

THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

SLOVAKIA

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SECTION 1 – GENERAL

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

The Slovak Civil Code (Act No. 40/1964 Coll.) contains key provisions on legal capacity and guardianship of adults who cannot fully manage their affairs. Under Article 10 of the Civil Code, a court may restrict an adult's legal capacity if the person is able to perform only certain legal acts due to a permanent mental disorder or habitual substance abuse, specifying the scope of the restriction in its decision. Prior to 2016, the law even allowed full deprivation of legal capacity for an individual "*completely unable to perform legal acts*" due to permanent mental illness. However, in line with human rights standards, full deprivation of legal capacity was abolished by procedural reforms in 2015/2016. The Act on Non-Contentious Civil Procedure (Act No. 161/2015 Coll.) now permits only tailored restrictions or revision of prior deprivations. Courts must periodically review and can restore capacity if the reasons for restriction cease.

When legal capacity is restricted, the court appoints a guardian (*opatrovník*) to assist or represent the adult in legal matters. Even without restricting capacity, the Civil Code allows for appointing a guardian for an adult under Article 29 as a protective measure. This is considered a preferable, less-intrusive alternative – a guardian can be appointed to help a person with a

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mental disorder manage specific affairs without removing the person's general legal agency. The guardian is charged with acting in the protected adult's best interests and within the scope set by the court.

Recent amendments to the Social Services Act (Act No. 448/2008 Coll.) add safeguards to prevent conflicts of interest in guardianships. For example, a social services provider (or its employee) cannot be appointed as guardian of an adult who is a client in the provider's facility (unless the guardian is a close relative of the client). This ensures that caregivers or institutions do not misuse their influence over vulnerable residents.

Guardianship proceedings are subject to judicial oversight to protect the adult's rights. The Civil Code and related procedure law require that the individual concerned be heard by the court if possible, and any limitation must be strictly necessary. The guardian's duties and transactions on behalf of the ward may require court approval, especially for significant property decisions (often those exceeding a certain multiple of the subsistence minimum). The law thus balances protective supervision with maximum preservation of the adult's autonomy. Notably, a 2016 reform ended plenary guardianship (full incapacity). Individuals who were fully deprived of legal capacity under the old regime can apply for restoration of rights, and their guardianships can be adjusted or terminated if circumstances improve.

Financial support provisions - Slovak law defines a subsistence minimum (*životné minimum*) as the minimum income level necessary for basic living needs. Act No. 601/2003 Coll. on the Subsistence Minimum establishes this threshold, which is updated annually to reflect inflation and living costs. The subsistence minimum is a legally recognized poverty line: any person or household with income below this amount is considered to be in material need. For example, from July 2022 to June 2023 the subsistence minimum was set at €234.42 per month for a single adult, with lower incremental amounts for additional household members. This figure is regularly indexed by the government to maintain purchasing power. In practical terms, falling below the subsistence minimum triggers eligibility for certain social assistance programs.

To guarantee a basic standard of living, Slovakia provides material need assistance (*pomoc v hmotnej núdzi*) for those with insufficient income. The Act on Assistance in Material Need (Act No. 417/2013 Coll., formerly Act No. 599/2003 Coll.) defines material need as the situation when a person's household income does not reach the subsistence minimum and they cannot increase their income through their own efforts. In such cases, the household is entitled to assistance to meet basic living conditions, defined by law as at least one hot meal a day, adequate clothing, and shelter. Material need assistance is provided as a core benefit (allowance) plus various supplements (for housing, healthcare, activation, etc.), funded by the state budget. The goal is to form a safety net that, together with any income the person has, reaches a level sufficient for dignity and survival. For instance, a single adult with no income would receive a monthly allowance (the amount of which is set by law)

and may receive additional supplements (e.g. a housing allowance) to ensure they can afford basic necessities.

The subsistence minimum also serves as a benchmark in other legal contexts affecting vulnerable adults. For example, the Family Act (Act No. 36/2005 Coll.) uses it to calculate minimum child support obligations – every parent must pay at least 30% of the subsistence minimum for a child, regardless of their financial situation. In the context of adults, the term “minimum living amount” is generally synonymous with the subsistence minimum threshold. It is often referenced in laws to determine eligibility or amounts for social benefits, legal aid, and enforcement exemptions. By law, enforcement of debts must not reduce a person’s income below the subsistence minimum, protecting a core amount for the debtor’s living needs. In sum, the minimum subsistence level is a foundational metric in Slovak social policy, directly impacting the financial support that vulnerable adults (the unemployed, disabled, elderly poor, etc.) can receive from the state.

The government is obliged to adjust (valorize) the subsistence minimum each year by 1 July based on statistical indicators. This ensures that the “minimum living amount” keeps pace with economic conditions. An increase in the subsistence minimum not only expands the number of people eligible for aid, but also raises related benefits and thresholds (such as the material need allowance and income brackets for certain subsidies). Through this mechanism, Slovakia’s laws seek to maintain adequate material provision, as also mandated by Article 39 of the Constitution: *“Citizens have the right to adequate material provision in old age and in case of work disability... Everyone who is in material need is entitled to assistance to ensure basic living conditions.”*

Healthcare and social services provisions - Slovakia’s legal framework guarantees access to health care for all, with particular provisions for vulnerable groups. The Constitution explicitly provides that *“Everyone has the right to the protection of health”* and that citizens have a right to free health care and medical supplies based on public insurance, under conditions defined by law. In practice, this means the state runs a universal health insurance system under which basic medical services are available either free at point of use or with minimal co-payments for insured persons. The Health Insurance Act (Act No. 580/2004 Coll.) and related laws ensure that vulnerable populations are covered. Certain categories of people are “state-insured”, meaning the government pays their health insurance premiums. This includes the elderly (old-age pensioners), persons with disabilities on disability pension, the unemployed, children, and other economically inactive individuals. For example, a “pensioner” is defined in Section 11(8)(b) of the Health Insurance Act as a person receiving an old-age or disability pension (with no other insurance) – and such pensioners have their public health insurance contributions paid by the state. In short, the law guarantees that lack of income will not bar an individual from health insurance coverage, securing access to doctors, hospitals, and medicines for vulnerable adults.

The Act on Health Care and Services (Act No. 576/2004 Coll.) regulates the provision of medical care, patients' rights, and consent to treatment. It affirms the principle of informed consent but also enumerates exceptions when care may be provided without consent, such as in emergencies or where a patient is unable to consent and delay would endanger life or health. For adults who lack full legal capacity or decision-making ability, the law allows a legal representative or guardian to make health decisions on their behalf, with oversight to ensure this is in the patient's best interest. In psychiatric care, involuntary hospitalization or treatment is permissible only under strict conditions defined by the Health Care Act and subject to prompt judicial review (in line with international standards on the rights of persons with mental disorders). Health records and personal data of vulnerable patients are protected against unjustified disclosure, and the use of restraints or forcible measures in care facilities is regulated by recent amendments to prevent abuse. Taken together, healthcare legislation strives to balance the need to treat and protect vulnerable patients with respect for their dignity and autonomy.

Social Services for the Elderly and Disabled - Beyond medical care, Slovakia provides a framework of social services to support vulnerable adults (seniors, persons with disabilities, and others in need of care). The Social Services Act (Act No. 448/2008 Coll.) establishes a range of services, including in-home personal care, meal services, day-care centers, emergency shelter, and residential care facilities (such as nursing homes and supported living homes). These services are administered largely by municipalities or regional authorities, often in cooperation with non-profit or private providers, and are partially subsidized by the state. The Act also sets standards of care and accessibility – for instance, it ensures that care facilities meet certain quality criteria and that fees are calculated fairly according to the client's income. For persons with severe disabilities, targeted support is available under Act No. 447/2008 Coll. on Financial Contributions to Compensate Severe Disability. This law provides various cash benefits to offset the extra costs of living with a disability (e.g. contributions for mobility, special equipment, personal assistance, or home modifications). The aim, as stated by the Ministry of Labour, is to “*mitigate or overcome the social consequences of a severe disability*” and to promote social inclusion and dignity for disabled persons. In practical terms, a person with a severe health impairment can receive subsidies for things like wheelchair-accessible housing, transport, caregiving services, or a guide dog.

The legal framework imposes certain duties on social service providers and authorities to protect adults in their care. Service providers must respect the human rights and fundamental freedoms of clients; any form of abuse or neglect can lead to sanctions or loss of license under the Social Services Act. If an adult is no longer able to manage their affairs and has no family support, social workers or healthcare providers can petition the court to initiate guardianship or other protective measures – ensuring no vulnerable adult “falls through the cracks.” Cooperation between health services, social services, and courts is encouraged by law for holistic protection. Moreover, as noted above,

the Social Services Act prevents conflicts of interest by barring caregivers from becoming legal guardians of the same person. This separation ensures that a care institution cannot both profit from and make legal decisions for a vulnerable individual, thus safeguarding the person's interests.

- 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.**

General definitions

- *Dospelý (Adult)* – A person who has reached the age of majority (usually 18 years). Upon turning 18 (or earlier by entering into marriage with court approval above the age of 16), an individual in Slovakia obtains full legal rights and responsibilities.
- *Zraniteľná dospelá osoba (Vulnerable adult)* – An adult who, due to factors such as disability, mental illness, or advanced age, is at heightened risk of harm or unable to fully safeguard their own interests. Slovak legal discourse uses this term for persons with impairments (e.g. health-related or due to senior age) who may require special legal protection.
- *Spôsobilosť na právne úkony (Legal capacity)* – The capability of a person to hold rights and perform legal acts (e.g. enter contracts, marry). In Slovakia full legal capacity is tied to adulthood and sound mind. Courts can restrict an adult's legal capacity (after 2016 it is no longer possible to fully deprive it) if the person, due to mental disorder or other serious reason, cannot manage their affairs and no less restrictive measure suffices.
- *Mentálna spôsobilosť (Mental capacity)* – An individual's factual ability to understand decisions and their consequences. This is a clinical and legal assessment of a person's decision-making ability. If an adult's mental capacity is impaired (e.g. by *duševná porucha*, a mental disorder), a court will investigate whether the person can independently attend to personal and property matters (often via expert psychiatric evaluation) before considering any restriction of legal capacity.
- *Zástupca (Representative)* – A person who is authorized to act on behalf of another. Representation can arise ex lege (by law) or by the person's own act (such as granting a *plnomocnenstvo*, power of attorney). For adults unable to act on their own, only a legally designated representative (e.g. a court-appointed guardian, *zákonný*

zástupca) may make decisions in their name. (Family members *per se* do not automatically gain decision-making rights for an incapacitated adult without such legal appointment.)

Adult protection measures

Voluntary measures

Slovakia does not yet have a fully developed legal framework for voluntary measures such as continuing powers of attorney and advance directives (they exist in principle but lack clear statutory regulation).

- *Predbežné vyhlásenie / pokračujúca plná moc (Continuing power of attorney)* – An advance directive or power of attorney arranged by a capable adult in anticipation of future incapacity. The adult appoints a trusted person (agent) or sets out instructions to manage their affairs if they later lose mental capacity. This anticipatory measure is made while the person has capacity and aims to avoid future court intervention. (Note: Slovak law is gradually recognizing such tools; as of now, no specific titled “continuing POA” statute exists, but general mandate provisions apply and reforms are under discussion.)
- *Podporované rozhodovanie (Assisted decision-making)* – A support mechanism whereby the adult retains full legal capacity but receives help in understanding and making decisions. The supporter (assistant) has no decision-making power for the person, only with them. The individual’s will remains paramount – they make their own decisions with guidance or clarification from the supporter. *(This concept, in line with the UN CRPD, is not yet a distinct formal institute in Slovak legislation, but it underpins the preference for assistance over substitution in decision-making.)
- *Zastúpenie členom domácnosti (Representation by a household member)* – A court-approved arrangement that allows a close relative or household member to act on behalf of an adult who, due to mental disability, cannot act independently and has no other representative. Eligible representatives include a descendant, ancestor, sibling, spouse or partner, or a person who lived with the individual for at least 3 years prior. The family representative can handle routine affairs and manage the adult’s income to cover everyday needs (with limits, e.g. withdrawals capped by the monthly living minimum). However, they cannot consent to serious interventions affecting the adult’s bodily or mental integrity (such decisions remain excluded or require a guardian/court). This is an alternative to full guardianship, intended to be less intrusive while still providing support.

State-ordered measures

- *Obmedzenie spôsobilosti na právne úkony (Court-ordered limitation of legal capacity)* – A judicial measure restricting an adult’s legal capacity in specific areas or to a certain extent, applied when the adult’s mental condition *seriously* impairs their ability to make decisions. Since a 2016 reform, Slovak courts may limit but no longer completely revoke legal capacity. The court’s decision must detail the

scope of activities for which the person is no longer legally competent. Importantly, the petition to restrict capacity must show that less restrictive alternatives (like those above) are not sufficient. The person retains capacity for all matters outside the court-defined scope.

- *Opatrovníctvo (Guardianship)* – The court-appointed opatrovník (guardian) is a representative who assists or substitutes the adult in legal acts after legal capacity has been limited. The guardian is usually a close relative or other suitable person appointed by the court. By law, a guardian must act dutifully in the ward's best interests and is subject to court supervision. Certain important decisions by a guardian (especially beyond everyday matters) require prior court approval; for example, disposing of an incapacitated person's property or waiving significant rights is not considered a "bežná vec" (ordinary matter) and thus needs the court's consent to be valid. Guardianship aims to protect the adult while preserving as much of their autonomy as possible, and courts can modify or terminate it if the person's capacity or circumstances change.
- *Nedobrovoľná hospitalizácia (Involuntary hospitalization)* – The involuntary placement of an adult in a medical or psychiatric facility without their consent, under conditions defined by law. This typically occurs if the individual suffers from a serious mental disorder and poses an immediate danger to themselves or others, or cannot care for themselves, and refuses treatment. Slovak law provides for a special detenčné konanie (detention proceeding) where a court must promptly review and decide on the admissibility and continuation of such a confinement in a healthcare institution. In emergencies, doctors may initiate hospitalization, but judicial oversight is required within a short time frame to either approve or terminate the involuntary stay. This safeguard ensures that deprivation of liberty for medical reasons is lawful, necessary, and as limited as possible.

Ex lege measures

- *Vyživovacia povinnosť (Family maintenance obligation)* – A legal duty of support that family members owe each other by operation of law. The Family Act imposes mutual maintenance duties, which serve as a protection for vulnerable family members. For instance, parents must provide for their children *until* the children can support themselves, even if the child is an adult (e.g. an adult child with a disability or a student is entitled to parental support). Conversely, adult children who are capable of self-support are required to contribute to the upkeep of their parents if the parents are in need of assistance. The extent of this duty is determined by the needs of the dependent person and the financial abilities of the supporting relative. These statutory maintenance obligations help ensure that vulnerable adults (elderly, disabled, or otherwise unable to earn a living) receive basic support from their family without requiring state intervention.

- *Zákonné zastupovanie v zdravotnej starostlivosti (Statutory representation in healthcare)* – Rules governing who can provide consent for medical treatment on behalf of an adult patient who cannot consent personally. Under Slovak law, if an adult is not capable of giving informed consent (e.g. unconscious or lacking mental capacity) consent may only be given by the patient’s legal representative (such as a court-appointed guardian). Unlike in some jurisdictions, close relatives *do not* automatically have the right to consent to treatment for an incapacitated adult family member. In urgent cases where obtaining any consent is impossible, healthcare can be provided without consent (if it is life-saving or preventively necessary, a scenario of predpokladaný súhlas – presumed consent). This framework protects incapacitated adults by ensuring that medical decisions are made either by someone legally authorized or under strict necessity, rather than leaving such decisions to informal family discretion.
- *Štátne zdravotné poistenie dôchodcov (Automatic health insurance for pensioners)* – In Slovakia, persons in certain vulnerable categories are poistenci štátu (state-insured persons) under the public health insurance system. Notably, the state covers health insurance contributions for old-age pensioners (those receiving an old-age pension) as well as individuals who have reached retirement age but do not qualify for a pension. This means that seniors are insured by law without having to pay premiums, ensuring continuous access to healthcare. Similarly, recipients of disability pensions, the long-term unemployed, students, and other specified groups are state-insured. This ex lege measure guarantees that vulnerable adults (like the elderly and disabled) maintain health coverage and can receive medical care financed by the public health insurance scheme.

Each term above is grounded in Slovak law and practice, reflecting the legal mechanisms aimed at safeguarding adults who may be at risk while empowering them to the greatest extent possible within their capacities.

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.

Slovakia’s population is aging, and the country has legal and social frameworks to protect **vulnerable adults** – including older persons and people with disabilities. This section of the report presents empirical data on demographics and adult protection measures in Slovakia, with comparisons to

EU averages where relevant. Key areas include the aging population, disability prevalence, guardianship (legal capacity) cases, social services usage, and elder abuse statistics.

Aging Population (65+ Years)

Slovakia has an increasingly elderly population. As of 2023, **17.9% of the population was aged 65 or older**. This is a significant rise from roughly 12% in the early 2000s, reflecting a steady aging trend. By comparison, the EU average was about 21% age 65+ in 2020 (up from ~16% in 2001), so Slovakia's demographic shift is slightly behind but narrowing.

Projections indicate this trend will continue: Slovakia's total population is expected to shrink by ~11% by 2050, but the elderly cohort will expand as a share. This means older adults will form a much larger segment of society in coming years, increasing the importance of adult protection policies for the elderly.

Prevalence of Disability in the Population

Precise data on the number of persons with disabilities in Slovakia are limited. Broad estimates suggest **that 15–25% of the population has some form of disability**, depending on definitions. EU statistics indicate roughly **one-quarter of EU adults** self-report a long-standing disability or activity limitation. Applying the World Health Organization's estimate (about **15% of people experience significant disability**) to Slovakia's ~5.5 million population yields roughly **800,000 individuals with disabilities**. Actual figures vary with criteria – Slovakia's law defines a person with a severe disability as one with $\geq 50\%$ functional impairment (often denoted as **ŤZP status**), but an official count of all persons with disabilities is not readily published. Disabilities among Slovak citizens include a range of types – physical, mental (intellectual/psychosocial), visual, and hearing impairments are all represented. Physical disabilities are generally the most common, but comprehensive breakdown by type is scarce. For context, day care and rehabilitation services in Slovakia serve people across all these disability categories. In the absence of detailed national data, it is clear that persons with disabilities form a significant minority of the population, and their needs span various support services.

Guardianship and Legal Capacity Restrictions

Slovak law allows courts to **restrict an adult's legal capacity** in exceptional cases (usually due to intellectual or mental disabilities). When an adult is found incapable of managing their affairs, the court appoints a guardian and defines which acts the person is **incompetent to perform**. Notably, current law does **not permit full removal of legal capacity**, only partial restrictions tailored to the person's condition. These measures are intended to protect adults who cannot adequately protect themselves. Thousands of adults in Slovakia live under court-appointed guardians due to such legal capacity restrictions. National statistics from recent years show this is a growing phenomenon. Between 2012 and 2024, the number of legal capacity restriction cases increased steadily. This suggests more vulnerable adults (often persons with mental disabilities or dementia) have been placed under guardianship over

time. Slovakia has been reviewing its guardianship system to ensure it aligns with human rights – for example, by emphasizing partial rather than total restrictions and exploring supported decision-making alternatives.

Social Services and Long-Term Care Support

Many vulnerable adults receive support through social services, including long-term care for seniors and disability support services. Below are recent statistics on adults using key social services (the data was provided by the Ministry of Labour, Social Affairs and Family of the Slovak Republic upon request):

- **Residential care for seniors:** about **16,255 older adults** were living in facilities for the elderly (retirement or nursing homes).
- **Specialised facilities:** about **5,077 adults** (younger or older) with specific conditions (such as severe disabilities or chronic illnesses) resided in specialized care facilities.
- **Supported housing:** around **518 persons** were in supported housing units (assisted living arrangements for those who can live semi-independently).
- **Rehabilitation centers:** approximately **554 adults** were in residential rehabilitation facilities (for recovery and therapy needs).
- **Nursing care facilities:** about **2,078 individuals** were cared for in nursing service institutions (intensive nursing or hospice-type care)

Together, these figures indicate roughly 25 thousand adults in Slovakia were receiving institutional social services due to old age, disability, or serious health conditions. This number will likely grow as the population ages.

In-Home Care and Allowances: In addition to institutional services, Slovakia relies heavily on family care for the vulnerable. The state provides a caregiver allowance to family members who care for a person with a severe disability or dependency at home. In **2024, about 57,048 people** were receiving the care allowance as caregivers. (About 59% of these caregivers were of working age, and the rest were older family members.) This sizable number illustrates that tens of thousands of Slovak adults with disabilities or frail elderly are being supported in family settings rather than in formal institutions. Supporting these family caregivers is a key part of the adult protection system (to prevent burnout and ensure the vulnerable person’s needs are met).

Compared to Western Europe, Slovakia **has a lower rate of institutional long-term care** and a greater reliance on family-based care. Many EU countries also face increasing demand for elder care; on average about 30% of Europeans 65+ report some long-term care needs, and countries provide a mix of in-home services and care homes. Slovakia is working to expand and modernize its social services (for example, increasing funding to care facilities since 2018 to improve capacity and staff pay).

Elder Abuse and Neglect Statistics

Reported Cases: Elder abuse – which can include physical violence, psychological abuse, neglect, or financial exploitation – is an area of growing concern in Slovakia as the population ages. Official crime data show that **in**

2023, police recorded 1,653 crimes against senior citizens. Of these, about **44% were violent crimes** (such as assault or domestic violence), **25% were property crimes** (theft, burglary targeting the elderly), **21% were economic crimes** (fraud, financial exploitation), and the remaining ~10% were other offenses. Many of these crimes are essentially forms of elder abuse or neglect. The data suggest that hundreds of older Slovaks fall victim to abuse or crimes annually, and this may be rising as more people reach advanced age.

Beyond reported crimes, surveys attempt to capture *hidden* abuse. One study in Slovakia found an **overall elder abuse prevalence of about 5.2%–7.2%** (i.e. roughly one in twenty older persons had experienced some form of abuse). Common forms included psychological abuse, financial exploitation, and neglect. It's important to note that this study excluded seniors with severe cognitive impairments (like advanced dementia), where abuse risk is often higher. Therefore, the true prevalence could be higher. Indeed, international research by the World Health Organization estimates that approximately 1 in 6 people over 60 (16%) experience abuse each year globally. The relatively lower rate found in Slovak surveys may indicate under-reporting or a more narrow survey scope – elder abuse tends to be under-detected everywhere.

There is concern that elder abuse may increase as the elderly population grows, especially if social support systems lag. Slovakia has taken some steps – for instance, campaigns by the Slovak National Centre for Human Rights have raised awareness about elder abuse. However, no long-term time series of official elder abuse reports is published to confirm a trend. Anecdotally, agencies report increasing calls about elder neglect or mistreatment. Comparable EU data on elder abuse are limited, but studies in other EU countries also show prevalence in the range of 5–10% in community-dwelling elders (and higher in institutional settings). Slovakia will likely need to strengthen social services, community support, and legal protections to address this issue as part of its adult protection framework.

- 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.**

Relevant Treaties and Conventions (Slovakia's Participation)

- **UN Convention on the Rights of Persons with Disabilities (CRPD, 2006):** Slovakia signed the CRPD in 2007 and ratified it on 26 May 2010. The Optional Protocol to the CRPD was ratified at the same time, entering into force for Slovakia on 25 June 2010.
- **Hague Convention on the International Protection of Adults (2000):** Slovakia is not yet a party to this convention. (The EU has

recently encouraged all Member States, including Slovakia, to ratify this convention.)

- **UN Core Human Rights Treaties:** Slovakia succeeded to the major UN human rights treaties upon independence in 1993. This includes the **International Covenant on Civil and Political Rights (ICCPR)** (which guarantees equal recognition before the law) and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)** – both originally adopted 1966. It is also party to the **Convention against Torture (CAT, 1984)** (via succession in 1993) and to the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)** (via succession in 1993), among others.
- **Council of Europe – European Convention on Human Rights (ECHR, 1950):** Slovakia has been bound by the ECHR since joining the Council of Europe in 1993. It accepts the jurisdiction of the European Court of Human Rights for alleged violations of vulnerable adults' rights (e.g. rights to liberty, private life, freedom from inhuman treatment).
- **Council of Europe – European Social Charter (Revised, 1996):** Ratified by Slovakia on 23 April 2009. Slovakia accepted 87 of the Charter's 98 paragraphs, including key provisions on the rights of persons with disabilities and the elderly (Articles 15 and 23).
- **Council of Europe – Convention on Human Rights and Biomedicine (Oviedo Convention, 1997):** Ratified by Slovakia on 15 January 1998, in force since 1 December 1999. This bioethics treaty covers consent to medical treatment and research for those unable to consent.
- **Council of Europe – Convention on Action against Trafficking in Human Beings (2005):** Ratified by Slovakia on 27 March 2007. This treaty obliges Slovakia to protect victims of trafficking, including adults with vulnerabilities, from exploitation.
- **Council of Europe – Istanbul Convention on Preventing and Combating Violence Against Women and Domestic Violence (2011):** Slovakia signed this convention in 2011 but has not ratified it. In 2020, the National Council (parliament) formally rejected its ratification, leaving a gap in the international framework for protecting women (including elderly or disabled women) from abuse.

- **EU Framework:** As an EU member since 2004, Slovakia is bound by EU law that reinforces vulnerable adults' rights. **The EU Charter of Fundamental Rights** (binding since 2009) affirms the rights of persons with disabilities to integration and of older people to lead a life of dignity and independence. EU equality directives, notably **Directive 2000/78/EC**, required Slovakia to enact disability anti-discrimination legislation (leading to the 2004 Anti-Discrimination Act). The EU itself ratified the CRPD in 2010, meaning Slovakia must also uphold CRPD principles in areas of EU competence.

Influence on Slovakia's Legal Framework

International instruments have significantly influenced Slovak laws and policies for protecting vulnerable adults. Over the past two decades, Slovakia's guardianship laws, disability rights legislation, social services system, and protective measures have evolved – often spurred by its commitments under UN and European treaties.

Slovakia's guardianship system has been under reform pressure due to the CRPD and Council of Europe standards. Before 2016, courts could fully deprive a person of legal capacity (placing the person under plenary guardianship). The CRPD, especially Article 12, prompted re-examination of this approach. In its 2016 review, the UN CRPD Committee expressed "*deep concern*" about Slovak laws that allowed substituting disabled persons' decisions and even restricted their right to marry and vote when under guardianship. The Committee urged Slovakia to replace regimes of substituted decision-making with supported decision-making models, restoring the individual's legal capacity with appropriate supports. In response, Slovakia amended its Civil Code and civil procedure in 2016, abolishing the option of full deprivation of legal capacity. Since then, courts can only restrict legal capacity partially (for specific areas of life, tailored to the person's abilities) rather than removing it entirely. This reform was widely viewed as a direct response to CRPD obligations and the evolving European consensus that plenary guardianship is incompatible with human rights.

Despite this progress, Slovakia has not yet introduced a full supported decision-making regime. The law still relies on guardians (court-appointed representatives) to make decisions for persons deemed "incapacitated" in certain areas, albeit under periodic court review. NGOs and international monitors note that Slovakia "*has not yet adopted the reform of guardianship into supported decision-making mechanisms, as recommended by the UN Committee*". In practice, thousands of adults remain under partial

guardianship, and their ability to make legally binding decisions (e.g. to manage property, marry, or vote) can be curtailed by court order. There have been pilot projects in supported decision-making (with support persons assisting individuals to make their own choices), but no comprehensive legislation on this exists yet. The European Social Charter's supervisory body and disability rights advocates have urged Slovakia to "*systematically pursue its intent to reform the system of guardianship to replace [it] with supported decision-making, with effective safeguards*".

European Court of Human Rights jurisprudence has also influenced Slovak guardianship reforms. Cases like *Stanev v. Bulgaria* (2012) and *D.D. v. Lithuania* (2012) – though against other states – highlighted that indefinite, plenary guardianship and institutionalization without periodic review violate the ECHR. Such rulings have put pressure on all Council of Europe states, including Slovakia, to ensure guardianship orders are not abusive. Slovak law now provides for regular reviews of any capacity restriction and requires the presence of the person concerned in court proceedings (a right reinforced by ECHR Article 6).

Slovakia's equality and disability-rights framework has been heavily shaped by international commitments, notably the CRPD and EU law. Upon EU accession, Slovakia was required to implement EU anti-discrimination directives. The Equal Treatment Act (No. 365/2004 Coll.) was adopted in 2004 to comply with EU Directive 2000/78/EC, explicitly prohibiting discrimination on grounds of disability (among other grounds) in employment and other areas. This was a significant step, establishing a legal right to equal treatment for persons with disabilities and other vulnerable groups. The Act has since been amended to extend protections to education, social security, healthcare, and access to goods and services, moving closer to the broader scope of equality envisioned by the (still pending) EU Horizontal Anti-Discrimination Directive. The Slovak National Centre for Human Rights was designated as an equality body to assist victims of discrimination, and courts can award damages or order remedies in discrimination cases.

The CRPD's influence is evident in legislative and policy updates. Following ratification of the CRPD in 2010, Slovakia reviewed various laws for compliance. For instance, definitions of "disability" in law were aligned more with the social model advocated by the CRPD (focusing on barriers and impairments rather than medical diagnoses). The Anti-Discrimination Act was updated to include the duty of reasonable accommodation for persons with disabilities in employment and education (failure to provide necessary accommodation is deemed discrimination as per CRPD Article 5).

Furthermore, the CRPD spurred the creation of a National Program for the Development of Living Conditions of Persons with Disabilities, a strategic policy framework to coordinate disability policy across ministries. Slovakia has reported these changes in its state reports to the CRPD Committee, noting that the 2004 anti-discrimination law and later amendments were important steps towards fulfilling CRPD obligations.

At the European level, the EU Charter of Fundamental Rights (Art. 26) recognizes the right of persons with disabilities “to benefit from measures designed to ensure their independence, social and occupational integration”. This principle influences EU-funded programs in Slovakia. For example, European Social Fund projects have supported training and employment for people with disabilities, and the government has introduced quotas or incentives for employing disabled workers (partly guided by EU equal opportunity strategies). Additionally, Slovakia, like all EU members, must adhere to the European Accessibility Act (Directive 2019/882) which will make many products and services more accessible – benefiting elderly and disabled adults (e.g. accessible ATMs, telephones, e-books).

International standards have elevated disability rights in Slovakia from a marginal issue to one of legal enforceability and cross-cutting relevance. Disability is now firmly established as a protected characteristic in Slovak law, and the state is expected to actively promote inclusion – a direct result of EU and UN norms. That said, enforcement of these rights remains a challenge: relatively few discrimination cases reach the courts, and societal attitudes evolve slowly.

International instruments have also driven reforms in Slovakia’s approach to social care for vulnerable adults. CRPD Article 19 – the right to live independently and be included in the community – has been particularly influential. Traditionally, Slovakia, like many Central European countries, relied on large residential institutions for adults with mental disabilities, intellectual disabilities, or chronic illnesses. After ratifying the CRPD, Slovakia committed to “deinstitutionalisation” – the transition from institutional care to community-based services. The government adopted a national Deinstitutionalisation Strategy (2011–2015) and subsequent action plans, supported by EU Structural Funds. These plans aimed to downsize or close institutions and develop alternatives such as group homes, supported housing, personal assistance services, and day-care centers in the community. The European Social Charter (Art. 15 and Art. 23) also reinforces the obligation to provide appropriate social services allowing persons with

disabilities and older persons to remain integrated in society, which the European Committee of Social Rights has echoed in its recommendations.

There has been measurable, if slow, progress. Several large psychiatric hospitals and social care homes have been restructured, with residents moved into smaller units or back to their families with support. EU funding (under the Regional and Social Funds) was conditioned on respecting the CRPD; for example, money could not be used to build new long-stay institutions, only to create community services. This external leverage pushed regional authorities to start pilot projects. However, challenges and resistance remain at the local level. According to Inclusion Europe, *“the CRPD and human rights approach is affecting the EU funds and national policies, but on regional and municipal level and in social care provision there are still a lot of opposition to deinstitutionalisation in Slovakia”*. Some municipalities have been slow to establish community-based services or have faced opposition from local residents when opening group homes. Additionally, many families of persons with high support needs fear losing reliable institutional care unless robust community supports are in place, which has made the transition cautious.

Social services legislation has been updated under international influence. The Social Services Act (Act No. 448/2008) was amended multiple times to introduce new types of services like supported living arrangements, respite care for caregivers, and professional guardianship services. Minimum standards of quality for social care were developed, partly inspired by European quality frameworks. The CRPD (Article 26) calls for habilitation and rehabilitation services, prompting programs in Slovakia for skills training and supported employment for persons with disabilities. The European Social Charter’s Article 14 (right to social services) has been cited in encouraging Slovakia to expand access to services in rural areas and to ensure affordability for disadvantaged groups. The Revised Charter’s monitoring in 2021 noted improvements but also that coverage gaps persist (e.g. insufficient homecare services for the growing elderly population, leaving some older adults at risk of neglect).

Another area of development is financial support schemes. Under CRPD Article 28 (adequate standard of living and social protection), Slovakia has maintained and adjusted disability pensions, care allowances for families caring for a disabled adult at home, and subsidies for employers to accommodate disabled workers. These measures have been influenced by both ICESCR obligations and EU policy exchanges (such as the European Semester recommendations on social inclusion). The result is a mix of cash benefits and services intended to support vulnerable adults to live with dignity.

International human rights norms have acted as a catalyst for Slovakia to reform its social support system for vulnerable adults. The move from institutional care toward community living, though far from complete, is grounded in Slovakia's CRPD commitment to the "right to independent living". Likewise, ensuring sufficient social services and benefits for persons with disabilities and the elderly is seen not just as charity, but as fulfilling international social rights obligations. Slovakia has made notable policy strides, but observers (including the CoE and EU) urge consistent implementation of the deinstitutionalisation strategy and sustained investment in support services. The pace of change is a continuing challenge, with regional disparities and resource constraints hindering full realization of these international pledges.

The duty to protect vulnerable adults from abuse, neglect, and exploitation is enshrined in multiple instruments, and these have influenced Slovak law enforcement, social policy, and oversight mechanisms. Under CRPD Article 16, Slovakia must take "*all appropriate measures to prevent exploitation, violence and abuse*" of persons with disabilities, including gender-based aspects. This has led to more attention on abuse in both domestic settings and institutional settings. For example, care institutions are now subject to greater scrutiny: inspections of social care homes and psychiatric facilities have been strengthened, and staff are required to undergo training on preventing abuse and respecting residents' rights. The CRPD Committee in 2016 called on Slovakia to improve monitoring of facilities and ensure that any form of restraint or ill-treatment is eliminated. In part due to these pressures, Slovakia appointed a National Preventive Mechanism under the Public Defender of Rights (Ombudsperson)'s office—the Ombudsperson conducts visits to social care institutions and psychiatric hospitals to check for torture or cruel treatment. The Council of Europe's Committee for the Prevention of Torture (CPT) also periodically visits Slovak facilities; in a 2019 report it found credible allegations of ill-treatment of psychiatric patients by staff, prompting the government to take corrective action (such as firing abusive staff and improving complaint channels for patients).

In domestic law, criminal provisions have been updated to better protect dependent adults. Slovakia's Criminal Code criminalizes violence against a "close or entrusted person" (covering domestic violence) and has enhanced penalties when the victim is particularly vulnerable (due to age, disability, or dependence on the perpetrator). There is a specific offense of maltreatment of a dependent person, which can apply to abusing an elderly or disabled family member. These legal changes were influenced by European standards and the

lobbying of domestic NGOs referencing the Istanbul Convention's requirements, even though Slovakia hasn't ratified it.

In terms of exploitation, Slovakia's implementation of the Anti-Trafficking Convention and UN Palermo Protocol has led to a more victim-centered approach. There have been cases of persons with mild mental disabilities trafficked for forced labor; Slovak authorities now work to identify such victims and not treat them as criminals. Social workers and NGOs receive funding to run outreach programs for vulnerable adults at risk of exploitation, such as the homeless or people with addiction or mental health issues, trying to prevent trafficking or other abuse. Labour inspectors have been trained (with EU support) to spot signs of forced labor which could involve vulnerable individuals. Additionally, under EU law (Directive 2012/29/EU on Victims' Rights), Slovakia must ensure that victims of crime, especially vulnerable ones, receive information and support. This was transposed via the Act on Crime Victims in 2017, which recognizes that some victims (e.g. those with disabilities, or victims of sexual/domestic violence) need special protection measures – such as the ability to testify via video-link to avoid trauma, access to psychological counseling, and the presence of a support person during proceedings. These changes were driven by EU requirements and echo the protective ethos of CRPD Article 13 (access to justice) for persons with disabilities.

Despite these improvements, there are still areas of concern. Reports indicate that neglect of elderly or disabled adults (by overloaded caregivers or in understaffed facilities) is an emerging issue that Slovakia's system struggles to address fully. Apart from criminal sanctions for severe neglect, Slovakia lacks a dedicated adult safeguarding law that would, for example, empower social services to investigate and intervene in cases of abuse of an elder or adult with disabilities living in the community. Much of the prevention relies on general social work and the goodwill of neighbors or family to report issues. The CRPD Committee has highlighted the need for more structured measures, like mandatory reporting of abuse and training healthcare and social service personnel to detect signs of exploitation or violence against persons with disabilities. Additionally, Slovakia's failure to ratify the Istanbul Convention leaves certain gaps in coordinating services and data collection on gender-based violence, which can disproportionately affect women with disabilities or older women.

Because Slovakia has not yet ratified the Hague Convention on the International Protection of Adults, cross-border issues involving vulnerable adults remain challenging. In an increasingly interconnected EU, situations

arise such as: a Slovak citizen with dementia has a guardian appointed in Slovakia but then moves to Austria to live with relatives; or a foreign national under a protective measure relocates to Slovakia. Without the Hague Convention in force, there is no guaranteed mechanism for mutual recognition of guardianship orders, powers of attorney, or similar measures between Slovakia and other countries. This can lead to legal uncertainty and hardship – for example, a guardian appointed in Slovakia might not have authority to manage the person’s affairs in another country, or vice versa, unless they undergo separate court procedures in the new jurisdiction.

Currently, Slovak courts and authorities handle cross-border adult protection on a case-by-case basis, often using general private international law rules or bilateral courtesy. Slovakia typically applies its Act on Private International Law, which might allow recognition of a foreign guardianship if not contrary to public policy, but the process is not streamlined. This gap has been recognized at the European level. The European Commission noted that vulnerable adults’ right to free movement is impeded by the lack of cross-border continuity of their legal protections.

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

Early Legal Framework (1960s–1989)

- **1964 Civil Code:** The Czechoslovak Civil Code of 1964 (Act No. 40/1964 Coll.) allowed courts to declare an adult legally incompetent (“incapacitated”) due to mental illness or similar conditions. Under Article 10, a court could restrict a person’s legal capacity if they had a permanent mental illness or addiction that limited their ability to act, or fully deprive them of legal capacity if they were deemed incapable of any legal acts. In practice, full incapacitation meant the person lost the right to make decisions (such as managing property, marrying, or signing contracts), with a guardian appointed to act on their behalf. Partial guardianship orders also existed, but the regime favored broad, paternalistic control over vulnerable individuals.
- **Socialist-era misuse of incapacitation:** Under the socialist regime, guardianship and psychiatric commitment were sometimes misused as tools of social control. Communist authorities across the Eastern Bloc – including Czechoslovakia – occasionally labeled dissidents or other “undesirables” as mentally ill and confined them, effectively

stripping them of legal rights. While not as systematic as in the Soviet Union, such cases in Czechoslovakia demonstrated how legal incapacitation could be abused for non-medical reasons. More commonly, persons with intellectual or psychosocial disabilities were routinely institutionalized with little say, and the courts' broad power to remove legal capacity had virtually no safeguards by modern standards.

- **Lack of recognition of disability rights:** During this period, there was an absence of any framework recognizing the autonomy or rights of persons with disabilities. The state adopted a custodial, medical-model approach – providing basic care but not integrating disabled individuals into society as equal citizens. Legally, persons with disabilities and other vulnerable adults were viewed as objects of protection rather than holders of rights. For example, throughout the 1970s–80s, the government expanded large state-run social care institutions, believing this was the proper way to care for “incapacitated” individuals. There were no anti-discrimination laws or guarantees of accessibility, education, or independent living for disabled persons. In short, socialist law and policy did not acknowledge vulnerable adults as persons entitled to make choices; instead, full guardianship and institutionalization were seen as normal, with even reform-minded officials in the late 1980s failing to implement community-based alternatives despite recognizing their importance. The concept of **rights** for people with disabilities was essentially absent in the legal framework of 1960–1989.

Post-Communist Reforms (1990s–2004)

- **Velvet Revolution and democratic principles:** The Velvet Revolution of 1989 brought an end to socialist rule and ushered in democratic reforms in Czechoslovakia. This transition fundamentally changed legal principles – rule of law, separation of powers, and protection of fundamental rights became guiding values. After Slovakia became independent in 1993, it adopted a new Constitution (Act No. 460/1992 Coll.) enshrining human rights and equality. The Constitution guarantees fundamental rights to **all** citizens and explicitly provides that certain groups, including people with disabilities, are entitled to special protection. For example, Article 38 of the Slovak Constitution states that “*women, minors and persons with disabilities are entitled to an enhanced protection of their health at work and special working conditions,*” as well as special protection

in employment relations and training. This marked the first time Slovak law acknowledged persons with disabilities in the context of rights, signaling a shift from the previous era's neglect of this population's legal status.

- **New constitutional framework and human rights commitments:** In the 1990s, Slovakia solidified its commitment to international human rights norms. It joined the Council of Europe in 1993 and became party to the European Convention on Human Rights, which imposed standards for due process and protection of all citizens' rights (including those under guardianship). The new constitutional order emphasized that everyone is equal in dignity and rights, prohibiting discrimination. Although disability was not yet comprehensively addressed in ordinary legislation, the general framework set by the Constitution and international treaties created a basis for future disability-rights protections. Courts and lawmakers began to approach issues like guardianship with greater attention to individual rights than had been the case under socialism. Notably, the practice of legal incapacitation now required a court process subject to the rule of law, and political abuses of psychiatry were halted. However, throughout the 1990s the Civil Code's guardianship provisions remained largely the same, meaning full deprivation of legal capacity was still legally possible – a legacy that would be tackled only later.
- **Initial legal reforms for vulnerable groups:** The post-communist legislature took early steps to improve the situation of vulnerable and disabled persons, mostly in the realm of social welfare. One important change was allowing non-state actors to provide social services. In 1991–92, new laws (e.g. Act No. 135/1992) enabled private and non-profit organizations to deliver social care services, breaking the state monopoly and encouraging community-based alternatives. This led to the first pilot projects for supported living – for instance, in 1991 a Slovak NGO established one of the first supported housing centers for adults with intellectual disabilities. Additionally, Slovakia updated its social security and assistance laws to support persons with disabilities living in the community. Early legislation granted certain benefits and concessions – for example, a 1993 amendment to the social welfare law provided special privileges to people with serious disabilities (such as reduced public transport fares) as a form of support. In 1998, the Act on Social Assistance (No. 195/1998 Coll.)

was adopted, creating a framework for financial assistance and social services for people in material need, including those with disabilities. These reforms reflected a growing awareness that the state should aid vulnerable citizens, though the focus was still on care and charity rather than rights and autonomy.

- **Preparation for EU accession and legal alignment:** In the late 1990s and early 2000s, Slovakia's drive to join the European Union spurred further legal changes benefiting vulnerable adults. Aligning with EU standards meant adopting modern human rights and anti-discrimination principles. Slovakia began drafting comprehensive anti-discrimination legislation and reviewing laws for compliance with European norms. Although a dedicated disability discrimination law had not yet been passed in the 1990s, policymakers were aware that EU membership would require protecting equality for all citizens, including those with disabilities. This period also saw increased activity by domestic disability advocacy organizations and international NGOs, who pressed for community integration of people with disabilities. By 2002, Slovakia had in place many constitutional guarantees and was party to key treaties, setting the stage for major reforms (like anti-discrimination laws and guardianship changes) just ahead of and shortly after its EU accession in 2004. In summary, 1990–2004 was a time of laying groundwork: Slovakia moved away from the excesses of the communist approach, recognized the need to protect human rights, and put in place the initial laws and policies that would evolve into a more robust system for protecting vulnerable adults.

EU Membership and Modern Reforms (2004–2016)

- **EU accession and anti-discrimination laws:** Slovakia joined the European Union in May 2004, and in anticipation it enacted laws to meet EU directives on equality and human rights. A cornerstone was the Anti-Discrimination Act of 2004 (Act No. 365/2004 Coll.), which for the first time prohibited discrimination on various grounds – including **disability** – in employment, education, healthcare, and other spheres of life. This law introduced the principle of equal treatment for persons with disabilities, mandating reasonable measures to ensure they are not treated unfairly. The 2004 Act gave persons with disabilities a legal tool to challenge discriminatory practices, reflecting EU standards (such as the Employment Equality Directive) being transposed into Slovak law. EU membership thus

catalyzed a shift from seeing disabled individuals solely as recipients of care toward recognizing them as a protected class under civil rights law.

- **Social services reform and first steps toward deinstitutionalization:** After 2004, Slovakia began modernizing its social care system with an eye on European trends favoring **deinstitutionalization** (DI) – the process of moving people from long-stay institutions into community-based support. In 2008, the country adopted a new Social Services Act (Act No. 448/2008 Coll.) to replace the outdated social assistance law. This Act defined various types of social services (e.g. assisted living, in-home care, rehabilitation services) and set quality standards, laying a foundation for more community-oriented care. Building on this, the government in **November 2011** approved a dedicated “Strategy for the Deinstitutionalisation of the System of Social Services and Substitute Care,” officially committing to transform care for people with disabilities and other vulnerable groups. This 2011 DI Strategy, supported by available EU structural funds, was a milestone – it recognized that large congregate institutions should be gradually replaced with community-based services and that persons with disabilities have the right to live included in society. Following the strategy, legal changes were made to facilitate implementation. In 2013 the Social Services Act was substantively amended (effective **1 January 2014**) to support the transition from institutional to community care. The amendments introduced provisions encouraging the development of community-based services (like small group homes, day centers, and support for families) and required transformation plans for existing institutions. These were the first concrete legislative steps to turn deinstitutionalization principles into practice. Despite these efforts, progress during 2004–2016 was cautious – while new services slowly expanded, the overall number of adults in institutions remained high, showing that changing a decades-old system would be a long process.
- **Impact of international human rights commitments:** In parallel with EU-driven reforms, Slovakia embraced global human rights instruments that influenced its treatment of vulnerable adults. Chief among these was the **United Nations Convention on the Rights of Persons with Disabilities (CRPD)**. Slovakia signed the CRPD in 2007 and ratified it in 2010, making it part of domestic law (with

supra-legislative force under the Constitution). The CRPD obliges states to recognize the full legal capacity of persons with disabilities (Article 12) and to provide support for them to make decisions, rather than substituting decision-making through guardianship. It also calls for community living (Article 19) and accessibility in all aspects of life. After the CRPD entered into effect in Slovakia (June 2010), the government was required to align its laws with the treaty's standards. This prompted a critical look at guardianship and institutional care practices. Indeed, the years after 2010 saw increasing discussion in Slovakia about alternatives to full incapacitation, such as supported decision-making and periodic review of guardianship orders, in line with CRPD principles. International scrutiny also grew: Slovak officials had to report on their compliance with the CRPD, and disability rights experts at the European level were monitoring Slovakia's progress in areas like legal capacity and independent living. All of this added momentum to domestic calls for reforming the antiquated guardianship system.

- **Toward limited legal capacity instead of full deprivation:** By the mid-2010s, Slovakia began reforming its civil law to curtail the practice of completely depriving adults of legal capacity. The push came from multiple directions – domestic courts, activists, and international influence. In 2014, the Slovak Constitutional Court issued guidance signaling that **full deprivation of legal capacity** was incompatible with basic rights. It pointed to the example of nearby countries and modern legal trends, noting that Czech law (after 2014) abolished full incapacitation in favor of only allowing tailored restrictions. The Constitutional Court criticized the old practice as a *“relic of the old regime”* and urged that any intervention in legal capacity must be proportionate and individualized. Around the same time, media in Slovakia covered stories of guardianship abuse, which raised public awareness of the issue. Another factor was case law from the European Court of Human Rights – for instance, the ECHR's judgment in *Shtukaturov v. Russia* (2008) and similar cases highlighted that arbitrary or total removal of legal autonomy violates human rights. All these developments set the stage for legislative change. In 2015, the National Council (parliament) passed a new Civil Procedure Code for non-contentious matters (Act No. 161/2015 Coll.), which reformed the procedures for guardianship cases. When this law took effect in 2016, it abolished the possibility of courts declaring someone fully incapacitated going forward. Under the new

procedure, courts may still **restrict** a person’s legal capacity, but only to a specified extent and with regular reviews, and they can restore capacity if the person’s condition improves. In other words, after 2016, no adult in Slovakia can be newly stripped of all legal rights – any guardianship must be limited and tailored. This was a fundamental shift in the legal framework, moving away from the all-or-nothing approach of 1964. (Notably, the Civil Code’s text still technically contains the old provision on full deprivation, but it is rendered inoperative – the procedural law “trumped” it in practice.) Lawmakers and experts hailed this reform as a “historical milestone” that reinforces human dignity. It was the culmination of the modern reforms in this period, aligning Slovak law with European norms and the CRPD’s call for recognizing persons with disabilities as persons before the law.

Recent and Ongoing Developments (2016–present)

- **Abolition of full guardianship and its aftermath:** The 2016 abolition of full legal incapacitation marked a new era in Slovak guardianship law. Courts can no longer issue orders that completely deprive an adult of legal capacity. Instead, only partial restrictions with narrowly defined scopes are permitted, and every guardianship must be periodically reviewed for possible restoration of rights. This reform has prevented new cases of lifelong, total guardianship. However, a significant challenge has been addressing **existing** cases from before 2016. As of the reform, approximately 16,800 people in Slovakia were already under full guardianship orders made in the past . The law did not automatically review all those cases, meaning many individuals remained in a state of total legal incapacity unless they, their families, or other advocates actively petitioned the courts for restoration. Slovak authorities acknowledged this gap – the change was *pro futuro*, affecting new cases, while legacy cases have been slower to revisit. Efforts are underway by advocacy groups and the Commissioner for Persons with Disabilities to encourage re-examination of old guardianship orders, but progress has been gradual. In essence, the legal doctrine has changed to forbid full deprivation, but the practical impact will fully materialize only as historical cases are resolved.
- **Strengthening of advocacy and oversight bodies:** In line with its international obligations, Slovakia in 2016 bolstered mechanisms to protect the rights of persons with disabilities. Notably, it established

the **Office of the Commissioner for Persons with Disabilities** (Commissioner for the Disabled), an independent body tasked with monitoring, advocacy, and handling complaints regarding disability rights. The office became operational in March 2016, headed by an independent commissioner (appointed for a term by the government). This Commissioner's Office functions similarly to an ombudsperson: it reviews systemic issues (like abuse in social care homes or improper guardianship practices), advises on policy, and represents the interests of persons with disabilities in dialogues with public authorities. Its creation was partially in response to the CRPD, which requires states to have a framework (including one or more independent mechanisms) to promote and monitor implementation of the Convention. The Commissioner's Office has since been working alongside the general Slovak National Centre for Human Rights and the Public Defender of Rights (ombudsman) to highlight areas where vulnerable adults' rights are not fully protected and to recommend improvements. This development reflects the continuing shift in Slovakia's approach – from viewing vulnerable adults as passive recipients of care to empowering them and their representatives to hold the state accountable for rights violations.

- **Continued deinstitutionalization efforts:** Post-2016, Slovakia has maintained its official policy commitment to deinstitutionalization, though with mixed results. The government adopted a **National Action Plan on Transition from Institutional to Community-based Care for 2016–2020**, aiming to implement the 2011 DI Strategy in a concrete timeline. EU funding in the 2014–2020 programming period was earmarked to support this transition, for example by renovating or building small-scale community living facilities and developing home-care services. There have been positive steps: the number of **day care and weekly care centers** has increased markedly compared to the 1990s, and pilot projects have demonstrated the benefits of community living for persons with intellectual disabilities. Nevertheless, the overall pace of deinstitutionalization has been slow. Statistics indicate that the reliance on institutional care remains very high. In fact, the total capacity of social care institutions for adults with disabilities has **grown** since 1989 – from about 5,659 places then to an estimated 20,000 places by 2016– due to an aging population and the continued practice of placing people with psychiatric or intellectual impairments in large facilities. International observers, including the EU and the

UN, have urged Slovakia to accelerate the development of community-based services. The **UN Committee on the Rights of Persons with Disabilities**, in its 2016 review of Slovakia's record, expressed concern that many persons with disabilities were still institutionalized and recommended allocating sufficient resources to support **independent living** in the community. In response, Slovak authorities have affirmed that deinstitutionalization is a long-term process. Projects are ongoing to create supported housing, expand personal assistance schemes, and train social workers in inclusive practices. As of the late 2010s and early 2020s, Slovakia has also been preparing an updated strategy (for 2021–2030) to continue the transition, acknowledging that the goal of substantially reducing institutional populations is still far from achieved.

Slovakia's legal framework for vulnerable adults has evolved dramatically in the past decades. In the 1960s–80s, the law allowed for total removal of autonomy and largely ignored the rights of persons with disabilities. After the fall of communism, reforms in the 1990s established human rights principles and basic social supports. Joining the EU in 2004 and ratifying the CRPD in 2010 injected momentum for change – leading to anti-discrimination protections, the promotion of community-based care, and ultimately the abolition of full legal incapacitation by 2016. Today, Slovak law formally recognizes adults with disabilities as equal citizens before the law, no longer permitting the blanket denial of legal agency. The focus has shifted toward **empowering** vulnerable individuals, through supported decision-making and inclusion in society, though these ideals are still being realized. Ongoing efforts aim to finish the job: phasing out remaining old-style institutions, implementing community support nationwide, and refining laws to fully comply with international human rights standards.

- 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.**

Slovakia undertook significant legal reform in 2016 by abolishing plenary guardianship (full legal incapacitation). Before 2016, courts could fully deprive adults with mental disabilities of legal capacity, assigning a guardian to make all decisions. This changed with the new Civil Procedure rules (Act No. 161/2015 on Non-Contentious Civil Procedure) effective 2016, which

prohibit courts from entirely depriving anyone of legal capacity. Instead, only tailored restrictions of capacity are allowed, and courts must specify the extent of any limitation. This reform was hailed as a historical milestone for human dignity and a response to human rights precedents – lawmakers explicitly acknowledged that full deprivation of capacity violated human rights, referencing case law of the European Court of Human Rights (ECtHR) and obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD).

However, the 2016 reform applied *pro futuro* (going forward) and did not automatically restore capacity to those already under full guardianship. **Over 16,800 people** who had been fully deprived of legal capacity before 2016 remained under plenary guardianship unless they or an interested party petitioned the courts for restoration. In practice, many of these legacy cases have not been reviewed, meaning a large cohort of adults still live with total legal incapacitation despite the reform’s intent. This has been critiqued as a gap: while new deprivations stopped, historic cases were “grandfathered”, leaving thousands still stripped of personhood in law. Courts can reopen such cases on request, but there was no proactive mechanism to reassess them post-2016.

Despite ending full incapacitation, Slovakia’s legal capacity system continues to draw criticism from legal experts and disability rights advocates for not fully aligning with Article 12 of the CRPD (equal recognition before the law). The current system allows partial guardianship (restricted legal capacity) as per Section 10(2) of the Civil Code, which many argue remains a form of substituted decision-making. Disability rights monitors note that Slovak law “*operates exclusively within the ... deprivation or restriction of legal capacity*” framework, with no alternative means for supported decision-making. In its **2016 Concluding Observations**, the UN CRPD Committee commended Slovakia’s steps to reform but expressed concern that “*despite recent legal and procedural reforms, all persons with disabilities are not given equal recognition before the law*”. The Committee noted that persons under guardianship in Slovakia continued to be denied fundamental rights – including the right to vote, the right to marry and found a family, to own or manage property, and to retain their fertility. These automatic consequences of guardianship indicate that the new partial capacity regime still curtails key civil rights, raising questions about compliance with CRPD Article 12 and related rights (e.g. Article 23 on marriage/family and Article 29 on political participation).

Crucially, the CRPD Committee in 2016 urged Slovakia to repeal the remaining guardianship provisions – recommending deletion of Section 10(1) of the Civil Code (which still nominally allowed deprivation of capacity) and Section 10(2) (allowing restriction) – and to “*introduce supported decision-making which respects the autonomy, will and preferences of the individual.*” In other words, international experts have called for replacing substitute decision-making entirely with supported decision-making mechanisms, per CRPD General Comment No.1. As of the late 2010s, Slovakia had not yet implemented such a system, leaving a normative gap between the CRPD’s requirements and domestic law.

Slovak legal scholars and officials have echoed these critiques. For instance, Róbert Dobrovodský, has argued that the law needs to provide ways for people under guardianship to actively express their will. He proposes a mechanism for individuals under guardianship to submit a declaration of will to the court, ensuring that their preferences are heard and guide the guardian’s decisions. This reflects the growing consensus that even those with limited capacity must have avenues for personal autonomy – a principle at the heart of Article 12 CRPD. Thus, while the 2016 reform was a progressive step (ending plenary incapacitation), experts view it as incomplete. The persistence of partial guardianship, without formal supported decision-making supports, means Slovakia is only partially compliant with Article 12 and still has a substitute decision-making model at its core.

Protecting vulnerable adults is not only a question of legal capacity but also of their living arrangements and support services. Over the past decade, Slovakia’s government has launched initiatives to transform its social care system away from large institutions toward community-based services – a process known as deinstitutionalization (DI). The official push began in 2011, when the government adopted a *Strategy of Deinstitutionalisation* (DI Strategy) to guide the transition from institutional care to community care for persons with disabilities and the elderly. This was followed by National Action Plans (NAPs) to implement the strategy in phases. The first DI National Action Plan 2012–2015 piloted the transformation of several social care facilities and developed methodologies for moving residents into the community. An evaluation of the 2012–2015 NAP found that many tasks remained unfinished and needed to carry over into the next period. Consequently, an updated NAP for 2016–2020 was adopted, incorporating lessons from the pilot projects and even integrating recommendations from the CRPD Committee’s 2016 review. The objective of the 2016–2020 plan was to continue with the DI process and gradually replace institutional care of persons with disabilities with

community-based services, tailored to individuals' needs. This included developing supported housing, day programs, personal assistance, and other services to enable independent living in line with CRPD Article 19 (the right to live independently and be included in the community).

Despite these strategic documents and some EU-funded pilot programs, progress has been sluggish according to both government and independent assessments. By the end of the 2010s, Slovakia still relied heavily on institutional care for adults with disabilities. Government statistics illustrate the slow pace of change: In 2017, there were 1,262 social services facilities across Slovakia, providing long-term care to about 46,617 users. Strikingly, over 83% of these individuals (42,857 people) resided in institutions providing unlimited (permanent) care, while only 15.5% used non-residential daily care and a mere 1.3% were in weekly (periodic) care homes. Community services remain rare, and waiting lists for group homes or assisted living are long.

Many of these individuals spend the majority of their lives segregated from the broader community. The result, as an NGO report starkly noted, is that “many persons with disabilities face lifelong segregation” in Slovakia’s care system.

The government’s own reviews acknowledge the challenges. The Ministry of Labour, Social Affairs and Family evaluated the DI NAP 2012–2015 in mid-2016 and recognized that while pilot projects provided valuable experience, numerous measures had to be extended into the 2016–2020 plan. The 2016–2020 NAP aimed to set more concrete targets and involve a greater number of stakeholders (including regional authorities and service providers) in the transformation process. Funds from the European Structural and Investment Funds were mobilized – for example, a National Project supported “transformational teams” in facilities, and EU grants were offered to remodel or replace institutions. However, **implementation lagged** due to bureaucratic delays, local resistance, and the complexity of developing community services from scratch. By 2019, disability organizations observed “*enormous delays and lack of effective implementation of DI*”, noting that the timetable had slipped and many people remained in institutions despite the commitments. Indeed, the CRPD Committee had **criticized these delays in 2016** and urged Slovakia to **adopt a clear timeline and benchmarks** for deinstitutionalization. In response, the updated DI plans included some timelines, but tangible outcomes have been limited. It was not until 2022 that the government approved a new Strategy for Deinstitutionalization looking ahead (covering 2021–2030), indicating that the 2016–2020 NAP did not achieve full transition

and that efforts must continue into the new decade (this new strategy is mentioned in later international reviews, see below).

One area of modest improvement has been the expansion of certain **community support services**. For instance, the number of persons receiving **personal assistance** (a service where individuals with disabilities employ assistants to help with daily tasks) rose slightly to about 10,765 by mid-2019. The government also enacted changes to make personal assistance more accessible – in 2019, it abolished means-testing of the personal assistance benefit (so that people would not lose the support if their income rose). Additionally, the stipends for personal assistants and family caregivers were increased in 2018–2019, acknowledging that prior levels were too low. Despite these steps, **gaps remain**. Notably, if a person acquires a disability at age 65 or later, they are ineligible for personal assistance under current law, which disabled seniors consider a form of age discrimination. And family caregivers who are themselves pensioners only receive 50% of the normal care allowance. These restrictive rules have been flagged in policy evaluations as needing reform to truly support independent living for all age groups.

On the governance side, Slovakia in the past 10 years has established new oversight mechanisms and policies to better protect the rights of vulnerable adults, in line with CRPD obligations. Notably, in **2015 Slovakia created the Office of the Commissioner for Persons with Disabilities**, an independent body tasked with monitoring and promoting the rights of people with disabilities (including those under guardianship). This was part of Slovakia’s implementation of CRPD Article 33 (national implementation and monitoring framework) and was seen as a response to advocacy for stronger human rights institutions. They receive complaints, review court practices, and advise on needed reforms. For example, the Commissioner’s surveys helped reveal that Article 10 of the Civil Code had not been amended post-2016 and that thousands of people remained deprived of legal capacity with no review.

The Slovak National Centre for Human Rights has also highlighted legal capacity and institutionalization issues in its reports, further keeping government attention on these topics. Additionally, the Ministry of Justice formed an expert working group in 2017 to draft a comprehensive **guardianship law reform** (as part of a broader recodification of the Civil Code). This expert group, which included legal scholars and disability advocates, was tasked with developing legislation to introduce supported decision-making and otherwise address the shortcomings in the current system. However, progress has been slow – as of 2020, the reform bill had not been finalized, reportedly due to “various” obstacles and shifting ministerial

priorities. The Ministry of Justice acknowledged the importance of the issue by creating the group, but the delay in delivering a new law suggests that other political issues took precedence.

In terms of policy documents, Slovakia updated its National Programme for the Development of the Living Conditions of Persons with Disabilities 2014–2020 in 2016 and 2018 to incorporate the UN Committee’s recommendations from the CRPD review. This National Disability Strategy served as a cross-sector roadmap, including goals such as “*replacing the institutes of guardianship by supported decision-making*”, “*abolishing all automatic consequences of deprivation and restriction of legal capacity*”, and “*ensuring the extension of deinstitutionalisation and enhancement of community-based services.*”

The fact that these goals were explicitly added shows the government at least formally recognized the critiques and set policy intentions to address them. Annual or biannual progress reports on this National Programme were submitted (for example, a 2016–2017 report on the Disability Programme tracked which CRPD recommendations had been met). From those reports, it appears some incremental steps were achieved (like setting up the Commissioner’s office, slight increases in community service funding), but larger structural reforms remained pending.

The European Commission’s country fiche on disability (2020) recommended that Slovakia “*promote deinstitutionalisation of large-capacity facilities and increase availability of outpatient and outreach social services.*” The rationale was that the transformation of large facilities was “*slow*” and the COVID-19 crisis had highlighted the risks of concentrating vulnerable people in institutions (due to infection outbreaks and lockdown hardships). In response, the government in recent budgets has pledged more investment in home care and personal assistance. Yet, disability advocates argue that local governments (who often run social care homes) lack incentives or sufficient funding to establish community housing or supported living programs. A consistent critique in shadow reports is that EU funds earmarked for DI were underutilized or spent just on renovating institutions instead of replacing them, which the government has been urged to correct.

Within Slovakia, the issues of guardianship reform, disability rights, and adult protection have gradually entered the political discourse, though they have not always been top priorities. In the early 2010s, these topics were largely championed by experts and advocacy groups rather than political parties. The CRPD’s influence (after Slovakia ratified it in 2010) gave activists a powerful framework to lobby for change. This led to cross-party consensus

on at least one reform: the 2016 procedural law amendment to end full incapacitation had broad political support, as it was seen as aligning Slovakia with human rights norms. That reform passed without major public controversy – it was a relatively technical legal change that most politicians agreed was the right thing to do in light of ECtHR and CRPD standards.

However, the deeper reform – introducing supported decision-making and rewriting the Civil Code – has seen delays that many attribute to a lack of political will and leadership. The Ministry of Justice under successive governments did not treat the guardianship reform as urgent.

Guardianship reform competes with other justice priorities like anti-corruption measures, judicial reforms, and criminal law changes.

Public awareness of the rights of people with disabilities, including those with intellectual or psychosocial disabilities, has been slowly improving in Slovakia. Media have played a role by shedding light on individual stories. For example, Slovak newspapers reported on cases where people under guardianship fought lengthy legal battles to regain their legal capacity or to exercise a right (like marriage) and how the law impeded them.

However, broader public opinion may still harbor misconceptions – e.g. some might assume that if someone has a mental disability, it’s “safer” that they not make important decisions. The task of education has fallen to NGOs and campaigns. There have been awareness campaigns (by groups like Inclusion Slovakia or self-advocates) emphasizing slogans like “My Voice Matters” or highlighting success stories of people with support living independently. Social media has also given a platform to persons with disabilities themselves to speak about their experiences under guardianship or in institutions, gradually changing attitudes.

Public discourse also touches on independent living in the context of broader social topics. For instance, as Slovakia discusses how to improve elder care (with an aging population), the idea of enabling seniors and persons with disabilities to live at home or in the community rather than institutions is gaining favor.

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

Slovakia’s Civil Code (1964) still permits courts to restrict a person’s legal capacity and appoint a guardian, an outdated approach under the UN CRPD. Complete deprivation of legal capacity was formally abolished in 2016, but in

practice courts often issue “full” restrictions (e.g. limiting a person’s rights in all areas) – effectively replicating plenary guardianship. This has severe consequences: adults under full or broad guardianship cannot marry or exercise parental rights without court approval. **Current reform proposals** aim to overhaul these provisions. An expert working group in the Ministry of Justice (MoJ) was established in 2017 to draft amendments to the Civil Code addressing legal capacity. The group prepared a concept paper titled *Material Plan for Adult and Senior Guardianship* with wide stakeholder input (judges, NGOs, disability commissioner, health professionals, etc.). Key **proposed changes** include: improving safeguards against abuse by guardians, allowing individuals to designate a preferred future guardian in advance, and legally disqualifying social care institutions from serving as guardians for their own clients (to prevent conflicts of interest). The reform also seeks to better define partial capacity and require that guardianship be used only as a last resort – courts would need to appoint a guardian only for specific necessary matters, rather than a blanket removal of rights.

A central goal is to **replace substitute decision-making with supported decision-making (SDM)** in line with Article 12 of the CRPD. Currently, Slovak law provides *no* formal alternatives to guardianship – persons with intellectual or psychosocial disabilities who struggle with decisions can only be put under guardianship, not given decision-making support. The UN CRPD Committee urged Slovakia in 2016 to adopt supported decision-making systems. A legislative proposal is being developed to introduce SDM, meaning that individuals would retain legal capacity and make their own decisions with help from a supporter, rather than having a guardian decide for them.

The National Programme for Persons with Disabilities 2021–2030 explicitly calls for analyzing and piloting supported decision-making by 2022 as part of the guardianship reform (Measure 5.1.3).

The expert working group on guardianship reform, convened under the Justice Ministry, has been the driving force behind these legal changes. Formed in June 2017, it brought together a broad coalition (justice, labor/social affairs, health, interior ministries, judges, notaries, academics, NGOs, disability advocates, and Czech experts familiar with modern guardianship laws). Between 2018 and 2019, the group worked on draft reforms, recognizing that the adult guardianship regime (unchanged since 1964) needed a comprehensive update. However, reaching consensus proved difficult – analysis revealed many legal and practical dilemmas, and divergent opinions on how to balance protection with autonomy. As a result, by 2019 the draft was not ready for submission to Parliament. The initiative was revived in the

2020–2024 electoral term, with the Ministry pledging to “once again take up this issue”.

Slovakia has been pursuing **deinstitutionalization (DI)** of social care – transitioning from large, segregated institutions to community-based support – for over a decade. A national DI strategy was first adopted in 2011 and updated in 2019 to cover the 2021–2030 period. Despite these plans, progress has been gradually paced and remains incomplete. The European Commission noted that “the process of transformation of large-capacity facilities is slow,” with many people still living in institutional settings deprived of legal capacity (many of whom reside in institutions), illustrating the scale of legacy institutionalization. To accelerate DI, Slovakia has leveraged EU funds through national projects and structural fund calls. For example, from 2018 a National Project “Deinstitutionalisation of Social Services Facilities – Support of Transformation Teams” was implemented. Under this project, 24 social service facilities in the first wave received funding and expert guidance to develop transformation plans – a roughly 20-month process per facility. For 2021–2027, deinstitutionalization remains a priority, backed by EU and domestic funding. The Government’s Recovery and Resilience Plan (and other EU recovery funds) also earmark investments for social care infrastructure and services, which align with DI goals (e.g. building supported housing units, day centers). The National Priorities for Social Services Development 2021–2030, adopted by the Ministry of Labour, explicitly calls for continuing transformation and securing sustainable funding for community services. One significant policy shift has been to limit the size of new institutions: recent legislative changes cap the number of residents in newly established social care facilities, to prevent building “mini-institutions” and encourage small, home-like settings. In short, Slovakia’s DI plan envisions a gradual closure or downsizing of large institutions through 2030, supported by EU-funded projects and national policy directives.

A cornerstone of reform is the expansion of community-based services for adults with disabilities and older adults, so that people can live outside institutions with necessary support. Currently, the availability of such services in Slovakia is insufficient – historically, funding and provision have favored institutional care. Key support services like social rehabilitation, interpreter services for the deaf, personal assistance brokerage, guide services for the blind, supported housing, and crisis services have existed only in a limited scope. Many regions report shortages of in-home support, day programs, respite care, and accessible housing, leaving families with few options other than institutional placement. The government recognizes this gap. The

National Priorities document (2021–2030) emphasizes integrating community services into the mainstream funding system – meaning stable public financing for municipalities to run or contract services in the community. It also encourages municipalities to form joint regional networks to deliver services more efficiently.

Specific initiatives are underway to broaden service offerings:

- **In-Home Care and Personal Assistance:** Slovakia provides a cash allowance for in-home caregiving and a personal assistance benefit for people with severe disabilities. Recent reforms have improved these programs. In 2020, the conditions for personal assistance were liberalized – the hourly wage was raised from €2.78 to €3.82, and the person’s own income is no longer considered, removing a disincentive to use personal assistance. In 2020, a Constitutional Court ruling struck down the upper age limit for personal assistance (which had been 65 years), meaning seniors over 65 can continue to receive personal assistance support. These changes enable more individuals, including children and the elderly, to get help from personal assistants in daily activities, thus supporting independent living.
- **Support for Informal Caregivers:** Acknowledging that many vulnerable adults are cared for by family members, the state significantly increased the caregiver allowances. In mid-2018, monthly caregiver stipends were raised (for working-age caregivers from ~€250 to €369, and for pensioner-caregivers from ~€92 to €185) . Additional supplements for caregivers of children with disabilities were doubled (from €50 to €100). In July 2023, further increases took effect – the primary care allowance went up to €430 per month for a full-time caregiver (and to €215 for retired caregivers), amounts closer to the net minimum wage. These boosts, along with higher income exemptions for the cared-for person, were aimed at easing the financial burden on families and enabling caregivers to continue supporting relatives at home.
- **Community Facilities and Programs:** Through a mix of European and state funding, new community-based facilities are being developed. For instance, small-group homes or supported living apartments are being built to accommodate people coming out of large institutions. We can expect ongoing development of

community-based supports over the coming years, although the pace will depend on sustained funding and political priority.

Slovakia's **National Programme for the Development of Living Conditions of Persons with Disabilities 2021–2030** (essentially the National Disability Strategy) reinforces the country's commitment to the right to independent living (CRPD Article 19). The strategy's action plans contain measures to enable persons with disabilities to live in the community with choice and control. This aligns with broader government pledges: the Program Statement of the Government for 2020–2024 explicitly promised to "*create a new system of long-term social and healthcare*" to support an aging population and people with disabilities, including a new Social Services Act that integrates social care with healthcare. The aim is to break down silos so that individuals can receive comprehensive support (e.g. nursing, rehabilitation, and personal care) at home or in community settings rather than being forced into institutions due to medical needs. Work on this integrated care law has been ongoing, with an expectation to legislate a unified long-term care framework (covering home care agencies, nursing services, palliative care, etc.) in the near future.

Under the National Disability Strategy, the government has also committed to concrete steps for independent living such as: increasing the supply of accessible and supported housing, ensuring that community services (like personal assistance and home help) are adequately funded, and improving access to assistive devices. The strategy highlights the need for inclusive communities – meaning not just social services, but also accessible transport, inclusive education and employment opportunities, so that persons with disabilities are fully included. An important part of this commitment is policy synergy: deinstitutionalization is not seen in isolation but linked with providing affordable housing, community healthcare, and social inclusion programs (for example, EU-funded pilot projects are testing community living arrangements for people with disabilities who have high support needs). Additionally, Slovakia plans awareness campaigns to promote the concept of independent living and counteract stigma. The National Programme recognizes that public attitudes must shift – many still view people with disabilities as needing "care in special facilities" rather than support to live independently. By 2030, the goal is that significantly more adults with disabilities and seniors will be living in their own homes or family environments with appropriate supports, rather than in segregated institutions. Progress is monitored via periodic reports, and Slovakia's obligations under the CRPD are guiding these efforts (the strategy

explicitly references implementing CRPD recommendations in areas like legal capacity, accessibility, and independent living).

While Slovakia's pending legal and policy reforms for protecting vulnerable adults are comprehensive and generally well-regarded, their success will depend on overcoming practical barriers. Ensuring adequate funding, maintaining political commitment, fostering a supportive professional culture, and carefully managing the transition are all essential. The reforms have strong backing from experts and civil society, and there is pressure from international frameworks to implement them, which bodes well for their eventual realization. However, the pace and effectiveness of implementation will need to be carefully managed. The trajectory is clearly set toward a more progressive system that empowers vulnerable adults – a significant and positive shift in Slovakia's legal framework and social policy.

SECTION II – LIMITATIONS OF LEGAL CAPACITY

- 8. Does your system allow limitation of the legal capacity of an adult? N.B. If your legal system provides such possibilities, please answer questions 8 - 15; if not proceed with question 16.**
- a. on what grounds?**
 - b. how is the scope of the limitation of legal capacity set out in (a) statute or (b) case law?**
 - c. does limitation of the legal capacity automatically affect all or some aspects of legal capacity or is it a tailor-made decision?**
 - d. can the limited legal capacity be restored and on what grounds?**
 - e. does the application of an adult protection measure (e.g. supported decision making) automatically result in a deprivation or limitation of legal capacity?**
 - f. are there any other legal instruments,² besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?**

In Slovakia, an adult's legal capacity can only be limited by a court order, and only on serious grounds related to the person's mental condition.

² Rules that apply regardless of any judicial incapacitation, if that exists, or of the existence of a judicially appointed guardian which might affect the legal capacity of the person or the validity of his/her acts

Typically, this occurs when a person has a long-term mental health disorder or intellectual disability that makes them unable to make reasonable decisions or manage their affairs. For example, severe psychiatric illnesses, dementia, or significant cognitive impairments can warrant such intervention. Historically, chronic substance abuse (such as extreme alcoholism or drug addiction leading to impaired judgment) was also recognized as a ground for limiting capacity. The key criterion is that the impairment must be permanent or long-lasting (not a temporary crisis) and *so severe* that the individual cannot perform necessary legal acts without protection.

The rules governing capacity limitation are set out in statutes – primarily the Civil Code (for the substantive criteria) and specialized civil procedure laws (for the court process). These laws detail when and how a court may restrict someone’s legal capacity. In practice, a judge will consider medical expert evaluations and the individual’s actual abilities case by case. While case law (including Constitutional Court and European Court of Human Rights decisions) has influenced how the statutes are interpreted, the foundation is statutory law. Notably, a reform in 2016 (informed by human-rights principles) changed the law so that courts can no longer fully deprive a person of legal capacity; they are now limited to imposing tailored restrictions. Thus, both legislation and court decisions shape the scope, but any limitation must be explicitly ordered by a court in accordance with the law.

Legal capacity limitations in Slovakia are not “all-or-nothing” by default – they are intended to be tailored to the individual’s needs and abilities. When a court restricts an adult’s legal capacity, it must specify the exact areas or types of decisions in which the person is not allowed to act independently. For example, a judgment might state that the person cannot manage property transactions or sign contracts above a certain value, while leaving them free to make personal daily decisions. In other words, the person retains legal capacity in all areas not explicitly restricted by the court order. Before 2016, Slovak law permitted full deprivation of legal capacity (which automatically stripped the person of the right to make *any* decisions, from financial matters to marriage or voting). However, current law has abolished full deprivation, so a blanket loss of all decision-making power is no longer allowed. Every limitation must be case-specific, based on the person’s actual decision-making capabilities, rather than an automatic, one-size-fits-all removal of rights.

Restoration of Legal Capacity: Yes – an adult who has had their capacity limited can potentially regain full legal capacity if circumstances improve. Slovak law provides that a court should modify or cancel a capacity restriction if the reasons for it have changed or cease to exist. In practice, this means that

if the person's mental health improves, or they learn new skills to manage their affairs, they (or someone on their behalf) can apply to the court for a review. The court will typically require fresh medical evidence or expert testimony to confirm that the individual's decision-making ability has been restored. The individual, their close relatives, their guardian, or even a relevant institution (like a care facility or social services) may initiate this process. There isn't an automatic expiration for a guardianship measure – the onus is on the interested parties to request a review – but the law *allows* and indeed expects adjustment when justified. If the court is satisfied that the original conditions no longer apply, it will revoke the limitation and fully restore the person's legal capacity, or at least narrow the scope of the restriction if a full restoration isn't warranted.

Impact of Adult Protection Measures: In Slovak practice, placing an adult under a guardianship (a common adult protection measure) is directly linked to a court's decision on legal capacity. The appointment of a guardian is essentially a *consequence* of the court limiting someone's capacity – it doesn't happen independently. Thus, a guardianship itself doesn't “automatically” cause a loss of legal capacity; rather, the court's capacity ruling is what defines the person's legal powers, and the guardian is appointed to assist or represent the person in the areas where capacity was curtailed. By contrast, a supported decision-making arrangement is conceptually different: it involves helping the person make their own decisions without removing their legal rights. Slovakia's current law, however, does not yet explicitly recognize supported decision-making as an official alternative to guardianship. In other words, the legal framework doesn't provide for formal support persons who assist while the adult retains full legal capacity – the system still relies on substitute decision-makers (guardians) if capacity is deemed lacking. That said, if support measures are informally used (for instance, a person relying on family or social workers for advice), this *by itself* has no legal effect on the person's capacity. Only a court judgment can limit or remove an adult's legal capacity, and the use of protective measures is tailored to that judgment. In summary, guardianship comes hand-in-hand with a legal capacity limitation, whereas genuine supported decision-making (were it available) would aim to keep the person's capacity intact while offering guidance. Simply implementing an adult protection measure does not equal an automatic legal incapacitation – it fully depends on what the court has ordered.

Other Legal Instruments Affecting Capacity: Aside from the guardianship process, Slovak law does not have separate civil mechanisms that formally declare an adult incapable or limit their legal capacity in a general sense. The

guardianship (capacity limitation) proceeding is the primary legal route to restrict an adult's decision-making authority. However, there are a few context-specific tools and situations that can affect an adult's ability to make decisions without amounting to a full legal incapacity:

- **Healthcare decisions:** If an adult is temporarily or permanently unable to give informed consent to medical treatment (for example, due to unconsciousness or an intellectual disability), the law allows doctors to proceed with essential treatment based on a substitute consent. Typically, consent may be provided by a close relative or an existing guardian, or in urgent cases the treatment may be given without consent to save the person's life or health as permitted by the Health Care Act. This is a protective measure in the medical context and does not permanently strip the person of legal capacity – it only addresses the immediate need for decision-making about healthcare. Once the situation passes, the person remains legally competent for other matters unless a court has formally limited their capacity.
- **Financial management and property:** There is no standalone “financial conservatorship” law in Slovakia separate from the guardianship regime. If an adult struggles with managing property or finances due to a mental disability, a guardian can be appointed through the capacity limitation process to handle those transactions. In some cases, specific administrative arrangements can be made (for instance, social benefit payments might be administered through a trustee or family member to ensure the funds are used properly), but such arrangements do not equate to a legal capacity limitation – they are often voluntary or administrative solutions. An adult may also choose to sign a power of attorney to let someone manage their finances or make decisions on their behalf. This is a private contractual arrangement and, importantly, it doesn't limit the person's legal capacity; the person can revoke the power of attorney as long as they remain competent. Essentially, outside of a guardianship order, an adult retains full legal agency over their financial affairs, though practical limitations (like requiring co-signature for bank transactions if the bank is aware of a cognitive issue) can occur in day-to-day life.
- **Court orders in specific proceedings:** In certain legal proceedings, a court might appoint a guardian ad litem or curator to represent an adult who cannot litigate on their own behalf (for example, if the person is incapacitated due to illness during a lawsuit). This is a procedural safeguard to ensure the person's interests are protected in

that case. It does not amount to declaring the person generally incapable in all areas – it's limited to the litigation context. Likewise, if an adult is involuntarily committed to a psychiatric facility under mental health law, that affects their liberty and who consents to treatment, but it does not by itself remove the person's general legal capacity to, say, make a will or marry. Only the formal guardianship process can do that.

Guardianship (through court-ordered capacity restriction) is the only formal instrument to broadly limit an adult's legal capacity in Slovakia. Other legal tools exist to handle specific issues (medical consent, property management, etc.), but they either operate *within the guardianship framework* or do not strip the individual of legal capacity. The law prefers to leave adults in control of their lives as much as possible, intervening comprehensively only via a court judgment when absolutely necessary to protect the person's welfare.

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

Slovak law permits courts to limit an adult's legal capacity (also called *svojprávnosť* or capacity to act) in specific circumstances, but since 1 July 2016 it no longer allows a person to be completely deprived of legal capacity. When a court limits someone's capacity, it must specify the extent of the limitation and usually appoints a guardian (*opatrovník*) to assist or represent the person in the restricted areas. Below is an overview of how a limitation of legal capacity affects various aspects of an adult's life in Slovakia, with references to the Civil Code and other relevant laws.

a. property and financial matters;

An adult under limited legal capacity remains the owner of their property, but their ability to manage or dispose of it is curtailed. The court's decision will outline which property dealings the person cannot do personally. For example, courts often allow only routine transactions and small purchases, while prohibiting major acts like selling real estate, borrowing money, or accessing large bank funds. In one case, a person was limited such that he could

spend only up to 15 € per month and was not allowed to handle his bank accounts, sign any contracts transferring property, or take loans.

Upon limiting capacity, the court appoints a guardian (under Civil Code §27) to manage the person's assets and represent them in the restricted financial matters. The guardian is obligated to prevent harm to the person's property interests and must handle the assets prudently. Everyday financial acts (paying bills, buying food, etc.) can usually be done by the person if within the allowed scope, but any act beyond an ordinary day-to-day transaction requires court approval to be valid. In practice, the court's order will state that "*acts exceeding the scope of everyday matters are subject to court approval.*". The guardian must also report to the court periodically on the management of the ward's property, ensuring oversight.

These rules stem from the Civil Code (Act No. 40/1964 Coll.) and the civil procedure laws. Under Civil Code §10 and §27, a limited person's capacity to make contracts is restricted to the extent set by the court, and the guardian executes legal acts on their behalf in areas of limitation. If the person attempts a contract or disposal outside their allowed capacity, it is absolutely void by law (Civil Code §38(1)). For instance, a sale or mortgage signed by someone who lacks capacity for such transaction has no legal effect without the guardian's and court's involvement. In summary, a person with limited capacity can own property but cannot freely sell, encumber, or gift it; financial decisions must be made with the guardian's consent and often court supervision to protect the person's assets.

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

Limitation of capacity also affects personal status decisions under Slovak family law (primarily the Family Act, Act No. 36/2005 Coll.). The law imposes strict conditions on marriage and parenthood for persons with limited capacity, and it entrusts certain intimate decisions to guardians or courts.

A person who has been fully deprived of legal capacity cannot marry at all (though full deprivation is now obsolete). An adult whose capacity is limited by a court can marry only with the court's permission. Family Act §12 explicitly provides that "*a person with limited legal capacity may enter into marriage only with the court's approval.*" This means that if an individual under guardianship wishes to marry, the court will review whether their health and understanding are compatible with marriage; for example, the court may allow it if the person's condition is stable enough to fulfill marital responsibilities. If someone under limited capacity marries without obtaining

court approval, the marriage is voidable – a court can declare it invalid upon a spouse’s petition.

The Family Act does not explicitly forbid a person with limited capacity from divorcing, but in practice they cannot independently file or consent to a divorce without representation. Since a civil court proceeding is required for divorce, and each person can act in court only to the extent of their legal capacity, a guardian or court-appointed representative must act on behalf of a party who lacks capacity to litigate. In other words, the guardian may initiate or respond to divorce proceedings in the ward’s interest, with court oversight. The person’s true wishes should be considered, but procedurally the guardian will speak and make decisions for them due to the incapacity. Thus, while marriage for a person with limited capacity is possible only with court leave, divorce would typically involve the guardian’s participation to ensure the disabled spouse’s rights are protected (pursuant to Civil Procedure Code §67).

Medical decisions of a personal nature, such as contraception or sterilization, are governed by health care law with special safeguards. Consent to medical treatment generally requires the patient’s informed consent under the Health Care Act (Act No. 576/2004 Coll.). If an adult is deemed incapable of informed consent (for instance, due to limited legal capacity or mental impairment), the law allows the legal representative (guardian) to give consent on their behalf. This includes decisions about birth control or even sterilization. Notably, Slovak legislation has permitted sterilisation of women with restricted legal capacity based on a guardian’s consent, without requiring the woman’s direct consent or a prior court order. In practice, the guardian can request a sterilization and a doctor may proceed with it upon the guardian’s written request and consent. (This has been heavily criticized under the UN Convention on the Rights of Persons with Disabilities, and calls have been made to reform the law.) Aside from sterilization, for ordinary medical treatments a guardian similarly has authority to consent if the ward cannot understand the treatment. In one court decision, a person with limited capacity was explicitly found “not capable of deciding on matters of his health, namely hospitalizations, examinations, and therapeutic procedures,” which meant the guardian would make those medical decisions.

c. medical matters;

Beyond reproductive issues, general healthcare decisions are affected by limitation of capacity. The cornerstone is the requirement of informed consent for any medical act. According to the Health Care Act, “*informed consent*” must be obtained from the patient or, if the patient is not legally competent to

consent, from their legal representative. Thus, if an adult's legal capacity is limited due to mental disability or other reason, the guardian is empowered to consent to medical treatment on their behalf.

- **Consent to Treatment:** The guardian can authorize or refuse medical interventions in line with what the patient's will would be or their best interests. Doctors are obligated to provide the necessary information to the guardian and, as far as possible, to the patient in an understandable way. Certain treatments (especially psychiatric hospitalization) may require additional judicial oversight under the law on healthcare or civil procedure, but in general the guardian's consent is the proxy for the patient's consent when capacity is lacking. For routine medical care, this means a guardian must sign surgical consent forms, approve medications, etc., if the patient cannot fully grasp those decisions.
- **Emergency or Involuntary Treatment:** In emergencies where even a guardian cannot be contacted, doctors may proceed with necessary treatment to save life or prevent serious harm, but they must later inform the guardian or court as required by law. For involuntary psychiatric care, the Civil Procedure Code (Non-Contentious Proceedings Act) provides a process for court review of admissions without consent, ensuring that a person with limited capacity isn't arbitrarily institutionalized. The key principle is that no major procedure should be done without some form of consent except in strictly defined situations.
- **Guardian's Authority and Limits:** Guardians cannot override certain personal rights of the ward. For example, while they may consent to treatment, they should involve the ward in decisions to the extent possible, and the ward's wishes should be respected if they are able to express a preference. There are also ethical limits; a guardian is expected to act in the ward's best health interest and in accordance with medical advice. If a guardian refuses necessary treatment unreasonably, medical staff can seek a court order. Likewise, some decisions (like permanent sterilization, as discussed) might involve a court approval step if required. According to Slovakia's report to the UN, the law even allows a guardian's direct consent for sterilization without a court, but a court can be asked to decide on sterilization at the guardian's request as well. This indicates the legal framework attempts to balance patient rights, guardian authority, and court supervision in sensitive medical matters.

d. donation and wills;

Wills (Testaments): Making or revoking a will is a personal legal act that requires understanding and intent, so legal capacity is crucial. Under the Slovak Civil Code's provisions on inheritance (Civil Code §§476–479), only a person with legal capacity can make a valid will. In fact, the law specifies that *any person aged 18 or above with full legal capacity may draft a will (individuals 15–18 can do so only as a notarial deed), and persons completely lacking legal capacity or acting during a mental disorder cannot make a will.* This means if an adult were fully incapacitated by a court (which now doesn't happen, but historically did), any will they attempted to execute would be invalid. For adults with limited legal capacity, the rule is more nuanced: they *can* create or revoke a will *if and only if* the court's decision limiting their capacity did not explicitly remove their capacity to make a will. The Civil Code implies that the court may allow certain important personal acts to remain possible. In practice, if the court's limitation order does not mention wills or does not imply the person cannot understand such an act, the person may validly make a will. However, if the court's ruling or the person's condition suggests they lack mental ability to make a will, then any will could be challenged as invalid. A guardian cannot make a will on behalf of the person – a will is strictly a personal declaration of last will, so it cannot be delegated. In summary, limited capacity does not automatically bar someone from making a will, but it depends on the scope of their remaining capacity. It's wise for a person under guardianship who wishes to make a will to have a doctor or notary attest that they understand what they are doing, to ensure the will holds up if contested.

Donations and Gifts: Entering into a donation contract (e.g. gifting property or money) is a legal act concerning property, so the person must have the capacity for that act. As a general principle, the donor must be legally competent to contract. If an adult's capacity is limited, they likely cannot donate significant property on their own – this would be considered a legal act beyond ordinary management, which falls under the guardian's authority. For example, gifting a house or a large sum of money would certainly exceed the "everyday act" threshold and thus require the guardian's consent and a court's approval (because it diminishes the ward's assets). If a person under limited capacity nonetheless signs a donation contract without the guardian, that contract is voidable or void, as it's an act they were not allowed to do. In the case of someone who *had been fully deprived* of capacity (prior to 2016 reforms), the Civil Code made it clear that any contract they sign – including a gift – is absolutely null, and only the guardian can transact for them. Now with only partial limitation, the court's decision will indicate whether the

person can make small gifts (like giving a friend a low-value present might be considered a normal act of daily life) or not. Generally, valuable property transfers by a ward are tightly restricted. The guardian can make or approve certain gifts on behalf of the ward only if it does not harm the ward's interests, and typically must seek court permission. For instance, a guardian might be allowed to donate a modest amount to charity on behalf of the ward if the ward used to do so regularly and it's in line with their wishes, but any unusual or large gift would need court scrutiny.

In practical terms, when a person with limited capacity wants to gift or donate something:

- If it's a minor gift (social courtesy, small birthday gift) and not explicitly forbidden, it may be allowed as part of ordinary life.
 - If it's a significant donation (property, large money), the guardian must handle it. The law would require the guardian to represent the ward in signing the donation contract, and the court would likely need to approve it to ensure it's not against the ward's interest. Without such approval, the donation is not legally effective.
- e. civil proceedings and administrative matters (e.g. applying for a passport).**

A limitation of legal capacity also impacts one's ability to deal with legal processes and administrative affairs:

- **Lawsuits and Legal Acts:** In civil proceedings, an adult is only competent to act before the court to the extent of their legal capacity (Civil Procedure Code, Act No. 160/2016 Coll., §67). This means if someone's capacity is curtailed, they cannot independently initiate a lawsuit, file motions, or enter binding settlements beyond what they are allowed. In cases where a person with limited capacity is involved in a lawsuit (either as plaintiff or defendant), the court will ensure they are represented by their guardian or a court-appointed curator. The guardian effectively steps into the person's shoes in legal proceedings for matters the person cannot handle. For example, if a person with limited capacity is owed money and needs to sue to collect it, the guardian would file and conduct the lawsuit on their behalf. Likewise, if such a person is being sued, the court will communicate with the guardian and may appoint a *procesný opatrovník* (procedural guardian) to defend the ward's interests. Any contracts or legal documents (like signing a lease, a loan agreement, etc.) are subject to the same rule: the individual can only sign within

the bounds of their capacity, and otherwise the guardian must sign. A contract signed solely by a person who lacks capacity to understand it is null. So, practically, people under limited capacity do not personally sign important contracts (property sales, bank agreements, etc.) – their guardian signs with them or for them, after obtaining court approval if required. This ensures that the person is not legally bound by agreements they may not fully comprehend.

- **Administrative Matters:** Dealing with government offices (e.g. applying for documents, voting, dealing with authorities) is also affected. A court may specifically restrict the person’s ability to act before *state and municipal authorities*. Tasks like applying for an identity card or passport, registering a car, signing official forms, or handling bureaucratic processes must be done by the guardian on the person’s behalf. For instance, to obtain a passport, the guardian would fill out the application and sign it as the legal representative. The person under guardianship might still be physically present for photo or fingerprinting if needed, but the legal consent/signature comes from the guardian. Similarly, if a limited-capacity person needs to handle banking or social benefit offices, the guardian presents the court order and is recognized as the decision-maker.
- **Voting and Civic Participation:** It’s worth noting that until recently, being deprived of legal capacity also meant loss of the right to vote. Slovakia has been moving away from that practice in line with CRPD, but in older cases, courts sometimes concluded that a person with certain mental disabilities “should not have the right to vote because he does not understand the issue”. The current trend is to avoid automatic removal of voting rights just because of guardianship, but this area is evolving. By law, only a court can declare someone ineligible to vote due to mental incapacity, and this would typically coincide with a finding of severe incapacity.
- **Signing Official Documents:** Any official document that requires a legal signature (such as consenting to a marriage – discussed above, acknowledging paternity, applying for a business license, etc.) will require the guardian’s signature if the subject’s capacity is limited in that area. The person’s own signature might still be given for formality, but legally it carries weight only if within their allowed competence.

- Relevant Law: The Code of Civil Procedure and the Act on Non-Contentious Civil Procedure (Act No. 161/2016 Coll.) provide that in proceedings about legal capacity or involving persons with limited capacity, the court must ensure proper representation. In non-contentious matters (like a guardianship review, or consent for a medical procedure), the *Civilný mimosporový poriadok* requires the court to hear the person's views if possible and to possibly appoint a special guardian for the proceeding if needed. Administrative law (such as the Act on Identity Cards or Passport Act) typically contains provisions that a legal representative can act for a person who lacks capacity. For example, an application for a personal ID on behalf of an incapable person can be submitted by their guardian. These provisions align with the general principle that the guardian stands in for

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

In Slovak law, a court decision limiting an individual's legal capacity (now only restriction, since 2016 – complete deprivation is abolished) generally has effect only for the future (*ex nunc*) from the date it becomes final. In other words, the person's status is altered *going forward*, not retroactively. The Civil Code does not expressly provide any *ex post facto* operation for these judgments – they are considered constitutive decisions that change the legal status at the moment of finality. For example, courts typically specify that the appointed guardian's authority (consequent to a capacity limitation) begins as of the judgment's finality, underscoring that the ruling does not reach back in time. Thus, legal acts performed *before* the court's decision remain valid based on the capacity the person was presumed to have at that time (absent other vitiating factors).

Neither the Civil Code (Act No. 40/1964 Coll.) nor the civil procedure rules (formerly the OSP, now the Civil Non-Contentious Procedure Code) explicitly allow a court to give a capacity restriction *retroactive* effect. The default rule, in line with general principles of legal certainty, is that new legal consequences apply only from the time of the decision. If a person executed a legal act prior to being judicially limited in capacity, that act is not automatically invalidated by the subsequent judgment. It can only be invalidated if it's proven that at the time of the act the person lacked mental capacity to understand or control their conduct (a factual inquiry). Notably, § 38(2) of the Civil Code provides that a legal act made by a person *during a*

mental disorder that made them incapable of that act is null and void. This rule can invalidate transactions done before the court's intervention, but it operates on the person's mental state, not on the basis of a retroactive court order. In practice, that means if someone, later placed under guardianship, had signed a contract while suffering a serious mental illness, the contract can be declared invalid due to the person's incapacity at that moment, rather than because a later judgment somehow "back-dated" their lack of capacity.

Slovak courts have dealt with cases where transactions made *before* any court intervention were challenged due to the person's mental state. In one illustrative case, an elderly woman sold her real estate in 2008 and was never formally under guardianship at that time. After her death, her heirs sought to void the sale, alleging she had been suffering from advanced dementia. The court examined medical evidence and witness testimony, finding that the seller *"in February 2008 suffered from severe Alzheimer-type dementia which fully prevented her from understanding the meaning and consequences of her actions or controlling them."* The court concluded that the purchase contract she signed was absolutely null under Civil Code § 38(2) due to her incapacity at signing. Importantly, this outcome was not because of any retroactive declaration by the guardianship court, but because the civil law itself deems acts void if the person lacked mental capacity when making them.

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

In Slovakia, decisions about limiting or restoring a person's legal capacity are made by a **court**, not an administrative office. The court of first instance with jurisdiction over such matters is the district court (*okresný súd*) for the area where the person in question lives. In other words, the district court at the individual's domicile (which can include a long-term care facility address) handles proceedings on legal capacity. Appeals from the district court's decision would go to the competent regional court, as per general civil procedure rules. There is no special administrative body for these matters – it is firmly within the judiciary's domain.

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

Slovak law specifies who may petition a court to limit a person's legal capacity or to restore it. Close family members (so-called "*blízká osoba*," e.g.

spouse, parent, adult child, sibling) are explicitly permitted to apply. The person concerned (the individual whose capacity is in question) can also file a petition – this typically occurs when seeking restoration of their capacity. In addition, certain institutions have standing: a healthcare provider (such as a hospital or clinic) may initiate capacity proceedings, as can a social services provider (e.g. a registered care facility). Other persons with a legal interest in the matter (for example, a creditor or an employer affected by the person’s legal acts) are also eligible to apply. These are the categories granted legal standing to request a capacity limitation or its restoration under Slovak law. Generally, a random third party with no close relation or legitimate interest cannot initiate such proceedings – they must fall into one of the above groups or demonstrate a legal interest. (Notably, the court itself may also start capacity proceedings *ex officio*, without any petition, if it learns of grounds for incapacity, in order to protect the person.) There are no other special restrictions on who may apply beyond these statutory eligibility criteria, except that if the person subject to the petition has recently been denied restoration and no improvement is expected, the court can temporarily suspend that person’s right to reapply (e.g. for up to one year).

Relevant Legal Provisions

Civil Code (Act No. 40/1964 Coll.) – The Civil Code defines legal capacity and the conditions under which a court may limit it. Section 10 of the Civil Code provides that an adult can be partially deprived or restricted of legal capacity only due to a long-term mental disorder (or excessive substance abuse) that makes them unable to manage their affairs; a full removal of capacity was historically allowed if the person was completely unable to make any legal acts. However, modern interpretation requires that any intervention be a last resort and proportional – courts should prefer a tailored limitation (specifying which acts the person cannot do) . The Civil Code also mandates that if the reasons for a capacity limitation cease to exist, the court must modify or cancel the prior decision (i.e. restore the person’s full legal capacity). In other words, a capacity restriction is not permanent and must be lifted once the individual’s condition improves or the original grounds no longer apply.

Civil Procedure Code – Non-Contentious Proceedings (Act No. 161/2015 Coll.) – The procedural rules for limiting or restoring capacity are set out in the Civil Non-Contentious Procedure Code (Civilný mimosporový poriadok). Sections 231–250 of this Code govern proceedings “o spôsobilosti na právne úkony” (proceedings on legal capacity). Section 233 in particular enumerates who may file a petition (as noted above: a close relative, healthcare provider, social services provider, or a person with a legal interest). The law now also

explicitly allows the person whose capacity is at issue to initiate the proceeding themselves (previously this was limited to requests for restoration only). The Code of Non-Contentious Procedure outlines the court's duties in these cases: the court will appoint a guardian ad litem for the person concerned, ensure the person is heard (unless doing so would gravely harm their health), and procure expert psychiatric evidence before deciding. It is a specialized procedure where the court takes an investigative role to ascertain the true mental condition of the individual. In summary, the Civil Code provides the substantive criteria for when capacity can be limited or must be restored, while the Civil (Non-Contentious) Procedure Code provides the process and standing rules for how such proceedings are initiated and conducted.

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

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

In Slovakia, a court can limit an adult's legal capacity if the person suffers from a mental disorder (not merely temporary in nature) that prevents them from making informed decisions. The Civil Code specifies that the court must define the scope of any limitation and that it must modify or cancel (restore) the person's legal capacity if the conditions that led to the limitation change or cease to exist. Proceedings to limit legal capacity, to change the extent of a limitation, or to restore full capacity are governed by the Civil Non-Contentious Procedure Code (Act No. 161/2015 Coll.). This law incorporates several procedural safeguards to protect the rights of the adult concerned, as summarized below.

a. a requirement of legal representation of the adult;

Slovak law ensures that an adult whose legal capacity is under review is appropriately represented during the court proceedings. The Civil Non-Contentious Procedure Code explicitly provides that the person concerned has full procedural capacity to act in the proceeding on their own behalf. In

addition, if the person does not already have a legal representative (for example, a guardian from a prior arrangement), the court must appoint a guardian ad litem (*procesný opatrovník*) to represent their interests in the case. In practice, this means the court is responsible for ensuring the person has representation – either by recognizing an existing guardian or by appointing a suitable representative for the duration of the proceedings.

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

Slovak legislation permits and encourages the involvement of family members (close relatives) in capacity proceedings. A close person (*blízka osoba*) is explicitly allowed to initiate the proceedings by filing a petition to limit or restore an individual's legal capacity. Family members can also ask to be admitted as participants in the case, even if they did not file it. The court will grant such a request if it finds the person's participation would be useful for the conduct of the proceedings and for protecting the rights of the adult concerned. In fact, by law the petitioner can be a family member, a healthcare provider, a social services provider, or any person with a legal interest in the matter. During the process, the court may decide to notify a close relative about the initiation of the case (or the local authority for social protection/guardianship).

The law does not mandate the involvement of non-governmental organizations (NGOs) or independent civil society advocates by default, but it makes provisions for relevant organizations to participate when appropriate. For example, a social services provider or a health-care facility that is caring for the individual may file a motion to start capacity proceedings. Such entities often have first-hand knowledge of the person's condition and needs. Additionally, the court can inform the competent authority for social and legal protection and social guardianship (a state social services authority) about the case, which can then monitor or join the proceedings if necessary.

c. requirement of a specific medical expertise / statement;

Accurate medical evidence is a cornerstone of legal capacity proceedings in Slovakia. Courts rely on medical assessments to determine an adult's mental capacity and the necessity (if any) of limiting that capacity:

- **Medical Report at Filing:** When a petition to limit someone's legal capacity is filed by a private individual (such as a family member) or other interested party, the court can require the petitioner to provide a

medical report (doctor's statement) about the person's health condition. This report should outline the nature of the individual's mental disorder or incapacity. If the petitioner fails to submit a requested medical report within the deadline set by the court, the court will stop (dismiss) the proceedings. This rule helps prevent frivolous or unsupported applications by ensuring there is at least an initial clinical basis for the claim.

- **Court-Appointed Expert Opinion:** As the case proceeds, the court must appoint an independent expert witness (typically a psychiatrist or clinical psychologist with forensic expertise) to evaluate the mental state and decision-making ability of the adult. The expert will examine the individual and review their medical history in order to provide a professional opinion on the person's capacity to manage their affairs. The law specifically states that the court shall appoint and hear an expert in the proceedings. This expert's written report and testimony are crucial evidence for the court's decision. (In practice, the expert is usually a psychiatrist, given that most capacity limitations are due to mental health conditions or intellectual disabilities.)
- **Inpatient Evaluation if Necessary:** If the expert cannot form a reliable opinion based on outpatient examinations and available records, the court has the authority to order that the person be admitted to a medical facility for observation for up to four weeks. This inpatient evaluation is only used when absolutely necessary to assess the person's mental condition (for example, for complex or uncertain cases). The expert must propose this step, and it is intended to ensure a thorough and accurate diagnosis before a fundamental decision about legal capacity is made.
- **Exception – Treating Physician's Testimony:** The law provides a narrow exception to the formal expert examination. If the court believes that the situation can be sufficiently clarified by hearing the testimony of the person's treating physician, it may forgo appointing a court expert. In other words, if the attending doctor's input is enough to establish the facts (for instance, if the medical condition is clear-cut and uncontested), a full forensic expert report might not be required. However, in practice, courts usually insist on an independent expert opinion for such serious matters.

d. hearing of the adult by the competent authority;

The adult whose legal capacity is in question has a fundamental right to participate in the proceedings, and the court is obliged to hear from the person directly. The Civil Non-Contentious Procedure Code requires the court to personally hear (question) the individual in question during the process. This means the judge (or panel of judges) should arrange a face-to-face meeting in which the adult can speak, to whatever extent possible, about their situation, express their wishes, and provide impressions of their abilities.

The law emphasizes that this hearing must be conducted in a way that is sensitive and appropriate to the person's health and mental condition. The court may adapt the environment and manner of questioning to reduce stress – for example, holding the hearing in a familiar setting or using simple language – so that the adult can participate meaningfully. The goal is to ensure the person understands the conversation and can communicate as effectively as possible.

There is a limited exception if a direct hearing would be detrimental to the person's health. If a medical professional indicates that undergoing a court interview would seriously endanger the person's mental or physical well-being (for instance, causing extreme distress or a health crisis), the court can decide not to subject the person to a full hearing. This is reserved for exceptional circumstances. Even then, the law says the court should at least **see** the person – termed in the statute as “vzhliadnut” (to lay eyes on) the individual.

Importantly, if the person affirmatively requests to speak to the court, the law mandates that the court must grant them a hearing in all cases. The adult's wish to be heard overrides the above exception – even if it might be difficult, the court must find a way to listen to them. This ensures the individual's voice cannot be silenced in their own capacity determination.

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

An adult who has been subjected to a legal capacity limitation order has the right to challenge that decision. Under Slovak civil procedure, decisions of a first-instance court in matters of legal capacity can be appealed to a higher court, just like other civil judgments. The Civil Non-Contentious Procedure Code considers the person whose capacity is at issue as a full party to the case with the ability to take legal actions, which includes the filing of an appeal. This means the individual (even if their capacity is being limited) is entitled to appeal the judgment through their procedural guardian or on their own initiative. The appeal process is a crucial safeguard, allowing a second look at the case by a higher judicial authority.

14. Give a brief account of the general legal rules with regard to mental capacity in respect of:
a. property and financial matters;

In Slovakia, full legal capacity to manage property and finances is acquired at age 18 (majority). Before 18, or if a person has a serious mental impairment, capacity can be an issue. A court can restrict an adult's legal capacity due to a permanent mental disorder if the person is only capable of handling some legal acts. (Since 2016, courts no longer completely deprive adults of legal capacity – only tailored restrictions are allowed in line with the CRPD treaty.) The court's decision will specify which transactions the person cannot do and will appoint a guardian (opatrovník) or legal representative to assist or act for them. For example, a guardian may be authorized to manage the person's bank accounts or property sales if the person cannot do so.

Even when capacity is limited, the individual retains the right to perform everyday small transactions on their own (buying groceries, minor purchases, choosing their residence, etc.). This ensures a person isn't fully stripped of autonomy in daily life. However, any major financial act by a person who lacks mental capacity is void by law. The Civil Code states that a legal act is invalid if the person making it did not have the capacity to do so. Likewise, an act done by someone in a state of mental disorder that makes them unable to understand or control their actions is null. In practice, this means contracts, property transfers, or large purchases signed by a mentally incapacitated person (beyond what they are capable of) have no legal effect.

A guardian (often a family member or appointed official) serves as a substitute decision-maker for financial matters. Guardians must act in the ward's best interest and are under court supervision. Certain transactions by a guardian require court approval as an extra safeguard. For instance, if a guardian wants to sell or encumber an incapacitated person's property (anything beyond "ordinary" management), the Civil Code (§28) requires the court to approve it in advance. This prevents abuse, such as a guardian gifting away the person's assets without oversight.

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

Mental capacity is crucial for entering into marriage. Under the Family Act, a person lacking legal capacity or with court-limited capacity cannot validly marry. If a marriage is concluded by someone who has been deprived of legal capacity or whose mental illness is so severe that it *would* justify

deprivation, that marriage can be declared null and void by a court. In other words, the law requires that a bride and groom are of sound mind and able to understand the marriage. Even a person under partial guardianship (limited capacity) faces restrictions – such an individual may only marry with a court’s prior consent, and without it the marriage is invalid. This is intended to ensure that marriage is entered into by free and informed decision. If a person was already under a full incapacity order, they cannot marry at all.

Similar principles apply to ending a marriage. A spouse who lacks mental capacity cannot independently file for divorce or make legal decisions in the proceedings. Instead, their legal representative or guardian must act on their behalf in any divorce case. The court will typically appoint a guardian ad litem if one spouse is incapacitated, to protect that person’s interests during the divorce. While Slovak law allows divorce for “serious reasons,” an incompetent spouse’s condition may itself be a factor but also means that spouse cannot personally consent or object – the guardian and the court must ensure the outcome is fair. (Notably, if someone married while lacking capacity, the marriage could be voided as mentioned above, which is a separate process from divorce.)

Highly personal choices like contraception are generally considered part of private life, and Slovak law does not explicitly enumerate how these are handled for those lacking capacity. In principle, consent is required for any medical intervention (including contraceptive procedures), so an adult must have capacity to agree. A guardian can consent to medical care on behalf of an incapacitated adult (see Medical Matters below), but there are limits for interventions affecting reproductive rights. Notably, forced sterilization is explicitly prohibited. The Health Care Act (No. 576/2004 Coll.) mandates that sterilization can be performed only at the request or with the informed consent of the person undergoing it. This means a guardian *cannot* simply authorize sterilization of a ward without the ward’s own informed request. (This law was passed in response to past abuses; sterilizing someone without their fully informed, free consent is considered unlawful and can even qualify as inhuman treatment.) By extension, decisions about having children or not are meant to be made by the individual. If a person cannot understand such decisions, in practice their family or guardian may influence outcomes (e.g. ensuring contraception is used), but legally, there is no formal mechanism to allow a guardian to impose contraceptive measures against an adult’s will. The individual’s rights to family life and bodily integrity are recognized by the Constitution and international treaties, so any interference must be very carefully justified (usually only via a court order in extreme cases).

c. medical matters;

Slovak law requires informed consent of the patient for virtually all medical treatments. This principle was introduced in the 2004 Health Care Act as a key patient right. For consent to be valid, the patient must be informed of the nature, benefits, and risks of the proposed treatment and then freely agree. The default rule (Health Care Act §6) is that consent must be given by the patient themselves after receiving adequate information. If the patient has decision-making capacity, no one can substitute their consent – the decision is personal to the patient.

If an adult patient lacks mental capacity to understand or make decisions about treatment, the law allows a legal representative to give consent on their behalf. Section 6(6) of the Health Care Act explicitly provides that informed consent is given by the person to whom healthcare is provided *or by their legal representative* if the person is unable to consent. In practice, the legal representative is usually the court-appointed guardian for an incapacitated adult. For example, if an adult with severe intellectual disability or advanced dementia needs surgery, their guardian can sign the consent forms and make necessary medical decisions in consultation with doctors. The guardian is expected to act in the patient's best interests and, as far as possible, involve the patient in decisions.

There are some medical decisions that cannot be made by a proxy because of their personal nature. As mentioned, sterilization is one example – Slovak law insists on the patient's own informed request for sterilization, so a guardian's consent alone is not sufficient. Similarly, participation in experimental treatment or clinical trials would typically require the personal consent of the individual (or follow special legal procedures if the person cannot consent). Aside from these exceptions, a guardian's consent is generally effective for routine and necessary treatments of an incapacitated adult.

The law also accounts for emergency situations or court-ordered psychiatric care. In a life-threatening emergency, treatment can be given without prior informed consent if obtaining consent is impossible (e.g. the patient is unconscious or incompetent and no guardian is immediately available) – the priority is to save the patient's life or prevent serious harm. The Health Care Act allows treatment without consent in such urgent cases, with an obligation to later inform the patient or their representative of the intervention. In the context of mental health, if a person is involuntarily committed to a psychiatric facility by court order, the facility may provide

necessary treatment for the mental disorder even without the patient's consent, under strict legal conditions.

d. donations and wills;

Under Slovak civil law, making a valid will (last will and testament) requires the testator to have mental capacity at the time of drafting or revoking the will. The Civil Code does not allow a will to be made by a person who lacks the ability to form sound judgment – a will is considered a personal legal act that demands understanding and free will. If a person is totally incapacitated by a mental disorder, they legally cannot make or revoke a will; any such document would be invalid. Even without a prior court decision, if it's shown that at the moment of signing the will the person was in a mental state that made them incapable of understanding or controlling their actions, the will is null and void. (For example, a will signed during a severe psychotic episode or late-stage dementia could be invalidated for lack of capacity.) In practice, when a will is contested, courts examine medical evidence of the decedent's mental state to decide if they had "testamentary capacity."

The ability to make a gift (donation contract) is also tied to legal capacity. A gift transfer is a legal act requiring the giver to understand the consequences (they permanently part with property without compensation). If a person is mentally incapable, they cannot execute a valid donation of their property. Any contract to donate signed by a person lacking capacity can be nullified for incapacity – the Civil Code's general rule on invalidity of acts applies here as well. For instance, if an elderly person with advanced Alzheimer's disease signs away their house as a gift, that contract would not be legally valid if the person did not comprehend the transaction.

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

The capacity to sue or be sued (to take part in civil proceedings) depends on one's legal capacity. The Civil Procedure Code (Act No. 160/2015 Coll.) provides that **anyone can act before a court to the extent of their legal capacity**. This means a person with full legal capacity can initiate a lawsuit, file motions, and make binding decisions in the case. Conversely, if a person's capacity is restricted or they have been declared incapable of legal acts, they **cannot directly act in court on their own**. In such cases, the person must be represented by their **statutory representative**. For an adult, that is typically their court-appointed guardian. The guardian will sign documents, appear in hearings, and otherwise represent the incapacitated party's interests in the

litigation. For example, if an adult with mental incapacity is injured in an accident and needs to sue for damages, the lawsuit would be filed in the name of the incapacitated person but through their guardian as representative. Any procedural acts (like settling the case) would be done by the guardian with court approval when required.

Slovak courts are vigilant about representation when capacity is in question. If an incompetent person is named in a lawsuit without a representative, the court will suspend proceedings and appoint a **guardian ad litem** (procesný opatrovník) to represent them. The law ensures that no one is left without a voice in court due to incapacity. However, the incapacitated person's own wishes and rights should still be respected as much as possible; guardians are expected to communicate with their wards and advocate for what the ward would want, not just what the guardian thinks is best. It's also worth noting that if a person's capacity is only partially limited, they may be able to perform some legal actions in court on their own, but the court might still require the guardian's involvement or consent for important steps.

Routine administrative tasks like obtaining identity cards, passports, drivers' licenses, or other official documents also hinge on capacity and representation. A person with mental incapacity has the right to these documents, but the application process is adjusted. In general, a guardian can apply for and collect official documents on behalf of an incapacitated adult. For instance, the Ministry of Interior guidelines state that when an identity card (občiansky preukaz) is issued to a person with limited legal capacity, their guardian will pick up the ID on their behalf (upon showing the guardian's own ID). The guardian cannot delegate this task further – they must do it in person. The same applies to passports: the guardian can submit the passport application and is authorized to receive the passport for the ward. The person with the disability usually must be present for certain parts of the process (like being photographed or providing a signature/fingerprint), unless their condition makes even appearance impossible. There are exceptions in the law for people who **cannot appear in person due to incapacity or immobility** – in such cases, the authorities may waive the personal appearance requirement. For example, if an individual is bedridden and mentally unable to understand the process, the guardian's application may be accompanied by a medical certificate, and the passport can be issued without the person coming to the office.

All these measures are grounded in the Civil Code and civil procedure rules, which aim to protect persons lacking capacity while still recognizing their legal rights through substitute decision-makers.

Slovak Civil Code (Act No. 40/1964 Coll.), §§ 10, 38; Civil Procedure Code (Act No. 160/2015 Coll.), § 67; Non-Contentious Civil Procedure Code (Act No. 161/2015 Coll.); Family Act (Act No. 36/2005 Coll.), §§ 11 and 12 on marriage; Health Care Act (Act No. 576/2004 Coll.), § 6 and § 40 (sterilization)

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?

Slovakia's legal capacity laws have encountered various challenges in practice. A landmark legal dispute in 2012 exposed some of these issues: in the *E.T.* case, the Slovak Constitutional Court found that the process by which a man was deprived of legal capacity violated numerous fundamental rights – including his right to legal capacity, personal integrity, private and family life, and a fair trial, as well as the non-discrimination provisions of international treaties like the European Convention on Human Rights and the UN CRPD. This ruling signaled that courts must handle guardianship and capacity cases with far greater care for individual rights.

Observers have noted several recurring practical problems in how courts apply capacity law:

- **Over-reliance on Expert Opinions:** Capacity determinations often hinge on psychiatric expert evaluations, but courts have been criticized for accepting these reports uncritically. Experts sometimes base their conclusions mostly on medical records and a very brief conversation with the person (in some cases only a few minutes long, and even conducted in the presence of the family member seeking the guardianship).
- **Limited Voice for the Individual:** There have been instances where courts did not adequately hear from the person concerned during the proceedings. In fact, failing to ensure the person is personally seen and heard by the judge is against Slovak law, yet reports indicate this requirement is not always respected. This means the individual's own wishes and perspectives on their capacity may be overlooked, undermining their right to due process.
- **Broad Guardianship and Minimal Oversight:** When courts do decide to restrict a person's legal capacity, the limitations imposed can be very broad. In practice, partial capacity limitations sometimes end up

functioning almost like full guardianship – the guardian is given authority over virtually all aspects of the person’s life, effectively as if the person had been fully deprived of capacity. Furthermore, not all courts rigorously supervise how guardians exercise their power. For example, courts have not consistently required guardians to report regularly on the well-being and living conditions of the person under guardianship. This lack of oversight can leave individuals vulnerable to neglect or abuse. Slovakia’s Commissioner for Persons with Disabilities has noted that a “*historical paternalism*” still pervades the system – courts often take an overprotective, “*cautious, protective*” stance that prioritizes what they perceive as the person’s best interests, rather than enabling the person’s own choices.

- **Conflicts of Interest in Guardianship:** Another practical issue has been the appointment of inappropriate guardians. In the past, it was not uncommon for a close family member who petitioned for a person’s capacity to be removed to then be appointed as that person’s guardian, or even for a residential social care facility to serve as a guardian for one of its residents. These situations create clear conflicts of interest (e.g. a care home acting as both service provider and legal decision-maker for a person in the home). A recent reform addressed part of this problem: as of 2020, social service providers (and their employees) are no longer allowed to be appointed as guardians for persons living in their facility, except if the guardian is a close relative. This change was intended to better protect the rights of individuals under guardianship, though concerns about other conflict-of-interest scenarios (such as family petitioners being automatically made guardians) remain.

Debates about reforming legal capacity law in Slovakia have been ongoing, especially in light of international human rights standards. Slovakia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2010, committing to ensure persons with disabilities enjoy legal capacity on an equal basis with others (Article 12 of the CRPD). In 2016, the UN CRPD Committee reviewed Slovakia’s record and raised serious concerns that “*despite recent legal and procedural reforms,*” persons with disabilities were still not being given equal recognition before the law. The Committee noted that under Slovak practice, people under guardianship can be denied fundamental rights such as the right to vote, the right to marry and found a family, the right to own or manage property, and even the right to make decisions about their reproductive rights. In its official recommendations, the

CRPD Committee urged Slovakia to overhaul its legal capacity framework – specifically, to repeal Section 10(1) and 10(2) of the Civil Code (the provisions allowing courts to deprive or restrict a person’s legal capacity) and to introduce supported decision-making mechanisms that respect each individual’s autonomy, will, and preferences. In other words, international experts have been pushing Slovakia to move away from substitute decision-making (guardians making decisions *for* a person) toward models where people with disabilities get the support they need to make decisions *for themselves*.

On the domestic front, there have been periodic discussions in government and parliament about guardianship reform, though progress has been slow. The Ministry of Justice has acknowledged the need to change the system, but concrete proposals stalled for years.

Several reforms have been proposed (and some enacted) to improve Slovakia’s legal capacity framework, focusing on aligning it with human rights standards and practical needs:

- **Abolishing Full Legal Incapacitation:** A major change came into effect in July 2016 with Slovakia’s new Civil Procedure Code for non-disputed matters. This reform ended the option of “full” deprivation of legal capacity. Courts can no longer declare an adult completely devoid of legal capacity; they are limited to imposing specific, tailored restrictions if absolutely necessary. This means guardianship orders must now spell out which areas of life or legal acts the person needs assistance with, rather than a blanket removal of personhood. Human rights experts hailed this move as a significant step forward – the reform was described as a “*historical milestone*” that better protects human dignity. However, the change applied only going forward. It did *not* automatically restore capacity to thousands of individuals who had been fully incapacitated by courts in the past. In fact, roughly 16,800 people who were deprived of legal capacity before 2016 remained in that status with plenary guardians after the reform, since the law did not mandate a review of old cases. (Those individuals or their families would have to petition the courts to have their cases re-examined, something not all are aware of or able to do.) Consequently, while the 2016 reform was a positive development, it left a significant backlog of legacy cases – an issue that advocates have flagged for further action.
- **Strengthening Safeguards and Oversight:** Alongside the shift to partial capacity measures, there have been efforts to improve

guardianship procedures and oversight. The courts are expected to apply the “*least restrictive*” alternative when limiting someone’s capacity, and to periodically review whether a continuing limitation is justified. In practice, the office of the Commissioner for Persons with Disabilities has been pushing for stricter adherence to these principles. Some targeted legal fixes have also been implemented. For example, in 2018–2020, the Social Services Act was amended to prohibit social care institutions (and their staff) from being appointed as guardians for persons under their care, eliminating a conflict of interest that previously existed. There are also ongoing discussions about introducing more regular reporting duties for guardians and setting up a better monitoring system (possibly through the courts or social services) to ensure guardians are acting in the ward’s best interests and respecting their rights. These proposals have generally been well-received as common-sense improvements to the existing system, and they align with recommendations from both national and international observers.

- **Introducing Supported Decision-Making:** The most significant proposal – still under development – is a comprehensive guardianship law reform that would introduce a system of supported decision-making (SDM). Instead of assigning a guardian who makes decisions on behalf of a person deemed incapacitated, supported decision-making provides a legal mechanism for that person to make their own decisions with support. In practice, this would mean the court could appoint a supporter (which might be a trusted individual, a professional, or even a team of people) to help the person understand choices, communicate their decisions, and carry them out. Crucially, the decision would legally remain the person’s own, not the supporter’s. Slovak experts have been studying models from other countries (like Canada, Ireland, or the Czech Republic’s recent reforms) to design how supported decision-making could work under Slovak law.

SECTION III – STATE-ORDERED MEASURES

Overview

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

Pay attention to:

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

Slovak law provides several legal mechanisms to protect adults who lack full legal capacity or cannot safeguard their own interests. Key state-ordered measures include:

- Guardianship with Limited Legal Capacity (*Opatrovníctvo*) – If an adult has a long-term mental disorder or similar condition that impairs their ability to manage affairs, a court can limit their legal capacity and appoint a guardian. The guardian (*opatrovník*) is empowered to represent the person in legal matters within the scope of the court’s decision. Notably, full deprivation of legal capacity is no longer permitted under current law – only tailored limitations are allowed. The court must specify which acts the person is not capable of, rather than impose a blanket incapacity. The adult thus retains capacity for other acts (and retains rights in everyday matters and personal affairs) even under a partial guardianship.
- Court-Appointed Guardian *without* Capacity Limitation – The Civil Code allows the court to appoint a guardian to an adult without formally restricting legal capacity in cases where the person, “*for serious reasons,*” cannot defend their rights or handle certain matters themselves. This comes from Article 29 of the Civil Code, and it permits a protective guardianship while the person remains legally competent. In practice, this might be used for a person with a mental disability or illness who needs help managing specific issues. For example, a court may appoint a guardian to assist with healthcare or financial decisions while the adult retains overall legal autonomy. This measure is considered less restrictive than limiting legal capacity, since the person’s legal rights are not removed.

- Court-Ordered Representation by a Household Member – Slovak law (inspired by the Austrian model) recognizes that a close family member living in the same household can act as a court-approved representative for an adult who needs help with routine matters. With court approval, a household member (such as a spouse or adult child) may be authorized to represent the person in everyday financial or personal transactions. This “*representation by a household member*” (zastúpenie členom domácnosti) is an alternative to formal guardianship. It is only valid if the adult does not object – even an ability to express disagreement is enough to prevent or terminate this representation. The idea is to provide a mild form of support within the family for day-to-day affairs without stripping the adult of legal rights.

Each of these measures has specific definitions and procedures in law. Guardianship (with or without capacity limitation) involves a court-appointed guardian taking responsibility for the protected adult’s affairs to the extent determined by the court. Court-ordered representation by a family member is narrower, covering everyday acts, and is contingent on the adult’s tacit agreement. All these measures are overseen by the court (hence “state-ordered”) to ensure the adult’s rights and interests are protected.

Simultaneous Application of Multiple Measures

In general, different protective measures are not applied concurrently on the same adult – instead, the court will choose the measure that best fits the person’s needs at that time. The various tools (family representation, guardian without capacity removal, limitation of capacity with guardianship, etc.) are conceived as alternative or sequential solutions, not cumulative ones.

Slovak law follows the principle that the least restrictive sufficient measure should be used (see the subsidiarity principle below). This means if a mild measure can protect the person, the court should use that *instead of* a more restrictive one. For example, an adult would typically either have a family member formally representing them or have a court-appointed guardian – but not both at once. If a court-appointed guardian is in place, there is usually no need for a simultaneous household-member representative, since the guardian’s authority (defined by the court) will cover the necessary decisions. Likewise, if an adult enters a supported decision-making arrangement (were that to be recognized in the future), a guardianship would not be imposed at the same time, as that would defeat the purpose of the supported decision-making.

In practice, when a petition for guardianship or capacity limitation is filed, the petitioner must explain why less intrusive measures are insufficient. The court will first consider options like family representation or appointing a limited guardian, and only move to a more encompassing guardianship if those wouldn't adequately protect the person. This process inherently avoids overlapping measures – the most appropriate single measure is selected.

Preferential Order of Measures (Subsidiarity Principle)

Yes – Slovak law explicitly applies the principle of subsidiarity (preferential use of less restrictive measures) in protecting vulnerable adults. The legal framework prioritizes the least restrictive alternative and escalates to more restrictive interventions only if absolutely necessary. In practice, this means guardianship that limits a person's legal capacity is a last resort. Milder measures must be considered (and found insufficient) before the court will curtail anyone's legal autonomy.

This principle is codified in the law. For example, the Civil Code provisions on capacity (as reformed) and the civil procedure rules require that "less restrictive measures" be evaluated first. A petition to limit legal capacity must include a justification that no less restrictive alternative will adequately protect the person.

When a guardianship is deemed necessary, the law still mandates that it be tailored and temporary to minimize restriction. The court must explicitly delineate the scope of acts for which the person is not legally competent, allowing the person to retain capacity for all other acts. For instance, the judgment will list the types of decisions the guardian will handle (e.g. financial transactions above a certain value), and the adult remains capable of handling ordinary everyday matters on their own. Moreover, any limitation of capacity is subject to a time limit – by law, it can be imposed for a maximum of three years before it must be reviewed. After the term expires, the court must re-evaluate the person's situation and either renew the measure (with any necessary adjustments) or restore the person's full legal capacity. This ensures that a restrictive measure is not left in place longer than necessary, reflecting a commitment to the least restrictive duration as well.

In addition, the reforms abolished the possibility of plenary (total) guardianship. As noted, complete deprivation of legal capacity is no longer an option – only partial (specific) limitations can be ordered. This change, effective from 2016, was aimed at complying with human rights standards (CRPD Article 12) and preventing unnecessarily harsh outcomes. Even when a person's abilities are severely impaired, the court will leave them with some

legal agency (for personal matters or small everyday transactions) rather than removing personhood in law. The subsidiarity and proportionality principles require that the court intrude only to the minimum extent needed to protect the individual.

Interim or Emergency Protective Measures

Slovak law does provide mechanisms for urgent or interim intervention to protect adults in emergencies. When an adult is in immediate danger or requires immediate protection, the courts and other authorities have tools to act quickly, even before a final guardianship or other measure is in place. Key provisions and practices include:

- **Ex officio Proceedings and Urgent Court Orders** – Courts can initiate protective proceedings on their own motion (*ex officio*) if they learn of an adult in serious need of protection. The Civil Procedure rules for non-contentious matters (*Civilný mimosporový poriadok*) explicitly allow the court to step in without waiting for a formal petition. In such cases – or when a petition is filed and the situation is urgent – the court may issue a preliminary or emergency order (often termed *neodkladné opatrenie*, an urgent measure). Importantly, the law permits the court to order an urgent protective measure even without a formal proposal if the case itself can be started without one (which is true for capacity/guardianship cases). This means if an adult’s health or assets are at immediate risk, the court can, for example, temporarily appoint a guardian or prohibit certain actions on an emergency basis.
- **Temporary Guardianship / Ad hoc Representatives** – In emergencies, a temporary guardian can be appointed very swiftly. For instance, if an adult suddenly becomes incapacitated (say, falls into a coma or suffers an acute mental health crisis) and an urgent decision is needed (such as consenting to surgery or managing finances), the court can appoint an interim guardian to act on the person’s behalf. Even under the old civil procedure code, courts had the power to appoint a guardian *ad litem* for a participant who, “*although legally competent, for other reasons cannot act in the proceedings*”. Under the new non-contentious procedure, this concept extends to material acts as well – the court can name a provisional guardian to handle urgent matters until a full hearing can be held. This ad hoc guardian may be a family member or other suitable person empowered to make immediate decisions in the person’s best interest. For example, courts have

authority (via Civil Code Article 29 or similar provisions) to appoint a guardian with a narrowly defined task – such as securing the person’s property or authorizing a medical procedure – without delay . This ensures that the adult’s welfare is not left in limbo during the sometimes lengthy process of a formal capacity determination. Once the emergency passes or a long-term guardian is appointed, the temporary guardian’s role ceases.

- Emergency Medical Placement and Evaluation – If there is uncertainty about an adult’s mental capacity or health and an immediate risk is present, the court can order a short-term protective placement for evaluation. Slovak law provides that upon an expert’s request, the court may order that the person be temporarily placed in a medical facility for up to 4 weeks to undergo assessment and receive necessary care. Specifically, “*if it is indispensably necessary to examine the person’s health condition,*” the court can mandate hospital admission for at most one month. This is an emergency measure to both protect the individual (by providing supervision and treatment in a hospital) and to gather evidence (through psychiatric evaluation) for the ongoing legal proceedings. The person’s liberty is temporarily curtailed for their own safety and to inform the court’s final decision. In practice, this might be used if an adult is in danger due to severe mental illness – the court can ensure they are in a safe environment and evaluated, even before deciding on long-term guardianship. Such an order is not automatic; it must be based on a specialist’s recommendation and is subject to judicial discretion (the judge is not obliged to grant it if not convinced it’s necessary)
- Involvement of Social Services and Other Authorities – Outside the court process, Slovak social services and health care laws contain emergency provisions to assist vulnerable adults. For example, the Act on Social Services (No. 448/2008 Coll.) allows a social services provider or municipal authority to act when an adult is found in a state of urgent need. If an adult is unable to request help due to their health, the authorities can help initiate services on their behalf. They can arrange temporary care, shelter, or necessary social services to remove the person from immediate danger. While social workers cannot themselves assign a guardian (that’s the court’s role), they can facilitate rapid interventions – such as placing the person in a emergency social care facility or contacting a court to begin guardianship proceedings. Similarly, if an adult is being abused or

neglected, the police and social authorities can remove the person from the harmful situation and then quickly coordinate with the court for protective measures. In psychiatric emergencies, the Health Care Act permits doctors to provide urgent treatment or even detain a person for short-term observation (usually 72 hours) without consent if the person poses a serious threat to themselves or others – after which the court is notified to review any longer commitment. These actions are ad-hoc protective interventions aimed at immediate safety.

Slovak law provides for emergency and interim protective measures to safeguard vulnerable adults in immediate peril. Courts can act swiftly – even within hours or days in grave situations – to appoint a temporary guardian or issue protective injunctions. They can ensure the adult is safely evaluated by professionals through short-term placement orders. Social and medical services also have mandates to intervene in emergencies and later coordinate with the courts. These stop-gap measures are crucial for bridging the time until a full legal solution (like a guardianship or other long-term measure) is in place, thereby preventing harm and preserving the adult’s well-being when urgent action is needed.

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.

Measure	Legal Grounds (Conditions for Application)	Relevant Provisions	Legal
Guardianship with Limited Legal Capacity <i>Opatrovníctvo (po obmedzení spôsobilosti na právne úkony)</i>	– Applied to an adult who, due to a long-term mental disorder (including intellectual disability) is unable to manage all of his/her	– Civil Code (Občiansky zákonník) § 10(2) – establishes that a person with a non-temporary mental disorder or substance abuse can have their legal capacity limited by	

	<p>legal affairs independently.</p> <p>– Full deprivation of legal capacity is no longer permitted in Slovakia; only partial limitation is allowed (since 1 July 2016). The court must tailor the limitation to only what is necessary for the person’s condition.</p> <p>– The measure is only ordered if it is in the person’s interest and serious harm would likely occur without it, and only after confirming that no milder alternative measures (like household representation or a less-restrictive guardianship) would suffice.</p>	<p>the court (with scope of limitation defined in the judgment).</p> <p>– Civil Non-Contentious Procedure Code (Civilný mimosporový poriadok) § 234 (Act 161/2015 Z.z.) – requires that any petition to limit capacity must state why less restrictive measures are not possible.</p> <p>– Civil Non-Contentious Procedure Code § 248 – since 2016, courts may only limit, not fully revoke, legal capacity (implementing Art. 12 of the CRPD).</p>
<p>Court-Appointed Guardian without Capacity Limitation <i>Opatrovník bez obmedzenia spôsobilosti na právne úkony</i></p>	<p>– Applied to an adult who <i>retains legal capacity</i> but, due to mental impairment or similar condition, needs assistance in specific areas of life (e.g. managing finances, dealing with authorities). This is used when the person does not meet the strict criteria for capacity limitation (no</p>	<p>– Civil Code / Civil Procedure – This measure is recognized as a less-restrictive alternative in Slovak law. The Civil Non-Contentious Procedure Code explicitly lists “<i>appointment of a guardian</i>” (ustanovenie opatrovníka) as a milder</p>

	<p>imminent serious harm) but still requires help to protect their interests.</p> <p>– Typically, the court may order this during or in place of a capacity proceedings if it finds that the person’s condition calls for support rather than removal of autonomy. The individual’s legal capacity remains intact; the guardian’s role is to support or represent the person in the defined matters without general capacity restrictions.</p>	<p>measure than capacity limitation.</p> <p>– Civil Non-Contentious Procedure Code §§ 272–277 – provide for proceedings on the appointment of a guardian for an adult. In practice, the court’s decision appointing such a guardian (without limiting the person’s capacity) is based on the person’s specific needs identified in the capacity review process. <i>(Note: This guardian has the legal status of a guardian under civil law, not to be confused with a merely procedural guardian</i></p>
<p>Court-Ordered Representation by a Household Member <i>Zastúpenie členom domácnosti (so súdnym súhlasom)</i></p>	<p>– Allows an eligible family or household member to represent an adult who lacks capacity for everyday legal acts due to a mental disorder, in cases where the person has no other appointed representative. The potential representative must be a close relative (descendant, ancestor, sibling, spouse) or a person who lived with the individual in a common household for at least 3</p>	<p>– Civil Code §§ 49–54 (as amended) – set out the legal basis for household-member representation. §49 defines the conditions (mental disability preventing independent legal acts, and eligible representatives such as adult child, parent, spouse, etc.). §52 limits the representative’s authority (they cannot consent to serious interventions or handle extraordinary property</p>

	<p>years before the need for representation arose.</p> <p>– The representation covers routine affairs in line with the person’s living conditions. The household representative cannot make highly personal or irreversible decisions on behalf of the person – for example, they cannot consent to serious medical procedures affecting the person’s bodily integrity, and cannot dispose of the person’s property beyond ordinary management. Financial transactions by the representative are capped to modest amounts (up to the monthly subsistence minimum) for routine needs.</p> <p>– The court must approve (authorize) this form of representation. The arrangement terminates if the represented person later objects to being represented, if a court appoints a full guardian, or if another protective measure (like a support agreement) comes into effect.</p>	<p>matters), and provides financial limits for managing the person’s income. §53–54 govern procedural aspects (e.g., multiple representatives and termination of representation).</p> <p>– Civil Non-Contentious Procedure Code – the requirement of court approval is implicit; the court’s sanction is needed to validate the household representation (the model is inspired by Austrian law and written into Slovak practice).</p>
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<p>Advance Directive (Preliminary Declaration) <i>Predbežné vyhlásenie</i></p>	<p>– An advance directive is a <i>proactive declaration</i> made by a person with full legal capacity, stating their wishes for future guardianship or support in the event they later become incapacitated. For example, an individual can designate a preferred guardian (or exclude someone from being guardian) and give instructions on managing their personal or financial matters if they can no longer decide themselves.</p> <p>– Such a declaration is made before the person loses capacity, typically in writing (often with notarization or similar formality for authenticity). When the time comes, the authorities are supposed to respect this prior will. The court, when deciding on a guardian or measure, should give effect to the person’s advance wishes as expressed in the directive, so long as it was made validly and the nominated guardian consents</p>	<p>– <i>Slovak law currently does not contain a detailed statutory provision for advance directives in guardianship.</i> However, the concept is acknowledged as a modern safeguard of autonomy (under Article 12 of the CRPD).</p> <p>– Comparative Law: The idea is implemented in the Czech Civil Code (e.g. §38 et seq. of Act No. 89/2012 Sb., <i>Občanský zákoník</i>) which Slovak reforms have looked to. Under Czech law, a “<i>predbežné prehlásenie</i>” allows one to appoint a future guardian in advance, and the court must abide by that choice when later appointing a guardian. Slovak courts may informally consider any such advance statements under the general principle of respecting the person’s previously expressed will and preferences, though a dedicated framework is expected in future legislation.</p>
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18. Which authority is competent to order the measure?

The **district court** (*okresný súd*) in the jurisdiction where the adult resides is the **competent authority** to order state-ordered protective measures in Slovakia.

19. Who is entitled to apply for the measure?

In Slovakia, the following individuals and entities are entitled to **apply for a state-ordered protective measure**:

1. The Person Concerned - An adult who believes they need assistance can apply for a measure (e.g., requesting a guardian or supported decision-making arrangement) under Civil Non-Contentious Procedure Code § 233. If their legal capacity was previously limited, they may apply for its modification or full restoration.

2. Close Family Members (*Blízka osoba*) - Spouse, parents, adult children, siblings, grandparents can file a petition if they believe the person is unable to manage their affairs (Civil Code § 49).

3. Healthcare and Social Service Providers - A hospital, psychiatric clinic, or social services provider may petition the court if a person in their care is unable to protect their own interests (Civil Non-Contentious Procedure Code § 233). Social services offices (municipalities, guardianship authorities) may initiate proceedings if they become aware of a vulnerable adult in need of protection.

4. Any Other Person with a Legal Interest - Any individual or entity directly affected by the person's legal acts (e.g., a creditor, employer, financial institution) may file a petition if the person's incapacity affects legal transactions.

5. The Court Itself (Ex Officio Cases) - The district court may initiate the procedure on its own motion if it learns that a person is at serious risk due to mental incapacity and has no one to act for them (Civil Non-Contentious Procedure Code § 231).

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 adult's consent is considered but not always required before a state-ordered measure is imposed. If the adult is capable of expressing their wishes, the court must take their opinion into account under Civil Non-Contentious Procedure Code § 243. However, if the court determines that the adult lacks the ability to make an informed decision due to a severe mental disorder or other condition, the measure may be imposed even without their consent (Civil Code § 10(2)).

If the adult objects to a proposed measure, the court must examine their objection carefully and conduct a hearing, unless their health condition prevents participation. The court may only override the adult's opposition if clear medical and expert evidence supports that they are unable to manage their affairs and that intervention is necessary to prevent harm. In household representation cases, the adult's express opposition automatically prevents the arrangement from taking effect (Civil Code § 49). If the adult resists legal capacity limitation, the court may still proceed if medical experts confirm a serious impairment, but the ruling must be proportional and justified to meet international human rights standards (CRPD Article 12).

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

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

The adult concerned is a direct party to the proceedings (along with the petitioner). The adult concerned is viewed as the "weaker party" in need of protection, the court must take steps to safeguard their rights and equality of arms during the hearing. In practice, the adult may choose to have a lawyer, and if they lack capacity to effectively defend themselves, the court can appoint a guardian ad litem or similar representative to act in their interest (though the law does not mandate hiring counsel).

The law ensures that financial barriers are minimal in these cases. The proceedings to impose a protective measure (e.g. to restrict legal capacity and appoint a guardian) are exempt from court fees. If the adult cannot afford a lawyer but wishes to have legal representation, they can apply for free or

subsidized legal aid. Slovakia's state-funded Centre for Legal Aid provides assistance to those who lack means, and even NGOs offer support in such cases. This means the adult can obtain legal advice or representation without cost if eligible.

Family members and certain others can take part. A close relative or any person demonstrating a legitimate interest may initiate the proceedings by filing a petition. They can also ask the court to join the case as participants, and the court will allow it if their involvement would help the process and protect the adult's rights. In fact, the court explicitly considers whether to inform a close family member or the competent social authority about the start of the proceedings. Family members often serve as witnesses or even as the prospective guardian. Civil society organizations per se do not have an automatic right to intervene as parties, but relevant agencies (for example, the social services authority or guardianship authority) may be notified and can provide information or act as guardians if appointed. Additionally, NGOs can support the adult by offering legal assistance or advocacy, even if they are not formal parties to the case.

A medical assessment is required for the court to order a protective measure. The law mandates that evidence-gathering focus on the adult's mental health status to determine if the legal criteria for restriction are met. In practice, the court will obtain an expert psychiatric or psychological opinion on the person's condition (for example, diagnosing any mental disorder, confirming it is not temporary, and evaluating its severity). If a family member files the petition, the judge can require them to submit a medical report about the adult's health; failing to provide such a report can lead to the case being dismissed. This medical expertise is a crucial piece of evidence before any protective measure (like partial guardianship) is imposed.

The adult has a fundamental right to be heard by the court. Slovak law obliges the court to personally interview (hear) the adult concerned in the protective measure proceedings in virtually all cases. An in-person hearing of the adult is mandatory except in truly exceptional circumstances – for instance, if the person is in a coma or is so severely incapacitated (e.g. a profound intellectual disability or acute schizophrenia episode) that a hearing is not possible. The proceedings are conducted in open court with a public hearing, which is a default rule to ensure transparency. The judge does have discretion to exclude the public if sensitive personal matters are discussed, in order to protect the adult's privacy. Overall, the adult's voice should be presented to the court either directly or via suitable means, and skipping the adult's testimony is allowed only in rare, well-justified cases.

After the court decides on a protective measure (for example, an order restricting legal capacity and appointing a guardian), the adult has the right to appeal the decision. Slovak civil procedure guarantees that a first-instance judgment can be challenged by an ordinary appeal to a higher court. Importantly, filing an appeal prevents the first-instance decision from becoming final or enforceable while the appeal is pending (this suspensive effect ensures the status quo is maintained). The adult – or their legal representative – must lodge the appeal within 15 days from the delivery of the written judgment. The appeal is filed with the court of first instance, which will forward it to the appellate court for review. During the appeal, the higher court will typically re-examine the case, and it may even hear the adult again or consider new evidence if necessary. In sum, the adult is entitled to challenge the protective measure order under the usual conditions for civil appeals, with the procedural safeguards that the case will be reviewed by a second-instance court.

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

Yes, Slovak law requires official registration and notification of state-ordered measures affecting legal capacity.

1. Court Registration and Records - All measures limiting legal capacity or appointing a guardian must be registered in the court records (Civil Non-Contentious Procedure Code § 251). The district court (*okresný súd*) where the person resides maintains an official record of the decision.

2. Notification Requirements - The adult concerned, their legal representative, and the petitioner (if different) must be formally notified of the decision (Civil Non-Contentious Procedure Code § 250). Social services authorities and relevant administrative bodies (e.g., guardianship offices, municipalities) must also be informed if the measure affects state-provided care or benefits.

3. Publicity and Third-Party Effects - Guardianship and legal capacity limitations are not automatically made public, but institutions needing this information (e.g., banks, real estate offices) can request verification from the court. If the measure affects property transactions or financial dealings, relevant agencies (land registry, tax office, banks) may be informed to prevent unauthorized actions (e.g., Civil Code § 28 requires court approval for certain property transfers by guardians). The identity card (*občiansky preukaz*) of a

person with limited capacity may include a note that the person is under guardianship, but only in specific cases (regulated by ID laws).

4. Notarial and Public Registers - Slovakia does not currently have a central guardianship registry accessible to the public. However, notaries and courts handling transactions involving an incapacitated person may check court records to confirm legal capacity.

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

Please consider the following:

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

Under Slovak guardianship law (primarily the Civil Code and civil procedure rules), courts appoint a guardian (*opatrovník*) for an adult who is unable to manage their affairs (e.g. due to mental incapacity or similar). The following outlines the key rules on who may be appointed and related safeguards:

1. Eligibility for Appointment of a Guardian

- **Who Can Serve as Guardian:** The guardian is usually an individual (a natural person) with full legal capacity. By law, when an adult is deprived of legal capacity or has it limited by a court, the court must appoint a guardian as that person's legal representative. The law favors appointing someone from the adult's personal network – for example, a family member or other person close to them. If no

suitable private individual is available, the court can appoint a public authority (typically the local municipality) or its designated body as guardian of last resort. In practice, this means:

- **Natural Persons:** Any adult individual who is capable and meets the legal criteria can be appointed. There is no formal professional qualification required, but the person should be competent to handle the role and have no legal disqualifications (for instance, they themselves must have legal capacity and a clean record in terms of conflicts of interest).
- **Public Institutions:** The law explicitly allows a local government authority (municipality) or a facility of the municipality (with its own legal personality) to be appointed if no private person is suitable or willing. This is a common solution when family or friends are not available.
- **Other Organizations:** The statutes do *not* specifically mention NGOs, private companies, or civil society organizations as guardians. Typically, a legal entity outside of the local public authority would not be appointed. The wording of the Civil Code suggests the only non-individual guardians should be the local government or its authorized facility. In effect, private institutions or care providers are not the intended appointees in the law.
- **Legal Requirements for Guardians:** The guardian must have full legal capacity (be an adult not under guardianship themselves). They should be capable of fulfilling the guardian's duties, which include acting on the adult's behalf in legal matters and managing their affairs in the adult's best interest. The court will consider the person's relationship to the ward, their trustworthiness, and ability to carry out responsibilities. For example, Slovak practice has been guided by the principle that the guardian should be someone who knows the ward and is involved in their life (someone "active in the family, work, cultural or other environment close to the person"). Certain persons are explicitly barred due to conflict of interest – **for instance, a staff member of the court handling the case cannot be appointed as guardian**, except in trivial matters. (This rule prevents any bias or conflict that could arise from a court employee serving as guardian in a case before their own court.)

2. Consideration of the Adult's Preferences

- **Wishes of the Adult:** Slovak law expects the adult's wishes and best interests to be taken into account when selecting a guardian, although the statutes do not list a specific mechanism for the adult to choose their guardian. In the guardianship (capacity) proceedings, the adult in question is treated as a party to the case and has the right to be heard by the court. This means the court will attempt to interview or otherwise ascertain the adult's views if possible. Through this process, the adult can express whom they trust or prefer (or if they object to someone in particular). The Civil Code and related laws emphasize that any guardian must act in the **protected person's** interest, which implicitly requires considering the person's own will and feelings. In line with modern principles (including the UN Convention on the Rights of Persons with Disabilities), courts strive to respect the adult's autonomy to the extent possible, so a expressed preference for a certain individual as guardian would carry weight in the decision. For example, if an adult while still capable had informally indicated a preferred guardian (or if they do so during the proceedings), the court would take that into account alongside other factors (like suitability of that individual).
- **Family Member Priority:** The law and practice give priority to close family members, especially the spouse, when choosing a guardian. The rationale is that family members are presumed to care for the person's welfare and know their wishes. In fact, the Civil Code implies a hierarchy by stating that *primarily a relative* of the person should be appointed as guardian if possible. Slovak courts commonly consider the **spouse** as the first choice. A legal commentary notes that usually the guardian "should be the spouse of that person, since the content of marital rights and obligations (as defined in the Family Act) presupposes protecting the interests of the incapacitated spouse". If the person has an unmarried partner or long-term domestic companion, that individual is not explicitly given priority by law (since only a legal spouse is mentioned in related contexts), but such a person could still be appointed under the category of "another suitable person" if it aligns with the adult's wishes and best interests. In summary, the adult's closest relationships are a major factor: the court will lean towards appointing someone who the adult trusts and who has a natural duty of care (with spouses or adult children often at the top of the list). When there are multiple interested family members, the court may consider the adult's prior statements or the dynamics of who would best represent the adult's interests.

3. Ranking of Preferred Representatives

Slovak law effectively creates a **hierarchy of who should be appointed** as guardian, though it is not a rigid rank-order list, but rather a prioritized sequence:

1. **Close Relative – preferably the spouse:** The first choice should be a family member who is capable of carrying out the role. Among relatives, a spouse is typically seen as having the strongest claim, followed by adult children or parents, etc., depending on who is most involved and suitable. The guiding principle is to choose the person with the greatest ability and willingness to protect the adult's interests, and family ties are viewed as providing this motivation by default. For example, §27 of the Civil Code dictates that when a person is incapacitated, a guardian is appointed and it should above all be a relative who meets the conditions. Only if no such relative is available or appropriate will the court look beyond the family.
2. **Another Qualified Person (Non-relative):** If no family member is willing or suitable, the court can appoint another person who meets the legal requirements. This might be a close friend, a neighbor, or any individual who has a bond with the adult and is deemed responsible and trustworthy. The key is that this person should ideally come from the adult's immediate social environment (someone "in the... environment which is close to the participant" in the words of an older civil procedure provision). In other words, the court tries to find someone who knows the adult's needs and can genuinely represent their interests even if not related by blood or marriage.
3. **Institutional Guardian (Local Authority):** If no private individual (neither relative nor other close person) is able to take on the role, the court will turn to the local government. The Civil Code expressly provides that in the absence of an appropriate individual, *the court appoints the local municipality or its agency as the guardian*. In practice, this means the office of the town or city (or a social services department of the municipality) becomes the legal guardian. The municipal authority can act through its officials to make decisions on behalf of the person. This option is considered a last resort, used when family or friends are not available or suitable. The law cites "*orgán miestnej správy*" (an organ of local administration) as the entity to be appointed in such cases, underscoring that a public guardian is the fallback in the hierarchy.
4. **(No lower preference beyond the above):** The statutes do not list any other types of entities beyond the local administrative body.

Notably, this hierarchy implies that courts should **not** skip to appointing an institution if there is a willing and able relative. Likewise, a private organization is not named in the law as an option at all. The underlying goal is to ensure the guardian is as close to the person as possible in terms of personal relationship, with institutional guardianship used only when necessary. This ranking protects the adult's interest by attempting to give them a guardian who has a personal stake in their well-being.

4. Safeguards Against Conflicts of Interest

Slovak law builds in safeguards to prevent conflicts of interest in guardianship appointments:

- **Avoiding Inherent Conflicts in Appointment:** The court must *not* appoint anyone whose interests conflict with those of the person under guardianship. In fact, the Civil Code states that if a situation arises where the guardian's interests clash with the ward's (or one guardian represents multiple people whose interests conflict), the court will appoint a **special representative** for the specific case to protect the ward's interests. For example, if a guardian would have to represent the ward in a transaction with the guardian's own family, the court would name an independent ad hoc representative for that transaction to avoid a conflict. More broadly, when choosing a guardian in the first place, the court tries to select someone without adverse interests. Legal commentary emphasizes "*when appointing a guardian, one must ensure that no collision of interests occurs between the representative and the represented*". This principle would disqualify, for instance, a person who stands to gain financially in a way that might compromise their loyalty to the ward.
- **Restrictions on Certain Candidates:** Some potential guardians are barred by law to prevent conflicts. A clear example is that **an employee of the very court handling the case cannot be appointed as guardian** (except in trivial matters of low value). This prevents a scenario where a court staff member, who might feel beholden to their employer (the court), is supposed to independently advocate for the ward – an obvious conflict between duty to the court and duty to the ward. Likewise, if the adult is residing in a care institution, the court will be cautious about appointing an employee of that institution as the guardian, since the institution's interest (e.g. getting paid for services) could conflict with the ward's interests. While the Civil Code doesn't explicitly forbid appointing a social service provider or facility staff, the **spirit of the law** is to avoid such conflicts. This is

reflected in the fallback rule that names the municipality (a neutral public body) rather than a private care home as guardian if no individual is available. In practice, courts prefer an independent guardian over someone who is simultaneously providing paid care or services to the person, to ensure checks and balances.

- **Guardian’s Duty of Loyalty:** Once appointed, a guardian is legally obligated to act solely in the ward’s best interests in managing their affairs. The guardian’s actions are subject to oversight by the court (see below), providing another layer of protection. For instance, certain major transactions involving the ward’s property require court approval. This oversight mechanism helps deter guardians from making decisions that benefit themselves at the expense of the ward. If a guardian ever begins to act against the ward’s interests, the court can intervene (including by removing the guardian – see point 6 below).
- **Special Representative for Conflicts:** As noted, Section 30 of the Civil Code ensures that for any particular matter where the guardian cannot represent the ward due to a potential conflict, the court will appoint an **ad hoc special guardian** (often called a *kolízny opatrovník* in cases involving minors, and similarly for adults). This could happen, for example, in a legal dispute between the ward and the guardian (if such a situation arises, the guardian obviously cannot represent both sides). This safeguard means the ward’s interests will always be independently represented, even if a conflict with the regular guardian occurs.

The law strives to choose guardians who are aligned with the adult’s interests and puts measures in place to address any conflicts that emerge. Appointing a neutral party (like the municipality) when no conflict-free individual is available, and the possibility of special representatives in conflict situations, are key protections in Slovak guardianship law.

5. Appointment of Multiple Guardians

- **Single Guardian Principle:** Slovak legislation generally operates on the assumption that one guardian will be appointed to represent an incapacitated adult. The Civil Code refers to “*súdom ustanovený opatrovník*” in the singular, and there is no explicit provision for appointing two or more co-guardians for the same adult. In practice, courts have been reluctant to name multiple people as joint guardians for one individual. For example, legal practitioners recount that some courts have refused to appoint “several persons as guardian” for one ward at the conclusion of capacity proceedings. Instead, the

preference is to have one responsible guardian who can be held accountable and can act decisively on the ward's behalf. Having a single guardian avoids potential confusion or disagreement in decision-making for the ward.

- **Possibility of Co-Guardians:** Because the law does not expressly authorize co-guardians, cases of joint guardianship (such as two family members sharing duties) are not common. In theory, the court might divide responsibilities (for instance, one person handling property management and another personal care), but the statutes as written do not outline such an arrangement for adults (unlike some jurisdictions that allow separate personal and financial guardians). Slovak courts tend to designate one primary guardian and expect that person to coordinate help as needed, rather than formally splitting the role. If family members wish to share the role, typically one will be appointed as the official guardian and the others may assist informally or the guardian can seek the court's permission to delegate certain tasks, but legally the authority rests in the one appointed guardian.
- **Substitute/Successor Guardians:** While multiple guardians at the same time are not the norm, the system does allow for *changing guardians* over time. The court can relieve one guardian and appoint a new one if circumstances require (see next section). However, the initial appointment order usually does **not** name an alternate or substitute guardian in advance. If the guardian later cannot continue (due to death, resignation, removal, etc.), a fresh appointment process will be undertaken to install a new guardian. In other words, the concept of a "standby" guardian is not codified, but the court's ongoing jurisdiction ensures a replacement can be appointed whenever needed.

6. Obligation to Accept Guardianship

- **Voluntary Nature of the Role:** No private individual is forced to serve as a guardian against their will. Being appointed by the court involves assuming legal responsibilities, but the person slated to be guardian can refuse the appointment. In practice, courts will usually confirm that a prospective guardian is willing to take on the role before finalizing the appointment. If an individual the court is inclined to appoint expresses unwillingness or inability, the court will seek an alternative candidate. The law supports this: under the Civil Procedure rules (Civilný mimosporový poriadok), a guardian can ask to be *released* from their function, and the court will remove them if requested. In fact, the law explicitly provides that the court *shall*

remove a guardian upon the guardian's own petition to step down. This means a guardian is not irrevocably bound to the role; they have the right to resign if they cannot continue to serve.

- **If a Guardian Refuses or Resigns:** When a proposed guardian refuses appointment, the court will not compel them – it will turn to another suitable person (going back to the hierarchy of candidates). For instance, if a family member declines, the court might ask if another relative can serve, or ultimately appoint the municipality if no individual accepts. The same applies if a guardian starts in the role but later becomes unable or unwilling to continue. The guardian should inform the court and can be officially relieved of duty. The court then appoints a new guardian to fill the vacancy so that the protected adult is never left without a representative. The law charges the court with overseeing guardianship arrangements, so it has authority to make a new appointment whenever necessary to safeguard the adult's interests.
- **Municipalities as Guardians of Last Resort:** One scenario to note is when the local authority (municipality) is appointed as guardian. A municipality is a legal entity rather than an individual, so it cannot “resign” in the same manner; however, municipalities have sometimes sought to avoid being appointed by encouraging or finding an alternative guardian. If a municipality is appointed, it generally must carry out the duty as part of its public responsibilities. That said, even a municipality could appeal the court's decision if it believed the appointment was improper. Usually, though, if it has reached the point of appointing the municipality, it means no private person was available, and the municipality will end up serving. The **obligation to accept** is thus effectively stronger for the municipality (as it's an arm of the state) than for a private citizen. Still, the municipality can later ask the court to remove it if, for example, a family member becomes available or circumstances change.
- **Removal for Inability or Misconduct:** Apart from voluntary resignation, the court will remove a guardian who can no longer fulfill the role or who misuses their authority. The Civil Procedure code specifies that the court supervises guardians and will dismiss the guardian if they **lose the capacity to perform the function, seriously neglect their duties, abuse their powers, or other serious reasons arise**. For example, if a guardian becomes ill or incapacitated themselves, or if they are found to be acting against the ward's interests, the court will end their appointment. In such cases, as with

a resignation, a new guardian would then be appointed. This ensures there is always a capable guardian in place – no one is irreplaceable, and the system prioritizes the ward’s protection over keeping any particular guardian in the role.

During the measure

Legal effects of the measure

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

Under Slovak law, guardianship is tied to a court decision that limits an adult’s legal capacity. The Civil Code allows a court to **restrict an adult’s capacity to make legal acts** if the person has a long-term mental disorder or similar condition impairing decision-making. The court must **specify the exact scope of the limitation** in its ruling – it cannot impose a blanket incapacity. In the past, the law even permitted *full deprivation* of legal capacity if someone was totally unable to make any decisions. However, since 2016 the procedural law (Civil Non-Contentious Procedure Code) **abolishes new cases of full deprivation**, allowing only tailored restrictions on capacity. In practice, this means an adult under guardianship **loses the ability to make certain legal decisions** as defined by the court’s order, and those decisions fall within the guardian’s authority.

Importantly, an adult **retains any legal capacity not taken away by the court**. Because the court must limit capacity only in specific areas, the person remains free to make decisions in all other matters not covered by the guardianship order. In other words, guardianship *does not erase the adult’s autonomy entirely* – it only restricts it where necessary, and the adult can still act independently in areas **outside the defined limitations**. Moreover, Slovak law provides for less restrictive alternatives. For example, the Civil Code permits appointing a **guardian (curator) without stripping the adult’s legal capacity** in appropriate cases. This ensures that fundamental personal rights are preserved: the adult remains a rights-bearing individual, and guardianship does not automatically take away inherent rights such as privacy, dignity, or the ability to make personal choices when capable.

When a guardian is appointed, they serve as the adult’s **legal representative** for the decisions and transactions that the adult can no longer carry out on their own. The guardian is empowered to **make legal acts on the adult’s behalf** to the extent of the court’s capacity limitation. In areas covered by the guardianship, the guardian’s consent or decision is required to perform legal acts (for instance, signing contracts or managing finances). However, the adult **does not vanish from the decision-making process entirely**. If the

court has only partially restricted the person's capacity, the adult can still make decisions in all other spheres of life and may participate in decisions *even in guarded areas to the extent of their understanding*. The guardian is expected to act in the adult's best interests and, as far as possible, **respect the adult's wishes** in making decisions. In sum, **not all decisions are made by the guardian** – the adult continues to exercise choice in any matter for which they retain capacity, while the guardian steps in only for those legal actions that the adult is deemed unable to handle.

Slovakia's guardianship system includes several safeguards to protect the adult's rights through **judicial oversight**. First, guardianship can only be established by a **court order**, and the court appoints the guardian and defines the guardian's powers and the limits of the adult's capacity. The guardian's authority is subject to ongoing court supervision: for any **major decisions affecting the adult's property or important interests**, the guardian must seek court approval (routine everyday matters are excepted). Second, the law provides for regular review and flexibility. The Civil Code explicitly obliges the court to **change or cancel the restriction** if the reasons for which guardianship was imposed have changed or ceased to exist. In practice, this means an adult's capacity status isn't fixed forever – it can be **reviewed and restored**. The adult under guardianship (as well as their relatives or any person with a legal interest) has the right to **petition the court to revisit the capacity decision**. If the adult's condition improves or the support measures can be reduced, the court can modify the guardianship or even fully reinstate the person's legal capacity. These safeguards ensure that guardianship remains a proportionate measure and that the adult's rights are continually protected and can be regained when possible.

Legal Provisions:

- Slovak Civil Code (Act No. 40/1964 Coll.), § 10 (legal capacity and its restriction)
- Civil Code, § 27(2) (guardian as legal representative for an adult with restricted capacity)
- Civil Code, § 28 (court approval required for non-routine property dispositions by a guardian)
- Civil Code, § 29 (appointment of guardian for an adult for serious reasons without removing legal capacity)
- Civil Non-Contentious Procedure Code (Act No. 161/2015 Coll.), § 231 (only restriction, not deprivation, of capacity; ability to alter or cancel restrictions)

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:**
 - **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. **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?**
- d. **are there other duties (e.g. visiting the adult, living together with the adult, providing care)?**
- e. **is there any right to receive remuneration (how and by whom is it provided)?**

Under Slovak law, when an adult is **deprived or limited in legal capacity** due to a long-term mental disorder or other serious reason, the court appoints a guardian (*opatrovnik*) as the adult's legal representative. In effect, the guardian **acts in the name of the adult (substituted decision-maker)** for legal acts that the adult cannot perform. The court's appointment order will **define the scope of the guardian's authority** in line with the purpose of guardianship. If full legal capacity is removed, the guardian handles virtually all civil matters for the person. If capacity is only **partially limited**, the adult retains the ability to make everyday decisions, while the guardian is empowered to act for specified matters (for example, managing finances or important contracts). There is no formal "supported decision-making" model in current law – **the guardian substitutes the adult's decision-making in the areas set by the court**, rather than merely co-signing or assisting. Guardians typically have authority over **property and financial affairs** (e.g. managing income, paying bills, administering assets) and may also represent the adult in **personal matters** that carry legal consequences (such as selecting residence or consenting to medical care if the adult cannot consent). However, certain highly personal acts (e.g. marrying, making a will) cannot be done by a guardian on the ward's behalf, since those require personal consent by law (an adult lacking capacity generally **cannot enter marriage or make a will** under Slovak law). Notably, any **major disposition of property** by a guardian (beyond routine management) requires **court approval** for validity. The guardian steps into the adult's shoes for legal decisions within the court-

defined scope, especially in property/financial domains and necessary personal or care decisions, while the adult may still make minor everyday decisions if capable.

Slovak guardianship law emphasizes that the guardian must act **in the best interests of the adult (ward)** and protect the ward's rights. In performing their function, a court-appointed guardian is required to exercise their rights and duties **properly and in line with court instructions**. This "proper" performance is generally understood to mean acting diligently and always for the **benefit and welfare of the ward**. For example, a guardianship appointment order may state that the guardian must manage the ward's affairs "*so that no harm is done to [the ward's] rights*". Traditionally, the "**best interest**" of the adult is a guiding principle – the guardian should make decisions that favor the adult's personal and financial well-being, even if that means overruling the adult's momentary wishes when the adult lacks capacity. At the same time, modern principles (and anticipated reforms) stress that the adult's own **will and preferences** should be respected as far as possible. In practice, guardians are expected to **consider the ward's wishes** and involve them in decision-making to the extent of their understanding. Proposed legal reforms even contemplate that an adult under guardianship could make a formal declaration of their wishes (e.g. choice of guardian, living arrangements), which would be **binding on the guardian unless it clearly contradicts the adult's best interests**. Thus, while **current law does not explicitly codify a "will and preferences" standard**, a guardian should balance the adult's expressed wishes with their objective best interests, always aiming to protect the adult's rights, dignity, and welfare. In essence, the guardian's duty is fiduciary – make decisions **for the adult's benefit**, and whenever feasible, **in line with what the adult would want** if they were capable of deciding.

A guardian in Slovakia should keep the ward **informed about important matters** and, as much as the ward's condition allows, **consult them when making decisions**. Although the Civil Code and related laws do not spell out a detailed consultation procedure, the spirit of the law (and human rights principles) is that the adult under guardianship remains a person with rights and should be **involved in decisions affecting them**. For instance, during the court process to appoint a guardian, the law requires hearing the person or at least seeing them (except in extreme cases) to recognize them as a subject of the process. By extension, after appointment a good guardian will explain choices to the adult, seek their opinion on personal issues, and **honor their preferences whenever possible**. The guardian is essentially the adult's voice in legal matters, so they must **act transparently and cooperatively** with the

ward – this means **no secret decisions** about the ward’s life unless absolutely necessary in their interest.

Reporting obligations: Guardians are under a duty of accountability. The court that appoints the guardian also **supervises the guardian’s performance**. Guardians must follow any specific directives in the appointment order, which often include periodic reporting. In practice, courts commonly require the guardian to **submit regular reports on the ward’s status and the management of the ward’s property**. For example, a court may order that the guardian report on their activities, the living conditions and health of the ward, and a summary of financial management **every six months** (by certain dates each year). These reports allow the court (and indirectly the family, if they are involved in the proceedings) to **review the guardian’s conduct**. If a guardian fails to report or if the reports show mismanagement, the court can intervene or ultimately remove the guardian. There isn’t a statutory duty for guardians to routinely report to the ward’s family, but close family members are often involved as guardians themselves or can request the court’s oversight if they suspect problems. In any case, the guardian **must maintain records** of financial transactions and decisions made on behalf of the adult, and be ready to account for them. Overall, the guardian’s duty is to **keep the ward (and the court) informed**, to consult with the ward on decisions as appropriate, and to **report periodically to the supervising court** on how they are caring for the adult’s person and property.

Aside from decision-making on specific issues, guardians have general **duties of care and loyalty** toward the adult. The guardian is expected to **monitor the adult’s well-being** and ensure their needs are being met. This typically includes maintaining personal contact: a guardian should **visit or communicate with the ward regularly** enough to stay aware of the ward’s living conditions, health status, and any changes in circumstances. There is no legal requirement that a guardian **live with the adult** or personally provide daily care, unless the guardian happens to be a family member who takes on that role. In many cases (e.g. an adult living in a social care facility or nursing home), the guardian’s role is to **oversee the care** being provided by others rather than deliver it themselves. However, the guardian should coordinate with caregivers, doctors, or social services to make sure the adult receives proper care. They may need to **consent to medical treatments** on behalf of the adult, arrange appropriate housing or support services, and advocate for the adult’s educational, therapeutic, or social needs. Guardians must always act with **due diligence (“odbornou starostlivost’ou”)** – meaning they should be proactive and careful in managing the adult’s affairs. If the adult’s situation changes (for example, health worsens or they regain some capacity), the

guardian should respond accordingly, even seeking a court revision of the guardianship if needed. Importantly, the guardian must avoid any **conflict of interest**. They cannot mix the ward's finances with their own or make decisions that benefit themselves at the expense of the ward. If a potential conflict arises, the guardian should inform the court, which can appoint a special representative for that specific matter. In summary, the guardian's other duties include: **looking after the personal welfare of the adult** (through oversight rather than direct caregiving in most cases), **maintaining contact** to stay informed of the adult's needs, **ensuring the adult receives proper care and treatment**, and acting with loyalty and prudence in all matters. The guardian is essentially the protector of the adult's person and interests, beyond just handling paperwork.

Slovak law envisions guardianship primarily as a **service in the interest of the protected adult**, not a paid job. **Guardians are generally not entitled to a salary for their duties**. Family members or other individuals who act as guardian do so **without remuneration by default**. That said, a guardian has the right to be reimbursed for any **necessary expenses** incurred while managing the ward's affairs (for example, travel costs to attend appointments, fees paid on the ward's behalf, etc.). The **Civil Procedure (Non-Contentious) Code** provides that the court will set the amount of **reimbursement for costs** related to administering the ward's property, which is paid out of the ward's funds. In practice, the guardian would report such expenses in their periodic accounts, and the court approves reasonable cost reimbursement. **No commission or fee** is paid for the guardian's time or effort in routine cases. An exception exists for **professional guardians**: if the guardian is an attorney or other professional specifically appointed in that capacity, the court **may award an appropriate fee** for their service. (Under proposed reforms, lawyers could serve as "professional guardians" for a fee set by the court, whereas municipalities currently often serve as guardians without charge.) In all cases, any remuneration is subject to court oversight to prevent abuse. In summary, **most guardians serve free of charge**, aside from being compensated for out-of-pocket costs, and only in special cases (e.g. a court-appointed lawyer-guardian) will the guardian receive an **honorarium determined by the court**. This approach ensures that the guardian's decisions remain focused on the ward's best interests, not on personal financial gain.

Legal Provisions: Slovak Civil Code (Act No. 40/1964 Coll.), §§ 10, 27–30; Civil Non-Contentious Procedure Code (Act No. 161/2015 Coll.), §§ 274–277; Act No. 576/2004 Coll. on Healthcare, §6 (informed consent)

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?**
- 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)?**

An adult can be subject to different protective measures at the same time, as long as each measure addresses distinct needs or legal scopes. Slovak law permits **partial guardianship** – the court can restrict an adult’s legal capacity only in specific areas and must specify the scope of the limitation. In practice, this means a guardian (*opatrovník*) may be appointed for certain matters (e.g. financial affairs) while the adult retains capacity in others. Other measures or representatives can operate concurrently **so long as their authority doesn’t overlap**. For example:

- If an adult under guardianship is involved in a legal proceeding where the guardian cannot or should not act (e.g. due to a conflict of interest), the court can appoint a **special representative** (often a **procedural guardian**, *procesný opatrovník*) for that case. The general guardian continues to handle other affairs, while the procedural guardian represents the adult’s interests in that specific proceeding.
- Likewise, if the adult had previously granted a **power of attorney** for certain decisions, the court may consider that a less restrictive alternative and limit any guardianship to *only the necessary areas*. In fact, under reform principles, a guardian should be appointed *only* for those matters where no less-intrusive measure (like a power of attorney or other assistance) is available.

Each representative must act within the scope defined by law or the court’s order, and they are expected to cooperate in the adult’s best interests. The Civil Code prohibits a representative from acting outside their authority or in situations of **interest conflict**. In practice, this means the roles are divided: the guardian handles decisions in areas of incapacity as defined by the court, while any other support person or representative handles the rest. If a potential overlap or conflict arises, the court or law provides a solution (e.g. appointment of a special guardian for the conflicted matter). Importantly, a person **cannot have two representatives with duplicate authority at the same time** – for

any given matter there should be a single acting decision-maker to avoid confusion. For instance, procedural rules state that a party may only have one chosen representative in a case at a time, so any additional appointee would have a distinct, non-duplicative role (such as covering a different matter or stepping in due to conflict/urgency).

Multiple Guardians under the same Measure

Possible but not typical. Generally, the court appoints **one guardian per incapacitated adult**, but the law does not forbid having more than one in appropriate circumstances. By analogy, the Family Act explicitly allows **co-guardians for minors**. In adult guardianships, the court could likewise appoint two or more co-guardians if it serves the person's welfare (for example, one guardian could manage property and another oversee personal care). In any case, the court's decision **must define each guardian's authority** (or the *division of tasks*) to prevent overlap. The Civil Code requires the guardianship order to specify the scope of the guardian's powers, especially in partial capacity cases. This provides a mechanism to split responsibilities between multiple guardians if needed (such as assigning one guardian to financial transactions and another to healthcare decisions).

If multiple co-guardians are appointed **for the same scope**, they are generally expected to act **jointly** – effectively, they must agree on major decisions on behalf of the ward. (This mirrors how married co-guardians of a child must both act in the child's interest, with the court resolving issues if they disagree.) The law itself does not lay out detailed rules for adult co-guardians' internal decision-making, but in practice the guardians should coordinate and seek consensus, since each has equal duty to act in the protected person's best interest. The court may also **allocate different spheres of competence** to each guardian in the appointment order to allow independent action in each sphere (thus avoiding the need for constant mutual consent). For example, one guardian's mandate might be limited to property administration while the other handles personal and health matters – each could then act independently within their domain as authorized by the court. Any limitations or requirements (such as requiring court approval for certain significant acts) would apply to all guardians similarly.

Recognition by third parties: Third parties (banks, hospitals, etc.) will ask for the **court's guardianship decree** to verify who is authorized to represent the person and in what capacity. The court order or certificate will name the guardian(s) and detail any limits on their authority. A third party must adhere to that arrangement: for instance, a bank will only allow account management by the guardian designated for property/financial matters or will require signatures of *both* co-guardians if they were appointed jointly with

equal authority. In practice, when co-guardians have joint authority, third parties often insist on **dual consent** (both guardians signing or approving a transaction) to ensure the action is valid. If the guardians have divided roles, the third party will deal with whichever guardian's purview the matter falls under. In all cases, institutions are protected by relying on the court's written appointment – any act by a guardian within the scope of the court's decision is legally binding on the represented person. Conversely, if a guardian tries to act beyond their court-approved power, the third party should refuse or seek clarification.

Legal provisions: The framework for adult guardianship is set by the **Civil Code (Občiansky zákonník)** and the civil procedure laws. **Section 10 of the Civil Code** (Act 40/1964 Coll.) allows courts to deprive or limit legal capacity and *requires appointing a guardian* when capacity is removed or restricted. The **Civil Procedure Code** (now mainly the Civil Non-Contentious Proceedings Code) provides for the appointment of **guardians ad litem** in specific situations – e.g. §29 of the old Civil Procedure Code authorized the court to appoint a guardian if a party's mental condition prevents them from acting, or if a conflict of interest or other serious reason makes separate representation necessary. Slovak law thus anticipates scenarios of **multiple representatives** by assigning each a clear role: one may be a general guardian ensuring the person's everyday protection, while another (court-appointed) represents the person **in a particular case or specific transaction** to supplement or replace the general guardian. Additionally, regulations and practice instructions (often via guardianship guidelines or **social protection authorities**) emphasize that any guardian – or co-guardians – must act in the ward's **best interests and within the scope of authority granted by the court**. This approach aims to protect the adult's rights while allowing flexibility to use multiple supportive measures when appropriate.

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

Pay attention to:

- a. **what competent authority is responsible for the supervision?**
- b. **what are the duties of the supervisory authority in this respect?**
- c. **what happens in the case of malfunctioning of the representative/support person? Think of: dismissal, sanctions, extra supervision;**
- d. **describe the financial liability of the representative/support person for damages caused to the adult;**

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.

In Slovakia, the supervision of court-appointed guardians and similar protective measures is the responsibility of the *court*. Typically, the district court that appoints the guardian (often called the guardianship court) oversees the guardian's performance. The Civil Non-Contentious Procedure Code (Act No. 161/2015) explicitly provides that "*the court supervises the manner of performance of the guardian's function.*"

In practice, this means the court (not an administrative body) is the competent authority to monitor guardianship. The court may work with local authorities or social services for information, but ultimate oversight authority rests with the court.

The supervising court has a duty to ensure the guardian is fulfilling their obligations in the ward's best interests. Upon appointment, the court must define the scope of the guardian's rights and duties in its decision. The guardian is required to carry out their tasks *properly and in line with the court's instructions*. The court can issue guidance or orders to the guardian and may require periodic reports on the adult's welfare and the management of their property. In fact, under the Family Act for minors (which is analogous in spirit), the guardian must report to the court on the ward's health, care, and property, and any major decision by the guardian (a "significant matter") needs prior court approval. By supervising in this way, the court ensures the guardian is acting lawfully and in the protected person's best interests.

If a guardian (or other appointed representative/support person) fails in their duties, the court can take corrective action. The primary consequence is *removal (dismissal) of the guardian* by the court. Slovak law mandates that the court **shall recall (remove) a guardian who is breaching their duties, misusing their authority, or otherwise no longer fit for the role**. In other words, guardians can be dismissed for neglecting their responsibilities or acting against the ward's interests. The court may also step in with increased scrutiny or specific instructions if problems arise (for example, requiring more frequent reports or limiting the guardian's powers). In serious cases of misconduct, aside from removal by the court, the guardian could face liability for any harm caused (or even criminal sanctions if abuse or negligence is extreme). However, the standard legal remedy for a failing guardian is for the court to revoke their appointment and appoint a new guardian as needed.

A guardian is **personally liable for damage caused to the adult (the ward) through the guardian's breach of duties**. Slovak civil law applies

general tort principles to a guardian's obligations. This means if the guardian mismanages the adult's property or otherwise fails in their fiduciary duty, resulting in a loss to the adult, the guardian must compensate that loss. For example, the Family Act explicitly states that a guardian is liable for any breach of duty in administering a minor's property under the general rules of compensation for damage. By analogy, an adult's guardian who neglects their duties (such as misusing funds or neglecting care) can be sued under the Civil Code's general provisions on liability (e.g. Civil Code §420) to make the adult whole. The guardian is essentially a legal representative required to act with due care – if they violate that duty and the adult suffers harm, the guardian must answer for it personally.

In general, a guardian is **not automatically responsible for damages the adult ward causes to third parties** or contractual partners – *unless* the guardian failed in their own duty of supervision. Under Slovak Civil Code §422, if a person who causes damage is incapable of understanding or controlling their actions (such as an adult with a severe mental disability under guardianship), the law shifts responsibility to the person who is obliged to supervise them. In practice this means: if the ward, due to their incapacity, causes harm and the guardian negligently failed to prevent it, the guardian may be held liable to the third party for the damage. However, if the guardian has not neglected their supervisory duties, they are not liable for every act of the ward. The ward themselves might bear liability if they had the capacity to understand and control their actions in that situation. In summary, a guardian does **not** guarantee the ward's behavior to third parties, but **can be liable** to third parties when the guardian's inadequate supervision enabled the harm. (For example, if a guardian leaves a legally incapacitated person unsupervised in a situation where they cause damage, the guardian can be responsible for that loss.) Otherwise, absent guardian fault, a contracting partner or third party generally cannot demand the guardian personally pay for the ward's obligations or torts.

Legal Provisions: Civil Code (Act 40/1964) §§ 27, 420, 422; Civil Non-Contentious Procedure Code (Act 161/2015) §§ 274–277; Family Act (Act 36/2005) §§ 33, 56–59

28. Describe any safeguards related to:

- a. types of decisions of the adult and/or the representative/support person which need approval of the state authority;**
- b. unauthorised acts of the adult and of the representative/support person;**
- c. ill-conceived acts of the adult and of the representative/support person;**

d. conflicts of interests

Slovak law mandates court or state authority oversight for major decisions by a guardian on behalf of an adult under guardianship. In particular, any **significant transaction involving the ward's property** must receive prior court approval. The Civil Code explicitly provides that if a guardian is managing the ward's assets, any act beyond ordinary day-to-day administration (a "bežná vec") requires the court's consent. This means **major dispositions** – for example, selling or encumbering real estate, large financial transactions, or other non-routine decisions – cannot be done unilaterally by the guardian. This safeguard ensures that important decisions are reviewed by the **guardianship court** (or relevant authority) to confirm they are in the ward's best interests before they take effect. (Notably, a similar principle applies in minors' guardianship, where "**every significant matter**" requires court approval.

If either the adult under guardianship or their representative (guardian) acts outside the scope of their legal authority, Slovak law provides that such actions are **invalid**. The Civil Code states that any legal act performed by a person **lacking legal capacity** is null and void from the outset. In other words, if the ward (adult with restricted capacity) enters into a contract or decision that exceeds their competence, that act has no legal effect **unless properly authorized**. Likewise, a guardian's action **beyond their power or without required approval** is not binding on the ward. For example, a guardian selling the ward's property without the court's consent (when such consent is required) is acting ultra vires; **the transaction cannot be completed or registered** due to the missing approval. Such an unauthorized act is treated as void (invalid) rather than merely voidable – it does not become valid unless and until the necessary court or authority approval is obtained retroactively. This rule protects the ward by preventing unauthorized deals or obligations from arising outside the framework set by the court.

Slovak guardianship law imposes a duty on guardians to act **prudently and in the ward's best interests**, and it provides remedies if harmful or improper decisions are made. A guardian is expected to perform their duties properly and can be held **accountable for poor decisions**. If a guardian makes a decision that is clearly detrimental to the ward (financially or personally), the courts can intervene. The guardian may be **removed or replaced by the court** for breaching their obligations or abusing their rights. In fact, a court **must** recall a guardian who is not fulfilling their role appropriately or is misusing their authority. Additionally, the guardian can incur **liability for damages** – the Civil Code (and related regulations) hold the guardian responsible for losses caused by mismanagement of the ward's property. The law also subjects guardians to ongoing **court supervision**. Guardians are often required to report

on the ward's welfare and asset management, allowing the court (and relevant social authorities) to monitor their decisions. Through these measures, any *ill-conceived* act that harms the ward can lead to legal consequences: the act itself may be nullified (if outside the guardian's authority), and the guardian faces sanctions (removal and damage compensation). Thus, there are robust safeguards to discourage and remedy harmful decisions by guardians or by the ward under improper influence.

Slovak law contains specific safeguards to prevent and address **conflicts of interest** in guardianship. A fundamental rule is that **no one whose interests conflict with the ward's may act as that person's representative**. This means during appointment of a guardian, the court must choose someone who has no personal stake contrary to the ward's welfare. If a conflict of interest arises later – for example, if the guardian's personal interests collide with the ward's in a particular transaction or legal matter – the law provides a solution. The Civil Code requires the court to appoint a **special representative** (sometimes called a curator or **collision guardian**) to represent the ward in that specific matter. In practice, this ensures that for any deal or decision where the guardian cannot be impartial (such as a contract between the guardian and the ward, or simultaneous representation of multiple people with clashing interests), the ward's rights will be protected by an independent representative. Additionally, other regulations bolster this protection against conflicts. For instance, social service institutions are barred from serving as guardians to their own clients, to avoid institutional conflicts of interest – a recent amendment to the Social Services Act (No. 448/2008 Coll.) explicitly forbids a service provider (or its employee) from being appointed guardian of a person to whom they provide care. Overall, these safeguards (prohibiting conflicted representatives and appointing alternate guardians when needed) ensure that the guardian's **sole loyalty** is to the ward's interests and that any potential conflict is resolved by involving the court or another neutral authority.

Legal Provisions: Relevant provisions include the Slovak **Civil Code** (Act No. 40/1964 Coll., e.g. §§26–30) for general rules on legal capacity, representation, and guardianship, the **Civil Procedure (Non-Contentious) Code** (Act No. 161/2015 Coll.) for procedural aspects of appointing/supervising guardians, and specialized acts like the **Social Services Act** (e.g. Act No. 448/2008 Coll. §8(12)) addressing conflicts of interest in guardianship.

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.

Slovak law allows several parties to request termination of a court-ordered protective measure (such as a limitation of legal capacity/guardianship). A motion to dissolve the measure may be filed by:

- **The affected adult** (the person under guardianship).
- **Close family members** (“blízka osoba,” e.g. spouse, parent, adult child).
- **Healthcare providers** involved in the person’s care (e.g. a hospital or psychiatric facility).
- **Social services providers** or relevant public authorities (such as the local office of social affairs/curatorship).
- **Anyone with a legitimate legal interest** in the matter (this could include a guardian or even a concerned third party, if they demonstrate an interest).

These parties can initiate court proceedings to modify or terminate the protective measure. Notably, the individual concerned has the right to seek restoration of their own legal capacity by application to the court.

Dissolution of a protective measure is handled by the courts in a **non-contentious civil proceeding** (typically at the district court where the person resides). The process is generally as follows: a written **motion** is submitted to the court by one of the authorized persons above, and the court will review evidence and possibly hold a hearing. There is **no automatic periodic review** of guardianship orders in Slovak law – the court will not terminate or reconsider the measure unless a motion is filed (i.e. an active request for review).

The application should set out facts indicating why the measure is no longer needed. In fact, the law requires that the petition include justification for the change – for example, describing improvements in the adult’s condition or other reasons the protective measure is no longer necessary. Typically, a **medical report or expert evaluation** must support the motion. If a private individual (rather than a state body or hospital) files the request, the court can instruct the applicant to provide a recent medical certificate about the person’s mental capacity. Failing to provide such evidence can lead to the court stopping the proceedings. The court will usually appoint an independent expert (psychiatrist/psychologist) to evaluate the adult’s capacity during the proceedings if needed.

Because there is no mandatory time-bound review, dissolution generally **requires a specific motion**. The person under guardianship may repeatedly apply for restoration of capacity, but to prevent frivolous or premature re-

filings, the court may impose a waiting period. According to the Civil Non-Contentious Procedure Code, if the *ward* (the person under the measure) already sought restoration and the court found no prospect of improvement, the court can rule that a new application by that same person cannot be filed until at least 6 months later. This provision guards against repetitive motions when the medical condition is unlikely to change in the short term. Other authorized parties (like family or authorities) can also initiate termination at any time if they have grounds. There is no court fee for these capacity proceedings, and the process is intended to be flexible to protect the person's rights.

A protective measure (limitation of legal capacity/guardianship) can be terminated when **the reasons for its imposition no longer exist or have changed substantially**. Slovak Civil Code §10 explicitly provides that the court must modify or revoke a prior order depriving or limiting legal capacity if the circumstances that led to that order have ceased or altered. In practice, the key grounds include:

- **Recovery or Improvement of the Adult's Condition:** If the adult's mental health or decision-making ability has improved to the point that they can manage their affairs, this is a fundamental reason to end the measure. A new expert assessment concluding that the person has regained capacity will typically justify dissolution. For example, if an individual under guardianship due to a mental disorder undergoes successful treatment or rehabilitation, the court can restore their full legal capacity.
- **Change in Circumstances:** Any significant change in the factual circumstances that underpinned the protective measure can be a ground for termination. This might include the development of less-restrictive support arrangements. (Notably, Slovak law since 2016 emphasizes using the least restrictive measures – the initial limitation must have been necessary only because no less restrictive alternative was possible. If now, for instance, family support or community services can help the person without formal guardianship, the original order may no longer be warranted.)
- **New Evidence or Error:** If new evidence emerges showing the adult has capacity (or that the person was misdiagnosed or the measure was overly restrictive), the court may revoke the order. Likewise, if it turns out the measure was imposed based on a procedural or factual error, the court can correct this by terminating the measure. In such cases, the proceeding is essentially a *rehearing* of the person's capacity with updated information. (Serious procedural defects in the

original process could also be addressed through an appeal or reopening of the case – in other words, the original decision could be overturned – but generally the simpler route is to file for modification or dissolution with current evidence.)

- **Expiry of Term or Conditions (if any were set):** In some guardianship orders, the court might specify a duration or condition for review (though the law does not require a time limit, a court could set one). If the order was explicitly temporary or subject to review after a period, it would be terminated or reviewed accordingly. In most cases, however, orders are open-ended and rely on a new motion to end them.

In summary, the court will terminate the state-ordered protective measure when it is no longer necessary – primarily when the adult has **regained sufficient capacity or autonomy**. The burden is on the applicant to show that the original grounds (e.g. severe mental incapacity) have *pominuli* (ceased) or significantly eased.

Once the court dissolves the protective measure, the **legal status of the adult returns to normal**. The previous court decision that limited the person’s legal capacity is either changed or **revoked by the new judgment**. In practical terms, this means:

- The adult is **restored to full legal capacity** as an individual. They immediately regain the ability to make all legal decisions on their own, just like any adult without a guardianship. No further confirmation is needed; the court’s final decision itself re-establishes their capacity.
- Any **guardian or trustee appointed** as part of the protective measure is released from their role. The guardianship relationship ends with the dissolution, since its legal basis (the capacity limitation) no longer exists. The adult no longer requires a substitute decision-maker and can act in all civil matters independently.
- The adult can **enter into contracts and handle affairs** without the consent of a guardian. Acts that previously would have been invalid without the guardian’s involvement (due to the capacity limitation) are now valid when done by the adult alone. In essence, the adult’s rights and responsibilities are fully returned.
- The court will typically update official records to reflect the restoration of capacity. For instance, the judgement is noted in the Central Register of Documents (Notarial Central Register) to signal to third parties that the person’s capacity is no longer restricted. This

helps ensure that banks, authorities, etc., recognize the person as having full capacity again.

It is important to note that dissolution **operates ex nunc** (from now on). It does not retroactively validate acts done in the past while the person was under incapacity; those past transactions remain subject to the legal situation that existed at that time. However, moving forward, the person has all the rights of an adult with full capacity. In sum, once the court terminates the protective measure, the adult resumes control over their personal and financial decisions as a matter of law.

Legal Provisions:

- Slovak Civil Code (Act No. 40/1964 Coll.), § 10 on legal capacity and its modification.
- Civil Non-Contentious Procedure Code (Act No. 161/2015 Coll.), especially §§ 231–238 and § 247, governing proceedings on legal capacity (who may file, procedure, evidence)

Reflection

30. Provide statistical data if available.

Adults Under Guardianship

- **Total Under Guardianship:** As of mid-2016, an estimated **17,916 adults** in Slovakia were under court-ordered guardianship. This included **16,816 people fully deprived of legal capacity** (legacy cases from before 2016) and **1,100 people with partial legal capacity limitations**. This one-time survey by the Commissioner for Persons with Disabilities was the first to compile such data, since no routine tracking existed. This figure is roughly **0.3–0.4%** of the adult population.
- **Trends:** Comprehensive updated totals are not officially tracked after 2016, but experts believe the number remains in the tens of thousands. Demographic and health trends (e.g. rising mental health diagnoses – about **400,000 people in Slovakia had a mental disorder in 2014, with 74,000 new cases that year**) suggest guardianship needs could be **increasing**. In the absence of newer official counts, the 2016 baseline (~17.9k adults) is used as a reference point, and it has likely grown modestly with an aging population.

Court Decisions on Legal Capacity

- **Capacity Limitation vs Restoration:** Since July 2016, Slovak courts can no longer *fully* revoke a person’s legal capacity (so-called *deprivation*); they can only **limit capacity** in specific areas and

appoint a guardian. Each year, courts issue hundreds of such **capacity-limitation orders** (the Justice Ministry keeps annual statistics of these rulings). In contrast, cases restoring a person's capacity are very rare. For example, around **2023 only ~96 court decisions** were recorded that *restored* legal capacity (or canceled a prior incapacity order). Even with advocacy, restorations remain infrequent – the national disability commissioner managed to help **26 individuals regain full legal capacity** between 2016 and 2023.

- **Judicial Practice Trends:** While *plenary* guardianship (total removal of capacity) is officially abolished, in practice courts often impose **broad “partial” limitations**. The Commissioner observed that judges sometimes restrict individuals in so many areas that it *de facto* amounts to full incapacity. (In one recent verdict, the court stated it was limiting the person's capacity “**in the entire scope**,” effectively mirroring a full deprivation.) This trend shows a **paternalistic approach** persists in Slovak courts' handling of capacity cases. On a positive note, there is growing awareness of supported decision-making, but as of the last five years, guardianship remains the dominant outcome in capacity proceedings.

State-Ordered Protective Measures (Guardianships and Related Orders)

- **Annual Volume of Measures:** Slovakia's courts institute **guardianships (opatrovnictvo)** as the primary protective measure for adults unable to manage their affairs. Judicial statistics indicate on the order of **several hundred new guardianship appointments per year**. The Ministry of Justice records each guardianship/capacity case disposition annually, but it does **not aggregate the total number of active guardianships** in a given year.
- **Types of Measures:** In practice, nearly all state-ordered adult protection measures are **guardianships with legal capacity limitation** (since full removal is no longer permitted). The law does allow less restrictive options – for instance, appointing a guardian *without* restricting legal capacity, to assist with certain decisions (Civil Code Article 29) – but such alternatives are **rarely used**. Instead, courts typically resort to formal capacity limitation and guardianship as the default protection. There is little data on use of other measures like curatorships for specific needs, implying those are not common. Essentially, state intervention for vulnerable adults overwhelmingly takes the form of a **guardian appointed by the**

court to make decisions on behalf of a person whose capacity is deemed (fully or partially) impaired.

- **Breakdown by Measure:** As of the last survey in 2016, about **94%** of adults under protection had a plenary guardian order from the past (full incapacitation) and around **6%** had a partial limitation with a guardian. New orders after 2016 fall into the latter category. **Restoration orders** (lifting or easing a guardianship) are extremely uncommon – only a few dozen such cases nationwide in recent years. This imbalance shows that once protective measures are in place, they tend to be long-term, with few exits from the guardianship system.

Elderly and Persons with Disabilities

- **Demographics of Vulnerable Adults:** Slovakia has an aging population – about **17% of citizens are age 65 or older** (roughly 927,000 people as of 2023). This elderly share has been steadily rising. In addition, a significant number of people live with disabilities. While precise counts vary by definition, estimates suggest roughly **10–12% of the population** has some form of disability. For instance, one EU report noted that only those with severe disabilities (around 20% of persons needing long-term care) receive formal support in Slovakia, indicating a substantial population with disabilities.
- **State Support and Care:** Tens of thousands of Slovak adults with disabilities or age-related frailty receive **state-provided care or assistance**. As of mid-2023, over **77,600 people** were drawing either a caregiving allowance or personal assistance benefit to help with daily needs. (This figure includes family caregivers of persons with severe disabilities and individuals using personal assistants.) In terms of institutional care, Slovakia’s long-term social services still rely heavily on **residential facilities** for the elderly and disabled – formal nursing homes and social care homes remain prevalent.

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?

1. Legal and Practical Issues

- **Outdated Guardianship System:** Adult guardianship is essentially the only protective measure in Slovakia, historically allowing courts to fully strip a person’s legal capacity. Critics note this often results

in loss of fundamental rights – for example, adults under guardianship have been barred from voting, marrying, owning property, or making basic life decisions. This **substituted decision-making** model has been labeled overly restrictive and not aligned with modern human rights standards.

- **Due Process Concerns:** Significant cases have exposed procedural flaws. In *Berková v. Slovakia* (ECtHR, 2009), the European Court of Human Rights found the guardianship process violated the applicant’s rights – she was not personally heard when she sought to restore her legal capacity, and the court even forbade her from reapplying for three years. Domestic investigations echo these concerns: in some instances Slovak judges decided to limit or remove an adult’s capacity **without ever meeting the person**, relying only on medical files or even a photograph. Such practices undermine the individual’s right to be heard and assessed fairly.
- **Indefinite Restrictions & Rare Review:** Once an adult is placed under guardianship (with “limited legal capacity”), it often becomes a long-term or permanent status. Courts historically **seldom revisited or reversed** capacity limitations. As of mid-2016, there were about **16,816 people** in Slovakia who had been fully deprived of legal capacity, and restorations of capacity were “exceptional”. In practice, many adults remained under plenary guardianship orders issued years ago, without periodic review. The Office of the Commissioner for Persons with Disabilities has noted this problem – by 2023, the Commissioner (Ombudsman) intervened to help restore full legal capacity to 26 individuals who had been unjustly kept under guardianship.
- **Criticisms from Experts & Advocates:** Slovak and international experts (lawyers, social workers, NGOs) have repeatedly criticized the legal framework for adult capacity. They argue current law does not sufficiently tailor guardians’ powers or consider less intrusive alternatives. For instance, a 2015 coalition report led by MDAC (Mental Disability Advocacy Center) found that Slovakia **failed to implement Article 12** of the UN CRPD – courts can still “strip the legal personhood” of people with intellectual or psychosocial disabilities, with **little provision of decision-making support** in lieu of guardianship. The **UN Committee on the Rights of Persons with Disabilities** echoed these concerns in 2016, noting that despite some reforms, persons with disabilities were **not given equal recognition before the law** and continued to be denied basic civil rights under

guardianship. Legal professionals within Slovakia (including some judges and scholars) have also pointed out that the guardianship regime is outdated (unchanged in substance since the 1964 Civil Code) and **inconsistently applied**, leading to unpredictable or unjust outcomes.

2. Political and Public Debate

- **Acknowledgment of the Issue:** The need to reform adult guardianship has been recognized at the government level. In 2018–2019, the Ministry of Justice (MS SR) set up a working group to draft a **guardianship reform**. This initiative was partly driven by rising numbers of people with mental health conditions and high-profile cases of abuse: the ministry’s background report cited many instances of **vulnerable seniors or persons with mental disabilities being exploited** (e.g. duped into signing away property) under the old regime. The very existence of these cases in public discourse underscored that the current protective measures were not adequately protecting those they meant to help.
- **Advocacy and Public Pressure:** Outside government, **human rights organizations and disability advocates** have kept the issue in public view. The National Commissioner for Persons with Disabilities has been especially vocal. Notably, she appealed to all parties contesting the 2023 elections – and to the next Justice Minister – to **make adult protection reform a priority** and finish the legislative changes that have been on the table. This public appeal indicates that heading into recent elections, guardianship reform was being raised as an important (if long-neglected) policy issue.
- **Parliamentary and Political Response:** While there is broad agreement in principle that the system needs change, concrete political action has been slow. The 2019 Justice Ministry working group did draft a concept (*vecný zámer*) for reform, but comprehensive legislation never reached Parliament before the government changes. Some individual politicians across party lines have shown support – for example, in 2023 an opposition MP publicly backed the Commissioner’s call. However, debates in the National Council specifically on guardianship have been infrequent. The topic tends to gain attention mostly through **reports of egregious cases** (e.g. media stories about abuses or court mishandling) and through **international criticism**, rather than as a sustained parliamentary agenda item. There have also been discussions in expert circles (e.g. at academic conferences, in the Slovak Disability Council) about how

to align Slovak law with the CRPD’s mandate to replace guardianship with support. Overall, while not a front-page political issue for the general public, guardianship reform has a dedicated advocacy community and is increasingly part of the human rights dialogue in Slovakia. Recent calls for reform suggest a growing consensus that the status quo is untenable, even if concrete legislative change has lagged.

3. Proposals for Improvement

- **Ending Full Incapacitation:** A key legal change in recent years was the **abolition of “deprivation of legal capacity”**. Effective July 2016 (with the new Civil Non-Contentious Procedure Code), Slovak courts can no longer *completely* remove an adult’s legal capacity; they can only **restrict capacity in specific areas** and must appoint a guardian with defined responsibilities. This reform was a direct response to human rights case law and the CRPD – it aimed to stop the practice of plenary guardianship where a person lost all rights in one stroke. Now the law technically requires a more tailored approach (only limiting capacity “as necessary” for the person’s protection). In practice, however, this often still results in broad restrictions, and thousands of individuals who were fully deprived of capacity before 2016 saw **no automatic restoration** of their rights. Courts must proactively review old cases to convert them to the new model, and many such reviews have been slow or lacking.
- **Comprehensive Guardianship Reform Draft:** The Justice Ministry’s 2019 reform proposal (not yet enacted) contained several innovations to modernize adult protection. **One** was to allow *advance selection of a guardian*: a currently competent adult could formally designate who should be their guardian in the future if they become incapacitated (similar to a power of attorney for personal matters). **Another** goal was to **increase oversight and prevent abuse** – e.g. imposing stricter duties on guardians to act in the ward’s interest, and providing ways to hold guardians accountable if they misuse a vulnerable person’s finances or property. The reform also sought to clarify the responsibility of family members: it emphasized that adult children or relatives should not unreasonably refuse to act as a guardian for an incapacitated parent/kin, attempting to curb the practice of relatives dumping the responsibility on the state. Additionally, it aimed to better protect the elderly from being tricked into unwarranted asset transfers by ensuring a guardian’s presence or mandatory court approval for high-value transactions. While this

package had broad expert input (with the Commissioner and social ministry involved in the drafting), it has yet to be passed into law.

- **Introducing Supported Decision-Making:** Perhaps the most significant reform being discussed is a shift from substituted decision-making (guardianship) to **supported decision-making**. Supported decision-making is a model where an adult retains full legal capacity, but can appoint supporters or “assistants” to help them understand options and communicate decisions – without transferring legal authority away. Slovak disability advocates and the Commissioner are strongly pushing for this to be added to the Civil Code. In fact, the call from experts “*since 2010*” has been to implement a **supported decision-making mechanism in legislation**. In early 2024, the Ministry of Labor, Social Affairs and Family convened talks on creating a legal status for a “supporter” (podporca) as an alternative to a court-appointed guardian. Under the proposal, a person with disabilities could have a network of supporters (family, friends, professionals) who advise and protect them from exploitation, but **the person would legally make their own decisions** (the supporter has no coercive power). This would require amending several laws (Civil Code, possibly the Civil Procedure and Social Services acts). If enacted, it would mark a major shift toward compliance with Article 12 of the CRPD, effectively reducing the use of plenary guardianship in favor of personalized support arrangements.
- **Minor Reforms and Pilots:** In the absence of a full legal overhaul, Slovakia has tried some incremental improvements. For example, in 2021 an amendment to the **Social Services Act** introduced a new concept of a “**dôverník**” (**confidant**). This allows a person receiving residential social care (such as an adult with a disability in a care home) to designate a confidant of their choosing – a trusted person (often a family member or friend) who can be informed about their situation and involved in decisions. The confidant does **not** replace the guardian or have formal legal powers, but the idea is to add an extra layer of support and advocacy for the person. Alongside this, the 2021 law strengthened certain obligations of social care providers to work with court-appointed guardians and now also confidants. However, **implementation has been problematic**: care institutions report confusion about whom to consult or obey – the guardian or the confidant – when they disagree. This highlights that piecemeal changes, while well-intentioned, may cause practical dilemmas without a broader reform clarifying everyone’s roles. There have also

been discussions about introducing regular review periods for guardianship orders (for instance, requiring courts to reconsider each case every few years), and about better training and certification for guardians, but these remain at the proposal stage. In summary, several improvements (both legislative and procedural) have been proposed – from relatively small tweaks to a radical overhaul replacing guardianship with supported decision-making – but most are still in development or awaiting political will to implement.

4. Evaluations and Outcomes

- **UN Oversight:** Slovakia’s system of state-ordered adult protection has been scrutinized internationally. In its **2016 concluding observations**, the UN Committee on the Rights of Persons with Disabilities expressed deep concern that “*despite recent legal and procedural reforms, all persons with disabilities are not given equal recognition before the law*” in Slovakia. The Committee noted that people under guardianship were **denied basic rights** such as the right to vote, marry and found a family, or manage their property. The UN officially recommended that Slovakia **repeal Civil Code provisions on deprivation/restriction of legal capacity** and replace all substituted decision-making regimes with supported decision-making that respects the person’s will and preferences. This was a clear finding that the current measures were not effective in upholding disabled persons’ rights. Similarly, the Council of Europe’s human rights commissioner and other bodies have flagged Slovak guardianship practices as incompatible with modern human rights norms, which has put pressure on the state to evaluate and change its approach.
- **Reform Outcomes So Far:** The partial reforms to date have had mixed results. The 2016 shift to *capacity restriction instead of deprivation* was a step forward, but an **audit in subsequent years found** that many judges simply converted old deprivation orders into broad “restrictions,” resulting in little practical change for those individuals (they still effectively cannot act independently in most areas). The introduction of the “**dôverník**” **support person** in 2021 is still being evaluated; early feedback from social service providers indicates confusion but also some positive instances where a confidant helped articulate a resident’s wishes contrary to a passive guardian. No formal evaluation of the *dôverník* system has been published yet, but the Ministry of Labor is monitoring its implementation. On a more encouraging note, the Commissioner’s

interventions show that **when reviews do happen, people can often regain rights** without harm – of the 26 cases where her office pushed for restoration of capacity, all 26 individuals had their legal capacity returned and reportedly managed well with community support. This suggests that some people were unnecessarily under guardianship and that supported decision-making (informally arranged by families or social workers) can work in practice. These outcomes bolster the case for a systemic shift. Overall, both official findings and independent assessments conclude that Slovakia’s state-ordered protective measures for adults need significant improvement to truly protect **and** empower the individuals concerned.

SECTION IV – VOLUNTARY MEASURES

Overview

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

Slovakia does not yet have a fully developed legal framework for voluntary measures such as continuing powers of attorney and advance directives (they exist in principle but lack clear statutory regulation). I will provide a current state of affairs in this question and then proceed with question 50.

1. Continuing Power of Attorney (Trvalá plná moc)

Slovak law does not yet explicitly regulate a “durable” or continuing power of attorney that remains effective after the principal loses capacity. Powers of attorney are governed by the Civil Code (Občiansky zákonník). Under the Civil Code, a power of attorney (plnomocenstvo) can be granted by any adult with capacity, and it must specify the scope of the agent’s authority. If the POA is not limited to a single act, it must be in writing. The Code provides that a POA terminates upon the death of the principal unless its content indicates otherwise, but it does not list loss of legal capacity as an automatic termination ground. This suggests that, in theory, a properly drafted POA could continue to operate during the principal’s incapacity. Slovak legal scholars have noted that such an arrangement might be viewed as a legal act with a suspensive condition – i.e. the authority “springs” into effect or remains in effect if the person becomes incapacitated. However, because the law is

silent, the concept of *trvalá plná moc* (lasting POA for incapacity) is not firmly established in statutes, making its status somewhat uncertain in practice.

In the absence of a special statute, the formal requirements for a continuing POA are those for any POA, with additional precautions. The principal must have full capacity at the time of signing, and the POA should be in writing. While notarization is not strictly required by law for all POAs, it is highly advisable for a continuing POA: a notarial form or at least notarized signatures can help prove the document's validity and date, especially since it may be invoked when the principal can no longer confirm their intent. (For certain transactions like real estate, Slovak law anyway requires notarized signatures on the POA for it to be accepted by authorities.) Currently, there is no dedicated registry for POAs in Slovakia, but a notary can authenticate and store the document if requested. The **scope** of a continuing POA can be broad (covering financial, property, and personal matters) or limited, as defined by the principal. It should explicitly state that it remains effective (or becomes effective) upon the principal's loss of legal capacity, to put third parties on notice of the principal's intent.

Under the Civil Code, a principal cannot waive the right to revoke a power of attorney at any time. This means while the principal is still capable, they can always cancel the mandate. If the principal has since lost capacity, they obviously can no longer revoke it themselves – at that point, the POA would continue by its terms. There is no clear provision on whether a court-appointed guardian can revoke or override a previously granted POA. In practice, if a guardian (*opatrovník*) is later appointed by the court, conflicts may arise: the guardian's court-sanctioned authority could supersede the agent's decisions, especially if the POA was not known to or approved by the court. The current law does not provide a formal mechanism for the principal to preemptively nominate a guardian or require courts to honor a previously chosen agent, although a person's earlier expressed wish could influence the court's choice (see section 3). In sum, a continuing POA is possible in principle (and often referred to in legal literature as "*plnomocenstvo pre prípad nespôsobilosti*"), but it operates in a gray zone without explicit statutory guidance. Ensuring it is properly executed (preferably as a notarial deed) and clearly worded will improve its chances of being honored.

2. Advance Directives (Predbežné vyhlásenie)

Slovakia currently **lacks a dedicated legal framework for advance directives** – i.e. binding pre-statements of one's will regarding personal, financial, or healthcare decisions in case of future incapacity. Neither the Civil Code nor health care laws expressly recognize a "living will" or other advance declaration by which an adult can set out instructions or appoint a decision-

maker for a future period of incapacity. In the healthcare context, Slovakia is a party to the Council of Europe's Convention on Human Rights and Biomedicine (Oviedo Convention), which in Article 9 provides that when a patient cannot express consent at the time of a medical intervention, their previously expressed wishes should be taken into account. This international obligation is reflected in principle – medical professionals are expected to consider a patient's prior wishes – but it has not been translated into a clear statutory procedure for making or registering advance healthcare directives. The Health Care Act (Act No. 576/2004 Z.z.) grants patients the right to informed consent and to refuse treatment (§11). However, this right is exercised in the present; there is **no** provision allowing a patient to refuse specific treatments in advance for a future time when they might be incapacitated. In fact, experts note that one *cannot* simply use the current refusal provision of the Health Care Act to cover future situations. In summary, the concept of *predbežné vyhlásenie* (an advance declaration of will) is **not yet codified** in Slovak law for healthcare or other personal decisions.

For financial and property matters, aside from the continuing POA discussed above, there is likewise no separate “advance directive” mechanism. An individual may informally express wishes (for example, in a letter or as a clause in a last will regarding who should manage their affairs), but such statements have no legally binding effect on courts or third parties under current law. The only way to plan for future incapacity in property/financial matters is via a POA or by creating legal structures like trusts or co-ownership arrangements, since a pure advance instruction (without creating a present legal relationship) isn't provided for.

Because advance directives are not regulated, any such document operates informally. In healthcare, a doctor who is aware of a patient's written advance wish (often referred to as “*predchádzajúce pranie*” – a prior wish) should give it due weight out of respect for patient autonomy. In practice, some patients in Slovakia do prepare documents akin to living wills (e.g. refusing artificial life support in terminal conditions), but these rely on ethical acceptance rather than legal mandate. Healthcare providers remain constrained by law which requires providing necessary care unless a valid refusal exists. Because an incapacitated patient cannot refuse in real-time, doctors face uncertainty: honoring an advance directive (especially if it refuses life-sustaining treatment) could conflict with the legal duty to save life. There is currently no registry or official form for advance healthcare directives in Slovakia. By contrast, the Czech Republic explicitly allows “*dříve vyslovené přání*” (previous wishes) in its law, with formal requirements (written form, and if it refuses life-saving care, it must be notarized or confirmed by a

physician). Slovakia has not yet established such rules, meaning any advance directive here must at least be in writing and clearly articulated to have a chance of recognition. It is prudent to have the statement signed before witnesses or a notary, to prove the person's identity and capacity at the time of making it, although again this is not mandated by Slovak law (but follows from general practice for important documents).

In personal matters (such as choices about living arrangements or care), an advance directive would likely be treated as an expression of the person's wishes. It is not legally binding, but authorities *may* consider it as part of determining the person's best interests if, for example, a guardianship or custodial decision is being made. Similarly, one can name a preferred guardian or explicitly disqualify someone (e.g. "I do not want Person X to be my guardian") in a written declaration. Slovak courts are not obliged by law to follow that wish, but it could carry persuasive value. Currently, the Civil Procedure (Civil Non-Contentious Proceedings Code) does not contain a provision on respecting a *predbežné vyhlásenie* by the person concerned when appointing a guardian. The court's duty is to act in the person's welfare and typically to choose a close relative who is suitable. The absence of a clear legal status for advance directives means their enforceability is limited – they are only as strong as the willingness of others to honor them.

3. Legal Recognition and Practical Issues

Slovak courts and authorities do not yet have an explicit legal obligation to recognize these voluntary measures, but there is growing awareness of them. In guardianship proceedings (legal capacity cases), the **will and preferences of the person** should be considered under general human-rights principles (Slovakia has commitments under the UN Convention on the Rights of Persons with Disabilities to uphold autonomy). In practice, if an incapacitated adult had previously made a notarized power of attorney or written a preference for who should act on their behalf, a court will often take that into account.

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

N/A

- 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)?**

N/A

Start of the measure

Legal grounds and procedure

- 36. Who has the capacity to grant a 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 voluntary measures enter into force. Please consider:**

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

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 are 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

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

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 measure 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?

The Slovak legal system has specific provision for *ex lege* representation resulting from marital law and/or matrimonial property law only. Slovak law generally does not allow family members or others to automatically act on behalf of an adult without a court decision or the adult's prior authorization. In other words, **there is no broad *ex lege* representation for vulnerable adults in Slovakia.** The one notable exception is within marriage: spouses have a statutory right to represent each other in ordinary everyday matters. Under §20(1) of the Family Act (Act No. 36/2005), each spouse is *ex lege* authorized to act on behalf of the other in routine affairs of daily life, "*najmä prijímať za neho bežné plnenia*" (especially to receive ordinary deliveries or performances). For example, one spouse can pick up a postal parcel or pay a routine bill on behalf of the other by virtue of this provision. Actions taken by one spouse in attending to the normal needs of the family legally bind both spouses jointly and severally.

Outside of this narrow spousal context, no law automatically designates a family member or other person to represent an adult who cannot manage their affairs.

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

N/A

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

N/A

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

N/A

Representatives/support persons

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

N/A

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

N/A

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

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

N/A

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

N/A

Safeguards and supervision

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

N/A

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

N/A

Reflection

60. Provide statistical data if available.

N/A

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

N/A

Specific cases of ex lege representation

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

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

Under Slovak law, each spouse may act on behalf of the other in ordinary family/household matters. The Family Act explicitly allows one spouse to represent the other in “*bežných veciach*” (everyday matters) without a special power of attorney. This covers routine transactions for running the household (e.g. paying family expenses, receiving deliveries). Legal acts performed by one spouse in these ordinary family matters automatically bind both spouses jointly and severally. For example, a debt incurred for usual household needs is owed by both spouses. However, this automatic binding effect is limited to ordinary affairs – one spouse cannot unilaterally undertake *extraordinary* financial transactions (such as selling family real estate or taking a large loan) that bind the other without the other's consent. In fact, the Civil Code requires consent of both spouses for legal acts beyond ordinary dealings with the couple's joint property, or else the act is invalid. (Either spouse can veto being bound by the other's act toward a third party, if they explicitly inform that third party in advance.) In short, there is no general blanket agency for all financial matters, only a statutory agency for day-to-day family transactions.

Relevant Legal Provisions: Slovak marital property and family law provisions addressing spousal representation and financial commitments include:

- Family Act (Act No. 36/2005 Coll.) – § 20(1)-(2): Establishes that each spouse may represent the other in ordinary matters and that such

acts bind both spouses jointly and severally. It also provides the exception that if the other spouse had *expressly excluded* the effect of a transaction (and a third party knew this), the acting spouse's deal won't bind them.

- Civil Code (Act No. 40/1964 Coll.) – § 145(1)-(2): Regulates management of the *bezpodielové spoluvlastníctvo manželov* (community property of spouses). Paragraph 1 states that “*bežné veci*” concerning joint property can be handled by either spouse alone, while other (non-ordinary) transactions require consent of both spouses, otherwise the legal act is null. Paragraph 2 confirms that obligations arising from transactions related to joint property hold both spouses jointly liable.
- Civil Code – § 143: Defines the scope of joint matrimonial property (generally, all assets acquired by either spouse during marriage, except gifts, inheritances, and personal-use items). This context is relevant since the rules on spousal consent (§145) apply to managing this community property.

These provisions ensure that while spouses share a joint estate and responsibility for family needs, significant financial decisions require mutual agreement.

If one spouse is legally incapacitated (e.g. due to mental illness or disability), the other spouse does not automatically gain full authority to manage the incapacitated person's affairs or to enter contracts on their behalf. The healthy spouse's power remains limited to the above “ordinary matters” representation. Beyond day-to-day family transactions, there is no automatic spousal power of attorney simply by virtue of marriage. Instead, Slovak law requires court proceedings to establish guardianship for the incapacitated person. A court must formally appoint a guardian (*opatrovník*) to act for the incapacitated spouse. Typically, the court may appoint the other spouse as the guardian, but this is not presumed without a court order. The appointed guardian then has legal authority to manage the person's assets and sign necessary contracts, usually under court supervision. For example, §27(2) of the Civil Code specifies that when an individual is deprived of legal capacity by a court, a court-appointed guardian becomes their legal representative. Even a guardian (including a spouse in that role) must seek court approval for major acts of asset management beyond routine matters. In sum, a spouse must undergo a guardianship process to obtain decision-making authority over an incapacitated partner's property or contractual affairs; it is not granted automatically by marriage.

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.

Under Slovak law, **either spouse may manage the community (joint) property for ordinary matters** without the other's consent. Civil Code § 145(1) explicitly states that "*bežné veci*" (everyday affairs) concerning joint property can be handled by either spouse acting alone. In practice, this covers usual management and minor transactions. However, **for important or non-ordinary transactions, the consent of both spouses is required.** The law provides that in matters beyond everyday use, *both* spouses must agree; otherwise the legal act is invalid. For example, courts have held that selling or encumbering valuable assets (like real estate) is not an "ordinary" matter – such acts must have the other spouse's consent, or they can be annulled at the request of the other spouse. This rule protects the equal rights of both spouses in the community property. Additionally, any legal acts concerning joint property bind both spouses jointly and severally (Civil Code § 145(2)), meaning both are liable for obligations arising from those acts. Spouses may also modify these default rules by a notarial agreement – for instance, they can agree to a different administration arrangement per Civil Code § 143a(1) – but such agreements are effective against third parties only if the third party knew of them

If one spouse is mentally impaired and lacks legal capacity, the other spouse does not automatically gain full control over the joint property. The requirement for dual consent on major dealings still applies; an incapacitated spouse cannot give consent, so a substitute decision-maker is needed. In Slovak law, when a person's legal capacity is limited by a court due to mental illness or impairment, the court appoints a guardian (*opatrovník*) to represent that person (Civil Code § 27(2)-(3)). Typically the court will appoint the other spouse as guardian if appropriate, given that spouses have a duty to care for and assist each other. The appointed guardian can then administer the impaired spouse's share of the community property and give the necessary consent on the spouse's behalf for larger transactions. In other words, the capable spouse must act through the court-appointed guardian role (often themselves in that role) rather than by automatic authority. For everyday management, the healthy spouse can continue to handle routine matters alone (as allowed by §145(1) OZ) even if the other is incapacitated. But for any major decision (e.g. selling a house or taking on a substantial debt against joint property), the guardian's involvement is required to legalize the act. In many cases, certain

significant transactions on behalf of a person under guardianship also require court approval to ensure the protection of the incapacitated spouse's interests (as a safeguard in guardianship proceedings). Notably, if the mentally impaired spouse's condition makes managing the community property untenable or inequitable, the other spouse can ask the court to terminate the community property regime for serious reasons (Civil Code § 148(2)), but absent such a dissolution the regime continues with a guardian administering the impaired party's rights.

Key Legal Provisions

- Civil Code (Act No. 40/1964 Coll.) – *Sections 143–150*: Regulates the default *bezpodielové spoluvlastníctvo manželov* (community property of spouses). § 145(1); § 145(2) establishes joint and several liability of spouses for acts regarding joint property. § 144 provides that both spouses use and maintain the common property together. § 143a(1) allows spouses to modify the scope of community property or its administration by notarized agreement. § 146 enables a court to decide disputes if spouses cannot agree on managing the property. § 148(2) permits a court to dissolve the community property during marriage for grave reasons (e.g. circumstances making continued co-ownership against good morals).
- Family Act (Act No. 36/2005 Coll.) – Defines personal rights and duties of spouses. Spouses are equal in rights and obliged to live together and help each other, which underlies the expectation that a spouse will care for an infirm partner. (The Family Act does not detail property management, as that is left to the Civil Code, but it reinforces the mutual assistance duty relevant when one spouse is incapacitated.)
- Guardianship Law – Under the Civil Code's general provisions, a person with diminished capacity must act via a court-appointed guardian. § 27(2)-(3) Civil Code specifies that when a spouse is deprived or limited in legal capacity by a court decision, a guardian is appointed as their legal representative. In practice, the spouse will often be appointed guardian if capable, to administer the impaired spouse's affairs. The guardian can perform legal acts on behalf of the incapacitated spouse to manage or dispose of community property within the limits set by the court, ensuring that major transactions have the necessary legal authority despite the spouse's incapacity.

Each of these provisions works together to ensure that both spouses' interests in the community property are protected – requiring mutual consent for significant transactions during normal circumstances, and invoking guardianship/court oversight if one spouse can no longer competently consent

due to mental impairment. The law thus balances efficient management (through solo action in daily matters) with safeguards (joint consent or guardian involvement for important decisions) in the administration of matrimonial property.

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

Negotiorum gestio – the management of another’s affairs without mandate – is expressly recognized in Slovak civil law under the term “*konanie bez prikazu*”. The Slovak Civil Code (Act No. 40/1964 Coll.) contains a dedicated section (§742–746) governing this institution. In essence, it addresses situations where a person (the gestor, or *konateľ bez prikazu*) voluntarily intervenes in someone else’s matters without authorization from that person. The statutory rules on *negotiorum gestio* in Slovakia apply generally to anyone managing another’s affairs without authority – the provisions themselves do not single out any particular class of persons. There is no explicit mention of “vulnerable” or incapacitated adults in §§742–746 of the Civil Code. In theory, therefore, the concept could cover a scenario where someone voluntarily manages the affairs of an adult who cannot do so themselves. In practice, however, Slovak law provides separate, dedicated mechanisms to protect adults lacking legal capacity, and those mechanisms are usually relied upon instead of *negotiorum gestio*. Slovak law tends to favor formal protective measures (like guardianship or court-approved trusteeships) over informal interventions for managing an adult’s affairs. The existence of a guardian generally excludes the need for anyone else to invoke *negotiorum gestio*, because the guardian is already authorized to act.

SECTION VI – OTHER PRIVATE LAW PROVISIONS

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

Aside from *negotiorum gestio*, Slovak law recognizes voluntary contractual representation and court-appointed guardianship for vulnerable adults. A capable adult may grant a power of attorney (*plnomocenstvo*) to a trusted person, authorizing them to act on the giver’s behalf within the scope specified. This is a private-law mandate (often via a contract of mandate) and can be general or specific. However, such power of attorney ends if the principal dies or loses legal capacity, as Slovak law does *not* provide for a continuing (durable) power of attorney that remains effective after the

grantor's incapacity. In practice, this means a vulnerable adult *must have had capacity at the time of granting* the power, and serious later incapacity will typically necessitate formal guardianship despite any earlier mandate. There is no statutory proxy by kin (e.g. no automatic spousal or family representation for an incapacitated adult) in Slovak civil law – unlike a few EU countries, Slovakia has *no* general next-of-kin representation regime for adults. The basic rules on representation are found in the Civil Code (Act No. 40/1964 Coll.). Sections 22–33 of the Civil Code govern voluntary representation: §22 states that a person may be represented either by law or by an agreement; §§31–32 set out the requirements for powers of attorney (e.g. a written power is required if the legal act itself must be in writing). Termination of a power of attorney is addressed in §33 (it ceases upon revocation, death, or loss of legal capacity of the principal, under prevailing interpretation). Guardianship of adults is addressed in Civil Code §§26–30. In particular, §27(2) provides that if a person is declared fully or partially incapacitated by court, *“the court-appointed guardian is the legal representative of that person.”*

Section 29 allows courts to appoint a guardian for an adult for other serious reasons (for example, if the adult's residence is unknown) to protect their interests. Procedural statutes (the Civil Non-Contentious Proceedings Code) set out the process for capacity hearings and guardian appointment, and the Family Act (Act No. 36/2005) mainly covers guardianship of minors – adult guardianship remains governed by the Civil Code's provisions on legal capacity. Notably, Slovak law currently lacks special provisions for “advance directives” or continuing powers of attorney for future incapacity, as well as any general statute for supported decision-making. The absence of a “private mandate” mechanism is confirmed by comparative reports (Slovakia is among the countries with no such statutory instrument for future incapacity). Likewise, no Family Act provision authorizes a spouse or relative to make decisions for an incompetent adult absent a court-appointed guardianship.

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?

Slovak law does not provide a formal mechanism for parents or guardians to unilaterally make binding plans for an adult child's future care. Once a child reaches 18, parents no longer have automatic legal authority; any guardianship (*opatrovníctvo*) over an adult with limited capacity must be appointed by a court. In practice, parents can express their wishes (for example, in a will or

petition) about who should care for their adult disabled child, but such wishes are not legally binding. The court will ultimately decide the appointment of a guardian or caregiver at the relevant time. (For comparison, the Family Act allows parents to suggest a guardian for a minor if the parents cannot care for the child, but no equivalent provision exists for adult children.) Families may enter private agreements or care contracts, but these have to comply with general law and do not override the court's role in appointing a guardian for personal care decisions. Currently, third parties cannot legally pre-designate a future guardian for an adult with limited capacity. Under the Civil Code, if an adult is declared partially or fully legally incapacitated, the court appoints a guardian (usually a close relative if willing) at that time. A parent or current guardian cannot "nominate" a successor with binding effect – any future guardian must be confirmed by the court. (For instance, if a court-appointed guardian dies or is unable to continue, the court will initiate proceedings to appoint a new guardian, possibly *ex officio*.) While a parent's recommendation or the family's preference may be taken into account, it is not guaranteed. Notably, the Family Act allows parents to propose a guardian for a minor child in advance, but this statutory option does not extend to adults. There have been discussions on modernizing guardianship law – including allowing competent adults to appoint their own future guardian in advance (a form of advance directive)– but as of now, no such provision has been enacted. In short, any guardian for an adult with limited capacity must be appointed through legal proceedings rather than pre-selected by third parties.

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;**
 - b. subsidiarity: autonomous decision-making of adults with impairments as long as possible, substituted decision-making/representation – as last resort;**
 - c. proportionality: supported decision-making when needed, substituted decision-making/representation – as last resort;**
 - d. effect of the measures on the legal capacity of vulnerable adults;**
 - e. the possibility to provide tailor-made solutions;**
 - f. transition from the best interest principle to the will and preferences principle.**

Slovakia historically allowed plenary (full) and partial guardianship, which are forms of substituted decision-making. In 2016, a significant reform abolished new cases of full legal incapacitation (plenary guardianship), permitting only restricted or partial guardianship going forward. This change, enacted via the Act on Non-Contentious Civil Procedure, was hailed as a “historical milestone” aligning with human rights standards, driven by European Court of Human Rights case law and the UN CRPD. Under the current law, courts may **limit** specific legal acts a person can perform instead of completely removing legal capacity, and they must specify the scope of any such limitation.

Despite this progress, Slovakia has not yet introduced a formal supported decision-making framework. There are no dedicated legal mechanisms by which adults with impairments can be *supported* in making their own decisions while retaining full legal capacity. The guardianship system remains a substitute for the person’s decision-making rather than an aid to it. Both international and domestic observers note this gap: the CRPD Committee in 2016 explicitly recommended that Slovakia “*repeal*” the existing provisions on deprivation and restriction of legal capacity and “*introduce supported decision-making*” that respects the individual’s autonomy, will, and preferences. Likewise, in its 2020 report, the European Commission found that “*Slovakia has not yet adopted the reform of guardianship into supported decision-making mechanisms*”, though the then-new government had pledged to address it in its policy manifesto. The Council of Europe’s Commissioner for Human Rights also urged authorities to “*develop a flexible system of supported decision-making, based on individual consent,*” as a next step after ending full incapacitation. At present, however, supported decision-making exists only informally (through family or social support), and full guardianship has largely been replaced by partial guardianship rather than by alternative support arrangements.

The primary mechanism to avoid plenary guardianship is now the use of tailored, partial guardianship orders. In practice this means a court order can appoint a guardian for certain matters (e.g. financial or property decisions) while leaving the adult free to decide in other areas. The 2016 procedural law requires courts to *consider the individual’s capacities in different domains* and impose only necessary limitations. Power of attorney and advance directives (where a person designates someone to act on their behalf) are available under general civil law, but these are not specific disability support measures and require the person to have capacity at the time of execution. As of now, Slovakia does not have

specialized legal instruments such as supported decision-making agreements or personal ombudsmen in its legislation. In summary, the country is in a transitional phase: it has taken steps away from the most extreme form of substituted decision-making (plenary guardianship) but has yet to put in place new supported decision-making models envisioned by Article 12 of the CRPD.

Slovak law and policy formally recognize that any intervention in an adult's legal capacity should be a last resort and as limited as possible. The reform to abolish full deprivation of capacity reflects the principle of **subsidiarity**, i.e. that guardianship should only be used when absolutely necessary for the person's protection. The Civil Code (Article 10) and the new procedural rules require courts to consider whether a person can make some decisions on their own; if so, a full surrogate decision-maker should not be imposed. In line with Council of Europe standards, a protective measure should "not result automatically in the complete removal of legal capacity", and any restriction must be shown necessary to safeguard the person. This implies that the individual's autonomy is to be preserved to the greatest extent possible. Guardianship (a form of substituted decision-making) is intended to be a measure of last resort after exploring less restrictive alternatives.

In practice, however, the subsidiarity principle faces challenges. Slovakia's current system still defaults to court-ordered guardianship for adults with intellectual or psychosocial impairments due to the lack of formal supported decision-making alternatives. NGOs have criticized that the law "*does not provide... any kind of alternatives to guardianship*" for persons with disabilities, meaning courts often have no option but to appoint a guardian if an adult is deemed unable to manage all affairs. This can lead to guardianship being applied even in cases where lighter support or intermittent help might suffice. The procedural law does oblige courts to involve the adult in the decision (by holding a hearing) and to tailor the order, which embodies subsidiarity on paper. Indeed, Article 243 of the Act on Non-Contentious Civil Procedure mandates that the court **hear and see** the person concerned before deciding on capacity, to gauge what assistance is truly needed. Substituted decision-making should thus only be ordered to the extent the person cannot be helped through other means.

Despite these safeguards, reports indicate that some courts do not rigorously apply the subsidiarity principle. The Commissioner for Persons with Disabilities has observed that judges sometimes continue to rely on old "standard procedures" and impose broad guardianships without fully considering the person's remaining abilities. In some proceedings, the

adult is not even present or heard – a practice the law technically allows if a hearing would harm the person’s health or if they are deemed unable to understand the proceedings. This exception has been overused to “*leave out*” the adult from the process based only on disability, undermining their right to be heard. Skipping the person’s testimony contradicts the spirit of subsidiarity (since it presumes incompetence rather than first seeking the person’s input) and violates procedural rights. Such instances show that while the legal framework aspires to prioritize autonomous decision-making and use guardianship only as a last resort, in practice substituted decision-making may still be applied too readily in Slovakia.

Slovak law embodies the principle of **proportionality** by requiring that any limitation of an adult’s legal capacity be tailored to their individual needs and circumstances. Instead of an all-or-nothing approach, courts must specify exactly which areas of life or legal acts an adult is unable to manage, and restrict capacity *only in those areas*. For example, a person might be restricted from managing large financial transactions or selling property, but remain legally capable in personal matters or daily transactions. This flexibility – effectively a spectrum between full autonomy and full guardianship – is built into the partial guardianship system. The 2016 reform reinforces proportionality: since outright deprivation is no longer permitted for new cases, every guardianship is by definition a limited one, calibrated to what the person cannot do on their own. Slovak courts are expected to craft guardianship orders that “recognise that different degrees of incapacity may exist and that incapacity may vary from time to time”, avoiding any more restriction than necessary. Moreover, the law provides that if the reasons for a capacity restriction change or cease, the court *shall* modify or cancel the guardianship order. This creates a legal safeguard that the measure should not be static if the person’s abilities improve.

Despite the legal provisions for proportionality, reports highlight shortcomings in how guardianship is implemented. The Commissioner’s Office and legal experts have noted that some courts issue overbroad guardianship orders that effectively strip a person of almost all decision-making power, differing little from the old plenary guardianship in outcome. For instance, there have been cases where an individual’s capacity was ostensibly “limited” but in fact the court removed every important right except perhaps a token allowance of minor expenditures (one order allowed the person only €25 per week at their own discretion). Such an order is *de facto* a full incapacitation under another name, and the Commissioner criticized it as an “absolute violation” of Article 12 CRPD

and of Slovak law's intent, which forbids complete deprivation. Furthermore, some judgments have even restricted personal rights that are not strictly legal acts – for example, deciding **who may visit the person or where the person will live** – far exceeding what proportional guardianship should cover. These practices indicate that not all judges are consistently applying the principle of tailoring support to actual needs. Additional safeguards like periodic reviews are not systematically mandated (there is no fixed review interval in the law), so an overly restrictive order can persist until someone challenges it. The result is that, while the legal framework allows for nuanced, proportional support, in practice there is variability and in some instances a failure to ensure the support is truly no more than necessary.

In Slovakia, an adult is presumed to have full legal capacity (*spôsobilosť na právne úkony*) upon reaching majority, meaning they can make binding decisions, contracts, marry, vote, etc. Being placed under guardianship – even a partial one – directly affects this legal capacity. If a court restricts a person's legal capacity in certain areas, the person is no longer legally empowered to act independently in those specified matters. Instead, their guardian (legal representative) must act on their behalf or give consent for the act to be valid. For example, if someone's capacity to handle finances is limited, any major contract they sign on their own (like a loan agreement) could be invalid without the guardian's approval. In essence, the guardianship order delineates a partial civil incapacitation: within its scope, the adult is treated by law as lacking capacity to act, while outside that scope the adult remains capable. Before 2016, courts could also totally deprive a person of legal capacity, rendering them akin to a minor in the eyes of the law. Such an individual would be unable to make any legal decisions – they could not marry, vote, work, buy or sell property, or even manage routine affairs without their guardian. Full deprivation thus had a sweeping effect: it “*entails serious consequences*” – the person loses independence in all legal spheres and “*numerous rights... are extinguished or restricted*” (as the European Court of Human Rights noted in criticizing this practice).

Since the 2016 procedural amendment, new guardianship measures do not completely remove legal capacity. This means the law now strives for partial restriction as the maximum, preserving the person's capacity in any areas not explicitly covered by the court's decision. For those under a partial guardianship, the effect on legal capacity is *limited to the extent of the court's order*. In areas not restricted, the adult remains free to make decisions and legal transactions as any other person. However, in the

restricted domains, the adult is essentially treated as legally incompetent, and the guardian's substituted decision is binding. Importantly, a person under guardianship may still lose certain civil rights as a collateral effect.

Slovakia's system is intended to provide individualized support through the tailoring of guardianship orders. By adjusting the scope of each person's capacity limitations, the court in effect creates a personalized regime – one person might only need help managing finances, another might need support in healthcare decisions, etc. This approach aims to match the measure to the *level of impairment* or the specific decision-making difficulties the adult faces. In practice, the quality of individualization depends on thorough assessments. The law requires expert input (usually medical/psychological evaluations) during guardianship proceedings to determine the person's functional abilities. Ideally, this results in tailor-made guardianship: e.g., an order might say the individual *cannot* sell real estate or take loans without the guardian, but *can* decide personal matters like daily purchases, residence, work, or medical consent if they have capacity in those areas. The positive aspect is that Slovakia no longer uses a one-size-fits-all incapacity status; it strives for case-by-case solutions within the guardianship model. Additionally, recent legal amendments have addressed conflict of interest issues to better protect individuals. For example, a 2020 change to the Social Services Act now prohibits social care institutions (or their employees) from being appointed as guardian for a person living in that same facility (unless the guardian is a family member). This prevents situations where a care home both cares for and legally controls a resident, a reform that encourages more independent support for the individual's welfare.

Despite these adjustments, Slovakia's available **protective measures** outside of guardianship remain limited. Other European countries have introduced alternatives like “support agreements,” “mentor” programs, or community-supported decision networks, but such mechanisms are not yet part of Slovak law. As noted by observers, Slovak legislation currently offers *no formal substitute* for guardianship such as assisted decision-making regimes. The main recourse for a vulnerable adult in need of help is still to have a guardian appointed (with all the implications for legal capacity discussed above).

On the social policy side, there have been efforts to provide more individualized support services for persons with disabilities (e.g. personal assistance, social work counseling), which can indirectly empower adults to make decisions. Governmental and non-governmental programs focus

on building skills and supporting community living, as part of a broader disability inclusion strategy. Yet these supportive services are not legally recognized as *decision-making supports*. The UN CRPD Committee in 2016 recommended that Slovakia develop “a range of supported decision-making alternatives” tailored to different needs and impairments. This could include mechanisms like co-decision-makers (where the person and supporter make joint decisions), peer support networks, or advance directives specifically for psychiatric care decisions. So far, such proposals remain aspirational. The “National Programme for the Development of Living Conditions for Persons with Disabilities” (a Slovak strategy document) has acknowledged the need to strengthen support for autonomy, but concrete legal tools are still forthcoming. Draft legislative proposals have been hinted at – for example, the Ministry of Justice was reportedly preparing a new law in 2020 to address decision-making support – but as of the latest reports, no new legal instrument has been adopted. In sum, while guardianship itself is more individualized than before, truly tailor-made solutions that empower the adult (rather than substitute for them) are still largely absent. The protective measures available remain centered on guardianship, with incremental improvements (like conflict-of-interest rules and oversight by the Commissioner’s office) helping to fine-tune the system rather than transform it.

A core paradigm shift under the CRPD is moving from a “*best interest*” standard – where decisions are made on behalf of an individual based on what others perceive as beneficial – to a “*will and preferences*” standard, which respects what the person *wants*, even if it entails some risk. Slovakia’s traditional guardianship model, like many others, was rooted in the best interest doctrine: a guardian is expected to act as a benevolent substitute, doing what they believe will protect the ward’s welfare. Slovak law (Civil Code and related regulations) historically instructed guardians to take care of the person and their property with diligence, implicitly following the person’s objective interests. There has not yet been a wholesale reform to rewrite these duties in CRPD terms. Thus, in practice, many guardians and courts still operate on a paternalistic approach. The Commissioner for Persons with Disabilities noted that “*historical paternalism persists*” in the court system – meaning a “*cautious, protective decision-making*” mentality where protecting the person (sometimes against their wishes) is the priority. This suggests that the will and preferences of persons under guardianship are not always given primacy. For example, if an adult under guardianship expresses a

desire to live independently or manage some money, a guardian or judge might override that if they believe it's not in the person's best interest (for safety or health reasons).

There are some legal provisions aimed at incorporating the person's perspective. As mentioned, during the guardianship appointment process, the court should hear the adult's own testimony (health permitting) and consider their opinions. The absence of the person's will from the process was a past problem – it was legal to dispense with the individual's hearing, and indeed this often happened, effectively silencing the person. The new procedures attempt to correct that: Article 243 of the Non-Contentious Procedure Act requires that the person be seen and heard by the judge (and if the person cannot come to court, the judge or a commissioner should visit them). This is meant to ensure the person's will and preferences are at least ascertained at the outset. Furthermore, the adult has the right to propose who could be their guardian or to object to a particular guardian, and courts generally give weight to these wishes when appointing someone. Once a guardian is in place, however, Slovak law does not explicitly mandate that guardian to abide by the ward's wishes in every decision. There is an expectation of care and respect, but the legal standard is still oriented toward the ward's objective welfare. There is no requirement similar to some other jurisdictions where guardians must substitute the person's judgment (i.e. decide as the person would have decided if capable).

There are signs of gradual movement towards respecting individuals' choices. For instance, the Civil Code was amended (as part of the 2016 changes) to remove certain automatic consequences of incapacity – for example, the act of being under guardianship no longer automatically means one cannot make a will or decide on medical procedures, if at the moment of the decision they have the capacity to understand it. This reflects the idea that even people under protection might have lucid intervals or areas in which they can express a valid preference. Additionally, guardianship orders can be crafted to leave personal decisions (like daily living arrangements or relationships) to the person, unless absolutely necessary to interfere. In practice, though, the Commissioner's 2020 report gives examples where courts did the opposite – even dictating personal life choices such as who may visit the individual or where they live, without consulting the person's wishes. Such practices starkly conflict with the CRPD approach. The UN Committee in its review urged Slovakia to move decisively away from best-interest substituted decisions and to *“respect the will and preferences of the individual”*

through supported decision-making. At the moment, Slovakia has not enshrined this principle in legislation; it remains more of an aspirational standard promoted by disability advocates.

Importantly, being under guardianship in Slovakia does not entirely remove the person from participating in decisions affecting them. A guardian is generally expected to inform the person about decisions and involve them as much as possible, though this is guided by good practice rather than black-letter law. In medical treatment, for example, doctors will often seek the patient's assent even if legally the guardian's consent is required. The *will and preference* model would demand that the guardian's decision reflect what the person wants (to the extent it can be known), not just what the guardian or court thinks is best. While not explicitly codified, there is growing awareness. Training sessions for judges and guardians in Slovakia increasingly reference CRPD principles, encouraging them to take into account the person's own wishes. Some progressive court rulings have cited the CRPD to justify giving a person more say. Still, the predominant framework is best-interest driven. In summary, Slovakia has not yet fully shifted from the best interest model to a will-and-preferences model in practice. Legal reforms have started to open the space for the person's voice (e.g. mandatory hearing) but ensuring that vulnerable adults drive decisions about their lives remains an ongoing challenge. International bodies continue to press for this cultural change towards supported decision-making that honors the individual's will.

Slovakia's guardianship and legal capacity system has faced pointed criticism from domestic and international observers. Disability rights NGOs and the national human rights institution have long argued that the framework falls short of CRPD requirements. Key critiques include: the absence of alternative support measures (meaning guardianship is the only solution offered); insufficient involvement of the person concerned in court processes; and lack of periodic review or sunset clauses for guardianship orders (which can result in lifelong restrictions without reevaluation). Tens of thousands of people remain in legal limbo under outdated plenary guardianships. The Slovak Constitutional Court itself, in earlier judgments, criticized full incapacitation as a "*relic of the old regime*" and urged the legislature to seek inspiration from countries that recognize only restricted capacity and prioritize less intrusive measures. One of the most significant challenges is the implementation gap. Even where laws exist to safeguard rights (e.g. the requirement to hear the person, or to limit capacity only as necessary), these are not uniformly

followed. The Office of the Commissioner for Persons with Disabilities, established in 2015 as an independent monitoring body, has reported numerous “*bad practices*” by courts. Examples include judges effectively stripping someone of capacity by over-broad limitations, or rejecting a person’s request to regain capacity without even listening to them. In one case, a woman’s capacity was limited so extensively at her daughter’s request that she was “de facto deprived” of legal capacity; when the woman sought to have her capacity restored, the court refused to hear her and dismissed her petition, until the Commissioner’s Office intervened on appeal. Such cases underline a persistent paternalistic mindset and lack of adherence to procedural safeguards. Another issue is the heavy reliance on medical expertise in these cases – courts often accept expert psychiatric opinions at face value, even if the examination was perfunctory or done in the presence of interested parties, which can bias outcomes. Without probing these expert reports or considering social supports that might enable the person to cope, judges may err on the side of unnecessary restriction, erring towards caution (protection) rather than autonomy.

On a policy level, there have been discussions and commitments to further reform, but progress is slow. In its 2016 Concluding Observations, the CRPD Committee gave Slovakia a clear roadmap: “*repeal section 10(1) and 10(2) of the Civil Code*” (the provisions allowing deprivation and restriction of capacity) and replace substituted decision-making with supported decision-making arrangements. This has yet to be realized. The government that took office in 2020 acknowledged the issue – the Government Manifesto for 2020–2024 included a pledge to prepare legislation aligned with Article 12 of the CRPD, indicating intent to introduce supported decision-making or at least improve the guardianship system. The Ministry of Justice was reportedly drafting a new law on legal capacity and support for decision-making in 2020, with input from disability advocacy groups. However, as of the latest information (2021–2022), that draft had not been adopted or publicly debated, suggesting it may have stalled or is still under revision. Stakeholders like the Slovak Disability Council and the Commissioner’s Office continue to push for this reform to be brought to Parliament. Resistance to change comes partly from practical and cultural factors. Some professionals fear that abolishing guardianship outright could leave certain individuals vulnerable or that supported decision-making is too undefined to implement effectively. There may also be inertia in the judiciary – judges and lawyers accustomed to the old system might be wary of new approaches. Resource constraints are another issue: establishing a

supported decision-making regime would require training guardians or supporters, potentially creating new support services, and monitoring mechanisms – all of which need funding and political will. Moreover, the backlog of existing cases (those 16,000+ people under plenary guardianship) presents a daunting administrative task if each must be reviewed and adjusted individually. The Commissioner for Persons with Disabilities has advocated for a systematic review of these cases, possibly via legislative mandate, but so far courts address them only if a request is made

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;**
- b. protection during a procedure resulting in the application, alteration or termination of adult support measures;**
- c. protection during the operation of adult support measures:**
 - protection of the vulnerable adult against his/her own acts;**
 - protection of the vulnerable adult against conflict of interests, abuse or neglect by the representative/supporting person;**
 - protection of the vulnerable adult against conflict of interests, abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions;**
 - protection of the privacy of the vulnerable adult.**

a. Protection During Legal Capacity Proceedings

- Safeguards in Deprivation, Limitation, and Restoration of Capacity:** Slovak law historically allowed courts to deprive or restrict an adult's legal capacity (under Section 10 of the Civil Code) based on mental disability. In 2016, however, Slovakia abolished full deprivation of legal capacity – courts may now only restrict legal capacity, and must specify the extent of the restriction in the decision. This reform, introduced by the Act No. 161/2015 Coll. on Non-Contentious Civil Procedure, was driven by human rights concerns (ECHR case law and the UN CRPD). If a person's condition improves or the reasons for limitation cease, the court is obliged to change or cancel the restriction – effectively restoring legal capacity. The law allows the individual, their close persons, or any person with a legal interest

(including care providers) to petition the court for restoration or adjustment of legal capacity. (No automatic periodic review is mandated, so older cases of full deprivation remain in effect until someone initiates a change, a noted gap affecting over 16,000 individuals deprived before 2016.) Guardianship and capacity limitations are recognized as serious interferences with fundamental rights – Slovak courts have emphasized that such measures profoundly affect personal autonomy, privacy, and freedom, and thus must be used only when truly necessary.

- **Procedural Protections in Capacity Proceedings:** Legal capacity cases are conducted as non-contentious (inquisitorial) proceedings, meaning the court has a duty to actively investigate and protect the individual's rights. The court must ascertain all relevant facts *ex officio*, not just rely on parties' submissions. By law, the adult concerned has the right to be heard and seen by the court. Article 243 of the Non-Contentious Civil Procedure Act requires that the person be personally heard and even visited if needed (e.g. the judge should see the individual in their residence or facility). Failing to hear the person violates the law, yet the Commissioner for Persons with Disabilities found that some courts still made decisions *in absentia* of the person, even restricting basic personal rights, which is contrary to the statute. The individual is also entitled to appeal any decision limiting their capacity, like any party to civil proceedings. In practice, appeals and even constitutional complaints have been used to overturn unjustified capacity restrictions. Courts are expected to handle these cases expediently; excessively long guardianship proceedings have been deemed a violation of the right to a fair trial. For example, in *Matter v. Slovakia* (1999) the European Court of Human Rights found a breach where a capacity/guardianship case dragged on for over 7 years.
- **Role of Medical and Expert Assessments:** Medical expert evidence is a cornerstone of capacity proceedings. Courts will only consider restricting capacity if a permanent mental disorder or serious condition is documented. Typically, a psychiatric expert's assessment is required to diagnose the mental condition and evaluate the person's decision-making abilities. However, Slovak law cautions against uncritical reliance on a single expert's opinion. Article 244 of the Non-Contentious Civil Procedure Act mandates that the court examine the expert (not just accept a written report) and weigh expert conclusions alongside other evidence. Case law underscores that a

medical diagnosis itself is not sufficient grounds for incapacity – the court must find that the illness *actually impairs* the person’s ability to manage specific affairs. In a 2019 decision, the Nitra Regional Court stressed that even a permanent mental illness “*does not automatically constitute a reason*” for limiting capacity; judges must conduct a comprehensive assessment of the person’s social and economic functioning, not merely the medical label. These safeguards aim to prevent overly broad or medically unwarranted restrictions. Nonetheless, the Commissioner’s 2020 report noted problems in practice: experts sometimes spend only minutes with the individual and rely mainly on medical files, often in the presence of family members (which can bias the evaluation). Such practices undermine the intent of rigorous, independent expert review, and the Commissioner has called for improvements in the quality and objectivity of expert assessments.

- **Legal Representation and Advocacy:** During incapacity proceedings, the vulnerable adult must have adequate representation to safeguard their interests. If the person has no attorney, the court will appoint a guardian ad litem (procedural guardian) to represent them in the case. In practice, courts often appointed a family member who filed the incapacity petition as this procedural guardian, effectively letting the would-be guardian represent the adult’s interests – a clear conflict of interest. The Commissioner’s Office has criticized this practice, and reforms have been made to curb it. Notably, a recent amendment to the Social Services Act (Act No. 448/2008 Coll.) forbids social care institutions or their employees from acting as guardian for a resident in their facility (unless the employee is a close relative of the person). This prevents a care home from both controlling a person’s residence and legally representing them, addressing a major conflict of interest. The law guarantees the adult’s right to counsel as well – they may hire their own lawyer, and those who cannot afford one are eligible for free legal aid in guardianship matters. In fact, the Centre for Legal Aid (a state legal aid agency) has been involved in capacity cases – for instance, it assisted an individual in petitioning to regain capacity, and also (in a controversial case) sought to limit a person’s capacity who was abusing legal aid services. Additionally, since 2016 Slovakia has an independent Commissioner for Persons with Disabilities (appointed under Act No. 176/2015 Coll.) who can monitor proceedings and even join court cases to support the rights of persons with disabilities. The Commissioner’s Office often acts as an

advocate or amicus: for example, it has intervened in cases to ensure the court considers the person's wishes. However, courts have sometimes resisted the Office's participation on technical grounds (one court argued it needed the incapacitated person's consent for the Commissioner to intervene – an irony given the person's limited capacity). Overall, the system tries to ensure that a vulnerable adult in court is not without a voice, either through a representative or by the judge taking special care to hear from the person directly. Recent court decisions show increasing sensitivity to the person's own perspective and rights in these proceedings.

b. Protection in Applying, Changing, or Ending Adult Support Measures

- Least Restrictive Measure Principle: Slovak courts are obliged to apply the mildest form of assistance needed, and to limit an adult's legal capacity only as a last resort. The law (as interpreted post-2016) requires that any restriction of capacity be proportional and necessary, tailored to the individual's actual abilities. In practice, this means the court should explore alternatives before imposing guardianship. For instance, if a person's needs can be met by a supportive guardian without removing legal capacity, that route should be taken. (Under Article 29 of the Civil Code, a court may appoint a guardian or curator for an adult to assist in specific matters without declaring the person legally incapable. Courts and scholars see this as a preferable option to formal capacity limitation whenever feasible.) A 2020 appellate ruling underscored that capacity restriction must follow only after exhausting all less restrictive measures or when other measures are impossible. In that case, a father petitioned to limit his adult son's capacity due to the son's refusal of medical treatment; the court rejected the petition, noting that if the son's health was at risk, medical law mechanisms (involuntary treatment or hospitalization under strict conditions) could address the issue without stripping legal autonomy. This exemplifies courts' growing insistence on using targeted interventions (e.g. healthcare decisions or financial management assistance) rather than global guardianship if a specific problem can be solved in a narrower way. Moreover, when a court does impose a guardianship measure, it must delineate the exact scope of the guardian's powers – for example, limiting the guardian's authority to financial transactions above a certain value, while leaving the adult free to handle daily expenses. Blanket or "full" limitations (where a person is only allowed trivial acts like spending a small weekly allowance) are viewed as incompatible with the new law and Article

12 of the CRPD. In summary, both the legislation and recent case law demand a case-by-case, minimal interference approach to adult support measures.

- **Safeguards in Guardianship Appointments:** When appointing a guardian or support person, the court must ensure that person is suitable and acts in the adult's best interest. Typically, priority is given to a close family member or someone who knows the adult, provided no conflict of interest exists. The court's selection isn't simply a formality; the proposed guardian is vetted and must consent to the role. Recent reforms explicitly address conflicts: as noted, staff of care facilities can no longer serve as guardians for their clients, eliminating a scenario that previously led to grave conflicts of interest (where an institution could both control a person's living situation and make decisions on their behalf). The guardian's duties are established by law – they must act with due care, manage the adult's affairs prudently, and preserve the adult's rights and autonomy as much as possible. In fact, the Civil Code and related regulations require that a guardian promote the well-being of the ward and not override their will without due cause. Guardians may be required to take an oath and are informed of their legal responsibilities when appointed. Importantly, the court order establishing the guardianship will list the areas of decision-making entrusted to the guardian and those retained by the adult. Any decision beyond the guardian's authorized scope is invalid without further court approval. For example, a guardian usually cannot dispose of the adult's property (such as selling a house) or commit the adult to a long-term care facility without obtaining separate court consent, ensuring judicial oversight of major life decisions – this acts as a check against misuse of powers. Furthermore, the law now favors supported decision-making concepts: while Slovakia has not yet created a full supported-decision-making regime, the Ministry of Justice has indicated that the upcoming Civil Code recodification will introduce more progressive support measures (allowing adults under guardianship to formally express their wishes to the court, etc.). This is expected to strengthen the autonomy of vulnerable adults during guardianship appointments by giving legal weight to their preferences in the process.
- **Modification and Termination of Guardianship:** All guardianship and capacity-limitation orders are subject to change if circumstances evolve. Slovak law provides that the court “shall modify or quash” a decision on capacity restriction when the reasons for it have changed

or vanished. In practice, this means a guardianship is not necessarily lifelong – if an adult’s condition improves or they develop skills/resources to manage their affairs, the court can restore their full legal capacity. The individual under guardianship has the right to petition for a review of their status. Even under the older law, a person deprived of capacity (or any interested party) could initiate proceedings to regain it. Today, with only partial restrictions used, the adult can more readily approach the court (often with the help of their guardian, family, an NGO, or the legal aid centre). There is evidence of people successfully regaining capacity: for example, the Commissioner for Disabilities’ 2020 report highlights a case where an individual who had long been under guardianship due to alcoholism and debt worked with support organizations to clear his debts and then petitioned for restoration of legal capacity, which the court granted. Upon restoring his capacity, the court converted his arrangement to a less-intrusive measure – appointing a guardian *only for certain decisions* (healthcare supervision), while otherwise recognizing him as fully capable. This kind of outcome is considered a best practice. Nonetheless, one shortcoming is the lack of automatic periodic review in the law: unlike some jurisdictions, Slovakia does not mandate that every guardianship be revisited after a set period (e.g. every 5 years). Thus, the onus is on the adult or someone on their behalf to request modification. Many guardianships can continue indefinitely if unchallenged, even if the person’s capacity has improved. The Constitutional Court of Slovakia has urged lower courts to be vigilant in this regard. In a 2018 decision, it approved a lower court’s refusal to prolong a guardianship for an individual whose condition (internet addiction and behavioral issues) did not meet the legal threshold of permanent mental illness – emphasizing that bizarre or undesirable behavior alone is not a justification to maintain a guardianship and that courts must be convinced the legal criteria (like a permanent incapacity) are met to uphold any restriction. This stance reinforces that guardianships should be terminated when unwarranted. In sum, while the legal mechanism to end or adjust support measures exists and has been used (with courts increasingly receptive to restoration of rights), it largely relies on initiative by the individuals concerned or their advocates, which is an area identified for improvement (plans for the new Civil Code include enabling adults under guardianship to more easily signal their will to the court).

- **Preventing Abuse and Ensuring Accountability:** To prevent misuse of guardianship powers, Slovak law builds in several oversight mechanisms. Guardians are generally required to report periodically to the court (or a supervisory authority) on the personal and financial status of the vulnerable adult. For instance, a guardian may need to submit annual reports of income and expenses or updates on the ward's living conditions. The law (Civil Code and civil procedure rules) authorizes courts to demand such reports and to conduct inspections. In practice, this has been inconsistently enforced – the Commissioner's Office observed that *“not all courts require guardians to report on how the protected person is doing and under what conditions they live,”* although such oversight is recommended. If a guardian is found to be neglecting their duties or abusing their powers (for example, mismanaging funds, or not caring for the ward's needs), the court can remove or replace the guardian. The ward themselves, family members, or even social services can notify the court of a guardian's misconduct. Moreover, any interested person can lodge a complaint with the public prosecutor, who has the authority to initiate a review of the guardianship in the court's name. There are also criminal law protections: exploiting a person under one's guardianship could amount to criminal breach of trust or abuse of a vulnerable person, carrying legal penalties. Recent legislative tweaks address specific abuse scenarios – as noted, care institutions cannot be guardians of their clients due to the inherent conflict of interest. This came after concerns that some facilities acting as guardians were making decisions to keep individuals institutionalized for the facility's financial benefit. Now, if no suitable private guardian is available, usually a municipal authority or social services office is appointed rather than the facility itself, to ensure independent oversight. The “weaker party” principle is increasingly evident in court decisions: judges explicitly refer to the need to protect the fundamental rights of the person under guardianship and to scrutinize the guardian's actions against that standard. All these measures aim to create a system where guardianship is not a license for exploitation, but a carefully monitored service to the adult's benefit. Challenges remain (e.g. varying diligence in oversight by different courts), but ongoing reforms and training of judges/guardians are working to close the gaps.
- **Challenging or Modifying the Protective Status:** Slovakia's legal framework allows a relatively straightforward process for an adult to

challenge a guardianship or request changes, at least on paper. The person under guardianship (even if formerly fully deprived of capacity) has standing to apply to the court for restoration of capacity or a change in the guardian/measure. In addition, close relatives, the guardian, or authorities (like a social services agency or prosecutor) may also trigger a review. There is no limit on how frequently such requests can be made, though repetitive or obviously unfounded motions can be dismissed. If a guardian or a particular support arrangement is not working in the adult's interest, one can motion for a different guardian or a narrower scope of powers. For example, if an adult feels their guardian is too restrictive, they could present evidence to the court and ask for a modification (perhaps allowing them more independence in certain areas). Courts have to examine these requests conscientiously – failing to do so could violate the person's right to due process. In one illustrative case, an individual under guardianship repeatedly sought free legal aid to challenge his status; rather than silencing him, the courts affirmed that even difficult or abusive behavior by a ward is not a ground to deny them access to justice or to summarily continue the guardianship. In fact, the appellate court in that scenario highlighted that curtailing someone's legal actions via guardianship because they inconvenience authorities is illegal and contrary to democratic principles. This underscores that the system, when functioning properly, lets the adult be heard and contest decisions about their life. One issue has been that if a person lacks litigation capacity, their *procedural guardian* (often the very guardian whose powers might be challenged) would formally represent them, which is a clear conflict. The anticipated Civil Code reform aims to solve this by enabling adults under guardianship to directly address the court with their wishes (perhaps through a simple declaration of will) without full reliance on their guardian's intermediation. Additionally, the Commissioner for Persons with Disabilities and various NGOs provide support by advising individuals of their rights and in some cases helping draft motions to court. Overall, while more can be done to simplify the process, a vulnerable adult in Slovakia does have legal avenues to challenge or adjust their protective measures, and recent trends show courts becoming more receptive to such challenges in light of constitutional and human rights standards.

c. Protection During the Operation of Adult Support Measures

- **Protection Against Harmful Acts by the Individual:** Once a support measure (like a guardianship or partial capacity restriction) is in place, it serves to shield the adult from the legal consequences of potentially harmful decisions. In practical terms, if an adult under limited capacity tries to perform a legal act that they don't fully understand (say, selling property or borrowing a large sum), the law will likely render that act invalid or voidable unless the guardian approved it. Any contract or obligation entered into by a person beyond the scope of their legal capacity can be cancelled by the guardian or nullified by the court. This prevents exploitation, as third parties know they cannot legally bind a person who lacks capacity for that type of transaction. For day-to-day decisions, a good guardian will discuss choices with the adult and help guide them away from self-harm. For instance, a guardian managing finances will ensure the adult has money for living needs but not allow ruinous spending or someone swindling them. In the personal sphere, guardianship can protect health and safety: if the adult is inclined to refuse necessary medical care or lives in unsanitary conditions, the guardian can intervene – arranging doctor's visits, consenting to treatment on the adult's behalf, or improving their living environment. It's important to note that guardianship is not meant to be a punitive or overly controlling measure; the adult retains as much autonomy as the court order allows. Some court judgments have criticized guardianship arrangements that went so far as to dictate non-legal personal matters (for example, who the ward can socialize with or where they can live) . Such overreach is considered an abuse of the system – the goal is to protect, not needlessly limit personal freedom. If an adult's own decision poses imminent serious harm (e.g. life-threatening refusal of treatment or risk of suicide), Slovak law provides separate interventions like emergency healthcare placement or psychiatric committal under court supervision (Articles 252–271 of the Non-Contentious Civil Procedure Act). Those measures can be used instead of expanding a guardianship's scope, ensuring that the response is appropriately targeted. In summary, the support system strives to create a safety net: the adult is protected from their potentially harmful acts by requiring guardian consent for significant decisions, but is otherwise encouraged to make everyday choices to the extent of their ability. The balance is delicate – leaning too far can infringe rights, too little can leave the person vulnerable – hence the emphasis on tailoring each guardianship to the person's actual needs.

- Preventing Abuse, Neglect, or Conflicts of Interest by Guardians: Once a guardian is appointed, they wield considerable power over the vulnerable adult's affairs, so oversight and accountability are critical. Slovak law tasks the guardianship court with ongoing supervision. Guardians may be required to periodically render accounts of financial management (showing income, expenses, and asset status of the ward) and to report on the ward's living conditions and care. If a guardian fails to submit reports or if the report raises concerns, the court can summon the guardian for an explanation or conduct its own inquiry (sometimes involving social workers). In cases of suspected neglect or abuse (for example, the guardian not visiting the ward or misusing funds), family members or care professionals can inform the court or the prosecutor's office. The court has authority to remove a guardian who breaches their duties or is found to have a conflict of interest, and then appoint a new guardian. A notable reform addressing conflict of interest is the prohibition on guardians who are also service providers to the ward. This was implemented after it was found that some social care homes, when acting as guardians, tended to keep individuals institutionalized or made decisions for the institution's convenience. Now, an employee of a facility can only be a guardian if they are a close relative of the person, otherwise an outside guardian must be found. This separation helps ensure the guardian can objectively stand up for the person's best interests – even if that means moving them out of the facility. Additionally, guardians are expected to maintain regular personal contact with the ward. While not always codified, it is implied in the duty of care. Neglecting the ward (failing to check on their wellbeing or to involve them in decisions) could be grounds for replacement. To further guard against abuse, certain decisions of a guardian require advance court approval: for example, selling real estate, taking out a loan on behalf of the ward, or any act that fundamentally changes the ward's property status typically needs a judge's review and approval. This ensures a second pair of eyes on major transactions, often with input from experts (valuators, etc.) to confirm that the act is in the ward's interest. Beyond the courts, Slovakia has instituted additional watchdogs: the Commissioner for Persons with Disabilities can receive complaints about guardians and investigate. Though the Commissioner cannot directly overturn a court's decision, her office can facilitate bringing issues to the court's attention or assist the ward in legal actions. There's also the general Ombudsman (Public

Defender of Rights) who monitors human rights in facilities and can review if a public authority (including courts or social services) might be violating someone's rights under guardianship. These institutional safeguards – combined with the legal duties imposed on guardians – form a framework intended to catch and correct any abuse or neglect in the operation of adult support measures. As a result, while instances of guardians misusing their authority have occurred, there are mechanisms to address them, and recent policy has been to tighten those controls even further.

- **Protecting Autonomy in Institutional Care:** Many vulnerable adults in Slovakia reside in residential care facilities (social care homes, psychiatric hospitals, etc.). The legal system recognizes that entering an institution can further diminish personal autonomy, so several protections are in place to guard residents' rights. First, admission to a facility is typically voluntary or consented to by the person or their guardian. If an adult is under guardianship and the guardian believes placement in a care home is necessary, the guardian's consent can authorize it – but if the adult opposes the placement, it can become a legal issue. Involuntary confinement for treatment (e.g. psychiatric commitment) requires a separate judicial process with strict time limits and reviews (under the NCPC, a court hearing must occur within a short period of any involuntary hospitalization). For social care (non-medical) institutions, if a person does not consent and is not under an order, keeping them would violate their liberty rights. Thus, in theory, a guardian cannot simply “warehouse” someone in a home against their active will without court involvement. Once in a facility, the Social Services Act (Act No. 448/2008) delineates the rights of social service recipients. These include the right to dignity, privacy, and self-determination in daily life. Residents have the right to communicate freely (to send and receive mail, use the phone, receive visitors) and to participate in decisions about their daily routine and care plan. Any restrictions (for example, limitations on leaving the facility for a person with severe cognitive impairment) must be tailored to safety needs and often documented in the care plan, subject to oversight. Institutions are required to respect residents' personal liberty to the greatest extent compatible with their health – they cannot lock someone up or restrain them except in emergency situations governed by law (and even then, use of restraints or seclusion is regulated and monitored). The autonomy of an individual in a facility is also protected by external monitoring: the

Commissioner for Disabilities and the Ombudsman conduct monitoring visits to residential facilities, where they speak directly with residents (even those under guardianship) to ensure their rights are respected. Any reports of abuse or excessive restrictions by an institution can lead to investigations or sanctions against the facility.

- **Privacy and Confidentiality:** Being under guardianship or living in a care setting does not strip a person of their right to privacy. The Slovak Constitution (Article 16 and 19) guarantees the inviolability of person and privacy of personal life, and these rights apply equally to people with limited legal capacity. In practical terms, a vulnerable adult's financial, medical, and personal information is protected by confidentiality laws. Guardians, as fiduciaries, are expected to keep the ward's affairs confidential – they should not disclose the person's private information (health status, financial details, etc.) except as needed to fulfill their duties or as required by law. For example, a guardian will share the ward's medical information with a doctor but cannot freely publish or mis-use that information. Medical confidentiality is codified in healthcare laws: doctors can generally only share a patient's health data with the patient or their legal representative. If an adult has a guardian for healthcare decisions, the guardian can access medical records and consult with doctors, but the duty of medical secrecy otherwise remains – unauthorized parties (including family members who are not guardians) cannot access that information without consent. Financial privacy is similarly guarded: banks and institutions will usually only release an incapacitated person's account details to the court-appointed guardian (or the person themselves, if they retain some rights), and even then, the guardian must use that information solely for managing the person's finances. The Personal Data Protection Act (Slovakia's implementation of the EU GDPR) also classifies health and disability status as sensitive personal data, which must be handled with a high level of protection. This means care homes, hospitals, and guardians must ensure that personal data of vulnerable adults is not leaked or misused; violations can result in penalties. In residential facilities, the right to privacy also means the person should have privacy in their living space and communications. Staff should knock before entering rooms, respect the person's private correspondence, and allow intimate relationships or visits within the bounds of decency and the person's wishes. Some older practices (like reading a resident's mail or not permitting a married couple to live together in a facility) would

violate current standards and likely draw legal action. Additionally, the court proceedings concerning an adult's capacity are typically not public, to protect the individual's privacy. Case files and judgments in guardianship cases are confidential, accessible only to parties and those with a legitimate interest. Overall, Slovakia's legal framework aligns with the principle that vulnerable adults enjoy the same privacy rights as others. The challenge is ensuring these rights are upheld in day-to-day practice. Courts have noted that even if an adult's behavior is odd or they make unconventional choices, this alone does not justify intrusive state interference – the sanctity of private life must be maintained. In fact, respecting a person's privacy and personal will is seen as part of treating them with dignity. Therefore, any support measure must be conducted in a manner that minimizes intrusion into the person's private matters, consistent with safeguarding their welfare.

d. Case Law

Slovak case law in recent years reflects both the successes and shortcomings of the system in protecting vulnerable adults. Here are a few notable examples and developments:

- **Courts Enforcing Least Restrictive Measures:** In May 2020, the Regional Court in Košice set a significant precedent by denying a father's request for an urgent guardianship order against his adult son. The father was worried because the son, who has a psychosocial disability, refused certain medical treatment. The first-instance court refused to limit the son's legal capacity, and the appellate court upheld that decision. The appellate judgment recognized that *"restriction of legal capacity is a dangerous interference with personal and property autonomy... and thus a significant interference with fundamental human rights,"* citing the Slovak Constitution (Articles 14, 16, 19) and Article 8 ECHR and Article 12 CRPD in support. The court noted that alternative solutions were available – specifically, the law on healthcare allows involuntary hospitalization/treatment in extreme cases – making guardianship unnecessary. It held that only after all less repressive measures are exhausted should a court consider restricting capacity, firmly establishing the principle of necessity and subsidiarity in Slovak jurisprudence. This case is viewed as a success in protecting the rights of the vulnerable adult (the son), as the courts protected him from an undue loss of autonomy and encouraged using a targeted solution to the immediate problem.

- **Guardianship Not to Silence or Punish:** Another 2020 case involved the Center for Legal Aid itself petitioning to limit the capacity of a man (identified as F.D.) who was excessively filing frivolous legal aid requests and court submissions. The man inundated courts and offices with repeated, baseless filings, causing significant burden. The lower court terminated the proceedings, effectively refusing to impose guardianship as a means to stop the man’s litigious behavior, and the Regional Court in Nitra agreed. The appellate court emphasized that a guardianship’s purpose is to protect those who cannot control their actions or understand consequences – not to restrict someone’s rights as a punitive measure. It declared that the mere fact someone abuses legal processes or behaves erratically is not a lawful reason to remove their legal agency. Notably, the court stated *“restricting the right of access to [authorities] and courts only because of an abusive approach should always be considered illegal and contrary to the principles of democracy and the rule of law.”*. This is a powerful affirmation that guardianship cannot be misused to curb a person’s civic rights (like the right to petition courts) even if their actions are inconvenient. The outcome protected the individual’s legal personhood and underscored judicial integrity in upholding rights.
- **Higher Courts Setting Standards:** The Nitra Regional Court in 2019 issued guidance on how trials for capacity limitation should be conducted, which has been influential. In that case, the court spelled out that a valid ground for limiting capacity must *“preclude performing specific legal acts”* – it’s not enough that a person has a diagnosis or a general disability. The judges insisted on an *individualized assessment*: the court must hear the person concerned, consider their social/family circumstances, and not rely solely on an expert’s opinion. This ruling has been cited to remind first-instance courts of the proper procedure (for example, that the expert psychiatrist’s conclusions should be weighed along with testimony from the person and family, and that the judge should ideally meet the person face-to-face). It effectively aligns practice with the procedural safeguards in the 2016 Non-Contentious Procedure Act. By documenting this in a published decision, the Regional Court provided a template for best practices – a success in terms of clarifying how to protect vulnerable adults’ rights during proceedings.
- **Constitutional Court Interventions:** The Constitutional Court of the Slovak Republic has also been active in guardianship matters. A

landmark decision came in March 2018 (case IV. ÚS 220/2018), where the Constitutional Court reviewed a situation from Ružomberok District Court. The lower court had refused to either deprive or restrict a woman's legal capacity, despite her family's concerns about her mental health, reasoning that her issues (described as dependency on virtual online relationships and a mixed personality disorder) did not amount to a permanent mental illness warranting incapacity. The family complained, but the Constitutional Court upheld the lower courts' refusal, stating that their conclusion was constitutionally sound. The Constitutional Court agreed there was *"no proof of even the minimum legal requirement"* for limitation – the condition was not permanent and, moreover, odd or immoral behavior by itself (the woman's online activities) *"does not justify the court interfering with one of the most fundamental rights – legal capacity"*, which enjoys protection under the EU Charter of Fundamental Rights. This case is often cited as a successful protection of individual rights: it prevented an unnecessary guardianship and reinforced the high threshold needed to take away autonomy. It also signals to all courts that guardianship is an absolute last resort, never to be used simply because someone's lifestyle is unconventional or disagreeable.

- Persistence of Challenges (Real-World Gaps): Despite these positive examples, there have been instances showcasing failures or gaps in the system. The Commissioner for Persons with Disabilities, in her oversight role, has documented cases where courts fell short of the legal standards. For example, in her 2020 annual report, the Commissioner noted situations where a court effectively gave a guardian full control over a person as if they were totally deprived of capacity, aside from a meager weekly allowance for the person – directly contradicting the intent of the 2016 reforms and Article 12 CRPD. In some proceedings, judges did not personally interview the person in question, nor did they update medical evidence, even though Article 243 of the procedure code requires seeing and hearing the individual. These oversights resulted in overly broad, paternalistic guardianships that the Commissioner deemed an "absolute violation" of the person's rights. Additionally, the Commissioner highlighted that many courts were too ready to accept expert psychiatric opinions without critical examination – a practice she described as "uncritical acceptance of expert opinions". In these cases, an expert's cursory evaluation (sometimes done with the family hovering, potentially

pressuring the individual) was treated as definitive, rather than one piece of evidence to be scrutinized. Such examples show that on the ground, some vulnerable adults have not been fully protected by the safeguards that exist on paper. The government and judiciary are actively addressing these issues through training and the ongoing Civil Code reform, but the uneven application of the law remains a reality that NGOs and oversight bodies are working to improve.

- **Successful Restoration and Empowerment Stories:** On a more optimistic note, Slovakia has seen guardianship used in a transitional and empowering way in some cases. The Commissioner’s 2020 report tells a “happy ending” story: A man who had been deprived of legal capacity for many years due to alcohol addiction and consequent debts was living in a social care facility. He expressed to the Commissioner’s staff his desire to regain independence. With assistance from the Commissioner’s Office and a personal bankruptcy procedure to clear his debts, he applied to court and in 2020 had his legal capacity fully restored. The court did appoint a guardian from the social services (in a supervisory role for healthcare decisions), but otherwise recognized him as capable of managing his life. Freed from the legal disabilities, the man was able to pursue employment – he fulfilled his dream of getting a job as a chief shepherd, moved into his own accommodation, and “found a new meaning in life”. This example illustrates the potential of the reformed system: with proper support (debt management, skills training) and willingness of the court to reverse an old guardianship, a previously “vulnerable” adult can reclaim full agency and reintegrate into society. It showcases a success in both the legal and social dimensions of protecting vulnerable adults: the law was responsive enough to remove an unnecessary restriction, and the social support measures were available to make that restoration viable.

Slovakia’s system for protecting vulnerable adults has undergone significant reform in recent years, moving away from outdated plenary guardianship toward a model emphasizing proportionality, oversight, and respect for the individual’s rights. Legal provisions in the Civil Code, Family Act, and new civil procedure rules establish safeguards at each stage – from court hearings to guardian supervision – largely in line with international standards. Recent and ongoing reforms (such as the planned Civil Code update) aim to fill remaining gaps, like introducing supported decision-making alternatives and ensuring every person under guardianship can directly exercise their rights. While challenges in implementation persist (as seen in

some court practices and the need to revisit legacy cases of full deprivation), Slovak courts and authorities are increasingly attentive to the balance between protection and autonomy. Case law demonstrates a trend of guarding fundamental rights: unnecessary or overly broad interventions are being struck down, and guardianship is more clearly viewed as a tool of last resort. The involvement of oversight institutions – from the Disability Commissioner’s Office to the judiciary’s self-correction via appeals – provides avenues to address failures when they occur. Slovakia’s system is steadily evolving, with stronger legal safeguards now in place during capacity proceedings, the structuring of guardianships, and their day-to-day operation, though continuous vigilance and reform are required to ensure that vulnerable adults are both protected *and* empowered under the law.