they cause. It should be noted here that caring for an adult, often an elderly person, who usually has many health problems and assets, is not such an undemanding task. The law must therefore regulate the issue of costs and honoraria more adequately. Only with appropriate payments and lists of trustees will a sufficient number of trustees be ensured in the future. In practice, it is difficult to get them, because their work is responsible and demanding, and the honorarium and reimbursement of expenses are questionable.

- 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?**

See section III.23.e.

- 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)?**

See section III.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?**

The work of a guardian is under the supervision of the centre for social work.

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

A guardian must report on her or his work every year and give an account of the management of the ward's property. She or he must also provide invoices if the centre for social work asks her or him to do so (art 250 of FC). In order to facilitate supervision of the guardian's work, the ward's property is assessed and inventoried before it is handed over to the

guardian for administration (art 245 of FC). The social work centre must diligently review the guardian's report. The review of the report also includes a visit to the ward, which the social work centre must carry out at least once a year.

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

If minor irregularities in the guardian's work emerge from the report, the centre for social work must take all necessary measures to eliminate them. In the event of major irregularities, due to which there is a possibility that the guardian is not conscientiously taking care of the ward's person, rights or benefits or is not carefully managing the ward's property, the centre for social work must propose to the court the dismissal of the guardian and the appointment of a new one and, if necessary, take all necessary measures to secure the ward's benefits.²² The court that dismisses the guardian also sets a deadline in the decision on dismissal, within which the dismissed guardian must submit a final report on her or his work and an account on the management of the assets and hand over the assets for management by the newly appointed guardian (art 254 of FC, art 67 of ZNP-1).

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

The guardian is responsible for her or his work. She or he must compensate damage caused to the client through her or his work that has not been performed conscientiously (art 253 of FC). Her or his compensation liability to the ward is assessed according to the general rules of the law of obligations.

- 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.**

According to the general rules of the law of obligations, a guardian can also be held liable for damage caused to third parties. The CO thus expressly stipulates that a person who is obliged to control a ward by law or by decision of the competent authority or by contract, is responsible for damage caused by such a person who, due to disturbed mental development, mental health problems or due to some other reasons, is not of sound judgment. She or he can be released from liability if she or he

²²The decision on the change of guardianship, by which the court dismisses the previous guardian and appoints a new one, is an uniform decision, therefore it cannot become legally binding in only one part - decision of the High Court in Ljubljana, no II Cp 880/2019 of 25.9.2019; decision of the High Court in Celje, no I Cp 271/2020 of 16.09.2020 - SOVS database.

can prove that she or he performed due supervision or that the damage would have occurred even with careful supervision (art 41 of CO). If the ward caused the damage when of sound judgment, but the guardian also contributed to the occurrence of the damage, the ward and the guardian can be jointly and severally liable to a third party for the damage caused.

28. Describe any safeguards related to:

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

A guardian needs the consent of the centre for social work (art 247 of FC) in the case of more important property transactions that go beyond regular operations and administration. Such transactions are considered to be alienation or encumbrance of the ward's real estate, alienation of movable property of greater value, disposal of property rights of greater value, renunciation of inheritance,²³ renunciation of the legate, rejection of a gift or submission of a proposal by the child to establish or challenge paternity (art 248 of FC).

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

On unauthorised acts of the adult see section III.24.

Any exceeding of a guardian's rights is dealt with according to the general obligation rules for exceeding representation.

A guardian's legal transactions, which the guardian was otherwise entitled to conclude but concluded without the necessary consent of the centre for social work, are generally contestable. The rules on contestable transactions entered into by a ward without the consent of their guardian shall be applied *mutatis mutandis* to them (see section III.24).

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

An adult who was allowed to manage a matter her or himself bears the consequences of her or his ill-conceived acts. Her or his actions are binding in this case. The same applies to legal transactions that a person concludes with the consent of the guardian. A legal transaction entered into by a person without the necessary consent can be challenged. A legal

²³Renunciation of inheritance, for which the consent of the centre for social work is required, is considered not only the renunciation of the inheritance, but also the renunciation of asserting a necessary share - decision of the Supreme Court of the Republic of Slovenia, no II Ips 32/2020 of 28.08.2020 - SOVS database.

transaction of a person who should be represented by a guardian is void. Such a legal transaction does not bind the person.

The guardian may be liable for damages to his ward for her or his ill-conceived acts.

d. conflicts of interests

If there is a conflict of interest between the guardian and the ward in a specific matter, a conflict guardian must be appointed for the ward. If there is a general conflict of interests between a guardian and ward, the guardian must be replaced (see III. 1.a and III.23.d).

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.

Guardianship of an adult is terminated by court decision if the reasons for guardianship have ceased (art 266 of FC). With the decision to terminate the guardianship, the court also dismisses the guardian and sets a deadline for her or him to submit to the centre for social work a final report on her or his work and an account of the management of the assets, and to return the assets to the management of the ward (para 2 of art 66 of ZNP-1). A proposal to terminate guardianship (as well as to change the decision on placement under guardianship) can be submitted by a centre for social work, the guardian and the person placed under guardianship, if they are able to understand the meaning and legal consequences of their proposal (para 4 of art 57 of ZNP -1). If the court rejects the proposal to terminate the guardianship, it may decide that, before the expiry of a certain period, which may not be longer than one year, the termination of the guardianship may not be proposed, if it follows from the findings of the entire procedure that it is not possible to expect recovery or significant improvement of the psychophysical condition of the person placed under guardianship (art 68 of FC).

Reflection

30. Provide statistical data if available.

There are no statistical data 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?

Given that the FC has only been in force since 2019, problems in practice and respect of the state-ordered measures have not yet appeared. The measures have also not yet been evaluated.

SECTION IV – VOLUNTARY MEASURES

Overview

32. What voluntary measures exist in your jurisdiction? Give a brief definition of each measure.²⁴

N/A

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.

N/A

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.

²⁴Please do not forget to provide the terminology for the measures, both in English and in the original language(s) of your jurisdiction. (Examples: the Netherlands: full guardianship – [curatele]; Russia: full guardianship – [opeka]).

N

- 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?**

N/A

- 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.**

N/A

- 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?**

N/A

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?

N/A

During the measure

Legal effects of the measure

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

N/A

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

N/A

Powers and duties of the representative/support person

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

N/A

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)?

N/A

- 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?**

N/A

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.**

N/A

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

N/A

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.**

N/A

Reflection

48. Provide statistical data if available.

N/A

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

N/A

SECTION V – EX LEGE REPRESENTATION

Overview

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

N/A

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?

When the patient is unable to consent to a medical procedure due to mental health problems or other causes that affect their ability to make a judgment, this may only be performed if the guardian allows it. If the patient does not yet have a full guardian, consent to medical intervention or medical treatment may be given by persons who are capable of making decisions about themselves and have reached the age of 18, namely in the following exclusive order: the patient's spouse, extramarital partner or partner from a same-sex community, the patient's children or adopted children, the patient's parents or adoptive parents, the patient's brothers or sisters, the patient's grandparents,

the patient's grandchildren (art 37 of PRA). This rule is also applied when the patient is temporarily unable to make decisions about her or himself (art 38 of PRA).

Spouses (also extramarital partners) manage and dispose of joint property jointly and by agreement. However, if one of the spouses disposes of movable property of a smaller value or if she or he performs legal tasks of regular management of joint property, it is considered that she or he has the consent of the other spouse (art 69 of FC).

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

Medical expertise or statement is not required for *ex-lege* representation.

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

It is not 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.

See section V.51.

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.

Ex-lege representation is intended only for consent to a medical procedure and for the spouse's disposal of movable property of a lower value, which is

part of the joint property of the spouses, or if the spouse performs legal tasks of regular management of the joint property (see section V.51.).

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

Persons listed as *ex lege* representatives in art 37 and 38 of the PRA can validly consent to a medical procedure.

A spouse can always dispose of movable property of smaller value and perform legal transactions of regular management of common property also in the name of her or his spouse, because the spouse's consent is assumed. The legal transaction she or he concludes is valid and cannot be contested by the other spouse on the grounds that it was concluded without her or his consent.

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?

A patient who is capable of making decisions about her or himself and has reached the age of 18 can, with a written statement, exclude or limit the persons who are entitled to make decisions about her or his medical treatment under the PRA, for cases when she or he will not be able to make decisions about her or himself. Such a statement is accessible to the healthcare provider through the central register of patient data (art 33 of PRA). A patient who is capable of making decisions about her or himself and has reached the age of 18, also has the right to have her or his previously expressed will about what medical treatment she or he does not allow taken into account, should she or he find her or himself in a situation where she or he would not be able to give valid consent if: 1) she or he suffers from a serious illness which, according to the achievements of medical science, would lead to death in a short time even with appropriate medical intervention or medical treatment, and such treatment does not give hope of recovery or improvement of health or relief of suffering, but only prolongs survival; 2) medical intervention or medical treatment would prolong her or his life in a situation in which the illness or injury will cause such severe disability that she or he will permanently lose the physical or mental capacity to take care of her or himself. The advance-expressed will from the first point is binding for the doctor, while the will from the second point must be taken into account as a guideline when deciding on treatment. An advance will must be taken into account when the situation foreseen by the advance will occurs and if, at the same time, there is no reasonable doubt that the patient would revoke the will under these

circumstances. The will expressed in advance must be documented on a special consent form. Information about the fact that the patient has given a statement about what kind of medical treatment she or he does not allow is accessible to the doctor through the central register of patient data (art 34 of PRA).

A patient who is capable of making decisions about her or himself and has reached the age of 18 can also designate a person who will decide on her or his medical treatment and other rights under the PRA in the event and for the duration of her or his incapacity to make decisions about her or himself (called a health representative). This person excludes *ex lege* representation. The patient appoints a health representative with written authorisation, on which the patient's signature must be authenticated. In a power of attorney, the patient can specify instructions and guidelines regarding her or his medical treatment and possible restrictions on the right to access medical documentation on her or his medical condition (art 32 of PRA).

The FC rule on the assumed consent of a spouse for disposing of movable property of a lower value and performing legal transactions of regular management of joint property is dispositive and can be excluded by the spouses by agreement.

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

Ex lege representation under art 37 and 38 of PRA is only used if the person does not have a full guardian.

The FC rule on the assumed consent of a spouse for disposing of movable property of lower value and performing legal transactions of regular management of joint property is dispositive and can be excluded by the permanent guardian in agreement with the other spouse.

Safeguards and supervision

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

If the persons listed in art 37 and 38 of the PRA (children, parents, siblings, grandparents, grandchildren) do not reach agreement on the performance of medical intervention or medical care, the doctor decides on this. This takes into account the opinions of relatives and the patient's greatest benefit. The

persons listed as *ex lege* representatives in art 37 and 38 of the PRA cannot refuse emergency assistance to a patient who is not capable of making decisions about her or himself.

There are no safeguards or supervision regarding *ex lege* representation in FC.

End of the ex-lege representation

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

Ex-lege representation under PRA ends with consent to the procedure.

Ex-lege representation under FC ends only with the agreement of the spouses on its exclusion.

Reflection

60. Provide statistical data if available.

There are no statistical data 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)?

There are no data on problems that have arisen in practice in respect of *ex lege* representation.

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?

See sections V.51-59.

- 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.**

See sections V.51-59.

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?**

The private law instrument *negotiorum gestio* exists in Slovene jurisdiction, but it does not have major practical significance in cases involving vulnerable adults.

SECTION VI – OTHER PRIVATE LAW PROVISIONS

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

There are no such private law instruments in Slovene law.

- 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?**

Although the law does not have a specific provision on this, the parents or another person at the social work centre could express their will for the future regarding the guardian of a certain person, but such a statement by the social work centre is not binding when submitting a proposal to the court, who should be appointed as the guardian of a certain person.

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;

The Slovene system has already introduced supported decision-making, with the guardian only giving consent or even subsequent approval to a person for certain transactions.

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

Such a system has been in force in Slovenia since 2019 with the new FC. The FC foresees the possibility that the person placed under guardianship can still conclude certain transactions on her or his own, if she or he is capable of doing so (see section I.3, III.24).

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

Such a system has been in force in Slovenia since 2019 with the new FC. The FC provides that the court will determine which transactions the person under guardianship can conclude with the consent of the guardian in terms of their capacity and in which transactions the guardian must represent them because they have completely lost the ability to make independent decisions (see section I.3, III.24).

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

Although the FC abolished the deprivation of legal capacity, placement under guardianship and determination of transactions in which a person is represented by a guardian and transactions to which the guardian gives consent, *de facto* affects the legal capacity of a person and her or his ability to engage in legal transactions (see also section I.3, III.24).

e. the possibility to provide tailor-made solutions;

The FC allows for tailor-made solutions when placing under guardianship: when placing under guardianship, the court determines transactions in which the person is represented by a guardian, transactions in which the guardian only gives consent and transactions that the person can still perform on her or his own (see section I.3, III.24).

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

The ward's wishes are taken into account if a ward of sound judgment has expressed them and only if this is to the benefit of the ward (see section III.21.c).

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;

In the guardianship procedure, a person's rights are protected by the appointment of a temporary guardian. Unfortunately, the law does not explicitly provide that the temporary guardian should be a legally qualified person, although such a provision would be useful. In the process of placing a person under guardianship, it is mandatory to interview the person. The court also allows a person to perform individual procedural actions in order to assert her or his rights or legal interests, if it is assessed that she or he is capable of understanding the meaning and legal consequences of such actions. From this point of view, the legal arrangement is appropriate (see section III.21).

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

See section V.68.a.

c. protection during the operation of adult support measures:

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

When concluding legal transactions, a person is protected on the basis of a court decision, which determines in which transactions the guardian represents her or him and to which transactions the guardian only gives her or his consent. A legal transaction of a person who should be represented by a guardian is void. A legal transaction entered into by a person without the necessary consent can be challenged.

When consulting with the ward, the guardian does not take into account her or his will, if this is not in her or his interest.

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

When appointing a guardian, the court must verify that there is no conflict of interest between the guardian and the ward. The judge is assisted in this by the legislation, which also specifically mentions some such cases of conflicts of interest (for example, if the candidate for guardian has entered into a contract of maintenance for life with the future ward). If a conflict of interests or another reason for which the guardian is no longer suitable for the performance of his function becomes apparent after the guardian has already been appointed, the court replaces her or him. The procedure for dismissing a guardian and appointing a new one begins on the proposal of a centre for social work, the guardian or the person placed under guardianship, if she or he is able to understand the meaning and legal consequences of her or his proposal.

- **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;**

See section VII.68.c indent 2.

- **protection of the privacy of the vulnerable adult.**

When the proposer of a procedure for placement under guardianship is not a centre for social work or the state prosecutor, the court may decide that, for the sake of the protection of the interests of the person about whom the procedure is conducted, the proposer of the procedure is not allowed to inspect and transcribe parts of the file that contain information about the person's financial situation, about which the procedure is conducted. Otherwise, the general provisions on the protection of the right to privacy apply to the protection of the privacy of a vulnerable adult (e.g., regarding the health status of the protected person). However, it would be useful for the legislator to consider special provisions in the future that would oblige the guardian to protect privacy.