

# THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

## NORTH MACEDONIA

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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 Constitution of the Republic of North Macedonia (the Constitution) rests upon fundamental core values among which: appreciation of basic human rights recognized by ratified international treaties and the Constitution itself, as well as humanism, social justice and solidarity.<sup>1</sup> The Constitution also guarantees equality in rights and freedoms.<sup>2</sup> However, it only foresees a general clause on equality that does not mention disability as a grounds for discrimination. Each citizen over 18 years of age (the age of majority) gains the right to vote that is equal, general and imminent. However, the right to vote is not granted to persons deprived of legal capacity.<sup>3</sup> The Republic of North Macedonia (RNM) should provide special care and protection of the family (as a whole and to its individual members), but it provides only subsidiary because primary care belongs to family members (parents have rights and responsibilities to take care of their children and the other way around - children have responsibilities to take care of their old, ill and exhausted parents).<sup>4</sup>

The main national sources of law in the current North Macedonian's legal framework regarding legal protection measures to vulnerable adults are: the Law on Family (Family Law),<sup>5</sup> the Law on General Administrative Procedure<sup>6</sup>, the Law

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<sup>1</sup> The Constitution - Устав на Република Македонија, *Службен весник на Република Македонија* 52/2991 – пречистен текст до последни амандмани и објава во *Службен весник на Република Македонија* 36/2-19, art. 8.

<sup>2</sup> *Ibid* the Constitution, art. 9.

<sup>3</sup> *Ibid* the Constitution, art. 22.

<sup>4</sup> *Ibid* the Constitution, art. 40.

<sup>5</sup> Закон за семејството (Law on Family), *Службен весник на Република Македонија* 80/1992 - консолидиран текст.

<sup>6</sup> Закон за општата управна постапка, *Службен весник на Република Македонија* 124/2015.

on Non-contentious Procedure (Proceeding),<sup>7</sup> and only subsidiary, the Law on Civil Procedure (Proceeding).<sup>8</sup>

The Law on Family stipulates, in many instances, when a person deprived of legal capacity is not capable of performing. In that sense, a marriage cannot be concluded if a person cannot understand the meaning, rights and responsibilities that come along with marriage and is unable to reason.<sup>9</sup> A man can recognize his fatherhood with a child born outside of marriage only if he has at least limited legal capacity and is able to understand the meaning of the recognition.<sup>10</sup> Following such statement, the mother<sup>11</sup> can consent (agree to the recognition) only if she has full legal capacity. If that is not the case, the consent can be given by the child's guardian followed by an approval from the Centre for Social Services.<sup>12</sup> The child can also consent him/herself if he/she has reached 16 years of age.<sup>13</sup> A proceeding for contestation of paternity could only be initiated by persons with legal capacity. If that is not the case, they could be represented by their guardian.<sup>14</sup> The Law on Family stipulates that the parental right could be extended after the child reaches 18 years of age in case where the child is not capable of taking care of him/herself on his/her own.<sup>15</sup> This article is not aligned with the Law on Non-contentious Procedure<sup>16</sup> and the provisions on guardianship in the Law on Family<sup>17</sup> that stipulate that a person over 18 years that is not capable of taking care of his/her own rights and interests should have limited legal capacity or be deprived of legal capacity followed by an official appointment of guardian by the Centre for Social Services (the Centre). A person can adopt a child only if he/she has full legal, intellectual and physical capacity,<sup>18</sup> while a consent to adopt a child from his/her biological parents will not be needed if they lack legal capacity.<sup>19</sup>

The RNM has adopted a National Strategy for Rights of Persons with Disability 2023-2030 with an Action Plan 2023-2026 in 2023.<sup>20</sup> The National Strategy stipulates that several laws have to change for the purpose of improving the services of persons with disability, including laws regulating elimination of

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<sup>7</sup> Закон за вонпарнична постапка, *Службен весник на Република Македонија* 79/2005, (пречистен текст) 09/2008 - [https://jpacademy.gov.mk/wp-content/uploads/2022/08/zakon\\_za\\_vonparicna\\_postapka.pdf](https://jpacademy.gov.mk/wp-content/uploads/2022/08/zakon_za_vonparicna_postapka.pdf).

<sup>8</sup> Закон за парничната постапка, *Службен весник на Република Македонија* 79/2005, (пречистен текст) 07/2011.

<sup>9</sup> *Op. cit.* Law on Family, art. 18.

<sup>10</sup> *Op. cit.* Law on Family, art. 55.

<sup>11</sup> The Law on Family follows the Roman Law's presumption that the mother is always certain, so her motherhood is established with her registration on the birth certificate as soon as she gives birth. On the contrary, if there is no marital union with the genetic father, his fatherhood may be established after his official recognition (in cases when the mother agrees), or in a judicial proceeding (in cases when the mother does not agree with the recognition).

<sup>12</sup> *Op. cit.* Law on Family, art. 56, par. 3.

<sup>13</sup> *Op. cit.* Law on Family, art. 57.

<sup>14</sup> *Op. cit.* Law on Family, art. 94.

<sup>15</sup> *Op. cit.* Law on Family, art. 64, par. 3 and art. 74.

<sup>16</sup> *Op. cit.* Закон за вонпарнична постапка, art. 34-57.

<sup>17</sup> *Op. cit.* Law on Family, art. 165-172.

<sup>18</sup> *Op. cit.* Law on Family, art. 100-a and 102-b, g and d.

<sup>19</sup> *Op. cit.* Law on Family, art. 103, par. 3.

<sup>20</sup> Национална стратегија за правата на лицата со попреченост 2023-2030 со акциски план 2023-2026, Влада на РСМ, Скопје, март, 2023.

discrimination, independence and autonomy in realization of their rights, as well as their better inclusion.<sup>21</sup>

The RNM has not signed and ratified the Hague Convention of International Protection of Adults but has signed and ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2011. Prior to that, there were some efforts to protect persons with disability in the framework of protection against discrimination.<sup>22</sup> Since then, several important efforts have been made to integrate persons with disabilities in the society. Firstly, a National Coordinative Body for Implementation of the Convention (CRPD) was founded as well as a Monitoring Team for Implementation of CRPD in the Department for Protection of Rights of Children and Persons with Disabilities at the Public Defender's Office.

A new Law on Prevention and Protection from Discrimination was passed in 2020.<sup>23</sup> The law defines persons with disabilities as those who have long lasting physical, intellectual, mental or sensory disability that if taken together with different societal barriers may disable their full and effective participation in society on equal grounds as the others.<sup>24</sup> Prior to the new Law, the mechanisms for combating discrimination were not efficient when it came to people with disabilities. In the period 2011 – 2016, the Commission for Prevention and Protection against Discrimination received 44 complaints based on disability and established discrimination only in 3 cases. When it came to Court's protection, during the same period, only 1 procedure was initiated against discrimination on the grounds of disability, in which the Court made a positive decision.<sup>25</sup> The Law on Social Protection<sup>26</sup> stipulates new rights, including increased social compensation. Persons with high level of intellectual disability, which are 26 years or older are potential beneficiaries of special disability allowance. The Law was amended in July 2021 stipulating a new provision to decrease the age from 18 to 6 years for accessing the special social service (personal assistance) aiming to improve support for the personal and educational development of persons with disabilities as well as their families. The amendments introduced a new category of children/persons with disabilities, which is a combined disability. Additionally, the Law on Protection of Children<sup>27</sup> was also amended for the purpose of increasing the special allowance to 15%. The National Strategy 2018-2027 Timjanik<sup>28</sup> aimed at special protection of children without parental care by placing them into families that provided social services and care in a home instead of in

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<sup>21</sup> *Ibid.* pg. 32.

<sup>22</sup> See for instance Цералдин Скалион Консалтинг и Шила Роџерс, *Прирачник за заштита од дискриминација (примери на добра пракса за примена на принципот на еднаков третман и недискриминација во Европската Унија)*, 2010, pp. 53-64 - [https://www.mtsp.gov.mk/WBStorage/Files/priracnik\\_antidiskriminacija.pdf](https://www.mtsp.gov.mk/WBStorage/Files/priracnik_antidiskriminacija.pdf) . Retrieved 9.6.2024.

<sup>23</sup> Закон за спречување и заштита од дискриминација Службен весник на РСМ, 258/2020.

<sup>24</sup> *Ibid.*, art. 4 and 5.

<sup>25</sup> Informal coalition and group of authors, *Summary Report of the State Responses to the Questions related to the initial Report of the Republic of Macedonia in the implementation of the Convention on the Rights of Persons with Disability (Summary Report)*, July 2018 pg. 6.

<sup>26</sup> Закон за социјална заштита, *Службен весник на РСМ*, 104/2019.

<sup>27</sup> Закон за заштита на децата, *Службен весник на РСМ*, 23/2013.

<sup>28</sup> [http://www.mtsp.gov.mk/content/pdf/strategii/Strategii%202018/Strategija\\_deinstitutionalizacija\\_Timjanik\\_2018-2027.pdf](http://www.mtsp.gov.mk/content/pdf/strategii/Strategii%202018/Strategija_deinstitutionalizacija_Timjanik_2018-2027.pdf). Last retrieved 31.5.2024.

an institution. The Law on Primary Education of 2019<sup>29</sup> and the Inclusive Education Conception of 2020<sup>30</sup> enabled inclusion of all children (including children with disabilities) in the same educational system. Children with disabilities can use educational assistance from specially trained educational assistants while attending regular school. Within the Law on Protection of Children there is a provision connected with the special allowance/fiscal benefits that are provided to one of the parents or to the guardian for “children with special needs who have impairment in physical and mental development” up to the age of 26 years. As a result, we can infer that persons with disability up to the age of 26 years are treated as children. This matrix by default has been transferred in all spheres.

The Republic of North Macedonia does not have a unified system of long-term care for persons in need. Instead, the long-term care operates via systems for social and health protection, providing financial allowances and support to family members who should provide the care.<sup>31</sup> The social protection system does not even recognize the term ‘long-term care’,<sup>32</sup> even though the services are aimed towards supporting daily activities of persons with restricted functional capacities (persons with disability, persons over 65 years of age or persons under social risk or with social problems). These services may include residential care in institutions, caring families or small group homes.<sup>33</sup> The beneficiaries who are financially maintained by other family members, have regular monthly incomes or have property in which they don’t live or other property with an extra income, cover the costs of these services themselves.<sup>34</sup> If that is not the case, then the costs should be fully or partially covered by the public health insurance, i.e. the State. The health protection is primarily oriented towards medical treatments, but also covers accommodation for ill persons, rehabilitation and palliative care.<sup>35</sup> In the RNM there is a system of mandatory public health insurance and special care for vulnerable groups in the health protection system. Beneficiaries of social insurance for the elderly have the right to health protection according to the Law on Social Insurance and Health Insurance.<sup>36</sup>

The provisions regulating guardianship are stipulated in the Law on Family. They are imperative, and to a larger extent, exclude autonomy of persons affected. The Centre for Social Services is the main institution that decides about establishment, rights and obligations of the guardian and termination of their role.

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<sup>29</sup> Закон за основно образование, „Службен весник на РСМ“ бр. 08-4389/1 од 30 јули 2019 година.

<sup>30</sup> Концепција за инклузивно образование достапна на: [Konceptcija za inkluzivno.pdf \(mon.gov.mk\)](https://mon.gov.mk). Last retrieved 31.5.2024.

<sup>31</sup> Бабовиќ М., Вељковиќ Т., Дакиќ Б., Пристап до услуги за долготрајна нега во Северна Македонија, Хуманост, Скопје, 2023.

<sup>32</sup> *Ibid.* pg. 13.

<sup>33</sup> Закон за социјална заштита, *Службен весник на Република Северна Македонија*, 104/19.

<sup>34</sup> Art. 2 and 3 Правилник за видот и обемот на услугите од социјална заштита кои се плаќаат од страна на корисникот и висината на учеството во трошоците на корисникот и лицата кои се должни да го издржуваат врз основа на други прописи, *Службен весник на Република Северна Македонија*, 177/2018.

<sup>35</sup> Art. 10, Закон за здравствена заштита, редакциски пречистен текст *Службен весник на Република Северна Македонија*, 37/16

<sup>36</sup> Закон за социјална сигурност за старите лица, *Службен весник на Република Северна Македонија*, 104/19

The work of the Centre as an administrative organ is regulated by the Law on General Administrative Procedure. Guardianship is a state-ordered form of social protection of persons in need who lack it otherwise.

There are two general categories of guardianship for vulnerable adults: 1. For persons with limited/restricted legal capacity or deprived of legal capacity and 2. For 'special cases' including a. persons without official residence and without legal representative, b. unknown property owners when there is a need for protection of the property and c. other cases including when a person cannot take care of his/her own interests. The main difference between these two categories is that in the first instance, the person has limited legal capacity or is deprived of legal capacity (with an official decision by a competent Court), therefore, unable to act or represent his/her own interests alone, while in the second instance, the person is unable to act and represent his/her own interests because of other reasons (does not have limited legal capacity or is not deprived of legal capacity with a Court decision). For the first type of guardianship, there has to be an official decision from a competent Court (in a non-contentious procedure) for a person to be considered to have limited legal capacity or be deprived of legal capacity. If a person is not able to take care of him/herself because of variety of reasons enumerated in art. 34, par. 1 of the Law on Non-contentious Procedure, then the Court should as a matter of priority notify the Centre whenever a proceeding for limitation/deprivation of legal capacity is initiated. The Centre could appoint a temporary guardian of that person in the very same proceeding, if it finds it necessary. After the final decision of the Court, there has to be an urgent notification to the Center, which in turn should appoint a guardian within 30 days. If the Court decides that the legal capacity of the person should be limited, then the role of the guardian corresponds with the role of a guardian of a minor who has reached 15 years of age. If the Court decides that the person should be deprived of legal capacity, then the guardian appointed by the Centre will have responsibilities as if he were a guardian of a minor below 15 years of age. Strangely enough, there is a discrepancy between the Law on Family and the Law on Obligations in the way they treat persons with limited legal capacity or people being deprived of legal capacity (the Law on Family<sup>37</sup> considers the borderline to be 15 years while the Law on Obligations<sup>38</sup> – 14 years). This situation enables different interpretations in practice.

In addition to these general categories, there are two more specific ones: 3. 'special guardian' (different from the one 'in special cases' from above) which may be appointed in cases when: a. the ward is in a conflict with the guardian him/herself or they are opposite parties in a same legal deed; b. when the ward is in a conflict with another ward under the same guardian or they are opposite parties in a same legal deed. Finally, the Law on Family<sup>39</sup> stipulates the possibility for another kind of guardian for 4. any person which due to age, illness, or other justified reasons is not capable of taking care of him/herself (guardian for certain

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<sup>37</sup> *Op. cit.* Law on Family, art. 168

<sup>38</sup> Закон за облигационите односи *Службен весник на РМ* основен текст бр. 18/2001 пречистен текст - <https://aso.mk/wp-content/uploads/2019/04/Zakon-za-obligacii.pdf>, чл. 45. Last retrieved 31.5.2024.

<sup>39</sup> *Op. cit.* Law on Family, art. 176, par. 1.

deeds or certain kinds of deeds appointed by the Center). The purpose of existence of this special kind of guardian is to encompass any other situation that is not mentioned in the Law, while the scope of rights and responsibilities of such guardian are determined based on the circumstances in each particular case.

Having in mind that all categories of guardianship should be officially approved and appointed by the Centre for Social Services as an organ of the Ministry of Labour and Social Policies, clearly shows that the country only has state-ordered measures regarding protection of vulnerable adults. Consequently, there is no possibility foreseen in any law for voluntary and *ex lege* measures. There is a possibility for capable adults to give a mandate or to authorize a representative in certain situations, types of situations, deeds or cases to take actions for them, in their name and interest,<sup>40</sup> but this is significantly different from voluntary and *ex lege* measures in that it does not refer to situations for example if or when the adult would potentially be deprived of capacity to reason etc. Consequently, there is a possibility for a continuing power of attorney that could enter into force immediately (not in the event of the granter's incapacity), but this is not within the meaning or to fit within the meaning given by Recommendation 2009. Lastly, any person capable of reasoning over 15 years could make a will (testament) in which he/she can decide about the transfer of his/her own property rights *mortis causa* (inheritance) or can (even though do not have to) direct, set conditions or terms to a person accepting legacy.<sup>41</sup> There is no possibility for a 'living will' in the Law on Inheritance or in any other law.

**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: *опека - опека*]. As explained in the General Instructions above, please briefly explain these terms by making use of the definitions section above wherever possible or by referring to the official national translation in English.**

- Guardianship (старателство - staratelstvo) is part of the Law on Family that provides organized protection of persons in need. It is a social protection measure to particular persons with a primary concern of their personal rights and only afterwards their property rights.
- Guardian (старател-staratel) is a representative and a support person who helps the person in need – the protected. He/she can be a close relative of the protected (ward), appointed person who works for the Centre or the Centre itself imminently.

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<sup>40</sup> See for instance art. 81 Law on Civil Procedure, art. 95 Law on the Notary Закон за нотаријатот, *Службен весник на РМ* бр.72/16, 172/16 и 233/18), Одлука на Уставен суд У.бр.129/16 од 24 јануари 2018 година, *Службен весник на РМ* бр.25/18.

<sup>41</sup> Закон за наследувањето, *Службен весник на РМ* бр.47/96, art. 62 and 103.

- Ward, protégé, protected, person under custody (штитеник, заштитен - shtitenik) – vulnerable person in need of protection.
- Centre for Social Services/the Centre (Центар за социјална работа/Центарот/Centarot) – the guardianship authority, public institution within the Ministry of Labour and Social Policy that decides upon guardianship. Apart from guardianships, the Centre decides upon many other family related matters.
- Legal capacity (правна способност, pravna sposobnost). There is a difference between legal capacity in a narrower and in a wider sense. In a wider sense, it means capacity to have rights (правна способност) and is acquired at birth.<sup>42</sup> It means the ability of a person to have rights and liabilities; to be a subject before the law. In a narrower sense, legal capacity is the capacity to act or exercise these rights (деловна способност, delovna sposobnost or sometimes referred to as business capacity) and it assumes the ability to make independent decisions about rights and obligations.<sup>43</sup> The legal (business) capacity is acquired upon reaching 18 years of age (the age of majority). Only in the case of this capacity, full or partial deprivation is possible. This report uses the term legal capacity in the narrower sense. In the Macedonian legal system, there is also full and partial deprivation of legal capacity, but for purposes of better clarity, the text uses person(s) with limited/restricted legal capacity or person(s) deprived of legal capacity instead.

Natural persons up to 14 years and adults (beyond the 18 years of age) deprived of legal capacity are legally incapable. Natural persons from 14 to 18 years of age and adults with limited legal capacity have limited legal capacity, unless it is otherwise stipulated by law<sup>44</sup> (art. 45 b Law on Obligations).

**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.**

According to the Summary Report of the Country (RNM) with regards to the CRPD of 2018,<sup>45</sup> the lack of data considering disability status is due to the non-consistent definition/interpretation on what disability is. The mentioned Register that was proposed in 2016 is completely based on the medical condition of people with disability. There is no data about women with disabilities - victims of

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<sup>42</sup> *Op. cit.* Law on obligations, art. 45.

<sup>43</sup> Legal capacity is defined in art. 165, par. 2 of the Law on Family. The Law on Obligations (regarding contracts and torts) also follows the same definition (art.45-b). Закон за облигационите односи *Службен весник на РМ* основен текст бр. 18/2001 пречистен текст - <https://aso.mk/wp-content/uploads/2019/04/Zakon-za-obligacii.pdf>. Last retrieved 31.5.2024.

<sup>44</sup> *Op. cit.* Law on Obligations, art. 45 b.

<sup>45</sup> *Op. cit.* *Summary Report*.

violence. There is not enough research about issues of disability and even in the research made by CSOs for different matters (for example, how many ethnicities are employed in the Public Administration) the disability is missing.<sup>46</sup> Furthermore, the Summary Report is very critical regarding inclusion of persons with disability in making the Report itself.<sup>47</sup>

According to the last census held in 2023, there are 94.412 persons with disabilities in the country, which is 5% of the total population, among which 2,5% are over 65 years of age.<sup>48</sup> The National Statistical Institute reported that around 31,5% of the whole population has some sort of disability, among which 34,2% are women.<sup>49</sup> The State has no official records on the number of persons deprived of legal capacity. Nevertheless, according to the State's Commission on Elections records from last elections in 2021, around 900 citizens were erased from the election list (due to deprivation of legal capacity) based on the data gathered from Courts.

The last National Strategy for Elderly People 2010-2020 (The National Strategy) dates back to 2010.<sup>50</sup> There is no other, more recently available information regarding adult protection measures and elderly abuse specifically. Some scarce data could be gathered from Action Plans and Reports regarding implementation of the Istanbul Convention against Violence against Women and Domestic Violence that in general refers to the fact that not much has been done notwithstanding the declarations.<sup>51</sup> The National Strategy<sup>52</sup> for prevention and protection from family violence 2012 - 2015 recognized persons with disability (persons with invalidity) as special kind of victims. The Law on Prevention and Protection against Domestic Violence<sup>53</sup> does not explicitly prohibit the exploitation, violence and abuse toward persons with disabilities. The disability is not included in the research done for the family violence. The shelter centres for victims of family violence are not accessible and there are no accessible services for support. The providers for support have not been trained.<sup>54</sup>

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<sup>46</sup> *Op. cit. Summary Report*, pg. 21.

<sup>47</sup> *Ibid.* pg. 23.

<sup>48</sup> Државен завод за статистика 2022

[http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/MakStat\\_Popisi\\_Popis2021\\_NaselenieVkupno\\_Naselenie\\_Poprecenost/T1053P21.px/table/tableViewLayout2/?rxid=a812e800-ecc2-45cf-b8ca-5cfe3d2208e5](http://makstat.stat.gov.mk/PXWeb/pxweb/mk/MakStat/MakStat_Popisi_Popis2021_NaselenieVkupno_Naselenie_Poprecenost/T1053P21.px/table/tableViewLayout2/?rxid=a812e800-ecc2-45cf-b8ca-5cfe3d2208e5). Last retrieved 15.1.2024.

<sup>49</sup> Анкета за приходи и услови за живеење за 2017 г., Државен завод за статистика, Статистички преглед број 2.4.18.13/905, pp. 28-31:

<http://www.stat.gov.mk/Publikacii/2.4.18.13.pdf>. Last retrieved 31.5.2024.

<sup>50</sup> Министерство за труд и социјална политика на Република Македонија, Национална стратегија за стари лица 2010-2020, јуни, 2010.

<sup>51</sup> Акциски план за спроведување на Конвенцијата на Советот на Европа за спречување на борба со насилство спрема жените и семејното насилство 2018-2023 и Балшиќевска М., Аврамоска Нушкова А., *Извештај за напредокот на РСМ при спроведување на Националниот Акциски План за имплементација на Истамбулската конвенција октомври 2018 – октомври 2020*, Национална мрежа против насилство врз жени и семејно насилство, 2002.

<sup>52</sup> *National Strategy for Prevention and Protection from Family Violence 2012 – 2015*. Available at: [http://mtsp.gov.mk/WBStorage/Files/nasilstvo\\_strategija\\_mkd.pdf](http://mtsp.gov.mk/WBStorage/Files/nasilstvo_strategija_mkd.pdf). Last retrieved 31.5.2024.

<sup>53</sup> The Law on Prevention, Protection and Protection against Domestic Violence. Available at: <http://www.mtsp.gov.mk/content/pdf/zakoni/Zakon%20za%20prevencija%20semino.pdf>. Last retrieved 31.5.2024.

<sup>54</sup> See more in *Summary Report (Summary Report) of the State Responses to the Questions related to the initial Report of the Republic of Macedonia in the implementation of the Convention on the*



There have been numerous systematic violations<sup>55</sup> and abuses<sup>56</sup> within the institutions for persons with disabilities and the State has not taken any concrete measures. In the Institution of Demir Kapija, 375 persons have died within 22 years; in 2016 - 9 people died. These facts open questions about the circumstances of their death.<sup>57</sup>

When it comes to elderly people, a recent study on long-term services in the Republic of North Macedonia clearly depicts the current situation on the topic and locates several problems.<sup>58</sup> The problems identified include: lack of information and statistical data on the number of elderly persons in need of long-term care as well as the kind of care they need, lack of institutional residential capacities, lack of finances, lack of employees in such institutions as well as exhaustion of the staff due to lack of employees. The study concludes that the role of informal caregivers (family members who live in the same household and provide the care) is not recognized and appreciated, while they cope with stress and exhaustion.<sup>59</sup> These are mostly family members who act as guardians, are appointed by a State institution but not protected or supported enough by the institution or the State who claims to rest upon solidarity. Persons in need mostly rely on their spouses and children followed by neighbours and friends. This informal care is crucial in a system that lacks developed long-term care services. Therefore, the study finds that the information about the profile, burdens and needs of guardians as caregivers is essential to uplift their satisfaction and well-functioning.<sup>60</sup> The vast majority of respondents (the elderly who rely upon informal care and their caregivers) of the study (85,9%) reported that caregivers never received any help or compensation from the State for their activities. Only 8,1% of the care-givers received some support and counselling from relevant organizations and institutions, while most of them reported the need for additional help of their guardians mostly due to exhaustion or chronic illnesses.<sup>61</sup> In the study sample 25,6% of persons over 65 and 64% of persons with disability were in need of long-term care.<sup>62</sup> Most of them relied on informal care, while the institutional care was used very little. 21,3% of them were forced to take care of themselves alone, without help. Some of the reasons for avoiding institutional care were identified in the lack of information and their own assessment that they can still function alone.<sup>63</sup> Long-term health services could be at home, in a caring family

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*Rights of Persons with Disability*, July 2018 – See more at <https://www.ohchr.org/en/treaty-bodies/crpd>. Last retrieved 31.4.2024.

<sup>55</sup> <https://vecer.mk/ognot-vo-banjata-bil-podmetnat>. Last retrieved 15.1.2024.

<sup>56</sup> <https://www.flickr.com/photos/yanska/sets/72157623887093943/>

<https://humansnullandvoid.wordpress.com/investigation/>. Last retrieved 31.5.2024.

<sup>57</sup> Helsinki Committees in Macedonia Special Report for Demir Kapija. Available at:

[http://www.mhc.org.mk/system/uploads/redactor\\_assets/documents/1551/Izvestaj\\_Specijalen\\_zavod\\_Demir\\_Kapija\\_2016.pdf](http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1551/Izvestaj_Specijalen_zavod_Demir_Kapija_2016.pdf). Last retrieved 15.1.2024.

<sup>58</sup> Бабовиќ М., Вељковиќ Т., Дакиќ Б., *Пристап до услуги за долготрајна нега во Северна Македонија*, Хуманост, Скопје, 2023.

<sup>59</sup> *Ibid.* pg. 19. See also what the study means by informal care - European Commission (2018). The 2018 Ageing Report, Economic and budgetary projections for the 28 EU Member States (2016–2070), Luxembourg: Publications Office of the European Union, pg. 136.

<sup>60</sup> *Ibid.* pg. 43.

<sup>61</sup> *Ibid.* pg. 45.

<sup>62</sup> *Ibid.* pg. 21.

<sup>63</sup> *Ibid.* pg. 27.

(in case the family is not capable/does not exist) or in a hospital, the first option being preferred.

The main conclusions of the study important for this Report are:

- 1) The Republic of North Macedonia does not have a unified system for long-term care, while the need for such care is covered mainly through social and health services. The focus of social care is mainly to support daily activities, while due to lack of functional capacities it has been considered to be very traditional. The focus of health care is mainly on health treatment. However, the health system also encompasses other activities that may facilitate daily lives of patients. The public policies of the country do not focus on long-term care since the system does not recognize it as such.
- 2) Closest relatives and other persons from the closest surrounding play the crucial role in long-term care for persons in need. The reasons for this could be found in the cultural attitudes in the country, as well as in the lack of access to support services and lack of finances of the persons in need that have to provide for themselves.<sup>64</sup>
- 3) Informal caregivers do not get the support and rest they need. Some of them are persons in need themselves having some kind of disability of a health condition.

**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.**

In general terms and relevant to the topic, the Republic of North Macedonia is a party to the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Universal Declaration on the Human Genome and Human Rights and the Universal Declaration on Bioethics and Human Rights. The regional mechanism for ensuring protection on human rights had already been established and implemented through the Council of Europe, the European Convention on Human Rights<sup>65</sup> being the most important.

CRPD was signed (by NMD) on 30 March 2007 and ratified on 29 November 2011. As mentioned above, the country took serious measures to fully implement the CRPD. However, there are many complaints by associations/organizations that protect rights of persons with disabilities regarding its full implementation as well

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<sup>64</sup> *Ibid.* pg. 49.

<sup>65</sup> Ratified by SFRY on 27<sup>th</sup> of February, 1997 as law on ratification – *Закон за ратификација на Конвенцијата за заштита на правата на човекот и основните слободи, и на Првиот протокол, Протоколот број 4, Протоколот број 6, Протоколот број 7 и Протоколот број 11 кон Конвенцијата.*

as Courts' decisions confirming discrimination.<sup>66</sup> The Oviedo Convention (The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine was signed in 1997 (4.4.), ratified in 2009 (3.9.), while it entered into force in 2010 (1.1.).

The Hague Convention on the International Protection of Adults has not been signed, there are no ongoing discussions about it or public awareness of its meaning. The draft version of the Civil Code does not have significant changes in the field of guardianship or possible introduction of voluntary or *ex-lege* measures for protection of vulnerable adults.

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

Most of the laws in the Republic of North Macedonia follow the legal tradition of former Yugoslavia where the country was part of, prior to its independence. Ever since its independence, the situation did not change drastically regarding protection of vulnerable adults. In this regard, an especially important fact is that the guardianship authority (the Centre), not the Court, still has the authority to determine the range of tasks that a person partially deprived of legal capacity could undertake independently and without its permission. As a result, the Court's decision on limitation/deprivation of legal capacity remains to be declarative, while the person deprived of legal capacity loses many rights (including the right to vote) automatically.

After the ratification of the CRPD in 2011, the State did not undertake any comprehensive review and did not develop strategic framework for harmonization of the legislation with the CRPD. Some of the reasons for this are: lack of cross-sectoral cooperation, financial implications and lack of political will. The Regulatory Impact Assessment (RIA)<sup>67</sup> within all its procedures, guidelines and regulations does not include any reference relating to compliance with the CRPD.

The National Coordinative Body for Equal Rights of Persons with Disabilities<sup>68</sup> was established in accordance with the UN Standard Rules for Equal Opportunities of persons with disabilities and has served as a bridge between the

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<sup>66</sup> Хелсиншки комитет, Потврдена е директна дискриминација врз лицата со попреченост при остварување на нивното право на глас од страна на Владата и Државната изборна комисија, декември 20, 2023 - <https://mhc.org.mk/news/potvrdena-e-direktnata-diskriminacija-vrz-licata-so-poprechenost-pri-ostvaruvanje-na-nivnoto-pravo-na-glas-od-strana-na-vladata-i-drzhavnata-izborna-komisija/>. Last retrieved 31.5.2024.

<sup>67</sup> The Regulatory Impact Assessment. Available at: <https://www.ogledalonavladata.mk/images/docs/propisi/17-upatstvo-za-nacinot-na-postapuvanje-vo-rabotata-na-ministerstvata-za-vklucuvanje-na-zasegnatite-strani-vo-postapkata-za-izgotvuvanje-zakoni.pdf>. Last retrieved 31.5.2024.

<sup>68</sup> NCBERPWD. Available at: [http://www.nkt.gov.mk/index.php?option=com\\_content&view=article&id=44&Itemid=53](http://www.nkt.gov.mk/index.php?option=com_content&view=article&id=44&Itemid=53). Last retrieved 15.1.2024.

Government and the NCOPDs.<sup>69</sup> This body had the mandate to coordinate the implementation of the National Strategy.<sup>70</sup>

The Law on Family, adopted in 1992, was changed and amended many times but never harmonized as a whole and therefore it represents a clash between old and new concepts and principles. This situation is planned to be changed by a new Civil Code which should incorporate the Law on Family's provisions as well. However, its ongoing work lasts for more than 10 years while citizens and families live in different realities from the outdated family law's provisions. Nevertheless, as mentioned above, even the new Civil Code does not incorporate the essence of the CRPD and the Hague Convention or Recommendation CM/Rec (2009)11 on Principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe (the last ones because they have not been ratified yet).

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

The undertaken activities mentioned in the State Reply to the CRPD Committee are projects based.<sup>71</sup> There is no national targeted strategy to raise awareness of people with disabilities in all their diversity. A recent study found that the medical model of perceiving disability prevails in the country: 30% of the citizens believe that the barriers should be removed, 44% state that citizens with disabilities need medical care and services, while 25% think that citizens with disabilities should be included in the society as much as possible.<sup>72</sup> Citizens with disabilities have some basic knowledge on the rights set forth in the Convention. Only 45.6% of citizens with disabilities stated they know about CRPD, and 54,4 % do not know,<sup>73</sup> in comparison with the citizen without disabilities where 36 % of the general public said they have heard about CRPD, while 67 % have not.<sup>74</sup>

The Summary Report of the State Responses to the Questions related to the initial Report of the Republic of Macedonia in the implementation of the

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<sup>69</sup> NCOPD. Available at: <http://www.nsiom.org.mk/>. Last retrieved 31.5.2024.

<sup>70</sup> National Strategy for equalization of the opportunities for people with invalidity 2010 – 2018. Available at: <http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>. Last retrieved 31.5.2024.

<sup>71</sup> Replies to the list of issues in relation to the initial report of Republic of Macedonia after the CRPD. Available at: [https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/MKD/INT\\_CRPD\\_RLI\\_MKD\\_31772\\_E.docx](https://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/MKD/INT_CRPD_RLI_MKD_31772_E.docx). Last retrieved 15.1.2024.

<sup>72</sup> "Knowledge attitudes and practices toward children with disabilities" UNICEF. Available at: <https://www.unicef.org/tfymacedonia/UnicefDisabilitiesInfographsMK.pdf>. Last retrieved 15.1.2024.

<sup>73</sup> "Knowing my rights", Polio Plus.

<sup>74</sup> *Ibid.*

Convention on the Rights of Persons with disabilities<sup>75</sup> identifies many problems.<sup>76</sup> The concept of disability itself is translated literally as "invalidity". There are a variety and a mixture of outdated terms in the legislation. The existing definitions reflect the medical paradigm of disability and do not correspond with the principles of dignity, non-discrimination, and equality.

According to the Summary Report, the Law on Family is an obvious example of discrimination and human rights abuse against persons with intellectual disability concerning the right to marriage. The minimum legal age for marriage is 18. A Court can issue a marriage license to persons between the ages of 16 and 18 if it finds them mentally and physically fit for marriage. This provision within the legislation is discriminating against persons with mental and intellectual disabilities to marry because they need to get a certificate of capability of understanding (the rights and obligations that come along with marriage) prior to obtaining an opinion regarding their health from a health institution, including their genetically inherited diseases.<sup>77</sup> Additionally the same Act, considering the right to adoption is discriminatory against persons with disability. Namely, within the listed negative criteria that exclude a person to be eligible for adopting a child is physical disability of such a degree that it can reasonably be doubted that they are able to care for a child.<sup>78</sup> Comprehensive information, services and support to children with disabilities and their families are missing in order to prevent hiding, abandoning, neglecting and segregation in this matter. The support to families is regulated through the Law on Social Protection, and the Law on Family. There is a huge discrepancy between the support that the State is giving and providing to families that have a child with disabilities and the foster care families.<sup>79</sup>

Another identified problem in the Summary Report is in the field of labour rights. Article 6 of the Law on Labour Relations explicitly prohibits discrimination in general but does not provide instruction on discrimination and does not prohibit any discriminatory advertisements or statements on the grounds of disability (art. 24, par. 2).<sup>80</sup> These provisions are being derogated with the provisions of the Law on Civil Servants, whereby general health capability is stated as a prerequisite for employment. The same provisions can also be found in the Law on Courts (art. 45 par. 1 point 3), the Law on the Police (art. 95) and others.<sup>81</sup> This law is abounding with numerous terminologies for disability. The Law on Employment of Invalid persons needs to reflect the social model of understanding disability<sup>82</sup> and

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<sup>75</sup> *Op. cit, Summary Report, 2018.*

<sup>76</sup> *Ibid.*

<sup>77</sup> *Op. cit.* Law on Family, art. 16, par. 2 and art. 18, par. 3.

<sup>78</sup> *Op. cit, Summary Report, 2018.* pg. 14.

<sup>79</sup> Poposka Z, Kochoska E. Shavreski Z, "Holistic report on persons with disabilities in the Republic of Macedonia". Available at: <https://openthewindows.org/wp-content/uploads/2021/04/HOLISTIC-REPORT-ON-PERSONS-WITH-DISABILITIES-IN-THE-REPUBLIC-OF-MACEDONIA.pdf>. Last retrieved 31.5.2024.

<sup>80</sup> Kochoska E. and others, *Analysis of the situation of people with physical disabilities in the Republic of Macedonia*, Helsinki Committee of Human Rights in North Macedonia, 2017.

<sup>81</sup> Poposka Z, Kadriu B. Kocavska L, Kochoska E, "Analysis of the discriminatory practices in the field of work and employment".

<sup>82</sup> Poposka Z, "Analysis of harmonization of domestic legislation", OSCE and CPAD. Available at: [http://www.kzd.mk/sites/default/files/dokument/publikacii/2015\\_analiza\\_za\\_harmonizacija\\_dom\\_za\\_kon.pdf](http://www.kzd.mk/sites/default/files/dokument/publikacii/2015_analiza_za_harmonizacija_dom_za_kon.pdf). Last retrieved 31.4.2024.

implement new affirmative measures that could lead from closed “sheltered” employment to employment in the open labour market and supported employment. The State needs to repeal the “school example” of systematic discrimination in the form of harassment, based on the law. The provision in article 4 paragraph 5 foresees that “[a]n invalid person may be an employer or carry out the duties of a responsible person at the employer, if the person receives a positive opinion from the Commission at the Ministry of Labour and Social Policies ...”. Such defined provision that requires obtaining and opinion on the ability of persons with disabilities performing managerial functions is considered to be discriminatory.<sup>83</sup> There is no data related to disability nor statistics for active, employed and unemployed persons with disability.<sup>84</sup>

A big problem is the system of guardianship that has to be changed with a supported decision-making system. There are no attempts to harmonize the legal system with the ratified Convention on the Rights of Persons with Disability in terms of replacement of the regime of substitute decision-making with the regime of supported decision-making, which respects personal autonomy, will and preferences of the person. This is also in line with the Oviedo Convention (The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine), especially when it comes to medical intervention without prior, informed consent of a person with disability.

The Concluding observations of the Committee on the Rights of Persons with Disabilities<sup>85</sup> acknowledged and further criticized several recognized drawbacks in the Summary Report itself: (a)The lack of harmonization of national legislation, policy and programmes with the Convention, and the persistence of the medical model of disability; (b)The use of different disability assessments and definitions in the legal framework of the State party that are not in line with the human rights-based model of disability; (c)The absence of clear plans, timelines or budgets to ensure the progressive implementation of the rights of persons with disabilities in consultation with the organizations of persons with disabilities.

On a general level, the Committee recommended that the State party should: (a) Review and ensure harmonization of its legislation and policies with the Convention; (b) Remove from its legislation, programmes, plans and policies derogatory terms related to disability and ensure respect for the dignity of all persons with disabilities; (c) Ensure that the disability assessment method fully incorporates the human rights-based approach to disability and takes the human rights approach.

The most urgent and fundamental issues that have to be resolved in order to harmonize the national legal system with fundamental values regard several fields related to several articles of the CRPD.

Regarding women with disabilities (art. 6), the Committee recognizes that national gender policies and programmes do not include a disability perspective, that disability is not mainstreamed in gender policies and that there is lack of

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<sup>83</sup> Poposka Z, Kadriu B, Kocavska L, Kochoska E, “Analysis of the discriminatory practices in the field of work and employment”.

<sup>84</sup> *Op. cit. Summary Report* pg. 19.

<sup>85</sup> Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Initial Report of the Former Yugoslav Republic of Macedonia*, 29. Oct. 2018.

specific measures to protect women and girls with disabilities, especially those with psychosocial or intellectual disabilities from gender-based violence.<sup>86</sup>

Regarding equal recognition before the law (art. 12), the Committee is concerned that the laws in the State party, especially the existing guardianship system, negate or restrict the legal capacity of persons with disabilities, limiting their right to decision-making and their right to make choices. Therefore, the Committee recommends that the country should: (a) Repeal all discriminatory provisions that permit deprivation of legal capacity based on impairment and replace them with supported decision-making mechanisms that respect the autonomy, will and preferences of the person concerned and (b) Conduct capacity-building activities for public officials on the right to equal recognition before the law of persons with disabilities and supported decision-making arrangements.<sup>87</sup>

Regarding protecting the integrity of the person (art. 17), the Committee is concerned that a legal guardian can authorize medical interventions, including abortion and sterilization, without the free and informed consent of the person with disabilities. It therefore urges the country to adopt effective measures to ensure respect for the right of persons with disabilities to provide their free and informed consent prior to medical treatment, including sterilization and abortion, and to provide efficient support mechanisms for decision-making in the State party.

Regarding living independently and being included in the community (art. 19) the Committee is concerned because there is a weakness of the deinstitutionalization process and the emphasis placed on the resettlement of persons with disabilities in small group homes instead of independent living arrangements and absence of services and provision of personal assistance to promote independent living of persons with disabilities. The Committee is also concerned because the personal assistance pilot programme is discriminatory on the basis of age.<sup>88</sup>

Regarding respect for home and the family (art. 23) the Committee is concerned about the legal provisions in the Law on the Family that discriminate against persons with psychosocial or intellectual disabilities with regards to the right to marry and found a family. The Committee is further concerned about the provision in that Law that requires persons with psychosocial or intellectual disabilities to be certified as “knowledgeable and understanding”. In this sense, the Committee recommends that the State party should: (a) Review the Law on Family to ensure that persons with disabilities can exercise their rights relating to marriage, family, parenthood and relationships on an equal basis with others and on the basis of their free and informed consent and (b) Adopt measures to promote adequate training of judicial and social workers and legal protection to ensure that persons with disabilities are not discriminated against during legal and administrative proceedings concerning their sexual and reproductive rights, the right to create a family and legal custody of their children.<sup>89</sup>

Regarding health (art. 25) the Committee recommends that the State party should: (a) Include disability as a ground for discrimination in the Law on

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<sup>86</sup> *Ibid.* pg. 3.

<sup>87</sup> *Ibid.* pg. 5.

<sup>88</sup> *Ibid.* pg. 7.

<sup>89</sup> *Ibid.* pg. 8.

Protection of Patients' Rights; (b) Remove age constraints to accessing free health care and treatment, as well as any exemptions in the Law on Health Insurance that discriminate against persons with disabilities; (f) Ensure the dissemination of information on sexual and reproductive rights in appropriate formats for all persons with disabilities, the availability of gender and age-sensitive services, and the availability of specialized services for persons with disabilities in all parts of the country.

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

The Ministry of Labour and Social Policy declares to be a protector of persons with disabilities with the slogan that they are “enabling equality, dignity and integration of persons with disability in the public life“. Currently, they are working on improving their position in society with a new National Strategy 2022-2027 (the old one was already mentioned above), a Register for persons with disabilities as well as a new system for assessment of the disabilities and reforms of the system for employment of persons with disabilities.<sup>90</sup> However, the fact that 2000 Hague Convention on the International Protection of Adults has neither been signed nor ratified and that the Constitution itself still does not allow for persons deprived of legal capacity to vote<sup>91</sup> is self-explanatory that the focus of efforts is not clear or is elsewhere.

Most of the provisions in the Law on Family and in the Law on Non-contentious Procedure have been adopted at times that excluded persons with disability (mental or intellectual impairments and the elderly) as a principle. Nowadays, the principle changed into inclusion of persons with disabilities, yet many laws remained unchanged and rigid.

It will be a great step if the changes bring forward the replacement of the exiting guardianship system with the supported decision-making system and to ensure that the rights, wills and preferences of the person are respected.<sup>92</sup> Namely, the guardianship system has to be reformed. The concept of legal capacity has to change in terms of reconsidering (possibly abolishing) the full deprivation of legal capacity, so that persons with disability will be able to exercise their rights and actively participate in their daily private as well as public life. Paramount to the further Strategy is reconsidering the concept of full deprivation of legal capacity of persons with disabilities and initiating a gradual transition to a system of

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<sup>90</sup> МТСП Градиме систем кој е праведен и прилагоден на лицата со попреченост, 28.7.2022 - [https://www.mtsp.gov.mk/juli-2022-ns\\_article-mtsp-gradime-sistem-koj-e-praveden-i-prilagoden-na-licata-so-poprecenost.nsp.x](https://www.mtsp.gov.mk/juli-2022-ns_article-mtsp-gradime-sistem-koj-e-praveden-i-prilagoden-na-licata-so-poprecenost.nsp.x). Last retrieved 31.5.2024.

<sup>91</sup> According to the Electoral Code - available at: <https://drive.google.com/open?id=0B8ZpCwro9h-zM2lkMkZERFo0NXc> (last retrieved 15.1.2024) the right to vote is available for all persons above 18 years of age who have legal capacity. A provision formulated in this way is restrictive and limited in its definition of the legal capacity. Moreover, the provision stipulates that citizens can exercise their right to vote only in the place / municipality where they live. This means that the provision excludes certain number of citizens with disabilities who reside in institutions, and citizens with disabilities who are temporarily in medical centres and institutions, or rehabilitation centres, during the election period. See more in the *op. cit. Summary Report*.

<sup>92</sup> *Op. cit. Summary Report*, 2018.



providing support in decision-making. This will create conditions for persons with disabilities to enjoy legal capacity on an equal basis with others, in all aspects of life.

Even though, the CRPD Committee points out that there is a key difference between legal capacity and mental capacity to make decisions, the Republic of North Macedonia, did not make significant efforts to change this. And while legal capacity should be intact because it ensures the realization of rights and freedoms, the assessment of mental capacity should primarily serve as a basis for determining the support that is provided to a person in the enjoyment of legal capacity as well as that mental capacity must not be used as a justification for denying legal capacity.<sup>93</sup>

The draft versions of the Civil Code including Law on Family provisions,<sup>94</sup> especially provisions regarding guardianship (4:231 – 4:300) clearly indicate the national *status quo* on the matter. Namely, most of the concepts remain the same, even the provisions are, to a certain extent, identical to the old/current and still in force Law on Family. For instance, the concept of guardianship remains, even though it is a trend of abandoning it in Europe. The concept of extension of parental rights on the basis of disability of the person over 18 years remains with a slightly changed title – extension of parental responsibilities - art. 4:194. This article stipulates as follows: “the Court, following a proposal by the parents or the Centre, may in a non-contentious proceeding decide to extend parental responsibilities if the child is not capable of taking care of his/her own rights, interests and personality on his/her own due to impediments in the psychological development even after maturity“. Nevertheless, there is no provision about appreciation of the wills and opinions of the person concerned.

The Centre remains to be the main organ to decide upon guardianships in a decision that sets the scope of rights and responsibilities of the guardian (art. 4:247) after the Court limits or deprives him/her of legal capacity in a non-contentious proceeding. The legal capacity remains to be defined as a capability to express a legally relevant will to participate in the legal traffic (art. 4:727). There are rare/no public debates to abandon the concept of full deprivation of legal capacity in order to provide free autonomy for persons with disability, apart from written academic work of researchers.<sup>95</sup>

The provisions for enabling participation of persons with speaking and hearing impairments in Court proceedings are not the same in all laws that refer to Court proceedings, which is an inconsistent approach to this issue. There are no obligations concerning the equalization of the access of persons with disabilities to justice and the institutions of justice. Therefore, the Summary Report for the Republic of North Macedonia recommends that consideration should be given to the adoption of separate Law on the Rights of Persons with Disabilities that should complement the provisions regarding discrimination and should be *lex specialis* in

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<sup>93</sup> *Ibid.* (CRPD/C/GC/1, para. 13).

<sup>94</sup> Работна верзија Граѓански законик, Книга 4 Семејноправни односи.

<sup>95</sup> See more in Зороска - Камиловска, Т., *Одземање и враќање на деловната способност*, Универзитет „Св. Кирил и Методиј“ Правен факултет „Јустинијан Први“, Годишник на Правниот факултет „Јустинијан Први“ во Скопје во чест на проф.д-р Марјан Марјановски, pg. 93.

relation to that law.<sup>96</sup> Furthermore, the Strategy also has to improve the conditions for exercising the right to access to justice and a fair trial of persons with disabilities on an equal basis with other citizens by ensuring accessibility of buildings of judicial authorities. The Strategy also has to recognize the necessity to improve the conditions for concluding marriage/non-marital cohabitation, for making decisions about giving birth as well as for support for parenting of persons with disabilities.

## **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,<sup>97</sup> besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?**

The Law on Non-contentious Procedure regulates the procedure for deprivation (full or partial) and for restoration of legal capacity (art. 34-57). The Court decides to fully deprive the person of legal capacity or just partially (limitation of legal capacity) on the grounds explicitly enumerated: mental illness or deficiency, use of alcohol or other substances such as nerve poisons, narcotic drugs, psychotropic substances and precursors that disable an adult to care for himself/herself as well as for his/her rights and interests.

If the reasons for deprivation cease to exist, the Court decides to restore the legal capacity (fully or partially).

The procedure could be initiated by a proposal from the Court *ex officio*, Centre, the spouse, the child, the grandchild, the parent, the grandparent, the sibling and anyone else who lives in the same household with the person concerned (art. 36). The concerned person is not eligible to initiate a procedure for deprivation of legal capacity but is eligible to initiate a procedure for restoration of legal capacity (art. 52).

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<sup>96</sup> *Ibid.* pg. 10.

<sup>97</sup> 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

The Proposal for deprivation of legal capacity should contain the facts and proofs leading to the conclusion that the legal capacity should be deprived (fully or partially) – art. 37, while the Court should conduct the procedure urgently (art. 38).

The scope of limitations is set out in the substantive law, primarily in the Law on Family (art. 165, par. 2), which governs various aspects of family relationships, including legal capacity issues related to individuals. Additionally, the Law on Obligations (art. 45-b) also contains provisions related to legal capacity in the context of contractual relationships. However, the scope of the limitation of legal capacity in each particular case is determined by the Court with a decision, by which it is being decided on partial or complete removal of legal capacity (art. 48 Law on Non-contentious Procedure).

The Court can decide in each particular case on partial or complete deprivation of legal capacity based on the individual circumstances of the person regarding his/her ability to care for himself/herself and for the protection of his/her rights and interests, considering factors like mental health and substance use. The decision is not fully tailor-made to fit individual needs. On the contrary, the Court could either decide to limit/deprive the person of legal capacity or not, while this decision is mainly based on the expert opinions of consulted physicians. This is perceived as if there were dominance of the medical science and psychiatry over judicial disposition to assess the extent to which the legal capacity should be deprived.<sup>98</sup> Nevertheless, the Law stipulates that the Court is not dependent on the proposal regarding the scope of deprivation of the legal capacity. On the contrary, the Court could make a subsequently different decision from the proposed.<sup>99</sup> The critics also deliberate that the person concerned is usually being called on a hearing for an opinion, if that does not affect his/her health (art. 43), but in practice the Court rarely relies on their opinions. As a next step, the Centre, in its decision, determines the scope of rights and responsibilities the person can still have and his/her guardian accordingly. The Law does not explicitly ask from the Judge to set the scope of legal matters that the person could/could not take in the future in the Decision,<sup>100</sup> therefore the Centre, responsible to appoint a guardian, further does it.

There are no other legal instruments that can lead to deprivation of legal capacity (if we exclude continuation of parental rights for children over 18 years with disability). The only adult protection measure in the Macedonian legal system is the measure of deprivation or limitation of legal capacity and subsequently appointment of a guardian. It applies the ‘best interest’ principle that prevails over the ‘will and preferences’ of the person concerned principle. There are no advanced directives, supported decision-making etc. The only possibility to have opinions of the concerned person is in urgent and justified cases when the Court can appoint a temporary representative (art. 40). The Court can also hear the opinion of the concerned person if it considers it possible.

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<sup>98</sup> See more in *op. cit.* Zoroska – Kamilovska T., 2017, pg. 100.

<sup>99</sup> *Ibid.* pg. 101.

<sup>100</sup> Even though, according to Zoroska-Kamilovska this should be presumed and the Court should state the scope of legal matters and acts the person could/could not take in the future. *Ibid.* pg. 101.

- 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);**

A person with full legal capacity (acquired at 18 years of age) is able to be a fully capable person to act. A person being deprived of legal capacity is considered by the law as a person under 15 years and is represented by his/her legal representative (guardian). Limitation of legal capacity, i.e. partial deprivation of legal capacity usually encompasses rights and responsibilities as of a person who has reached the age of 15. However, the Centre should specify the rights and responsibilities of the person concerned on one hand and on the other, of the guardian in its decision appointing one.

The guardian is obliged to take care of the ward's personal rights and interests, accommodation and health, thereby considering the reasons for deprivation/limitation of legal capacity. The final aim of the guardian is to enable the person to have an independent life as much as possible.

In the case when the person in relation to whom a procedure for removal of legal capacity has been initiated has real estate, an annotation is placed in the public books in which the rights to real estate are recorded. The Court should immediately notify the authority that keeps the public books of real estate records to make a note regarding the procedure for deprivation/limitation of legal capacity. If the ward has property, the Centre will make a decision for assessment inventory by a Committee appointed by the Centre and only afterwards will hand over the property to the guardian for management. The guardian is obliged within its powers to conscientiously take care of the rights and interests of the ward and manage the property. The guardian cannot undertake measures that go beyond the scope of regular work or management of the property of the ward without compensation and cannot bind him/her a guarantor (without prior approval from the Centre). The guardian is obliged, with the help of the Centre, to take necessary measures to secure funds necessary for the implementation of the measures determined by the Centre in the interest of the ward. The guardian, only with the approval of the Centre, could alienate or encumber real estate, movable objects of greater and special personal value or dispose of property rights of greater value, renounce an inheritance or refuse a gift and take other measures determined by law on behalf of the ward. The Center, in the procedure for granting approval for the guardian to dispose and manage the property of the ward, determines the purpose of the acquired funds and supervises their use. The guardian is obliged to compensate the ward for the damage caused by improper, negligent or careless performance of the duty (art.140-150 Law on Family).

Regarding marriage, persons who due to a manifest form of mental illness, with the presence of psychotic symptoms or residual signs of the illness, are unable to understand the meaning of marriage and the obligations arising from

it, and who are simultaneously incapable of reasoning, cannot enter into marriage (art. 18, par. 1 Family). Persons who lack mental (psychic) development and belong to the group of persons with severe mental deficiency (IQ under 36) cannot enter into marriage (art. 18 par. 2 Law on Family). On the other hand, persons with moderate or mild disabilities in their mental development as well as persons with severe hereditary diseases in the family, can enter into marriage after a previously obtained opinion on the genetic construction issued by the Institute for Mental Health of Children and Youth Skopje or another appropriate institution that deals with genetic research (art. 18, par. 3 Law on Family). It may be concluded that the right to marry and found a family, which is a basic human right (art. 12) of the European Convention on Human Rights, is restricted for persons with severe disabilities in the Republic of North Macedonia.

A contract of a person deprived of legal capacity is void, except for the contract of lower value (everyday contracts) which would be considered valid, unless otherwise determined by law. Contracts can be concluded on behalf of the person deprived of legal capacity by his/her legal representative (guardian). An adult whose legal capacity has been limited by a Court decision may, without the approval of the legal representative (guardian), enter into all contracts, the conclusion of which is not prohibited by the Court's decision. Other contracts of these persons, if concluded without the approval of the legal representative (guardian), are voidable, but may remain in force with his/her additional approval.

A testament can be drawn up by any person capable of reasoning who has reached the age of 15. The will is void if the testator was under 15 years of age or was incapable of reasoning at the time of its creation (art. 62, par. 1 and 2 Law on Inheritance). A loss of judgment that would have occurred since the will was made does not affect its validity. Consequently to the above-mentioned, a person who has been partially deprived of his/her legal capacity can write his/her own testament because he/she is equated to a minor who has reached the age of 15, but the person who has been completely deprived of his/her legal capacity cannot write his/her own testament. This is only if one follows the definition for limitation of legal capacity stipulated in the Law on Family (art. 162 and 168), and not if one follows the definition of legal capacity stipulated in the Law on Obligations (art. 45).

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

The limitation of legal capacity cannot have a retroactive effect. It produces effect only for the future actions. If the person undertook legal deeds while not being capable of making reasonable judgments and prior to the limitation of the legal capacity, if proven, they could be annulled or considered void. For instance, the Law on Inheritance (art. 62, par. 3) stipulates that a loss of judgment that would have occurred after the will was made, does not affect its validity. However, if it is proven that the person was not capable of making judgments at the time of the legal deed (in particular, making the will), the legal deed will be void.

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

The Court is a competent authority that decides on deprivation/limitation or restoration of legal capacity in a non-contentious procedure. Based on that decision, the Centre further appoints a guardian setting the scope of his/her authorizations and responsibilities (art. 140 of the Law on Family).

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

As mentioned above, the procedure could be initiated by a proposal from the Court *ex officio*, the Centre, the spouse, the child, the grandchild, the parent, the grandparent, the sibling and anyone else who lives in a permanent union with the person concerned (art. 36). The concerned person is not eligible to initiate a procedure for deprivation of legal capacity but is eligible to initiate a procedure for restoration of legal capacity (art. 52).

**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.**

Following the initiation of a procedure for limitation or restoration of legal capacity, the Centre should be notified if the procedure is not initiated on its own suggestion. The proposal for removal of legal capacity should state the facts from which it follows that there are conditions for removal of the person's legal capacity and the evidence that confirms those facts. In urgent and justified cases, the Court may appoint a temporary representative during the procedure. Before appointing a temporary representative, the Court should hear the person if possible and if that does not affect his/her health. The Court will then immediately notify the Centre of the appointment of a temporary representative. This temporary representative will be dismissed from duty if the proposal for removal of legal capacity is legally rejected, or the procedure is stopped, that is, when the reasons for which he/she was appointed cease to exist as well as when the Centre appoints a temporary guardian.

The Court is obliged to determine that the person in relation to whom the procedure for removal of legal capacity has been initiated, should be examined by at least two doctors, one of whom must be a specialist in nervous and mental

diseases. The examination must be performed in the presence of the judge, except when the examination is performed in a health facility. The review performed without the presence of a judge represents a substantial violation of the provisions of the Law on Non-contentious Procedure. The Court may order that the concerned person be placed in a public health institution for mental illnesses, in a timely manner (no longer than three months), if this is necessary to determine his/her mental state, except in cases when due to such retention, there would be harmful consequences to his/her health. The proposer, the person in relation to whom the procedure is initiated and his temporary representative, i.e. guardian, can file an appeal against that decision. The appeal does not postpone the execution of the decision. The Court is obliged to hear all persons who can provide information about the life and behaviour of the concerned person, and if necessary, it can also obtain data about those facts from other authorities and organizations. Finally, the Court will question the person against whom a procedure for removal of legal capacity is conducted, for all the facts essential for reaching a decision, if this is possible and if it does not have a harmful effect on his health (art. 36-47 Law on Non-contentious procedure).

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

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

It seems that *mental capacity* is associated (or at least closely related) with *legal capacity*. If it is officially concluded that the mental capacity is lacking fully or partially, the legal capacity may be limited or renounced by a Court decision. Nevertheless, if there is a lack of full mental capacity and a person is not officially restricted/deprived of legal capacity, it may affect legal actions because they may become null if challenged in the future.<sup>101</sup> A person deprived of legal capacity cannot conclude a contract, apart from daily routine contracts of smaller value (ar. 47-a Law on Obligations). A minor with restricted legal capacity can conclude only those contracts that are allowed by law, while an adult with restricted legal capacity can only conclude contracts that are not explicitly forbidden in the Court's decision. Other contracts concluded by persons with restricted legal capacity without approval from the legal representative may become void unless the legal representative does not approve them additionally (art. 48 Law on Obligations).

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<sup>101</sup> See for instance the case elaborated below Апелационен Суд Скопје, ГЖ – 2216/18, Решение од 24.1.2019, as well as the case Врховен Суд на Република Северна Македонија, Пресуда, Рев.2.бр.206/2018.

In relation to contracts involving property or other agreements, it is permissible to initiate legal proceedings to demonstrate that an individual who, at the time of entering into the contract, was not limited of legal capacity, but was actually incapable of rational judgment. As a widely accepted legal principle, this argument can be employed in Court proceedings to render the contract void.

Persons who, due to a manifest form of mental illness with the presence of psychotic symptoms or residual signs of the illness, are unable to understand the meaning of marriage and the obligations arising from it, and who are simultaneously incapable of reasoning, cannot enter into marriage. Also, individuals who have mental development delays and have severe and most severe mental deficiency (IQ -Intelligence quotient- below 36°) cannot enter into marriage. Finally, persons with moderate/mild disabilities in their mental development, as well as persons with severe hereditary diseases in the family, can enter into marriage after a previously obtained opinion on the genetic construction issued by the Institute for Children's Mental Health and young people in Skopje or another appropriate institution that deals with genetic research.

Medical matters that regard patients are regulated by the Law on Protection of Patients' Rights.<sup>102</sup> Article 6, par. 1 of the law stipulates the right to an informed consent to any medical intervention. Article 14 stipulates that a patient has the right to decide (about him/herself), with an exception when any postponement may eventually harm his/her/somebody else's health or life. If the person is blind, deaf or cannot read/write then a written form of acceptance or rejection of medical treatment should be carried out in the presence of a family member/guardian or legal representative (art. 14, par. 4). If the patient is out of conscience, deprived of legal capacity or a minor and admitted to the health institution, the consent should be given and signed by the parent, a legal representative or the guardian (except in cases of urgent medical interventions) - art. 15, par 1. These persons could withdraw the consent at any time if that is in the patient's interest (art. 15, par. 2). If the patient's interests and those of the person that decides on his/her behalf (the parent, the guardian, the legal representative) are in collision, the health institution should notify the Centre that should decide as a matter of urgency (art. 15, par. 3). A medical intervention without consent of authorized persons could be conducted only in very urgent cases when the life of the patient/someone else's is imminently endangered (art. 16). The patient or his/her parent/legal representative/guardian (if the patient is deprived of legal capacity or he/she is a minor) should consent with a written statement for participation in a scientific research. If it is in the patient's interest, the statement could be withdrawn from the patient him/herself or his/her representatives (art. 17). Patients deprived of legal capacity, not capable of making sound judgments or minors could be subjected to such investigations if it has additionally been considered that the research results might contribute to their wellbeing and improvement of their health following consent from the representatives and permission from the Centre (art. 20, par 1). An exception could be in a case when the results may contribute to other patients with similar

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<sup>102</sup> Закон за заштita на правата на пациентите, основен текст *Службен весник на РМ* 82/08.  
Пречистен текст - <https://zdravstvo.gov.mk/wp-content/uploads/2018/01/ZAKON-ZA-ZASHTITA-NA-PRAVATA-NA-PATSIENTITE-zakluchno-so-br.-150-od-2015.pdf>.



conditions, while the research itself poses a minimum risk and burden towards the patient (art. 20, par. 2).

According to the Law on Mental Health<sup>103</sup> a person with mental illness could be accepted in any health care facility only if the person has consented or on the grounds of a Court's decision or in urgent cases (art. 16).

Article 41 of the Constitution stipulates that it is a human right of a person to decide freely about procreation of children. However, art. 3 of the Law on Termination of Pregnancy<sup>104</sup> stipulates that the termination of pregnancy could be done with written consent of the pregnant woman, except in cases when she is a minor or a person deprived of legal capacity when a written statement from the parent or the guardian is needed.

The Law on Bio-medically Assisted Reproduction<sup>105</sup> is also restrictive in access when it comes to persons deprived of legal capacity. Namely, article 9 clearly states that a right to be a beneficiary of bio-medically assisted procedure is granted only to holders of full legal capacity. Like most laws, this one too does not specify if this right is granted to persons partially deprived of legal capacity.

Regarding the person's mental capacity in inheritance law, the capability of reasoning is crucial in relation to the possibility of writing one's own last will (testament). Whereas, a testament can be drawn up by any person capable of reasoning who has reached the age of 15, the will is null and void if the testator was under 15 years of age or was incapable of reasoning at the time of its creation. A loss of judgment that would have occurred since the will was made does not affect its validity.

When it comes to administrative procedures (such as issuing a passport), again, a person deprived of legal capacity cannot submit a request on his/her own. Instead, that can only be done by his/her parent/legal representative or guardian (art. 29 Law on Travel Documents for Citizens of the Republic of North Macedonia).<sup>106</sup>

**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?**

A case brought before the Supreme Court in 2018<sup>107</sup> tackled the deteriorated mental capacity when concluding a Donation Contract (Gift Agreement) without prior decision for deprivation of legal capacity. It was concluded that lower Courts

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<sup>103</sup> Закон за ментално здравје, основен текст *Службен весник на РМ* 71/07, пречистен текст - <https://zdravstvo.gov.mk/wp-content/uploads/2018/01/ZAKON-ZA-MENTALNO-ZDRAVJE-zakluchno-so-br.-150-od-2015.pdf>. Last retrieved 31. 5. 2024.

<sup>104</sup> Закон за прекинување на бременоста, *Службен весник на Република Македонија* бр. 101/19.

<sup>105</sup> Закон за биомедицинско потпомогнато оплодување, основен текст *Службен весник на РМ* 37/08, пречистен текст - <https://zdravstvo.gov.mk/wp-content/uploads/2015/10/0-ZAKON-ZA-BIOMEDITSINSKO-POTPOMOGNATO-OPLODUVAN-E.pdf>. Last retrieved 31.5.2024.

<sup>106</sup> Закон за патните исправи за државјани на Република Македонија, *Службен весник на РМ* бр. 73/04. Пречистен текст - <https://ldbis.pravda.gov.mk/PregledNaZakon.aspx?id=9084>. Last retrieved 31.5.2024.

<sup>107</sup> Врховен Суд на Република Северна Македонија, Пресуда, Рев.2.бр.206/2018.

decided rightfully when they annulled the Contract due to lack of/non-existence of mental (therefore, legal) capacity to fully comprehend the meaning, rights and responsibilities (art. 45 b, par 1, 47a, par 1 and 2 and art. 101 and 102 Law on Obligations).

Another case brought before the Court of Appeal (Court of Second Instance) in 2019<sup>108</sup> opened a discussion about the scope of legal deeds a person with limited legal capacity can undertake in comparison to a person deprived of legal capacity under the current legal framework. The case concerned a woman with serious medical conditions who concluded a Life-Care Contract/ Agreement for life-long support/maintenance, while her legal capacity was never challenged in Court. After her death, the validity of the Contract was questioned by her heirs who claimed that she was not capable of reasoning at the time of signing the Contract. Accordingly, they asked for annulment of the Contract. The Basic Court (Court of First Instance) annulled the Contract following an expert (medical) opinion leading to the conclusion that she was with restricted mental (accordingly, legal) capacity at the time when she signed the Contract. The Court of Appeal decided that the Basic Court should decide on the matter again, having more clear facts about her mental capacity to participate in the legal sphere and dispose of her property in a situation when her legal capacity was not officially challenged but was assessed as limited by an expert opinion. The Basic Court should explain the scope of legal deeds a person with restricted legal capacity can enter into and the difference between the same scope in case of complete loss of mental capacity (deprivation of legal capacity).

Regarding abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions, the country lost a case in front of the ECtHR. The case was about a mentally ill child whose parents were with mental disability.<sup>109</sup> The child was abandoned at birth and at his grandmother's request the child was placed in orphanage while the Centre was appointed as a guardian. Soon after the child was diagnosed with both mental and physical disabilities, the child was accommodated in a Rehabilitation institute (State-run Institution) that was not suitable to his conditions. Following an Ombudsman visit, he was found tied to his bed, while the Ombudsman recorded inhumane and degrading treatment. The Helsinki Committee for Human Rights in Skopje took over the case after the Ombudsman's public presentation initiating criminal complaints on behalf of the applicant. Since the domestic proceedings were not efficiently protecting the rights of the child, the case was filed before the ECtHR. The admission was contested by the Government on the grounds of a lack of legal standing to act on behalf of the child of the Helsinki Committee and on non-exhaustion of domestic remedies. However, the ECtHR considered the application admissible. In the Judgment, the Court recognized an infringement of art. 3 of the European Convention on Human Rights on account of an inappropriate placement of the applicant in the Rehabilitation Institute and lack of requisite care provided that resulted with inhumane and degrading treatment. The Court also found violation of art. 3 (procedural obligation - investigation) because the authorities' failed to hold a proper inquiry into the case. The Court found it particularly striking

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<sup>108</sup> Апелационен Суд Скопје, ГЖ – 2216/18, Решение од 24.1.2019.

<sup>109</sup> *L.R. v. North Macedonia*, ECtHR, Application No. 38067/15, Judgment of 23 January, 2020.

that the guardian and the other authorities were aware that the institute could not cater for the child's needs, yet no actions were taken accordingly. Instead, the placement continued for a considerable period. The Government had provided no explanation for the authorities' failure to react in a prompt, concrete and appropriate manner. The Special Reporter noted that domestic legislation allows forced interventions and further on stated that "Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged 'best interest' of the person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhumane and degrading treatment (A/63/175, paras. 38, 40, 41). Concerns about the autonomy and dignity of persons with disabilities lead the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions".<sup>110</sup> Despite many critics that the country received because of this case, it seems like it has not done much to avoid further repetitions. As far as the author of this Report is aware, there were no other such cases against Republic of North Macedonia before the ECtHR.

Regarding case-law, Judge Lidija Dimova has given reflections on matters that have to be improved in the national legal system in order to align it at least with international treaties that the country has ratified.<sup>111</sup> According to her, without legal capacity, a person cannot manage its own life, accordingly a person loses control over one's own life. A person's right to decide about his/her life is a basic human right. Deprivation of this right is against personal integrity and dignity. Therefore, she urges that the national legal system recognizes the need to uplift the position of persons with disabilities in order not only to be able to make decisions about themselves, but also to have the support they need in order to accomplish these rights.

### **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?**

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<sup>110</sup> *Ibid.* par. 46.

<sup>111</sup> Димова Л., Деловна способност, поим и значење, одземање и враќање, Академија за судии и јавни обвинители „Лавен Шатев“, 13.2.2020 - <https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2020/02/odzemanje-na-delovna-sposobnost.pdf>. Last retrieved 1.6.2024.

There are two general categories of guardianship (старательство – staratelstvo) for adults: 1. For persons with limited/restricted legal capacity and for persons deprived of legal capacity and 2. For ‘special cases’ including a. persons without official residence and without legal representative, b. unknown property owner when there is a need for protection of the property and c. other cases when there is a need for protection of rights and interests of certain persons. The last category also includes the possibility for temporary measures by the Centre for a foreign citizen not capable of taking care of him/herself if a competent body from the foreign country asks for it. ‘Special cases’ include special circumstances when the person is not capable of taking care of one’s self in a particular situation because of other reasons, not because of limited or deprived legal capacity. Competences of the Centre or of the guardian (старател – staratel) appointed by the Centre depend on the circumstances in each particular case.

In addition to the general categories, there are two more specific ones: 4. ‘special guardian’ (different from the one appointed in ‘special cases’) which may be appointed in cases when: a. the ward (штитеник – stitenik) is in a conflict with the guardian, or they are opposite parties in a same legal deed; b. when the ward is in a conflict with another ward protected by the same guardian or they are opposite parties in a same legal deed. Finally, the Law on Family in article 176, paragraph 1 stipulates the possibility for 5. any person which due to age, illness, or other justified reasons is not capable of taking care of him/herself to have a guardian for certain deeds or certain kinds of deeds appointed by the Center. The purpose of this article is to encompass any situation that is not mentioned in the Law, while the scope of rights and responsibilities of such guardian are determined based on the circumstances in each particular case. The same rules apply to all kinds of guardians. In general terms, the Center appoints the guardian, while the Court could do it only in exceptional, urgent cases. The only difference is that for persons with limited/deprived legal capacity, there has to be a separate procedure for limitation/deprivation of legal capacity, after which the procedure for appointing a guardian has to follow.

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

No article excludes the possibility that different types of state-ordered measures could be applied simultaneously. However, the reasons for appointing each one of them differ therefore, it is less likely to be in a situation to apply different state-ordered measures simultaneously.

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

As mentioned in A. normally different types of measures correspond to different types of situations a person in need or vulnerable adult may find

him/herself. Therefore, there is no preferential type of measure, just the one that suits the most to the individual's situation. For instance, if an incapacitated individual (such as an adult with dementia) requires comprehensive protection, a guardian for persons with limited legal capacity or deprived of legal capacity will be appointed. In cases where the vulnerable adult's interests are endangered by the guardian, the Centre should intervene (may terminate the guardian's role if it acknowledged that he/she misused their competences). In cases where the vulnerable adult is in conflict with the guardian or they are parties of a same legal deed (for instance, they are parties of a Contract for life-long care), then another guardian may be appointed to represent the interests of the vulnerable adult in that particular conflict (but on a different basis and only for the particular conflict of interests).

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

An interim or *ad-hoc* measure could be adopted when a special guardian is appointed for persons without official residence and without legal representative or for unknown property owner when there is a need for protection of the property or for other cases when there is a need for protection of rights and interests of certain persons involved in some judicial or administrative proceedings. Apart from the Centre, in such cases, the Court or another organ competent for the particular proceeding may appoint an *ad-hoc* guardian and immediately notify the Centre about it.

***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.**

For persons with limited/restricted legal capacity or deprived of legal capacity – two different procedures: 1. For limitation/restriction of the legal capacity and 2. For appointment of guardian. For the other cases, as described above.

Legal grounds and procedure: For persons with limited legal capacity or deprived of legal capacity - limited legal capacity or deprived of legal capacity because of mental illness, use of alcohol, drugs or other poisons or psychedelic substances (art. 34, par. 1 Law on Non-contentious Procedure). The proceeding for limitation/restriction or deprivation is regulated by the Law on Non-contentious Procedure, while the proceeding for appointing a guardian by the Law on Family. The Centre works according to the Law on General Administrative Proceeding. For the other cases, as described above.

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

For persons with limited legal capacity or deprived of legal capacity - the Court, according to the person's last permanent or temporary place of residence (art.35 Law on Non-contentious Procedure) in a non-contentious procedure decides to limit legal capacity or deprive of legal capacity and sends the decision to the Centre according to the person's last permanent or temporary place of residence (art. 125 Law on Family) that further decides to appoint a guardian. The Center's competences are regulated by the Law on Family, while it decides based upon provisions regulated by the Law on General Administrative Procedure. For all cases - the Center is the deciding authority, whereas only as an exception and in urgent cases, the Court takes precedence before the Center.

## **19. Who is entitled to apply for the measure?**

The spouse, the child, the parent, the grandparent, the siblings of the concerned person or any other person who lives in the same household with the concerned person, as well as the Centre for Social Services (art. 36 Law on Non-contentious Procedure). When it comes to the procedure for appointing a guardian, the initiators could be the Centre *ex officio* or any other interested person (art. 127 Law on Family). The same applies to all kinds of guardianships.

## **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 Court may appoint a temporary guardian in a proceeding for limitation/deprivation of legal capacity only if it considers that the circumstances are urgent and that there are justified reasons. In such circumstances, the Court will listen to the adult person if that is possible on a hearing regarding temporary guardianship (art. 40, par. 2 Law on Non-contentious Procedure). In a regular proceeding for limitation/deprivation of legal capacity, the Court will also listen to the adult if that does not affect his/her health about any facts relevant to the decision (art. 43 Law on Non-contentious Procedure). However, the Court will also consult at least two medical opinions of doctors, which should examine the adult (art. 45). The Court will reach the decision based on combination of these hearings. In a proceeding regarding adult's placement in a health institution for mental illnesses, the Court decides when the adult's freedom to move could be restricted. This proceeding is urgent (art. 58). When a health institution receives an adult without Court's decision or adult's consent, it has to notify the Court within 48 hours. If the person consents (special written form in front of witnesses), and his movement has to be restricted, the health institution again has to notify the Court (art. 59). Such notification is not necessary if the person is kept in the health institution based on a decision for deprivation of legal capacity of the Court or in

a criminal proceeding (art. 61). Regarding the proceeding for appointing a guardian, the Centre will consider the wishes of the adult if he/she is capable of expressing them, or the wishes of his/her close relatives (art. 135, par. 4 Law on Family). The same applies to all kinds of guardianships.

**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.**

Apart from the above mentioned, the Court, in the proceeding concerning legal capacity, may order, if it finds it necessary, to place the adult in a health institution for mental illnesses (no longer than 3 months), except in cases when that might influence his/her health in a deteriorating manner (art. 46). The adult or his temporary representative or guardian may file a complaint against such order. The final decision has to be reached within three days (art. 47). After the completion of the proceeding, the Court will reach a decision for limitation or for deprivation of legal capacity (art. 48). If the reasons for such decision cease to exist, the Court, again in a non-contentious procedure, may recover the legal capacity partially or fully (art. 49). The Court may postpone the decision-making process if the grounds for limitation of the legal capacity include use of alcohol or other drugs while the person begins with a treatment in a specialized institution (art. 50). If the Court has reached a decision for a full deprivation of legal capacity while the situation of the adult has improved, the Court may *ex officio* or by an initiative of everyone else who could initiate such procedure, including the adult or his/her representative/guardian change its decision (art. 51 and 52). Furthermore, the Centre may appoint a guardian (priority is given to close relatives of the adult) or act as a guardian imminently (art. 135 Law on Family). The Centre issues a document to the guardian in which his/her rights and obligations are clearly specified (art. 140 Law on Family).

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

*Necessity for publicity of the measure:* All decisions reached by the Court have to be delivered to the Birth Registry Office, to the Agency for Real Estate Cadastre, if the person has property, and to the Centre for Social Services (art. 54). All decisions made by the Center, have to be delivered to the registry offices and other state organs, relatives, family members and neighbors as well as other companies, institutions or organizations (art. 128 and 140 Law on Family).

- 1) For special cases including a. persons without official residence and without legal representative, b. unknown property owner when there is a need for protection of the property and c. other cases when there is a need for protection of rights and interests of certain persons.

Legal grounds and procedure: the above mentioned (a., b. and c.).

Authority: the Centre or the institution/organ competent to decide for cases in which the adult is a party. This institution should notify the Centre urgently about its decision (art. 173, par. 2 Law on Family).

Entitled to apply: The Centre or the institution competent to decide for cases in which such an adult is a party.

Consent of the adult: only for other cases when there is a need for protection of the rights and interests, if the person can express consent.

General description of the procedure: described in the Law on Family as a general procedure for appointing a guardian.

Necessity for publicity of the measure: All decisions reached by the Court have to be delivered to the Birth Registry Office, to the Agency for Real Estate Cadastre if the person has property, and to the Centre for Social Services (art. 54). All decisions made by the Center, have to be delivered to the registry offices and other state organs, relatives, family members and neighbors as well as other companies, institutions or organizations (art. 128 and 140 Law on Family).

- 2) “Special guardian“ when: a. the ward is in a conflict with the guardian him/herself or they are opposite parties in a same legal deed; b. when the ward is in a conflict with another ward protected by the same guardian or they are opposite parties in a same legal deed.

Legal grounds and procedure: the above mentioned (a. and b.).

Authority: The Centre (art. 174 Law on Family).

Entitled to apply: the persons concerned or the Center.

Consent of the adult: if they can express it.

General description of the procedure: described in the Law on Family as a general procedure for appointing guardian.

Necessity for publicity of the measure: All decisions reached by the Court have to be delivered to the Birth Registry Office, to the Agency for Real Estate Cadastre if the person has property, and to the Centre for Social Services (art. 54). All decisions made by the Center, have to be delivered to the registry offices and other state organs, relatives, family members and neighbors and well as other companies, institutions or organizations (art. 128 and 140 Law on Family).

- 3) For any person which due to age, illness, or other justified reasons is not capable of taking care of him/herself to have guardian for certain deeds or certain kinds of deeds.

Legal grounds and procedure: age, illness, other justified reasons.

Authority: the Center.

Entitled to apply: the person him/herself.

Consent of the adult: if can express them.



General description of the procedure: described in the Law on Family as a general procedure for appointing guardian.

Necessity for publicity of the measure: All decisions reached by the Court have to be delivered to the Birth Registry Office, to the Agency for Real Estate Cadastre, if the person has property, and to the Centre for Social Services (art. 54). All decisions made by the Center, have to be delivered to the registry offices and other state organs, relatives, family members and neighbors and well as other companies, institutions or organizations (art. 128 and 140 Law on Family).

**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?**

A guardian is the person appointed to protect the ward and can be either a natural person or the Centre for Social Services as a public institution imminently. Usually, the role of the guardian encompasses both functions: to support and to represent the ward. A guardian could be a person who has consented and has personal characteristics and ability to conduct its responsibilities (art. 135, par. 2 Law on Family). Priority is always given to close relatives, even though the Centre considers the ward's wishes and those of the closest family members. There is no explicit priority given to one against the other family member. The guardian has to have legal capacity and personal abilities to conduct the given role. Normally, a legal entity cannot be a guardian, the only exception being when the Centre overtakes the role imminently. The role of the guardian is altruistic (art. 152, par. 1 Law on Family), meaning that normally he/she will not receive any compensation, except for the expenses that occurred during the process or if extra activities were undertaken for protecting the rights and interests of the ward. A guardian cannot be a person deprived of legal capacity or parental rights, a person whose interests are against the ward's interests or a person, for who it could be

probable, according to his/her past behavior, that would not be able to conduct the role properly (art. 139 Law on Family). It is possible for one person to be a guardian to several wards if there is a consent of all parties concerned whose interests are not conflicting. It is also possible that the guardian and a person appointed by the Centre (the Centre imminently) be together in the role, each having partial competences in particular cases. In general, if a conflict of interests exists between the guardian and the ward, then that person is not eligible to be a guardian of that particular person. Nevertheless, if the conflict appears only in a particular case, then the Centre could appoint a special guardian for that particular matter (art. 174, par 2 Law on Family).

### *During the measure*

### *Legal effects of the measure*

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

The measure does not affect the legal capacity of the adult. In fact, the measure comes only after the modification (limitation or deprivation) of the legal capacity.

### *Powers and duties of the representatives/support person*

Depending on the fact if the legal capacity of the adult is limited or deprived, powers and duties of the guardian could vary – as taking care of a minor under or over 15 years of age. They can only vary regarding duties surrounding property rights, but not regarding the care of the person under guardianship. In this sense, the guardian's first concern is the person, even though the content of the care depends on the person's needs. The guardian of an adult with deprived legal capacity could only undertake all necessary measures regarding ordinary property issues, while for undertaking major property decisions (for instance, to sell, buy, give-donate a property etc.), a special approval from the Centre is necessary. On the other hand, a guardian of an adult with limited legal capacity has lesser amount of power and duties because a minor over 15 is usually considered capable to have its own income and to manage it accordingly (except in cases when special approval of the Centre is necessary).

In general, the guardian should primarily take care of the person, his/her rights and interests, accommodation and health. In particular, powers and duties of the guardian depend on the reasons why the adults have limited legal capacity or are deprived of capacity. The guardian should try to overcome such reasons (obstacles) if possible, while the final aim is to enable the adult to take care of him/herself independently (art. 167 Law on Family). If it is necessary, the guardian should place the adult in a medical institution and notify the Centre

about it. In these lines, one may argue that the guardian in the Macedonian legal system has many competences, including supportive and representative. He/she acts in most of the cases as parents act on behalf of their minor children.

The guardian should also represent the ward, assure financial means for the needs of the guardianship and report about its own work to the Centre.

**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;**

The guardian can act on behalf of the adult (depending on the matter, for some cases, an approval from the Centre is necessary). The guardian cannot (on its own, without permission from the Centre) give gifts, sell, or do any other legal changes of the ward's property rights out of higher value, reject inheritance, legacy or gifts or undertake other explicitly forbidden matter pursuant to law (art. 147, par. 1). The guardian represents the ward as a legal representative in all legal or other relations with third parties on behalf of the ward. They could act together if the person has limited (not deprived) legal capacity and if the nature of the matter allows it.

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

Wills and preferences of the adult could only be taken into account if it is considered that the person could reason and express them accordingly. However, the best interests of the adult should normally be a guiding principle of the guardian, even though this concept is not specifically and explicitly elaborated in the Law on Family.

**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?**

The duties of the representative to inform, consult, account and report are primarily to the Centre. In this regard, the guardian should report about his/her work to the Centre at least annually, but also whenever the Centre asks for it (art. 151, par. 1 Law on Family). There is no explicit provision about informing, consulting or reporting to the ward or the other family members, even though the Centre may decide about it in each particular case when appointing the guardian or later.

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

Other duties of the guardian could be explicitly and specifically determined in the Centre's decision to appoint the guardian and they could depend on the particular needs of the adult.

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

The guardian can receive a compensation of extra expenses he/she might have faced during their duties, as well as remuneration if he/she has invested extra efforts to successfully comply with duties. In such cases, the compensation and the remuneration have to be approved by the Centre, either while they are covered by the ward's own finances or (if that could endanger the ward's own maintenance) by the Republic Budget (art. 152 Law on Family).

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

A „special guardian“ is appointed when: a. the ward is in conflict with the guardian or they are opposite parties in a same legal deed; b. when the ward is in conflict with another ward or they are opposite parties in a same legal deed. The Law on Family does not go any further into elaborating the relationship between representatives/support persons. Generally, the Centre outlines the rights and responsibilities when appointing a guardian, while when there is a need for a “special guardian“, he/she replaces the work of the guardian in that particular legal deed.

**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?**

As above.

**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)?**

As above.

- 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 cases when the guardian is not fully or properly executing his/her rights, responsibilities and duties, there is a possibility for a complaint or objection to his work by the ward him/herself if capable, or his/her relatives, all other persons competent to initiate a procedure for appointing a guardianship, as well as any citizen (art. 131, par. 2). The complaint should be distributed to the Center, or if it concerns the Centre itself, to the Ministry of Labour and Social Policies. In the first instance, the Centre investigates the facts from the complaint and could take measures against the guardian or appoint a new one if it finds it necessary. In the second instance, the Ministry gives instructions to the Center, while the Centre reports to the Ministry about undertaken measures. If there is any material damage caused to the ward, the Centre could ask remuneration from the guardian if there are facts that he did not conduct his duties with due attention or in good faith (art. 153, par. 1). If the guardian does not remunerate the damage, the Centre does it via a Court proceeding. The guardian will also be liable for damages done to third parties by the protégé according to the tort law (as the parents are responsible for damages done by their children). Apart from the civil liability, the guardian could also have criminal liability if he/she has abandoned or maltreated the vulnerable adult. On the other hand, the property rights of the ward are protected by the Criminal Law stipulating evasion, unauthorized acts and services (послужување - posluživanje), fraud and trust abuse.

- 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.**

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

In general, a contract concluded by an incapable person is null. If the object of the contract is out of smaller value (everyday contracts), it may be considered as valid, unless otherwise stipulated in the law (art. 47-a (2) Law on Obligations). On the other hand, if the contract is concluded with person with limited legal capacity and outside of the authorisations given in the law, they may remain in force until their additional approval. If that does not happen, their validity may be questioned (art. 48 Law on Obligations). The other party of the contract may ask for the legal representative of the person with limited legal capacity to approve the contract. If the legal representative does not reply or an approval is not given, the other party may withdraw from the contract. This right is limited in time. The withdrawal may only be asked in 30 days after the other party becomes aware of the fact that the other person needs additional approval in order to conclude contracts (art. 49 Law on Obligations). If the person with limited legal capacity regains full legal capacity after the conclusion of the contract, that person may ask for annulment of the contract concluded without additional approval by filing an appeal to the Court in a 3-months period after regaining full legal capacity (art. 51 Law on Obligations).

The guardian has to ask for an approval from the Center when undertaking decisions on behalf of the ward regarding disposition or burdening (easement) of immovable property or disposition of movable property out of great or personal value to the ward or property rights out of greater value, renouncement of inheritance or other legacy rights, refusal of a gift or other actions according to the law (art. 147 Law on Family). The Law on Obligations stipulates in art. 21(1) that when an approval from a third party is needed for purposes of concluding a contract, the approval may be given before (as a permission) or after the conclusion of the contract (as an additional approval) if something else is not stipulated in the law. The guardian cannot represent the ward in legal deeds in which the other party is a spouse or other close relative to the guardian (art. 148 Law on Family). The guardian is responsible for any damage that he/she may cause to the ward due to his/her malfunctioning. The Center supervises his/her work and decides accordingly. The Center may also undertake other measures for protection of the ward if it suspects the work of the guardian (art. 153 Law on Family). The Center is responsible to undertake measures for protection of the rights and interests of the ward and of any third person that may be affected by the work of the guardian (art. 158 Law on Family).

***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.**

Usually, the role of the guardian is not fixed in time but is dependent on the circumstances that initiated it to start with. Nevertheless, if the guardian dies, stops to execute his responsibilities on his own or due to certain circumstances, then the Centre is entitled to take urgent measures to protect the ward and/or other persons concerned with the guardianship, as well as to appoint a new guardian (art. 154). The guardianship can be terminated due to several reasons: 1. death of the guardian, 2. time-expiring - if it was appointed for a particular time period, 3. malfunctioning of the guardian and an urgent appointment of a new one (art. 155, par. 2) and 4. request by the guardian for a relieve of duties with a (at least) three months' notice and an appointment of a new one (art. 155, par. 1). It follows that the measure of guardianship ceases to exist following initiation of the guardian and of the Centre, even though that is not explicitly stipulated in the Law on Family. However, any person may indicate to the Centre malfunctioning of the work of the guardian or other reason for termination of the measure. Usually, prior to the end of the guardianship, the Centre asks for a Report regarding the work of the guardian as well as regarding the ward's property condition (art. 157. Par 1 of the Law on Family).

## ***Reflection***

### **30. Provide statistical data if available.**

The Census of 2002<sup>112</sup> reveals that the share of elderly people (over 60 years) in the population is 15% (303.534 persons), out of which - 46% (139.636 persons) are males, while 54% (163 898 persons) are females.<sup>113</sup> The mortality rates increase with age and they are 13,4% for people aged between 55 and 64,28% for people aged between 65-74 and 43% for people over 75.<sup>114</sup> The UN World Population Prospects predicted back then that the this percentage will increase and will be 16,5 in 2009 (out of which 2,0% will be over 80 years) and 33,0 (out of which 6,8% will be over 80 years) in 2050.<sup>115</sup> Even though the life-expectancy is lower than the average of the other European countries, the UN also predicted that it is expected to increase and reach 74,9% in the period 2010-2015 and 79,5% by 2050.<sup>116</sup>

When it comes to the social protection of the elderly, it is stipulated in the Law on Family that the family members are responsible of taking care of their elderly, so the family is the primary caregiver. The elderly are entitled to social protection according to the Law on Social Protection only if the family members are at a social risk and cannot provide for their elderly.<sup>117</sup>

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<sup>112</sup> National Strategy for Elderly. *Op. cit.* Министерство за труд и социјална политика на Република Македонија, Национална стратегија за стари лица 2010-2020, јуни, 2010.

<sup>113</sup> *Ibid.* pg. 4.

<sup>114</sup> *Ibid.* pg. 11.

<sup>115</sup> *Ibid.* pg. 8. See also UN World Population Prospects 2009, the 2008 Revision.

<sup>116</sup> *Ibid.* pg. 12.

<sup>117</sup> *Ibid.*, see more on the different models for social protection on pg. 15-19.

According to the last statistical data (from 2021 but published in 2023),<sup>118</sup> the right to social welfare is used by 124.949 people in total, out of which 854 are socially excluded, 7.581 are persons with visual impairments and 12.359 are persons with physical disabilities.<sup>119</sup> Under custody are 1.778 persons, out of which 695 are situated in families that should provide care. From adult recipients of social welfare, 9.410 are persons with intellectual disabilities, 16.418 are persons with combined disabilities, while 6.634 are elderly people.<sup>120</sup> There are 318 in total recipients of care in institutions, among which 52 with moderate disabilities, 192 with severe disabilities and 7 with profound disabilities.<sup>121</sup> Among adult recipients of social welfare, there are 3.829 persons with intellectual disability, 1.951 persons with combined disability, 3.321 with financial problems, 5.231 elderly persons and 8.702 other persons.<sup>122</sup> There is 1 institution for organized living with support that has 28 recipients and 3 institutions for care for persons with disabilities with 298 recipients.<sup>123</sup> There are 38 institutions for adults with 1.858 recipients and 172 trade companies for employment of disabled persons with 1.996 recipients.<sup>124</sup>

**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?**

It is important to mention that there is a lack of research and interest about this topic in the country.<sup>125</sup> There is only one active association for support and development – Humanity (Хуманост)<sup>126</sup> that has been working in the field of publishing comments on the National Strategy for Elderly People (2010-2020)<sup>127</sup> and developing suitable models for care of the elderly at home.<sup>128</sup> The main problem stated there was that while the European Union standards in terms of elderly care stipulate that each country should ensure a minimum of 3% facilities for institutional accommodation of the elderly, the Republic of North Macedonia has capacity only for institutional care for the 0,66 of the total elderly population.<sup>129</sup> Some authors have suggested that the concept of active aging

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<sup>118</sup> Republic of North Macedonia State Statistical Office, *Social Welfare of Children, Juveniles and Adults 2021*, Skopje, 2023.

<sup>119</sup> *Ibid.* pg. 20.

<sup>120</sup> *Ibid.* pg. 23.

<sup>121</sup> *Ibid.* pg. 28.

<sup>122</sup> *Ibid.* pg. 47.

<sup>123</sup> *Ibid.* pg. 48.

<sup>124</sup> *Ibid.* pg. 49.

<sup>125</sup> Regarding persons with disabilities it has already been elaborated in the previous chapter.

<sup>126</sup> Web-site: <https://humanost.org.mk/>. Last retrieved 1.6.2024.

<sup>127</sup> Робановска Е., Хуманост, ГАП Национална стратегија за стари лица 2020-2020, 2019.

<sup>128</sup> Suitable Model – Care of the Elderly at Home in Macedonia, Case Study Macedonia, 2016.

<sup>129</sup> *Ibid.* pg. 7.



corresponds with healthy aging and that this is mainly supported by the Red Cross of the country and the Association of retired in the country.<sup>130</sup>

Ever since 2010, the State did not make a new strategy nor there have been significant political debates on the issue. Most of the national efforts were placed in the National Strategy on the Rights of Persons with Disabilities 2023-2030 with Action Plan 2023-2026<sup>131</sup> since the country ratified the UN Convention of Rights for Persons with Disabilities. The Strategy is adjusted with the UN and EU Strategy 2021-2030 as well as the Agenda 2030 and the sustainable development goals, appreciating human rights and the principle “Leave no one behind”.<sup>132</sup>

There are no ongoing reforms in the Law on Family provisions in the draft version of the Civil Code regarding state-ordered measures. Accordingly, there is a lack of public debate, even though there is an urging necessity.<sup>133</sup>

## **SECTION IV – VOLUNTARY MEASURES**

### ***Overview***

The Macedonian legal system does not recognize voluntary measures. It does not recognize continuing powers of attorney nor advance directives. It is only possible to authorize a person to take (certain) actions/deeds on behalf of the person that gives the authorization while still having legal capacity (with a statement signed by the notary public). This is known as authorization – полномошно/polnomosno, while the authorized person as полномошник/polnomosnik. The authorization could be limited (ограничено/ograniceno) or unlimited (неограничено/neograniceno), specific (посебно/posebno, специјално/specijalno) and general (општо/opsto, генерално/generalno) but not preventive (to encompass cases if and when the person might be disabled to reason and bring sound decisions about oneself).<sup>134</sup>

Authorization in civil proceedings is regulated by the Law on Civil Procedure (art. 80-92). Article 81, par. 1 stipulates that an authorized person could be ...among others... also a blood relative in straight line, brother, sister and a spouse if they have complete legal capacity. Especially important is art. 91 (1) stipulating that if during civil litigation with an authorized person as a representative, the represented party dies, his/her legal representative dies, or gets deprived of legal

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<sup>130</sup> Тргачевска А., Програми за поддршка на старите лица за активно и здраво стареење во локалните заедници, Евродижалог, стр. 100. - [https://studiorum.org.mk/evrodijalog/23/pdf/MKD/04\\_MAK\\_Trgacevska.pdf](https://studiorum.org.mk/evrodijalog/23/pdf/MKD/04_MAK_Trgacevska.pdf). Last retrieved 2.6.2024.

<sup>131</sup> *Op. cit.* Strategy - Национална стратегија за правата на лицата со попреченост 2023-2030 со акциски план 2023-2026, Влада на РСМ, Скопје, март, 2023.

<sup>132</sup> *Ibid.* pg. 5.

<sup>133</sup> See for instance the Red Cross' activities for taking care of elderly, ill or lonely: Радио Слободна Европа на Македонски јазик, Негувателки од Црвен Крст за старост, болест и самотија, 25. Dec. 2023 - <https://www.youtube.com/watch?v=jcIRx4o7TQM&t=1s>. Last retrieved 2.6.2024.

<sup>134</sup> For more see in Камбовски И., Застапување во граѓанското и трговското право, Стобитрејд, 2015.

capacity (...) the representative is still capable of taking legal actions in the litigation, unless an heir or a new legal representative revokes the authorization. The Law on Family in article 28 stipulates that in certain justified circumstances, the Marriage Registry Office can allow conclusion of marriage with the sole presence of one of the future spouses and an authorized person of the other spouse. This is a specific authorization that applies only for the purposes of concluding the marriage with the specified other person.

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

N/A

**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?**

No, the legal system does not have specific provisions for *ex lege* representation of vulnerable adults. *Ex lege* representation only exists for minors (children below 18 years) by their parents and in certain cases for spouses regarding marital law and matrimonial property law.

- 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?**

The Law on Property and Other Real Estate Rights<sup>135</sup> regulates the matrimonial property issues. Article 68 stipulates that each spouse is free to manage and dispose their own property, unless they do not make a different written mutual agreement. The property gained during marriage is a joint (community) property (art. 67 and 69). They manage and jointly dispose of the joint property (art. 70), unless they agree otherwise (art. 71). They can during the marriage or afterwards split the joint property into individual property by an agreement or with judicial decision in a non-contentious procedure (art. 74-78). Obligations that one of the spouses had prior to concluding the marriage, as well as other personal obligations undertaken during the marriage cannot automatically be transferred to the other one - not liable (art. 79). Both spouses are liable jointly and severally for obligations undertaken by only one of them for purposes of settling regular expenses/needs during their common life as well as for responsibilities that burden both of them by virtue of law. A spouse who has settled a joint obligation from his/her separate property shall have the right to reimbursement from the other spouse in proportion to his/her share in the joint property (art. 79).

**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**

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<sup>135</sup> Закон за сопственост и други стварни права, *Службен весник на РМ* 18/2001 (консолидиран текст)

[https://miod.gov.mk/sites/default/files/pbl\\_files/documents/legislation/zakon\\_za\\_sopstvenost\\_i\\_drugi\\_stvarni\\_prava\\_konsolidiran\\_032018.pdf](https://miod.gov.mk/sites/default/files/pbl_files/documents/legislation/zakon_za_sopstvenost_i_drugi_stvarni_prava_konsolidiran_032018.pdf). Last retrieved 31.5.2024.



**property? Please consider both cases: where a spouse has/has no mental impairment.**

As mentioned in the previous answer, spouses manage and dispose of their joint property jointly and consensually. A spouse may not dispose of his/her share in joint property, nor may he/she burden it with legal operations *inter vivos* without consent of the other. The joint property regime prevents a joint property owner from disposing of their share (by transfer or encumbrance), considering that shares, although specifiable, are not specified. The community property regime ends at the moment they are specified in any way (ideally or physically). If the share of one of them is on sale, the other spouse has a priority right to buy it (art. 70).

If one of the spouses does not have legal capacity, the appointed guardian decides instead. If the spouse is the appointed guardian, it is possible to appoint another (special/collision) guardian to a person whose interests are adverse to the interests of his/her legal representative.

Regular management of property entails presumed consent, meaning that one spouse can undertake necessary and regular actions concerning community property. This rule always applies in situations where neither spouse has limited/deprived legal capacity. If not, then specific rules apply that require the participation of a guardian.

***Ex lege representation resulting from negotiorum gestio and other private law provisions***

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

N/A

## **SECTION VI – OTHER PRIVATE LAW PROVISIONS**

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

N/A

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

N/A

## **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.**

The best sentence that describes how persons deprived of legal capacity feel in the Republic of North Macedonia nowadays is written elsewhere at a different time (more than 10 years ago): ‘*Without legal capacity we are non-persons in the eyes of the law and our decisions have no legal force. Third parties make decisions for us. This merger of our personhood into that of someone else’s has been described as „civil death“.*<sup>136</sup> This is how one of the very few studies about the topic in North Macedonia starts.<sup>137</sup> Ever since, many countries in Europe reformed their systems in a way that the whole system of guardianship became obsolete because the concept of deprivation of legal capacity was considered a threat towards human rights of the concerned person. Accordingly, the concept of substitute decision making for the vulnerable person for purposes of his/her own protection and protection of public interest switched into concept of supported decision-making. During this transition, the proportion between protection and empowerment of vulnerable adults was questioned. Professor Masha Antokolskaia considers this topic as the most important in the junction between Law on Family and Law on Persons, especially if we have in mind that demographically Europe is with an aging population and has more adults than children.<sup>138</sup>

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<sup>136</sup> Commissioner for Human Rights, *Who Gets to Decide? Rights to Legal Capacity for Persons with Intellectual and Psychosocial Disabilities*, Strasbourg, 20 February 2012.

<sup>137</sup> *Op.cit.* Зороска Камилловска Т., (Zoroska - Kamilovska T.), 2017, pg. 93.

<sup>138</sup> See more in the prof. Antokolskaia M.’s speech at the First FL-EUR Conference, *Autonomy and Protection of Adults. Striking the Right Balance*, 11 October, 2021 - [https://fl-eur.eu/fl\\_eur\\_conferences/first-fl-eur-conference-11-october-2021](https://fl-eur.eu/fl_eur_conferences/first-fl-eur-conference-11-october-2021). Last retrieved 31.5.2024.

In contrast, this topic is underestimated in the Republic of North Macedonia, while the system of guardianship is still a threat towards human rights, especially political rights, such as the right to vote, labour rights, private and family life rights and especially the right to conclude a marriage, make reproductive choices, the right to access to Court etc. Unfortunately, in the Republic of North Macedonia there are no/very rare debates and discussions about this, even though Professor Zoroska - Kamilovska triggered them in the above-mentioned study in 2017. According to her, the State has to do better to implement article 12 of the CRPD regarding deprivation of legal capacity of persons with mental disabilities. However, she remains of the opinion that the most rational choice could be found in a combined system: to keep the deprivation of legal capacity and use it only rarely in exceptional cases<sup>139</sup> and to introduce an alternative support decision-making system for persons with mental disabilities.<sup>140</sup> The arguments are found in that the current system for deprivation and restoration of legal capacity is flexible and in line with the modern standards (in line with Principle 3 – maximum reservation of capacity and Principle 6 – proportionality of the Recommendation (99)4) and the fact that there are still persons with severe mental disabilities which need a guardian.<sup>141</sup> The parallel system of support should enable possibilities for persons with mental disabilities to make decisions about themselves. Some activities are already taking place in this direction by non-profit organizations in the country.<sup>142</sup>

Regarding changes in the Law on Non-contentious Procedure in light of the European Court of Human Rights case law,<sup>143</sup> Zoroska - Kamilovska recommends that: 1. In a procedure for deprivation of legal capacity, the concerned person has to be heard and enabled to express his/her own opinion (even though such possibility is also given nowadays, but largely left upon judges' interpretation if and when a person is capable) and 2. In the Court's decision for partially depriving a person of legal capacity (limitation of legal capacity), a mandatory content has to be the scope of matters that the person cannot undertake alone anymore (nowadays, the Centre does this when appointing guardian).<sup>144</sup> These recommendations suggest co-existence of both concepts: substituted and supported decision-making (substituted decision-making/representation – as a last resort and subsidiarity as an autonomous decision-making of adults with impairments as long as possible).

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<sup>139</sup> The author supports this opinion (*ibid.* pg. 109) with the ECtHR's opinion in the case of Lashin v. Russia, Application No. 33117/02, Judgment of January 2013, para 80 stating: “the Court accepts that depriving someone of his legal capacity and maintaining that status may pursue a number of legitimate aims, such as to protect the interests of the person affected by the measure” while being aware that the Court made step backwards with this decision.

<sup>140</sup> *Ibid.* pg. 105.

<sup>141</sup> Recommendation (99)4 of the Committee of Ministers of the Council of Europe to Member States on Principles concerning the Legal Protection of Incapable Adults, 23 February, 1999) from 23 February 1999.

<sup>142</sup> For more see the web site of Message (Поракa): <https://poraka.org.mk/>. Last retrieved 31.5.2024.

<sup>143</sup> *Salontaji-Drobnjak v. Serbia*, Application No. 36500/05, Judgment of 13 October 2009; *Shtukaturov v. Russia*, Application No. 44009/05, Judgment of 27 March 2008; *Sykora v. Czech Republic*, Application No. 23419/07, Judgment of 22 November 2012, final 22.2.2013; *D.D. v. Lithuania*, Application No. 13469/06 Judgment of 14 February 2012; *Stanev v. Bulgaria*, Application No. 336769/06, Judgment of 17 January 2012.

<sup>144</sup> *Op.cit* Zoroska - Kamilovska, 2017 pg. 110 and 111.

However, the author of this Report holds an opinion that the general lack of awareness/research about the topic and the drawbacks of the national system that came too obvious after completing this questionnaire manifest a necessity for more profound reform. Namely, the whole system has to be changed regarding this matter starting from revisions (abolition) of provisions about full and partial deprivation of legal capacity and introduction of the term ‘limitation of legal capacity’. Maybe an introduction of the institute ‘limited business capacity’ instead would fit in the Macedonian context <sup>145</sup> From there on, many additional changes have to follow in multiple laws in order to protect human rights of vulnerable adults and to be consistent with ratified international conventions such as the CRPD (which should be anyhow a part of the internal legal system).<sup>146</sup> Mostly affected are: the Law on Non-contentious Procedure (in the domain of reforming the current concept of legal capacity and deprivation of it) and the Law on Family (in the domain of regulating guardianship, as well as other provisions that exclude persons with disabilities to express wills and opinions, such as when concluding marriage, recognizing a child etc.). The guardian’s primary concern is even nowadays to take care of the personal rights of the ward. However, this role should be shifted from making paternalistic decisions about the ward into empowering the ward to make decisions alone. This includes information in timely manner and considers in the utmost extent possible the ward’s wishes, opinions and as far as possible, decisions. The provision which regulates when the guardian shall be relieved of his/her duties, should be broadened to include cases when the guardian has concluded a Life-care Contract with the ward or another contract that leads to the incompatibility of the rights and obligations from the contract with the duties of the guardian.<sup>147</sup>

Having all the above in mind, it can be concluded that the Macedonian system is still very paternalistic when it comes to the relationship between vulnerable adults and the persons responsible to protect their interests on their behalf, appointed by the State. Therefore, the principle of presupposed ‘best interests’ dominates over the ‘will and preferences’ principle. This, of course, should be changed in the future.

- 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:**

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<sup>145</sup> Similar to the Serbian legal system. See more in Kovaček Stanić G., Samardžić S., *The Empowerment and Protection of Vulnerable Adults Serbia*, (Serbia Report) FL-EUR website, - <https://assets.vu.nl/7099fcf9-715f-0061-5726-009a48410fee/d6c155a6-447d-4289-aaef-586e3f860b4c/Serbia.pdf>, pg. 14. Last retrieved 31.5.2024.

<sup>146</sup> Art. 118 of the Constitution – “Ratified International Treaties are part of the internal legal system and cannot be changed by laws“.

<sup>147</sup> Similar to Serbia. *Op.cit.* FL-EUR Serbia, pg. 15.

- **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.**

Regarding current provisions in the Law on Non-contentious procedure, the person affected cannot initiate a procedure for deprivation (complete or partial) of legal capacity on its own (apart from the other eligible initiators), while the same person can initiate a reversible procedure (for complete or partial restoration of the legal capacity – art. 52. This might seem strange because the person affected is not officially incapacitated before the procedure, while it still is in that person's interest (and of the society) to initiate a procedure. On the other hand, it is unclear why an officially incapacitated person should be in a position to initiate a procedure for restoration of legal capacity on its own. Further on, the Law does not ask for mandatory presence or hearing of the concerned person, while it does ask for mandatory presence of an expert and a judge at the same time. Even though throughout the procedure, the Court is entitled to investigate the situation and based on the findings to bring its own decision, in practice, the decision is regularly substituted by the expert opinion. This could lead to the conclusion that the expert makes the decision instead of the judge, while an administrative organ – the Centre further describes which acts can or cannot be taken alone by the person/appointed guardian.

Regarding protection of the vulnerable adult against conflict of interests, there is a possibility of appointing another - impartial guardian as elaborated more profoundly above.

Regarding abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions, the above elaborated case of *L.R. vs. North Macedonia* clearly depicts the brutal reality.<sup>148</sup> Despite many criticisms that the country received because of this case, it seems as if it has not done much to avoid further repetitions.

The draft version of the Civil Code also seems ignorant towards rights of vulnerable adults. The work done so far (the draft version of it) does not seem to improve their position.

The situation is very much the same as in the current Law on Family and the position of the ward is inclusive in art. 4:238 (draft version of the Civil Code) that entitles the ward (if capable) to appeal to the work of the guardian, art. 4:250 and 4:264 that entitles the ward (if capable to understand) to be present when his/her property is assessed/returned. The situation is slightly improved in the novel article 4:241 that introduces mandatory archive of data about the number of wards, the measures undertaken for protection of their personal and property rights. On the other hand, the situation has deteriorated due to the absence of provisions that

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<sup>148</sup> *L.R. v. North Macedonia*, Application No. 38067/15, Judgment of 23 January, 2020.

entitle the ward to apply for restoration of legal capacity (4:278 mentions only the possibility for the guardian - not also the ward him/herself- to apply for restoration).

The conclusion is that the Republic of North Macedonia did not take serious measures that could improve the vulnerable adults' position. The opinion of the author of this Report is that the Republic of North Macedonia should at least follow some comparative solutions to improve the position of vulnerable adults in the short term that do not take much of an effort for regulation or implementation. For instance, instead of the Centre setting the rights and obligations that a person with limited legal capacity can still enjoy (especially the right to vote), the Court should do it, according to a special plan. Furthermore, the Court should set the scope of matters that the person with limited legal capacity should not undertake, while everything else should be considered as permissive.<sup>149</sup> Moreover, the decision of the Court should become tailor-made by the necessity of including a guardianship plan, specified for each person. Regarding women's reproductive rights, a pregnant woman who is partially deprived of legal capacity should have the right to independently request an abortion. Regarding procedural rights, the Court should be able to allow that the participant without legal capacity institutes actions in addition to the actions for which he/she is authorised under the law, if the Court believes that he/she is capable of understanding the meaning and legal consequences of such actions. In order to gradually transit from 'best interest principle' to the 'will and preferences principle', the Republic of North Macedonia should consider an introduction of a prior consent of the guardianship authority and a previously obtained opinion of the ward when making decisions about medical interventions on the ward. When it comes to the management and disposal of the ward's property, the guardian should have an obligation to obtain the ward's opinion and to respect his/her decisions, wishes and attitudes.

The proposed Macedonian Civil Code still relies heavily on the Centre (instead of the Court) regarding the matter of appointing a guardian and setting his/her scope of obligations *vis-à-vis* rights of the ward (art. 4:247). Article 4:727 defines legal capacity in a narrow sense (деловна способност) as a capacity of a person to be able to express a legally relevant will to participate in the legal traffic. Again, the age for determining the rights and responsibilities of a guardian of a person with limited legal capacity or deprived of legal capacity is set to 15 years, instead of aligning it with the Law on Obligations – 14 years (art. 4:275). The Republic of North Macedonia should at least introduce the guardian's obligation to inform and help the ward in making decisions about oneself according to his/her capacity in order to enable a more autonomous decision-making process. Following the proposed Civil Code, article 4:244 stipulates that if the ward is placed in an institution/organization, family or with a person, the Center should appoint another guardian for all other matters that the institution/organization, family, person does not encompass in their regular activities. This presupposes that there will be one responsible person of the institution taking care of more wards, which may be considered as potential conflict of interests, abuse or neglect that cannot suit personal needs of individuals.

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<sup>149</sup> Similar to Serbia. See more in *op. cit* Serbian Report FL\_EUR pg.45.