THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

SERBIA

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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.

One may argue that the regulations of the Republic of Serbia related to the protection and the support of the vulnerable category of adults are numerous, since a large number of laws and by-laws contain provisions that in some way relate to legal capacity, i.e., to persons who are unable to reason. First, the Constitution of the Republic of Serbia[1] states in Article 37 (paragraphs 1 and 2) that "Everyone shall have legal capacity (in wider sense).[2] Upon becoming an adult all persons shall become capable of deciding independently about their rights and obligations. A person becomes an adult after turning 18". In addition, the Constitution of the Republic of Serbia stipulates that everyone is equal before the Constitution and the law, that everyone has the right to equal legal protection, without discrimination, that any discrimination, direct or indirect, based on any grounds is prohibited, including mental or physical disability (Article 21).

The most important laws concerning legal capacity are the Family Act[3] and the Law on Non- contentious Procedure.[4]

Among other things, the Family Act regulates situations in which a person shall be *fully* or *partially* deprived of legal capacity.

The Family Act provides that in addition to child without parental care (a minor ward), an adult who is deprived of legal capacity (mature ward) is also placed under the guardianship. (Article 124). In further articles, the Family Act clearly regulates the rights and obligations of the guardian, as well as when the guardianship ends.

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[1] Constitution of the Republic of Serbia, ("Official Gazette of the RS", no. 98/2006 and 115/2021)
[2] See explanation of the term *legal capacity* in part I, section 2.
[3] Family Act, ("Official Gazette of RS", No 18/2005, 72/2011 - other law and 6/2015)
[4] Law on Non-contentious Proceedings (Official Gazette of the Socialist Republic of Serbia No 25/82 and 48/88 and Official Gazette of the Republic of Serbia No 46/95 – other law, and 18/2005 – other law, 85/2012, 45/2013 - other law, 55/2014, 6/2015, 106/2015 - other law and 14/2022).

Family Act contains numerous provisions regarding legal operations that persons who are unable to reason, i.e., persons deprived of legal capacity, cannot perform. Thus, a marriage cannot be concluded by a person who are unable to reason (Article 18), the mother has to give consent to the acknowledgment of paternity if she has reached sixteen years of age and is able to reason, (Article 48, paragraph 1), the child has to give consent to acknowledgment of paternity if he/she has reached sixteen years of age and is able to reason (Article 49, paragraph 1), and if neither the mother nor the child can give their consent, the consent to acknowledgment of paternity is given by the child's guardian, with prior consent of the guardianship authority (Article 50). Also, the Act stipulates that one parent will exercise parental rights alone when the other parent is fully deprived of parental rights or legal capacity. (Article 77). The consent of a parent to adoption is not necessary from the parent who is fully deprived of legal capacity (Article 96, paragraph 1(3)). On the other hand, one cannot adopt a person fully or partially deprived of legal capacity (Article 100, paragraph 2(2)).

A child without parental care is considered above all a child whose parents are fully deprived of parental rights or legal capacity, as well as a child whose parents are deprived of the right to take care of, raise or to bring up the child (Article 113, paragraph 3). A person who is fully or partially deprived of legal capacity cannot be foster parent (Article 117, paragraph 2(2)).

Besides Family Act, Law on Non-contentious Proceedings is of great importance because it regulates the procedure for deprivation of legal capacity in detail. (Articles 31-44).

At the national level, the National Assembly of the Republic of Serbia adopted the Law on Prevention of Discrimination of Persons with Disabilities in April 2006.[5] It is the first anti-discrimination regulation in the country, which comprehensively defines the concept of discrimination of persons with disabilities, special forms of discrimination, as well as special cases of discrimination of persons with disabilities in certain sectors of organized social life. The law prohibits direct and indirect discrimination, victimization, prescribes particularly severe cases of discrimination and mechanisms of judicial protection for victims of discrimination based on disability. Since March 2009, when the National Assembly of the Republic of Serbia adopted the general Law on Prohibition of Discrimination,[6] and the provisions on protection mechanisms against discrimination, which are in line with the highest European standards in this area, are also available to persons with disabilities. The Law on the Prohibition of Discrimination states that discrimination shall be considered to occur in the case of conduct contrary to the principle of observing the equal rights and freedoms of persons with disabilities in political, economic, cultural and other aspects of public, professional, private and family life (Article 26).

In 2013, the Republic of Serbia also adopted the Strategy for Prevention and Protection against Discrimination.[7] The mentioned Strategy in Part IV, which

[5] Law on Prevention of Discrimination against Persons with Disabilities, ("Official Gazette of RS", No 33/2006 and 13/2016)
[6] The Law on the Prohibition of Discrimination, ("Official Gazette of RS", No 22/2009 and 52/2021).
[7] Strategy for Prevention and Protection against Discrimination 2013 ("Official Gazette of RS", No from 10 July 2013).

is entitled *Special objectives of the strategy in relation to national minorities and sensitive social groups*, under paragraph 4.5 among all contains provisions related to persons with disabilities. Thus, the Strategy states that when depriving persons with intellectual disabilities of their legal capacity, it is necessary to ensure action in accordance with the legal positions expressed in the judgments of the European Court of Human Rights (ensure the exercise of the right to be heard, the right to access the court, the right to a fair trial, etc.) and improve the work of Centre for Social Services in connection with their role in the application of the deprivation of legal capacity procedure (4.5.4. Measure (paragraph 7)). Furthermore, it is stated that, in terms of personal status, it is necessary to carry out a legislative reform concerning deprivation of legal capacity of persons with disabilities and to provide alternative solutions related to their personal status. Provide the conditions for the family environment shall be the primary and the best solution for a person with a disability. Provide services to support women with disabilities who want to start a family, give birth and raise children. Provide funds in budget for programs and services to support women and children with disabilities who have experienced domestic violence (4.5.5.2. Personal status, private and family life).

The Government adopted the Strategy for the Improvement of the Position of Persons with Disabilities in the Republic of Serbia in 2020,[8] which is also important for the prevention of discrimination. When it comes to protecting the rights of people with intellectual and psycho-social disabilities, two laws were passed that improved the position of these people. Firstly in 2013, the Law on the Protection of the Rights of Persons with Mental Disabilities,[9] was adopted, which, among other things, reformed voluntary and forced hospitalization of persons with mental disabilities.

Significant advances in the field of work and employment were made in 2009, with the adoption of the Law on Professional Rehabilitation and Employment of Persons with Disabilities,[10] which to a large degree follows the provisions of the aforementioned Convention. The law makes it possible to apply the principle of inclusivity in the employment of persons with disabilities, through the introduction of a quota system, which determines the obligations of employers to employ persons with disabilities or assist the process of employment of these persons through several different modalities.

In the meantime, other laws were passed or amended in certain areas that are important for improving the position of persons with disabilities and preventing discrimination against them, such as The Law on the fundamentals of the education system, the Law on Social Protection, the Law on Health protection, the Health Insurance Act, etc. and based on them, a whole series of by-laws were adopted.

[8] Strategy for improving the position of persons with disabilities in the Republic of Serbia for the period from 2020 to 2024, ("Official Gazette of RS", No 44 from 27 March 2020).

[9] Law on the Protection of the Rights of Persons with Mental Disabilities, ("Official Gazette of RS", No 45/2013).

[10] The Law on Professional Rehabilitation and Employment of Persons with Disabilities, ("Official Gazette of RS", No 36/2009, 32/2013 and 14/2022 – 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 - opeka]. As explained in the General Instructions above, please briefly explain these terms by making use of the definitions section above wherever possible or by referring to the official national translation in English.**

1. Legal capacity - (poslovna sposobnost or in cyrillic: пословна способност) – It is important to note that in Serbian legal system there is difference between legal capacity in *narrow* and *wide* sense. In wider sense legal capcity or capacity to have rights (*pravna sposobnost, правна способност*) is acquired at birth. It means the ability of a person to have rights and liabilities; to be a subject before the law. In narrow sense, legal capacity, also known as *contractual* or *transactional* capacity, or capacity to act or exercise these rights (*poslovna sposobnost, пословна способност*) assume the ability to make independent decisions about rights and obligations. This person can assume rights, accept obligations and enter into various legal transactions with their own declarations of will. This legal capacity in Serbia is acquired upon reaching the age of majority, that is by reaching eighteen years of age. Only in the case of this capacity full or partial deprivation is possible. In this report, we will use the term *legal capacity* in this, narrower sense.

2. Full deprivation of legal capacity - (potpuno lišenje poslovne sposobnosti or in cyrillic: потпуно лишење пословне способности) - A person of age who, due to illness or impediments in psychophysical development, is not able to reason normally and is thus unable to take care of himself/herself and to protect his/her rights or interests, may be fully deprived of legal capacity.

3. Partial deprivation of legal capacity - (delimično lišenje poslovne sposobnosti or in cyrillic: делимично лишење пословне способности) - A person of age who, due to illness or impediments in psychophysical development, directly endangers his/her own rights and interests or the rights and interests of other persons by his/her actions may be partially deprived of legal capacity.

4. Guardianship - (starateljstvo or in cyrillic: старатељство) - The institution which regulates legal relationship between the person who is deprived of legal capacity (ward), his legal reperesentative (guardian) and guardianship authority.

5. Guardian - (staratelj or in cyrillic: старатељ) - The person who is legal reperesentative of the person who is deprived of legal capacity.

6. Guardianship authority - (organ starateljstva or in cyrillic: орган старатељства) - The activities of family protection, family aid and guardianship, are performed by a centre for social services.

7. Ward - (štićenik or in cyrillic: штићеник) – The person who is deprived of legal capacity.

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.

In 2021 in Serbia the total number of population is 6.797.105, population 65 and over is 1.447.834, so the percentage of the population aged 65 and older is 21,3 %.[11]

On 31/12/2020, under guardianship are 13.436 adults. In the past three years, the total number of adults under permanent[12] guardianship has been continuously growing, and in 2020 it is 2.1% higher than in 2019. Of the total number of adults under guardianship in 2020, 55% are male. When it comes to the age of the users, 70% belong to the elderly category and this distribution has been present in the previous three years.[13] In the Republic of Serbia, there is still a possibility of deprivation of legal capacity based on disability.

In the Strategy for Prevention and Protection against Discrimination,[14] it is stated that a special group within the framework of persons with disabilities consists of persons with intellectual disabilities who additionally encounter specific problems, e.g., with deprivation of legal capacity (and the consequences of making such a decision) and placement in certain institutions, often for life. Research shows that as many as 55% of people with intellectual disabilities stay in institutions for more than ten years. Also, when the court decides in a non-contentious procedure on the deprivation of legal capacity full deprivation occurs in 93.93% of cases, while partial deprivation occurs only in 6.08% of cases. One of the serious omissions in the process of deprivation of legal capacity, which was also pointed out by the European Court of Human Rights, is a failure to hear the party whose legal capacity is being decided upon. Of particular concern are cases where institutions (Centre for Social Services) advise parents of persons with intellectual disabilities to initiate the procedure of full deprivation of legal capacity for their child, without informing them of the consequences of full deprivation, nor of the possibility of partial deprivation of legal capacity.

In the process of writing this report, we had the opportunity to receive specific data for the city of Novi Sad[15] from the Centre for Social Services.

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[11] https://data.stat.gov.rs/Home/Result/18010403?languageCode=sr-Latn

[12] See footnote 48 concerning temporary guardianship. All other forms of guardianships are permanent.

[13] Report on the work of Center for Social Services for 2017, Republic Institute for Social Protection, Belgrade, December 2018, http://www.zavodsz.gov.rs/media/1423/izvestaj-o-radu-csr-2017rzsz.pdf The report on the work of Center for Social Services (CSS) is one of the reports on the work of social welfare institutions prepared by the Republic Institute for Social Welfare (hereinafter RZSZ). The report was compiled on the basis of individual statistical reports on the work of 170 CSS departments collected by the RZSZ. The data presented by the CSS should be taken as an illustration of the state of the system, given that the area of data collection is not sufficiently regulated and that there is no unified information system for records and data entry of social welfare institutions, with defined responsibilities of each instance in the process.

[14] Strategy for prevention and protection against discrimination in 2013, section 4.5.2. State of the matter ("Official Gazette of RS", No 60 of July 10, 2013)

[15] Novi Sad is the second largest city in Serbia and the capital of the autonomous province of Vojvodina.

According to the received data, in 2021 in the Centre for Social Services of the City of Novi Sad, 4,020 beneficiaries were registered in the categories of elderly persons (age over 65).

- Total number of adults under permanent guardianship as of 12/31/2021 in the Centre for Social Services of the City of Novi Sad was 595. Of that number, 20 (3.3%) were people in early adulthood, 430 (72.3%) were people in middle adulthood, and 145 (24.4%) were people in late adulthood. According to the type of deprivation of legal capacity, 466 (78.3%) persons were fully deprived of legal capacity, and 129 (21.7%) persons were partially deprived of legal capacity. As for the elderly beneficiaries who are under permanent guardianship, 114 (78.6%) are fully deprived of legal capacity, and 31 (21.4%) are partially deprived of legal capacity, which shows that the distribution of elderly beneficiaries according to the type of deprivation of legal capacity is almost the same as in the group of all users. The total number of initiated proceedings for deprivation of legal capacity in 2021 was 103. Of that number, 39 proceedings for deprivation of legal capacity were initiated for elderly persons, which constitutes 37.9% of the total number. In 2021, the initiators of proceedings for deprivation of legal capacity for the elderly were: relatives - 32 (82%) and the Centre for Social Services (*ex officio*) - 7 (18%).
- In the course of 2021, 551 Decisions were made on the appointment of a temporary guardian in the group of adult beneficiaries. Of that number, 367 decisions on temporary guardianship were made for beneficiaries from the category of elderly persons, which is 66.6% of the total number of decisions made.
- In 2021, 183 reports of violence against the elderly were recorded. Of that number, in 111 (60.6%) cases the victims of violence were female, while in 72 (39.4%) cases the victims of violence were male. According to the dominant type of violence, 115 (62.8%) cases of psychological violence and 68 (37.2%) cases of physical violence against the elderly were recorded.

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.

The Republic of Serbia is a member to the United Nations (UN) and the legal successor of the former states, a Signatory State of the Charter of the United Nations (1945), the Universal Declaration of Human Rights (1948) and eight of the nine basic international treaties on human rights, which have an impact on the position persons with disabilities, such as: the International Covenant on Civil and Political Rights with Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment and the Convention on the Elimination of All Forms of Discrimination against Women. Also, shortly after its entry into

force in the Republic of Serbia, in 2009, Serbia ratified the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention.[16]

However, Serbia is not yet party to the Hague Convention on the International Protection of Adults.

The Republic of Serbia is also a member of the Council of Europe, and for this area of the great importance is the European Convention for the Protection of Human Rights and Fundamental Freedoms[19] and Protocol No. 12 (2000) to the European Convention. Also, in 2009, the Revised European Social Charter was ratified[20] which is the basic document of the Council of Europe in the field of labour and social rights. The Republic of Serbia has adopted a large number of provisions of the Revised European Social Charter, which ranks it among the countries that are at the top of the list in terms of the number of provisions that have been accepted by the ratification instrument. Other important documents of the Council of Europe are the European Action Plan for Persons with Disabilities for the period from 2006 to 2015 (2006)[21] and the new Strategy of the Council of Europe on Persons with Disabilities 2017-2023.

Of the particular importance is the new global development agenda - the UN Sustainable Development Agenda until 2030, as well as the European Strategy for Persons with Disabilities 2010-2020: Europe without barriers.

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

The currently valid legal rules related to deprivation of legal capacity represent improved solutions compared to previous legal texts. The last amendments to the Law on non-contentious procedure (LNCP) brought significant changes, but at the same time, an opportunity was missed to overcome some shortcomings that threatens the position of persons subject to the procedure of deprivation of legal capacity. We will refer to the most important provisions related to the procedure of deprivation of legal capacity.

The procedure for depriving legal capacity is still a non-contentious procedure, and such a rule has been applied on the territory of Serbia for more than 140 years, ever since the adoption of the Rules on Proceedings in Undisputed (non-contentious) Acts from 1872.

According to the previously valid regulations, it was prescribed that the court could order that the person against whom the proceedings are conducted to be forcibly brought to the court for questioning if it finds that his questioning is mandatory and such a position was maintained in the legal theory for a long time (Legal rule from par. 188 LNCP from 1934.)

Moreover, according to the earlier practice, the medical examination and hearing of the person concerned could be omitted if that person had already been examined in the presence of a judge during the period of last six months, during the admission for the treatment in a health care organization, and later, according to the report of that organization, there was no significant change in his health

[16] Law on Confirmation of the Convention on the Rights of Persons with Disabilities ("Official Gazette of RS" - International Treaties", No 42/09).

condition. In addition, in the former judicial practice, formed on the application of the legal rules of the pre-war LNCP, there were opinions that the court is under no obligation to appoint an expert witness if, the court, after the hearing of the person concerned, concluded that this person is healthy.[17] In addition, the jurisprudence, regarding expert witnesses' opinion in the procedure for deprivation of legal capacity, was quite uneven due to the application of the legal rules of the pre-war non-contentious procedure law. In practice, there have been cases where one person is deprived of legal capacity only on the basis of the opinion of one expert witness, while another person is deprived, by the same court, only after the expert witnesses' opinion consisting of two doctors.[18] Such practice was a consequence of the application of the legal rule from par. 188 of the pre-war LNCP from 1934. There were cases where the court took the expert witnesses opinion as a one and only means of evidence and did not conduct the necessary investigations at all, so that there was no discussion in the decision-making process of all circumstances that should be a part of court's decision. In some cases, this led to a situation in which the interests of the person concerned was clearly endangered. This rule was amended by the Law on non-contentious procedure from 1983, and the current law also provides that the person concerned *shall* be examined by the minimum number of two doctors of adequate specialization, who will give their expert opinion of that person's mental health and reasoning ability.

Also, the earlier regulations did not explicitly stipulate that the procedure for deprivation of legal capacity is urgent. The current law has eliminated this shortcoming.

Under earlier federal regulations in the area of guardianship and in the practice of the courts, which was built on the basis of the application of the legal rules of the pre-war LNCP from 1934, it was not usual for the enacting clause of the Decision to specify in more detail the tasks that a person partially deprived of legal capacity can undertake independently and without the permission of guardianship authority. According to earlier federal regulations (Art. 48, Paragraph 2 of the Federal Law on Guardianship), guardianship authority had the authority to exclusively determine the range of tasks that a person partially deprived of legal capacity could undertake independently and without its permission. Thus, from earlier legal provisions emerged that the guardianship authority, and not the court, determines the tasks that a person partially deprived of legal capacity can undertake. This practically meant that the court's decision had only a declarative character because it only determined that one person was partially incapacitated and nothing more. Even after the Court's decision became final, until the guardianship authority in its Decision determines the scope of work that a person who is partially deprived of his legal capacity can undertake, the extent of his legal capacity would not be factually known because its limits were unknown.

The current Law on non-contentious procedure stipulates that the court is obliged, in the decision by which a person is partially deprived of legal capacity, to determine, based on the results of the medical expert witness opinion, the type

[17] Nevena Petrušić, 'Postupak za lišenje poslovne sposobnosti u pravu Srbije u kontekstu međunarodnih standarda o pravima osoba sa invaliditetom' (2015) 70, *Zbornik radova Pravnog fakulteta u Nišu,* 903, 920. http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z70/50z70.pdf
[18] Ibid.

of activities that the person can independently undertake in addition to the activities he/she is authorized to do by law[19], and *in particular to determine whether that person is capable of exercising the right to vote*, since until recently it was assumed that a person who is fully or partially deprived of legal capacity automatically loses the right to vote.

The last significant changes to the Law on Non-Contentious Procedure were made in 2014 and brought certain positive changes, of which we will highlight two of the most significant ones.

Above all, the legislator changed the institution of deprivation of legal capacity in a certain way by conceptualizing deprivation of legal capacity as a measure of protection and prescribed that it shall be reviewed after certain period of time. The shortcoming of previous rules was also pointed out by the European Court of Human Rights in the case of Salontaji-Drobnjak v. Serbia[20], stating that one of the weaknesses of domestic law is the lack of mandatory periodic verification of the status of a person who has been deprived of legal capacity.

Another significant novelty is the provision that foresees that a person who has been deprived of legal capacity can file an appeal within eight days from the day of delivery of the decision, regardless of "the state of his mental health", which was not the case before.

By adopting numerous international and European acts, Serbia began a gradual process of modernization of regulations in the area of Legal Protection and Empowerment of Vulnerable Adults, especially by adopting the Convention on the Rights of Persons with Disabilities. Before the adoption of this Convention, the Standard Rules on Equalizing Opportunities for Persons with Disabilities of the United Nations were of a particular importance, despite the fact that they were not legally binding for the member states, but there was a significant moral obligation for the member states to apply them. The Republic of Serbia included a significant part of these standards in the Law on Prevention of Discrimination of Persons with Disabilities in 2006.

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 issue of the legal capacity of persons with disabilities is of essential importance for the exercise of all rights and active participation in the life of the community. To ensure this, it is necessary to reform the guardianship system and abolish the possibility of deprivation of legal capacity. This implies amendments to the Family Law and the Law on Non-Contentious Procedure, as well as design-

[19] Person who is partially deprived of legal capacity has the legal capacity of the senior minor (child over 14 years of age). See more about legal capacity of persons partially deprived of legal capacity in II section (question 9).

[20] *Salontaji-Drobnjak v. Serbia*, Application no. 36500/05, 13 October 2009.

ing, developing, and establishing a system of support services for people with disabilities, to fit the needs, which The Commissioner for the Protection of Equality has continuously pointed out over the years. The way in which deprivation of legal capacity is regulated in Serbia is outdated and overcoming, it is not in line with the Convention on the Rights of Persons with Disabilities and General Comment no. 1 of the Committee for the Rights of Persons with Disabilities (CRPD Committee), as well as regulations prohibiting discrimination.

Domestic legislation contains provisions and solutions related to legal capacity and the provision of guardianship measures that need to be reformed and harmonized with the regulations and obligations assumed by the Convention, which the state itself stated in the Initial Report on the Implementation of the Convention,[21] where it states that [...] the legal norms regulating guardianship and deprivation of legal capacity have not been modified and represent a certain obstacle in respecting the rights of PWDs" (...) that "most (of them) have now been adopted when persons with disabilities [...] were excluded from society“ [..., and that "there is a clear determination of the Republic of Serbia to improve the regime of deprivation of legal capacity".

The guardianship of persons deprived of legal capacity in the Republic of Serbia is regulated by the laws that have not been significantly changed for a long time, and most of them were enacted during the period when persons with disabilities (persons with mental or intellectual impairments and elderly) were excluded from society. The changes in the rules governing the procedure of deprivation of legal capacity, i.e., the change in the Law on Non-Contentious Procedure, are especially slow. The starting point of the legislators when enacting regulations based on the deprivation of legal capacity and taking guardianship protection measures is to deprive persons of legal capacity and put them under guardianship if those persons are unable to take care of their own interests due to their mental disability or other reasons. Such starting point has been outdated in modern practice and theory, and if there are situations in life in which those persons are in need of support - the state is obliged to provide them support, even though interim measures of guardianship protection, which must be carefully and selectively applied so that in no case violates the rights and legal security of those persons. The legal norms that regulate the procedures for the deprivation of legal capacity and the exercise of guardianship are not unified within one legal text but are found in different laws and regulations. As mentioned above, the main rules of the procedure itself are contained in the Law on Non-Contentious Procedure and the Family Law. Somewhat vague and dubious wording of the law affects the procedure in practice.

According to the claims of civil society organizations, judges have greater discretionary rights in procedures for the deprivation of legal capacity. However, such statement cannot be accepted as a whole. Judges in these proceedings primarily act automatically, in relation to the findings and opinions of expert witnesses who determine whether or not a person can or cannot, given his state of mental health, protect his/her rights and interests alone. Opinions of court expert

[21] Initial report on the implementation of the Convention on the Rights of Persons with Disabilities, Government of the Republic of Serbia, 2012 http://drpi.research.yorku.ca/wp-content/uploads/2015/01/inicijalni_izvestaj_na_srpskom_jeziku_lat.pdf

witnesses upon which the court's decision on deprivation of professional capacity is based, are of a diagnostic nature and do not contain an assessment of the person's remaining abilities to protect his/her rights and interests with or without support.

The CRPD Committee recommended Serbia to harmonize its regulations with the Convention and replace the regime of substitute decision-making with the regime of supported decision-making, which respects personal autonomy, will and preferences of the person and to establish a transparent protection mechanism. In addition, the Committee recommended that the state provide training, with consultation and involvement of persons with disabilities, organizations representing them, and Ombudsman, at the national, regional, and local levels, for all actors, including civil servants, judges, social workers, in relation to recognizing the legal capacity of persons with disabilities and good practice in decision-making with the help of another person (CRPD/C/SRB/CO/1, para. 22). The CRPD Committee pointed out that there is a key difference between legal capacity and mental capacity to make decisions. 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 (CRPD/C/GC/1, para. 13).

A positive shift occurred in 2004, when the Sector for the Protection of Persons with Disabilities was formed within the Ministry of Labour, Employment and Social Policy. In that way, after many years, persons with disabilities received an equal partner whose main task is to protect and improve their position through cooperation with various disability organizations and directly with persons with disabilities. Further, the National Organization of Persons with Disabilities of Serbia (NOOIS) plays a particularly important role in the partnership between the Sector for the Protection of Persons with Disabilities and disability organizations. NOOIS, as an "umbrella" organization that represents the interests and needs of all persons with disabilities and their legal representatives, works to increase the inclusion of persons with disabilities in society, full respect for their human rights and non-discrimination based on disability, through participation in the adoption and implementation of laws and other documents in the field of disability, in accordance with international standards and documents. To this end, the Department for the Protection of Persons with Disabilities, in cooperation with NOOIS, provided for certain measures to eliminate some of the visible shortcomings of positive legal regulations.

The Initiative for the Rights of Persons with Mental Disabilities (MDRI-S) also has a significant contribution to improving the position of persons with disabilities. This organization was founded as a non-profit non-governmental organization with the support of the international organization Disability Rights International (DRI) and is fully dedicated to the protection and promotion of the human rights of persons with intellectual and mental disabilities and the achievement of their full inclusion and participation in society. Within the scope of this organization's activities is publishing works dealing with the position of persons with disabilities in Serbia. A special group of publications relate to the problem of legal capacity, and in this sense, the way in which courts and Centre for Social Services conceptualized legal issues in matters involving deprivation of legal capacity.

For the Republic of Serbia, the concluding observations and recommendations of the UN human rights mechanisms, especially the CRPD Committee on the Rights of Persons with Disabilities, are very important[22], as well as the recommendations from the Universal Periodic Review of the UN Human Rights Council, within which recommendations were made regarding the improvement of the position a person with a disability. Based on the recommendations sent by UN mechanisms to Serbia regarding the periodic reporting on the implementation of UN conventions, especially based on the recommendations of the CRPD Committee from 2016, special goals and measures are planned in the Strategy for the period from 2020 to 2024. Additionally, as a basis for planning measures, seven general comments, adopted by the CRPD Committee, are very important for understanding and implementation of the provisions of the Convention on the Rights of Persons with Disabilities.

The general goal[23] of the Strategy is to equalize the opportunities of persons with disabilities in enjoying all civil, political, economic, social, and cultural rights, with full respect for their dignity and individual autonomy, ensuring independence, freedom of choice, and full and effective participation in all areas of social life, including community life. The strategy, however, contains three specific goals: 1) increased social inclusion of persons with disabilities; 2) ensuring the enjoyment of the rights of persons with disabilities to legal capacity and family life on an equal basis with others and effective protection from discrimination, violence and abuse and 3) systematic introduction of the perspective of disability in the adoption, implementation, and monitoring of public policies. For each special goal, measures are prescribed, whose realization contributes to the achievement of the special goal, and all measures together contribute to the achievement of the general goal of the strategy. We will refer to the second goal, which is of particular importance for the topic of this report.

Namely, the Strategy states, among other things, that this goal will be achieved firstly by abolishing the possibility of full deprivation of legal capacity and extension of parental rights, by establishing a decision support system instead of guardianship, by creating conditions for persons with disabilities to enjoy the right to family life, by actively fighting against all forms of discrimination. As key indicators of the successful implementation of this goal, the Strategy states the following:

1) The possibility of full deprivation of legal capacity and extension of parental rights on the basis of disability has been abolished,

2) Established mechanisms and services that enable the enjoyment of legal capacity for persons with disabilities,

3) Improved protection of persons with disabilities, especially women with disabilities, from the violence and the abuse in the family and in the institutional environment.

The source of verification are the amendments to the Family Law and the Annual Report on the Implementation of the Action Plan for the Implementation of the Strategy.

[22] See Strategy for Improving the Position of Persons With Disabilities in The Republic Of Serbia for the Period From 2020 to 2024, section 2.2.
[23] Ibid., section 5.1.

Also, the Strategy specifies the measures that will contribute to the achievement of this goal.

In the first place, it is emphasized that the reform of the legal framework in the field of legal capacity is needed, which would ensure that the persons with disabilities enjoy all rights on an equal basis with other citizens and the establishment of a decision-making system with the support that replaces guardianship protection. This measure actually implies the abolition of the possibility of the full deprivation of legal capacity of persons with disabilities and initiates a gradual transition to a system of providing support in decision-making instead of the existing substitute decision-making (guardianship protection system), thereby creating the conditions for persons with disabilities to enjoy legal capacity on an equal basis with others, in all aspects of life.

In addition to the reform of the legal framework, it is also necessary to improve the conditions for establishing a marriage/nonmarital cohabitation, as well as support for the parenting of persons with disabilities. Namely, this measure aims to ensure the conditions for people with disabilities to marry, establish nonmarital cohabitation, as well as to ensure the conditions for women with disabilities to freely make decisions about giving birth. As indicators of results, an increase in the number of applied decision-making models with support is expected, as well as the number of people with disabilities who have been provided support in relation to parenthood.

The Strategy also states, as an adequate measure, the improvement of prevention and protection against discrimination of persons with disabilities. This measure primarily includes raising public awareness of the problem of discrimination against persons with disabilities and improving the conditions for effective protection of persons with disabilities from all forms of direct and indirect discrimination in the public and private sphere. As indicators of results, an increase in the number of trainings, i.e., the number of participants in seminars about the rights of persons with disabilities for employees in the state bodies and public services in educational, social and health institutions and institutions operating in the field of work and employment, as well as in the field of justice, is expected.

As the fourth measure, the improvement of 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 is mentioned. This is achieved by ensuring the accessibility of buildings of judicial authorities and the application of appropriate assistive technologies or other types of support in court proceedings, thus ensuring that persons with disabilities have equal opportunities in the realization and protection of violated and threatened rights. It is expected that number of court buildings that have been made accessible, as well as the number of court proceedings in which assistive technologies or other forms of reasonable adjustments have been applied to increase by 30%.

The last measure, which is stated as a means of achieving the mentioned goal, is the improvement of the prevention and protection of persons with disabilities from violence and abuse, especially women with disabilities. This is primarily achieved by raising public awareness of the problem of violence and abuse of persons with disabilities, especially women, in the family/partnership, institutional and extra-institutional context and by improving their information about protection mechanisms against all forms of violence and abuse. The measure increases the possibility for

adequate functioning and cooperation of institutions whose competence (jurisdiction) is the prevention and protection of persons with disabilities from violence and abuse. Indicators that this measure is being successfully implemented are the created and distributed protocols on preventing violence, abuse and exploitation accessible to persons with disabilities (in Braille for the Serbian language, applications for SMS messages, etc.), especially in social welfare and health care institutions, increased number of trainings, i.e. the number of participants in trainings on the specifics of violence to which persons with disabilities are exposed, especially women with disabilities. Finally, a particularly significant indicator is the prohibition of medical intervention without the prior, informed consent of a person with a disability, including women in institutions who have an intellectual disability.

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

An extensive reform of the legal system of the Republic of Serbia is currently underway, and one of the priorities is persons with disabilities. This is indicated by the adoption of a number of laws, including the Law on Prohibition of Discrimination of Persons with Disabilities, the Family Law, the Law on Professional Rehabilitation and the Employment of Persons with Disabilities. These laws indicate that the Republic of Serbia increasingly recognizes the rights of persons with disabilities. However, the legal norms governing guardianship and deprivation of legal capacity have not been modified and represent a certain obstacle in respecting the rights of these persons. There is a clear determination of the Republic of Serbia to improve the regime of deprivation of legal capacity, and in this regard, it strongly supports every initiative and activity of associations in this area. The Ministry of Justice undertakes measures in relation to guardianship of persons of age deprived of their legal capacity and apply them as much as possible from the Recommendation (99)4 of the Committee of Ministers of the Council of Europe[24], until the implementation of relevant legislative initiatives related to the change, in particular of the Law on the Non-Contentious Procedure.

The previous Minister for Family Care and Demography presented some of the starting points on which the Special Working Group will work on drafting of the Law on Amendments and Additions to the Family Law. The minister stated that the new provisions foresee the abolition of full and partial deprivation of legal capacity and the introduction of the institute of limited business capacity.[25] The result of the work of the Special Working Group is the amendments and additions to the current Family Law that propose to abandon the existing term „deprivation of legal capacity“ and introduce the term „limitation of legal capacity“ (Article 146). The court shall determine the duration of limitation, but it cannot exceed three years.

[24] Recommendation No. R (99) 4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults, https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec(99)4E.pdf

[25] Announcement of the Ministry of Family Care and Demography dated 7/12/2021.https://www.srbija.gov.rs/vest/561468/zakonima-osnaziti-porodicu-kao-osnovnu-celiju-drustva.php

When it comes to guardianship, it is proposed that in the implementation of the guardianship protection of an adult ward, the guardianship authority is obliged to: protect the dignity and well-being of the ward; strive to limit the rights of the ward as little as possible; encourage the ward's independent decision-making, provide him/her support in decision-making, as well as the participation in community life; take into account all the specifics of the ward's personality and accept his decisions, opinions, wishes, and attitudes, unless it is in conflict with the welfare of the ward. (Article 124).

When it comes to the appointment of a guardian, it is suggested that a spouse, relative, foster parent, or a person particularly close to the ward shall be appointed as a guardian, unless the interest of the ward dictates otherwise. It is proposed to abolish the existence of the collective guardian, by proposing to delete Article 130, which now reads:

„The manager of a social service institution for user accommodation, or a person employed in such an institution, may be appointed as the guardian of all the wards accommodated in that social service institution, if he/she consents to it and if it is in each wards' interest. "

It is proposed that the form of guardian, now called "direct guardian", to be changed to "state guardian". A state guardian is appointed if the following persons cannot be appointed as guardians: a spouse, a relative, a foster parent, or a person particularly close to the ward. The work of the state guardian is performed by an official, employed in the body of the local self-government unit that performs social protection and social activities, and who is designated by the head of that body. The state guardian should be an official who is trained and has special knowledge in the field of family law and social protection.

It is proposed that the provision which regulates when the guardian shall be relieved of his/her duties, be broadened to include the case 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 (Article 133).

When it comes to taking care of the ward, it is proposed to add the guardian's obligation to help the ward in making decisions in accordance with his/her legal capacity, to add the guardian's obligation to ensure that the minor ward receives all the information he needs in a timely manner and to enable him/her to express his opinion on all issues that concern him/her to pay due attention to that opinion, and in the case of an adult ward, to make sure that the ward receives all the information on issues that concern him/her in a timely manner and to take into account in the utmost extent possible the ward's decisions, opinion, wishes and attitudes when performing the guardian's duties (Article 135).

When it comes to the representation of the ward, it is suggested that the provision reads:

(1) The guardian is under the obligation to represent his/her ward.

(2) The minor ward has legal capacity equal to a child under parental care.

(3) The guardian represents his/her minor ward the same way a parent represents his/her child.

(4) The guardian represents an adult ward in the performance of his/her legal operations and actions for which ward's legal capacity is limited.

(5) The guardian may, but only with prior consent of the guardianship authority and with the previously obtained opinion of the minor ward:

1. decide on the education of the ward;

2. decide on medical interventions on the ward under the age of 15;

3. decide on medical interventions on the ward over the age of 15, who did not consent to the medical intervention, but such intervention is necessary in accordance with the law;

4. give consent to the undertaking of legal operations by a ward over 14 years of age;

5. undertake legal operations whereby he/she manages and disposes of the income acquired by a ward under 15 years of age. (Article 137.)

When it comes to the management and disposal of the ward's property, it is proposed to add the guardian's obligation to obtain the ward's opinion and to respect the decisions, wishes and attitudes of the adult ward (Articles 139, 140).

SECTION II – LIMITATIONS OF LEGAL CAPACITY

8. If your system allows limitation of the legal capacity of an adult, please answer questions 8 - 13; if not proceed to question 14. All reports should address questions 14 and 15.

a. on what grounds?

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

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

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

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

f. are there any other legal instruments,[26] besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?

Serbian system allows limitation of the legal capacity of an adult. Limitation of the legal capacity of an adult can be full deprivation of legal capacity and partial deprivation of legal capacity.

On what grounds is possible to limit the legal capacity of an adult depends on the form of limitation, if deprivation is full or partial.

[26] 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

Grounds for full deprivation are: If due to illness or impediments in psychophysical development, a person of age is not able to reason normally and is thus unable to take care of himself/herself and to protect his/her rights or interests (Article 146/1 Family Act).[27] The physical disability could be a ground only if inability to reason exists, as well. Grounds for partial deprivation are: If due to illness or impediments in psychophysical development, a person of age directly endangers his/her own rights and interests or the rights and interests of other persons by his/her actions. (Article 147/1 FA). The physical disability could be a ground only if inability to reason exists, which manifests of directly endangering rights of this person or interests or the rights and interests of other persons by actions of this person.The court may suspend rendering the ruling on partial removal of legal capacity due to abuse of alcohol or other narcotic substances, if it may reasonably be expected that the person in relation to whom the proceedings are conducted will refrain from the abuse of alcohol or other narcotic substances, if such person, on his own initiative or the proposal of the court, subjects himself to treatment in a specified health care organisation. The court may suspend the rendering of ruling on removal of legal capacity for a period of six to 12 months. The ruling may be revoked if the person terminates the treatment or is discharged from the health care organisation for disorderly behaviour (Article 41 Law on Non-Contentious Proceedings).In the statute (FA) is prescribed that the legal capacity of the person who is fully deprived of legal capacity is equal to the legal capacity of a young minor. A young minor is a child who has not reached fourteen years of age (Article 146/2 FA). The legal capacity of the person who is partially deprived of legal capacity is equal to the legal capacity of a senior minor. A senior minor is a child who has reached fourteen years of age (Article 146/2 FA).

According to Family Act 2005, two decisions enable tailored-made incapacitation to some extent. First is a court decision on partial deprivation of legal capacity which determines the legal operations that a person partially deprived of legal capacity may/may not undertake independently (Article 147/3). The guardian takes all other decisions and act as a representative.

Second is the decision on placing someone under guardianship, which must include a guardianship plan, which is specific for each person.

The limited legal capacity can be restored, the limitation of legal capacity can be reversed from full capacity to partial and *vice versa*. When the reasons for which the person has had his/her legal capacity removed cease to exist, the court shall, *ex officio* and upon the motion of the guardianship authority and spouse, child or parent render a ruling on the restoration of legal capacity (Article 42/1 Law on Non-Contentious Proceedings). [28]

If after rendering a ruling on full removal of legal capacity of a person it is established that his mental state has improved to such a degree that partial removal of legal capacity is sufficient, the court shall amend its previous ruling and

[27] Family Act - hereinafter FA.

[28]Law on Non-contentious Proceedings (Official Gazette of the Socialist Republic of Serbia No 25/82 and 48/88 and Official Gazette of the Republic of Serbia No 46/95 – other law, and 18/2005 – other law, 85/2012, 45/2013 - other law, 55/2014, 6/2015, 106/2015 - other law and 14/2022).

order partial removal of legal capacity (Article 42/2 Law on Non-Contentious Proceedings).

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

a. property and financial matters;

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

c. medical matters;

d. donations and wills;

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

The legal capacity of the person who is fully deprived of legal capacity is equal to the legal capacity of a young minor (Article 146/1 FA). That means this person may undertake legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she does not acquire either rights or obligations and legal operations of small significance (Article 64/1 FA).

The legal capacity of the person who is partially deprived of legal capacity is equal to the legal capacity of a senior minor (Article 146/2 FA). That means this person may undertake, in addition to legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she does not acquire either rights or obligations and legal operations of small significance, all other legal operations with the prior or subsequent consent of his/her guardian, or the consent of the guardianship authority for the disposition of immovable property and movable property of considerable value (Article 64/2 FA).

According to Family Act a child who has reached the age of fifteen may undertake legal operations whereby he/she manages and disposes of his/her income or property acquired through his/her own work (Article 64/3 FA). If the person who is partially deprived of legal capacity works, the question is if this provision might apply to his/her legal operations. The court can and should (to have tailored-made decision) make a decision on partial deprivation of legal capacity which determines the legal operations that a person partially deprived of legal capacity may /may not undertake independently. So, if the person who is partially deprived of legal capacity works, the court should specify that he/she may undertake legal operations whereby he/she manages and disposes of his/her income or property acquired through his/her own work.

The reason why is a person deprived of legal capacity is important factor for issuing such decision or not. For instance, if the reason for deprivation of legal capacity is prodigality, or addiction, in these cases it probably would not be appropriate to give him/her possibility to undertake legal operations whereby he/she manages and disposes of his/her income or property acquired through his/her own work independently.

According to Family Act provisions, a person deprived of legal capacity is not able to conclude a marriage. Inability to reason is one of the marriage impediments. “Marriage may not be concluded by a person unable to reason” (Article 18 FA). This provision is not questionable if person is fully deprived of legal capacity.

The legal capacity of the person who is partially deprived of legal capacity is equal to the legal capacity of a senior minor (child of fourteen years of age). So, the question is: is it possible for a court in a decision on partial deprivation of legal capacity to permit this person to conclude a marriage or to be able to file for the permission to conclude a marriage? In our opinion, decision on partial deprivation of legal capacity should be expressly regulated by the Family Act because of its great importance. Since it is not, in our opinion decision on partial deprivation of legal (active) capacity should not include marriage conclusion. As far as divorce is concerned, in Serbian law, the person who is deprived of legal capacity cannot file for divorce by himself/herself, as this person does not have procedural capacity for doing so. The guardian of a spouse without legal capacity may initiate action for divorce, but only with prior consent of the guardianship authority (Article 220/4 FA).

Concerning a personal name, the child at the age of fifteen if he/she is able to reason has a right to change it. A child who has reached the age of ten and who is able to reason has the right to give consent to the change of his/her personal name (Article 346 FA). As said before, the legal capacity of the person partially deprived of legal capacity is the same as legal capacity of the senior minor (child over 14 years of age) who may undertake, legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she does not acquire either rights or obligations, legal operations of small significance, but also all other legal operations with the prior or subsequent consent of his/her guardian (or the consent of the guardianship authority for the disposition of immovable property and movable property of considerable value). The question is if the person partially deprived of legal capacity may change a personal name, similarly to the child at the age of fifteen? It should be noticed that the legal norm on the legal capacity of the person partially deprived of legal capacity stipulates the possibility to take legal operations, which includes contracts in the first place, and not other legal acts in Serbian legal terminology, such as changing the personal name. So the conclusion could be that he/she cannot change the personal name *ex lege*. Another question is: is it possible for a court in a decision on partial deprivation of legal capacity to permit this person to change his/her personal name and/or to give consent to the change of his/her personal name? In our opinion, decision on partial deprivation of legal capacity should include rights on personal name, as these rights are on of personal nature and might be of a great importance for the person in question.

Concerning contraception there is no explicit provision in Serbian law if a person deprived of legal capacity is concerned, as well as the older child is concerned. So, the question is: is it possible for a court in a decision on partial deprivation of legal capacity to permit this person to decide on contraception? In our opinion, decision on partial deprivation of legal capacity could include rights on contraception, if the court finds this person is able to make such decision.

According to Family Act a child who has reached the age of fifteen and who is able to reason may give consent to a medical intervention (Article 62/2).

According to the Article 19 paragraph 2 of the Law on the Patient`s Rights[29] a physician or other healthcare professional is obliged to enable patient who is deprived of legal capacity to be involved in making decision on consent to the proposed medical treatment due to her/his maturity and mental capacity. If the 15 year old child refuse medical treatment, a physician or other healthcare professional is obliged to ask the consent from the child`s legal representative.

According to Cessation of Pregnancy in a Healthcare Institution Act pregnant woman who is partially deprived of legal capacity has the right to independently request for an abortion.[30] If pregnant woman is fully deprived of legal capacity, the consent of the guardian is needed for the abortion. If the consent of the guardian is not possible to obtain because of his/her absence or if because he/her is prevented to give consent for some reason, the consent of the guardianship authority (centre for social work) is needed (Article 2).

The person who is partially deprived of legal capacity may make a donation with the prior or subsequent consent of his/her guardian, or the consent of the guardianship authority (centre for social work) for disposition of immovable property and movable property of considerable value some legal operations (Article 64/2 FA), similarly to a senior minor.

The person who is 15 years of age and who is able to reason can make a will.[31] The question is if the person partially deprived of legal capacity should do the same, having in mind he/she has legal capacity equal to the legal capacity of a senior minor (child of the age of 14). In the theory there are different opinion on this issue. There are authors who are of the opinion that if person is deprived of the legal capacity, regardless if it is full or partial deprivation, he/she is not able to make a will.[32] Others are of the opinion that the partial deprivation is not relevant for the capacity to make a will,[33] or that person partially deprived of the legal capacity can make a will, except if the court in the decision of partial deprivation orders otherwise, or if afterwards medical expertise found he was not capable to make a will.[34] As making a will is very specific legal operation, in our opinion it should be explicitly stated in the Law on Inheritance if person partially deprived of legal capacity have a capacity to make a will and what conditions have to be meet for doing so. But, if Law on Inheritance does not refer to this issue, as it is the case now, we are of the opinion that person partially deprived of the legal capacity can make a will, except if the court in the decision of partial deprivation orders otherwise. If afterwards medical expertise found he/she was not capable to make a will the will would be null, but this is the same generally in making a will, regardless if the person was deprived of the legal capacity or not.

The court may allow that the participant without legal capacity to institute actions in addition to the actions for which he is authorised under the law, for the

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[29] Law on the Patient`s Rights, *Official Journal of the Republic of Serbia* No. 45/2013, 25/2019.

[30] Cessation of Pregnancy in a Healthcare Institution Act, *Official Journal of the Republic of Serbia* No. 16/1995.

[31] Law on Inheritance, *Official Journal of the Republic of Serbia* No. 46/1995, Article 79.

[32] For instance Оливер Антић, *Наследно право* 2009 (Inheritance Law) p.234.

[33] Дејан Ђурђевић, *Институције наследног права* (Institutiones of Inheritance Law) 2011 p. 122.

[34] Наташа Стојановић, *Наследно право* 2011 (Inheritance Law) p. 198.

purposes of exercising his rights, if the court believes that he/she is capable of understanding the meaning and legal consequences of such actions (Article 7 Law on Non-Contentious Proceedings). Thus, this person has right to adversarial trial and has active role in the proceedings.[35]

The person who is deprived of legal capacity may institute proceedings for the restoration of legal capacity, if he/she is capable of understanding the meaning and legal consequences of this petition. This is possible in the situation when the reasons cease to exist (Article 42 Law on Non-Contentious Proceedings). It is also possible for the person whose legal capacity is to be removed to file a petition to institute proceedings for the removal of his/her legal capacity if he is capable of understanding the meaning and legal consequences of his petition (Article 32/3 Law on Non-Contentious Proceedings).

Concerning administrative matters, the guardian has the authority to make a request for issuing passport for person who is deprived of legal capacity.[36]

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

Limitation of legal capacity have no retroactive effect. On the contrary, it is stipulated that if someone loses his/her legal capacity after making the will, this has no legal effect at this will, Law on Inheritance, Article 80.

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

The authority competent to decide on limitation or restoration of legal capacity is the Basic court in non-contentious proceedings, Law on Courts Establishment (Article 22/1).[37]

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

The proceedings for the removal of legal capacity shall be initiated and conducted by the court *ex officio*, or upon the petition of the guardianship authority, spouse, child or parent of the person who fulfils the legal requirements for the removal or limitation of legal capacity. The proceedings may also be initiated upon the petition of the grandfather, grandmother, brother, sister or grandchild if he/she lives with such person in the same family household. The petition to institute proceedings may also be filed by the same person whose legal capacity is to be removed, if he is capable of understanding the meaning and legal consequences of his petition (Article 32 Law on Non-Contentious Proceedings).

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[35] Nevena Petrušić, 'Postupak za lišenje poslovne sposobnosti u pravu Srbije u kontekstu međunarodnih standarda o pravima osoba sa invaliditetom' (2015) 70, *Zbornik radova Pravnog fakulteta u Nišu,* 903, 920.
http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z70/50z70.pdf

[36] Law on Passports (*Official Journal of the Republic of Serbia* No. 90/2007, Article 29).

[37] Law on Courts Establishment, *(Official Journal of the Republic of Serbia* No 116/2008).

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

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

In the proceedings of the deprivation of legal capacity the court examines whether a person of full age, taking into account the level of his capacity for normal judgment, is capable of taking care of his own rights and interests and decides to completely or partially deprivation of legal capacity of this person if reasons exist. If the court establishes that reasons for deprivation of legal capacity cease to exist it decides to restore legal capacity of this person. The proceedings for deprivation and restoration of legal capacity are urgent proceedings (Article 31 Law on Non-Contentious Proceedings).

The person in relation to whom the proceedings for restoration of legal capacity are conducted should have a guardian or temporary representative, who shall be summoned to the hearing, in addition to the guardianship authority and the person in relation to whom the proceedings are conducted (Article 35 Law on Non-Contentious Proceedings).

The court shall personally question the person in relation to whom the proceedings are conducted. If that person is in a health care institution, he/she has to be questioned there. The court may abandon the questioning in person only if this may be harmful to his/her heath or if the hearing is not possible at all, considering the mental or physical condition of such person (Article 36/3 Law on Non-Contentious Proceedings). It could be noticed this provision has some deficiency as it might be used in court practise to avoid the questioning of this person even if the reasons for abandon questioning do not actually exist. In fact, the investigation of the court practice in 2011 shows in 87% of the cases the court did not question the person to be deprived of the legal capacity and in 84% of the cases the court did not see this person.[38]

The person in relation to whom the proceedings are conducted has a right to appeal the decision on removal of legal capacity regardless of his/her mental state in 8 days of receiving the decision. This provision is the novelty of Law on Non-Contentious Proceedings, amendments from 2014 (Article 40 a), with the aim to improve the rights of the person whose legal capacity is removed.

[38] Lazarevic, S. Ćiric Milovanovic, D. Šimokovic, L. (2012) Univerzalnost prava u praksi: analiza primene konvencije Ujedinjenih nacija o pravima osoba sa invaliditetom u odnosu na osobe sa intelektualnim teškoćama u Srbiji, Inicijativa za prava osoba sa mentalnim invaliditetom MDRI – Sand people in need, Beograd 2012. in: Nevena Petrušić, 'Postupak za lišenje poslovne sposobnosti u pravu Srbije u kontekstu međunarodnih standarda o pravima osoba sa invaliditetom' (2015) 70, *Zbornik radova Pravnog fakulteta u Nišu,* 903, 920.
http://www.prafak.ni.ac.rs/files/zbornik/sadrzaj/zbornici/z70/50z70.pdf

Another novelty of Law on Non-Contentious Proceedings, amendments from 2014, is that in the decision of the removal of legal capacity of the person the court has to define time-limit for checking if the reasons for the removal still exist. Maximum time-limit duration is three years (Article 40/2). In other words, the removal of legal capacity is not limitless as it was before the amendments, and has to be re-examined in the period of maximum three years. [39]

The recent novelty of Law on Non-Contentious Proceedings, amendments from 2022 (Article 40/3), is that in the decision of the partial deprivation of legal capacity of the person the court has to define legal operations which this person can undertake by himself/herself and especially if this person can exercise his/her elective right (Article 40/3). The Law on Election of National Deputies 2022 stipulate that the person partially deprived of legal capacity may elect national deputies and may be elected to be national deputy if court in the decision of the partial deprivation of legal capacity founds he/she does not have capacity for doing so (Article 3/2).[40]

In addition, another recent novelty of Law on Non-Contentious Proceedings, amendments from 2022, is that in the decision of the partial removal of legal capacity of the person the court has to define legal operations which this person can undertake by himself/herself and especially if this person can exercise his/her elective right (Article 40/3).

The family members who can initiate the proceedings for the limitation of legal capacity are: spouse, child or parent, and if he/she lives with such person in the same family household than also grandfather, grandmother, brother, sister or grandchild. The family members are persons who can provide the information on the life and behaviour of the person in relation to whom the proceedings are conducted and on other important circumstances.

The court shall question the guardian or temporary representative, the petitioner and other persons who can provide the required information on the life and behaviour of the person in relation to whom the proceedings are conducted and on other important circumstances. Where needed, the court will obtain information about information on the life and behaviour of the person in relation to whom the proceedings are conducted and on other important circumstances from the bodies of the socio-political community, self-management organisations and communities, legal and other persons, to whom such information is available (Article 37 Law on Non-Contentious Proceedings).

The person in relation to whom the proceedings for removal of legal capacity are conducted must be examined by no less than two physicians of the appropriate speciality, who will provide their findings and opinion on the mental state and the capacity of such person to make judgments. The expert examination shall be performed in the presence of a judge, except when it is performed in an inpatient health organisation. The court may determine by a ruling that the person in relation to whom the proceedings are conducted, shall be temporarily, but for no longer than three months, placed in an appropriate health institution if, in the opinion of the physician, this is necessary to determine his mental state, unless that

[39] Ibid.
[40] The Law on Election of National Deputies, Official Journal of the Republic of Serbia No. 14/2022.

may cause harmful consequences to his health (Article 38 Law on Non-Contentious Proceedings).

In such proceedings, the ruling shall be made on the basis of oral hearing. The person in relation to whom the proceedings are conducted, shall be summoned to the hearing (Article 35 Law on Non-Contentious Proceedings).

The ruling on the placement into the health care institution, which ruling is actually only one faze of the proceedings for the limitation of legal capacity, may be appealed by the person in relation to whom the proceedings regardless of his mental state. The court shall forward the appeal with accompanying documents to the second instance court, which shall decide within three days of the receipt of the appeal (Article 39 Law on Non-Contentious Proceedings).

The person whose legal capacity has been removed may lodge an appeal on the court decision on removal of his/her legal capacity, regardless of his mental state (Article 40 Law on Non-Contentious Proceedings).

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).

Concerning contracts regarding property or other contracts it is possible to start court proceeding to prove that the person who was not limited of legal capacity in the moment of making the contract was not capable of reason and because of that reason to make the contract null. This is general legal principle, and it is applied in the court practise.

Inability to reason is one of the marriage impediments. In the Family Act is stipulated that marriage may not be concluded by a person unable to reason (Article 18).

The person who has 15 years of age and who is capable of reason can make a will, Law on Inheritance (Article 79). In the practise of making a will, especially private form of will so-called "lawyers form" it is common to have a medical examination of the testator to prove that he/her is able to reason, before making the will.

According to the Law on notary public 2011[41] a notary public may not act if he/she is aware or should be aware that the person is not able to conclude a contract for some legal reason (Article 53/4). So, if notary public is aware the person is not capable of reason, he/she should deny to certify the contract. On the other hand, the notary public does not have a authority to start a procedure for the liitation of the legal capacity.

[41] Law on notary public, (*Official Gazette of Serbia* no. 31/2011).

The refusal of the notary public to certify the contract could be appealed before the court (Article 53 a).

One of the contracts for which the notary public has the authority for issuing is the (pre) nuptial contract (Article 82/1/10, 11 Law on notary public). According to the amendments to the Family Act 2015 (Article 188) it is stated that the form of (pre) nuptial contract is notarial solemnization of the legal document.

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?

There is one important case before the ECHR on limitation of legal capacity in Serbia: Salontaji-Drobnjak v. Serbia (Application no. 36500/05).[42] The facts of the case are as follows: Since 1973 the applicant has brought, mostly before the Municipal Court (Opštinski sud) in Vrbas, some two hundred lawsuits against his employer and its management, as well as against various private parties and Government officials, alleging irregularities, harassment and/or malfeasance. He has also lodged numerous criminal complaints on the same grounds. On 24 December 2004 the Novi Sad Psychiatric Institute concluded that the applicant suffered from litigious paranoia (paranoia querulans) and recommended that his legal capacity be restricted. The experts recalled, inter alia, numerous lawsuits brought and submissions lodged by the applicant, the criminal proceedings instituted against him in 1996, the threats allegedly made in August 2004, and his debt incurred on account of legal costs.

The Court accepted that the restriction on the applicant's right of access to a court was disproportionate although fully in accordance with the relevant domestic law and in pursuit of a legitimate aim. The Court reasoned that "… the applicable domestic legislation does not seem to provide for a periodical judicial re-assessment of the applicant's condition (…), the key, almost discretionary, role in this regard having instead been granted to the SCC …"

Therefore, the ECHR found a violation of Article 6 § 1 of the Convention. The Court noted that the restriction of the applicant's legal capacity undoubtedly amounted to an interference with his "private life":"… the Court acknowledges that a legal system must be allowed to protect itself from vexatious litigants but considers that it is up to the domestic authorities to set up an effective judicial mechanism of dealing with such litigants' claims, without necessarily having to resort to additional measures affecting their legal capacity."

After this decision, Law on Non-Contentious Proceedings is amended in 2014, so in the decision of the removal of legal capacity of the person the court according to this amendment has to define time-limit for checking if the reasons

[42] More in: Marija Draškić, 'Novi standardi za postupak lišenja poslove sposobnosti: Aktuelna praksa Evropskog suda za ljudska prava' (2010) 2, *Anali Pravnog fakulteta u Beogradu* 355, 371. https://anali.rs/xml/201-/2010c/2010-2c/Anali_2010-2_355-370.pdf

for the removal still exist. Maximum time-limit duration is three years (Article 40/2).

SECTION III – STATE-ORDERED MEASURES

Overview

16. What state-ordered measures exist in your jurisdiction? Give a brief definition of each measure.[43] 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?**

State-ordered measure in the Serbian law is legal institution of guardianship (*starateljstvo*). The legal ground to order this measure is deprivation of legal capacity: A person of age who is deprived of legal capacity (mature ward) is placed under guardianship (Article 124 FA).

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.

The legal ground to order the measure – guardianship is the court decision on the deprivation of legal capacity of the adult person, so in this procedure other grounds are not investigated, as this is already done by the court in the proceedings for deprivation of legal capacity.

18. Which authority is competent to order the measure?

The decision on placing someone under guardianship is made by the guardianship authority (centre for social work) who is obliged to do so when receives the court decision on the deprivation of legal capacity of the adult person (Article 125/1 FA).

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

19. Who is entitled to apply for the measure?

The proceedings for placement under guardianship are initiated by the guardianship authority *ex officio* after the guardianship authority received the court decision on limitation of the legal capacity. The initiative for initiation of proceedings for placement under guardianship may be submitted by health care and educational institutions or social service institutions, judicial and other state authorities, associations and citizens, after the court has issued the decision on the limitation of legal capacity (Article 329 FA).

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?

A ward who is able to reason has the right to propose the person to be appointed as his/her guardian (Article 127 FA).

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; the possibility for the adult to appeal the order.

The guardianship authority is under the obligation to issue a ruling on the placement under guardianship immediately, and at the latest within thirty days from the day of receiving a final court decision on a person of age being deprived of legal capacity (Article 332 FA). The guardianship authority is under the obligation to issue an interim conclusion on providing accommodation for the ward within twenty-four hours from the moment of being informed of the existence of a need for guardianship.

If the ward has a property, the guardianship authority is under the obligation to make an inventory of the ward's property within eight days from the day of being informed of the existence of a need for guardianship at the latest.

The guardianship authority issues a written ruling on placement under guardianship (which means to nominate guardian) if it establishes that there are legal reasons for it and delivers this ruling to the guardian without delay. If the ward has a property, a report of the standing commission for inventory and evaluation of the ward's property is also delivered to the guardian, and the property itself is given to the guardian for management and disposal. The ruling on placement under guardianship determines the rights and duties of the guardian. It is to be considered that the guardian has been informed of his/her rights and duties with the delivering of the ruling on placement under guardianship (introducing the guardian to his duty). The guardian or a person having legal interest may file an

appeal against the ruling on placement under guardianship to the ministry responsible for family protection within fifteen days from the day he/she received the ruling (Article 333 FA). The guardianship authority issues a ruling on the appointment of a new guardian if it determines that the previously appointed guardian has been relieved from duty or has died (Article 334 FA).

The proceedings for placement under guardianship are urgent. In the proceedings for placement under guardianship the public is excluded.

The adult should have temporary guardian in this procedure. As this procedure is initiating only after the procedure for deprivation of the legal capacity, request for a specific medical expertise has already been fulfilled in the previous procedure and the adult has a possibility to appeal the order for deprivation of the legal capacity. A complaint regarding the work of the guardianship authority may be filed by a ward who is able to reason with the ministry responsible for family protection. The ministry is under the obligation to reply within thirty days from the day of the receipt of the complaint (Article 338 FA). A complaint regarding a guardian's work may be filed with the guardianship authority by a ward who is able to reason. The guardianship authority is under the obligation to reply within fifteen days from the day of the receipt of the complaint (Article 335 FA).

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

A final ruling on placement under guardianship or a final ruling on termination of guardianship is delivered without delay to the registrar keeping the register of births for the ward. If the ward owns immovable property, the ruling is also entered into the public record of rights on immovable property (Article 339 FA).

The guardianship authority is under the obligation to keep records and documentation on wards (Article 340 FA). Data from record keeping and documentation on placement under guardianship are privileged and all participants in the proceedings who have had access to such data are under the obligation to maintain confidentiality (Article 331 FA).

Appointment of representatives/support persons

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

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

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?

Natural person can be appointed as guardian, only exceptionally the guardianship authority can perform the guardianship duties directly (Article 130, 131 FA).

A natural person who has personal characteristics and abilities necessary to perform the duties of a guardian may be appointed as a guardian. A ward's spouse or relative are primarily appointed as a guardian, unless the ward's interest requires otherwise (Article 126 FA). The following persons may not be appointed as a guardian: a person fully or partially deprived of legal capacity or of parental rights; a person whose interests are adverse to the ward's interests; a person who, given his/her personal relations with the ward, the ward's relatives, cannot be expected to perform properly the activities of a guardian (Article 128 FA).

As said before, ward who is able to reason has the right to propose the person to be appointed as his/her guardian.

Several persons cannot be appointed (simultaneously nor as substitutes) as guardians within the framework of a single measure. A person is not obliged to accept appointment as guardian, as his/her consent to being a guardian is necessary.

The guardianship authority may decide, if it is in the ward's interest, not to appoint a guardian to a person under guardianship, but to perform the guardianship duties directly. An expert of the guardianship authority who will perform the activities of the guardian in the name of the guardianship authority is appointed by a ruling on direct performance of guardianship activities. The expert of the guardianship authority may validly perform the guardianship activities which, when performed by a guardian, are valid only upon an approval from the guardianship authority, only if he/she does not bear guardianship administrative authorizations and under the conditions and in the manner performed by a guardian. The guardianship authority may perform a legal operation with the ward under its direct care only with the consent of the ministry responsible for family protection.

During the measure

Legal effects of the measure

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

The appointment of a guardian as a measure does not affect the legal capacity of the adult, as he/she is deprived of legal capacity as a necessary step before appointing the guardian.

Powers and duties of the representatives/support person

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

- **a. can the representative/support person act in the place of the adult; act together with the adult or provide assistance in:**
  - **property and financial matters;**
  - **personal and family matters;**
  - **care and medical matters;**
- **b. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**
- **c. what are the duties of the representative/support person in terms of informing, consulting, accounting and reporting to the adult, his family and to the supervisory authority?**
- **d. are there other duties (e.g. visiting the adult, living together with the adult, providing care)?**
- **e. is there any right to receive remuneration (how and by whom is it provided)?**

The guardian as a representative can act in the place of the adult in: property and financial matters; personal and family matters; care and medical matters.

If the ward has a property, the guardianship authority's standing commission performs an inventory and estimates the value of the of ward's property (Article 125/5 FA). The guardian is under the obligation to take care of his/her ward conscientiously. Concerning property and financial matters taking care of the ward includes: acquiring assets to maintain the ward and managing and disposing of the ward's property (Article 135/5 FA). The guardian may, but only with a prior consent of the guardianship authority give consent to the undertaking of legal operations by a ward partially deprived of legal capacity (Article 137/4 point 3 FA).

The guardian is under the obligation to manage the property of the ward that the ward has not acquired through work. He/she is independent in performing the operations of regular management of the ward's property, but he/she may perform operations that exceed the regular management of the ward's property only with the prior consent of the guardianship authority (Article 139 FA). The guardian disposes of the property of the ward that the ward has not acquired through work, but only with prior consent of the guardianship authority. The guardian may use the principal of the ward's property only for the ward's maintenance or when so required by another important interest of the ward.

The decision on placing someone under guardianship must include a guardianship plan. By the decision on placing someone under guardianship the guardianship authority appoints a guardian and decides on the accommodation of the ward. The guardianship authority will first try to accommodate the ward in a family of his/her relatives (Article 125/2, 3, 4 FA). The guardian has no obligation to live with the ward, but he/she is under the obligation to pay visits to the ward and directly gain information on the conditions the ward lives under (Article 136/2, 3 FA). The guardian has no obligation to maintain the ward by himself/herself, but he/she has obligation to provide maintenance. The guardian is under the obligation to undertake all necessary measures to acquire assets for maintaining the ward. Assets for maintaining may be acquired from: the ward's

income; assets obtained from persons who have the legal obligation to maintain the ward; the ward's property; social security assets; other sources (Article 138 FA).

The guardian is under the obligation to take care to eliminate the reasons for which a mature ward was deprived of his/her legal capacity and to enable the ward to lead an independent life as soon as possible. The guardian is under the obligation to represent his/her ward. The guardian may, but only with prior consent of the guardianship authority, decide on medical interventions on the ward (Article 137/4 point 2 FA).

The income from the ward's property may be used for paying justified expenses incurred in the course of performing guardianship activities or for the payment of the guardian's remuneration, on the basis of a decision of the guardianship authority (Article 140/4 FA).

The ward can act independently in the scope of rights and duties if he/she is partially deprived of legal capacity.

The criteria for decision-making by guardian in the current law is the best interests of the adult.

26. Provide a general description of how multiple representatives/support persons interact, if applicable. Please consider:
- **a. if several measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the frame-work of these measures, coordinate their activities?**
- **b. if several representatives/support persons can be appointed in the framework of the same measure, how is authority distributed among them and how does the exercise of their powers and duties take place (please consider cases of concurrent authority or joint authority and the position of third parties)?**

Multiple representatives/support persons is not possible in Serbian law.

Safeguards and supervision

27. Describe the organisation of supervision of state-ordered measures. Pay attention to:
- **a. what competent authority is responsible for the supervision?**
- **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.

Competent authority responsible for the supervision is the guardianship authority. The guardian is under the obligation to submit reports and accounts of his/her work to the guardianship authority at the beginning of each calendar year for the previous year (regular report), when the guardianship authority so requires (special report), and after the termination of guardianship (final report). The guardian is under the obligation to submit the regular report by the end of February for the previous year, and the special and final reports within fifteen days from the day the guardianship authority so requests. The guardian's report should include data on the personality of the ward, on the conditions of the ward's accommodation, on his/her health, as well as on all other issues relevant to the ward's personality. The report should also include data on management and disposal of the ward's property, the ward's income and expenditures over the previous period, and the final state of the ward's property. The minister responsible for family protection prescribes the manner of submitting the report and of accounting (Article 142 FA).

If the guardianship authority establishes that the guardian has, for any reason, ceased to perform his/her duty, or that the guardian has abused the rights or grossly neglected the duties of a guardian, or that a circumstance has arisen due to which he/she could not have been appointed as a guardian if the guardian is fully or partially deprived of legal capacity; fully or partially deprived of parental rights; a guardian`s interests are adverse to the ward's interests; a guardian`s personal relations with the ward, the ward's parents or other relatives would prevent him to perform properly the activities of a guardian (Article 133/1 FA) the guardianship authority is under the obligation to relieve the guardian without delay.

If the guardianship authority establishes that the guardian has been performing the guardianship duties unconscionably or that it would be more useful for the ward to have another person appointed as his/her guardian, the guardianship authority is under the obligation to relieve the guardian within thirty days from the day (Article 133/2 FA).

If the guardian requests to be relieved for his/her duty to be guardian, the guardianship authority is under the obligation to relieve him/her within sixty days from the day the guardian so requests (Article 133/3 FA).

The guardian is liable for the damage that he/she causes to the ward in the course of performing guardianship activities, unless he/she proves that the damage occurred without his/her fault. The guardian is culpable when he/she caused the damage intentionally or through gross negligence. The guardianship authority is jointly and severally liable for the damage (Article 141 FA). For the damage that the ward causes to the third party, the guardian is liable, unless he/she proves that

he supervised the ward or that damage occurred even if he supervised the ward carefully (Article 164, 167 Law on Obligations).[44]

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

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

The guardian needs prior consent of the guardianship authority to:

- give consent to the undertaking of legal operations by a ward partially deprived of legal capacity (Article 137/4 point 3 FA);
- perform operations that exceed the regular management of the ward's property (Article 139 FA);
- dispose of the ward`s property that the ward has not acquired through work (Article 140/2 FA).
- decide on medical interventions on the ward (Article 137/4 point 2 FA).

In the situation that guardian does not obtain consent of the guardianship authority where is needed or undertakes ill-conceived acts, the contract would be null/void according to the rules of Law on Obligations which would be applicable.

In the situation that ward does not obtain consent of the guardianship authority or guardian where is needed or undertakes ill-conceived acts, the contract would be null/void according to the rules of Law on Obligations which would be applicable.

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.

Dissolution of the guardianship as a measure is connected with the restitution of the legal capacity. This means that the guardianship as a measure can be dissolved only if the legal capacity of the ward is restored. Guardianship is terminated with a final court decision on the restitution of legal capacity automatically to a mature ward and if the ward dies (Article 145/1 FA).

[44] Law on Obligations (Zakon o obligacionim odnosima), (Official journal of Yugoslavia, No. 29/78.)

The guardianship does not terminate with the death or relieving of the guardian (Article 145/4 FA). If guardian is not able to perform guardianship duty, then the other person should be appointed as guardian, thus measure of guardianship would still exist.

With the termination of the guardianship, the rights and duties of the guardian are terminated.

Reflection

30. Provide statistical data if available.

Data from the Republic Institute for Social Protection shows that the number of users in Centre for Social Services that are deprived of legal capacity is growing – 12,732 in 2015, 13,030 in 2016 and 13,075 in 2017.[45]

On 31/12/2020, 13,436 adults are under guardianship. In the past three years, the total number of adults placed under guardianship has been continuously growing, and in 2020 it is 2.1% higher than in 2019. Of the total number of adults under guardianship in 2020, 55% are male. When it comes to the age of the users, 70% belong to the elderly category and this distribution has been present in the previous three years. [46]

The number of beneficiaries for whom guardianship measures were applied during the year is 890, of which 53.7% are adults. Out of the total number of guardianships over adults, in 72.8% of cases the guardian is a natural person. The 27.2% of beneficiaries fall under the category of direct guardianship performed by CSS.[47]

On 31/12/2020, 10,492 adults had a decision on temporary guardianship, of which 52.7% were female.[48] The largest number of users, i.e. 50.3%, belongs to the elderly category. Such a distribution has been present in the last three years. In the course of 2020, 5,203 decisions were made on the application of measures of temporary guardianship over person adult beneficiaries. Of the total number of temporary guardians of adult beneficiaries, in 75.3% of cases the guardian is a natural person, while direct guardianship appears in 20.3% of cases.[49]

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[45] Report on the work of Center for Social Services for 2017, Republic Institute for Social Protection, Belgrade, December 2018, http://www.zavodsz.gov.rs/media/1423/izvestaj-o-radu-csr-2017rzsz.pdf

[46] Report on the work of Center for Social Services for 2017, Republic Institute for Social Protection, Belgrade, December 2018, http://www.zavodsz.gov.rs/media/1423/izvestaj-o-radu-csr-2017rzsz.pdf The report on the work of Center for Social Services (CSS) is one of the reports on the work of social welfare institutions prepared by the Republic Institute for Social Welfare (hereinafter RZSZ). The report was compiled on the basis of individual statistical reports on the work of 170 CSS departments collected by the RZSZ. The data presented by the CSS should be taken as an illustration of the state of the system, given that the area of data collection is not sufficiently regulated and that there is no unified information system for records and data entry of social welfare institutions, with defined responsibilities of each instance in the process.

[47] Ibid.

[48] The guardianship authority may decide to appoint a temporary guardian to a ward, to a child under parental care, or to a person with legal capacity, if it finds that necessary for the temporary protection of the personality, rights or interests of those persons, Article 132/1 Family Act.

[49] The guardianship authority may decide, if it is in the ward's interest, not to appoint a guardian to a person under guardianship, but to perform the guardianship duties directly, Article 131/1 Law on Non-contensious proceedings.

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 very worrying that full deprivation of legal capacity still dominates, that 31% of persons are under the direct guardianship of CSS, meaning that CSS is a guardian, performing guardianship directly and that 43% of persons deprived of legal capacity live in institutions. Also, the deprivation of legal capacity has a very negative effect on women with disabilities, especially those who are in residential institutions, in terms of sexual and reproductive rights, bearing in mind that that they do not decide independently about the use of contraception, the birth of children and/or termination of pregnancy, since it is decided by their guardians.[50]In the Draft Law on Amendments to Family Act it is proposed that apart from a ward's spouse, relative or foster parent who are primarily appointed as a guardian according to the current law, the person who is particularly close to the ward may be appointed as a guardian (Article 126/2).

In the Draft Law on Amendments to Family Act it is proposed the collective guardian to be abandoned (Article 130). This Article now states: "The manager of a social service institution for user accommodation, or a person employed in such an institution, may be appointed as the guardian of all the wards accommodated in that social service institution, if he/she consents to it and if it is in each wards' interest."

It is proposed that the form of guardian, now called „direct guardian", to be changed to "state guardian". A state guardian is appointed if the following persons cannot be appointed as guardians: a spouse, a relative, a foster parent, or a person particularly close to the ward. The work of the state guardian is performed by an official, employed in the body of the local self-government unit that performs social protection and social activities, and who is designated by the head of that body. The work of the state guardian is performed by an official who is trained and has special knowledge in the field of family law and social protection.

It is proposed that the provision which regulates when the guardian shall be relieved of his/her duties, be broadened to include the case 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 (Article 133).

[50] Strategy for improving the position of persons with disabilities in the Republic of Serbia for the period from 2020 to 2024, ("Official Gazette of RS", number 44 of March 27, 2020), p. 32

SECTION IV – VOLUNTARY MEASURES

Overview

32. What voluntary measures exist in your jurisdiction? Give a brief definition of each measure.[51]

The Serbian law does not provide for the application of voluntary measures.

33. Specify the legal sources and the legal nature (e.g. contract; unilateral act; trust or a trust-like institution) of the measure. Please consider, among others:
- **a. the existence of specific provisions regulating voluntary measures;**
- **b. the possibility to use general provisions of civil law, such as rules governing ordinary powers of attorney.**

N/A

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

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 the voluntary measure?

N/A

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

37. Please describe the formalities (public deed; notarial deed; official registration or homologation by court or any other competent authority; etc.) for the creation of the voluntary measure.

N/A

38. Describe when and how the voluntary measure enters into force. Please consider:

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

N/A

Appointment of representatives/support persons

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

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

N/A

During the measure

Legal effects of the measure

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

N/A

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

N/A

Powers and duties of the representative/support person

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

N/A

43. Provide a general description of how multiple representatives/support persons interact, if applicable. Please consider:
- **a. if several voluntary measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the framework of these measures, coordinate their activities?**
- **b. if several representatives/support persons can be appointed in the framework of the same voluntary measure how is the authority distributed among them and how does the exercise of their powers and duties take place (please consider cases of concurrent authority or joint authority and the position of third parties)?**

N/A

44. Describe the interaction with other measures. Please consider:
- **a. if other measures (state-ordered measures; *ex lege* representation) can be simultaneously applied to the same adult, how do the representatives/support persons, acting in the framework of these measures, coordinate their activities?**
- **b. if other measures can be simultaneously applied to the same adult, how are third parties to be informed about the distribution of their authority?**

N/A

Safeguards and supervision

45. Describe the safeguards against:
- **a. unauthorised acts of the adult and of the representative/support person;**

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

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

N/A

46. Describe the system of supervision, if any, of the voluntary measure. Specify the legal sources. Please specify:
a. is supervision conducted:
- **by competent authorities;**
- **by person(s) appointed by the voluntary measure.**

b. in each case, what is the nature of the supervision and how is it carried out?
c. the existence of measures that fall outside the scope of official supervision.

N/A

End of the measure

47. Provide a general description of the termination of each measure. Please consider who may terminate the measure, the grounds, the procedure, including procedural safeguards if any.

N/A

Reflection

48. Provide statistical data if available.

N/A

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

N/A

SECTION V – *EX LEGE* REPRESENTATION

Overview

50. Does your system have specific provisions for ex lege representation of vulnerable adults? If so, please answer questions 51 – 64. and, if not, proceed with question 65.

Serbian legal system has specific provision for ex lege representation resulting from marital law and/or matrimonial property law only.

Start of the ex-lege representation

Legal grounds and procedure

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

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 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

During the ex-lege representation

Powers and duties of the representatives/support person

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

N/A

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

N/A

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

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

N/A

Safeguards and supervision

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

N/A

End of the ex-lege representation

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 issue of spouses' responsibilities concerning their obligations is regulated by article 187 of Family Act. It is stated that both spouses shall be jointly and severally liable by their joint and separate properties for obligations undertaken in order to settle the needs of cohabitation in marriage, as well as for obligations which, by virtue of statute, burden both of them.

Further, 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 joint property.

63. Do the rules governing community of property permit one spouse to act on behalf of the other spouse regarding the administration etc. of that property? Please consider both cases: where a spouse has/has no mental impairment.

Spouses manage and dispose of their community property jointly and consensually. It is to be considered that one spouse always undertakes operations of regular management with the consent of the other spouse. A spouse may not dispose of his/her share in community property, nor may he/she burden it with legal operations *inter vivos*, Art. 174 Family Act. If one of the spouses does not have legal capacity, the appointed guardian should make a decision. If the spouse is appointed guardian, it is possible to appoint collision guardian to a person whose interests are adverse to the interests of his/her legal representative.

This means that the community property regime prevents a community property owner from disposing of their share (be it by transfer or encumbrance), taking into account that shares, although specifiable, are not specified. The community property regime comes to an end the moment they are specified in any way (ideally or physically). Given the unspecified nature of shares, the administration and disposal of assets community ownership of spouses, should be exercised jointly and agreeably.[52]

[52] More in R. Cvetić, 'Joint Ownership of Spouses and Good Faith Acquisition of Immovables by Relying in the Real Estate Cadastre' (2016) 3, Collected Papers of the Faculty of Law in Novi Sad,

But when it comes to regular management, the law supports presumed consent which means that one spouse can undertake necessary and regular actions concerning community property. This rule always applies in situations where neither spouse has mental impairment. In situation where one spouse has mental impairment, but is not deprived of legal capacity, the same rule will apply. Contrary, if that spouse is deprived of legal capacity, 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 so, 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

823, 842. and R. Cvetic, 'New Rules on Registration Procedure with the Real Estate Cadastre. Registration of Common Ownership of Spouses'(2019) 4, Collected Papers of the Faculty of Law in Novi Sad, 1167, 1186.

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 Draft Law on Amendments to Family Act proposes that the guardianship authority is obliged to: protect the dignity and well-being of the ward; strive to limit the rights of the ward as little as possible; encourage the ward's independent decision-making, provide him/her support in decision-making, as well as the participation in community life; take into account all the specifics of the ward's personality and accept his decisions, opinions, wishes, and attitudes, unless it is in conflict with the welfare of the ward (Article 124/2).

It is proposed also to add the guardian's obligation to help the ward in making decisions in accordance with his/her legal capacity and to make sure that the adult ward receives all the information on issues that concern him/her in a timely manner and to take into account in the utmost extent possible the ward's decisions, opinion, wishes and attitudes when performing the guardian's duties (Article 135).

The aim of these provisions is to empower vulnerable adults, giving him/her the wide possibility to autonomous decision-making. In this way substitute decision-making, which exists in current law, should be gradually replaced by supported decision-making. Stipulating explicit guardian's obligation to help the ward in making decisions in accordance with his/her legal capacity, to make sure that the adult ward receives all the information on issues that concern him/her and to consider the ward's decisions, opinion, wishes and attitudes enables the ward to actively participate in the process of the decision-making on the issues that concern him/her.

According to Family Act 2005, two decisions enable tailored-made incapacitation to some extent.

Based on the Family Act, the court will determine the legal operations that a person partially deprived of legal capacity can or cannot undertake independently (Article 147/3). In other words, the court has a choice: either to specify the legal operations that a person partially deprived of legal capacity can undertake (in addition to those that can certainly be undertaken by persons older than 14

years) or to list only those legal tasks that they cannot undertake. On the other hand, according to the Law on Non-Contentious Proceedings, the court has only one option - to specify the type of operations that person partially deprived of legal capacity can independently undertake in addition to the operations he/she is authorized to do by law (Article 40/3). Finally, the Draft Law on Amendments to Family Act offers the third and the best solution, according to which the court would only have the possibility to specify the activities that a person partially deprived of legal capacity will not be able to undertake, while there is no prohibition for all other legal operations. In this way, this new proposition empowers vulnerable adults. It seems that the new proposal is restrictive having in mind court`s position, giving the court only the possibility to define legal operations that the person may not undertake independently, if the partial deprivation is concerned.

Second decision which enables tailored-made incapacitation is the decision on placing someone under guardianship, which must include a guardianship plan, which is specific for each person.

The recent novelty of Law on Non-Contentious Proceedings, amendments from 2022, is that in the decision of the partial removal of legal capacity of the person the court has to define legal operations which this person can undertake by himself/herself and especially if this person can exercise his/her elective right (Article 40/3). This solution empowers vulnerable adults by proposing the court obligation to define especially if this person can exercise his/her elective right.

The legal capacity of the person partially deprived of legal capacity is the same as legal capacity of the senior minor - child over 14 years of age who may undertake legal operations whereby he/she acquires exclusively rights, legal operations whereby he/she does not acquire either rights or obligations, legal operations of small significance, but also all other legal operations with the prior or subsequent consent of his/her guardian (or the consent of the guardianship authority for the disposition of immovable property and movable property of considerable value). The question is if the person partially deprived of legal capacity may take only legal operations, but also important legal acts, similarly to the child at the age of fifteen. The child at the age of fifteen are able to change a personal name, to inspect the register of births and other documentation related to his/her origin, give consent to a medical intervention etc. According to the Article 19 paragraph 2 of the Law on the Patient`s Rights a physician or other healthcare professional is obliged to enable patient who is deprived of legal capacity to be involved in making decision on consent to the proposed medical treatment due to her/his maturity and mental capacity. The stipulation of the Draft Law on Amendments to Family Act which explicitly encompasses the possibility to take also the legal acts empowers the legal position of the person partially deprived of legal capacity giving him/her e.g., the right to change a personal name and the right to inspect the register of births and other documentation related to his/her origin.

According to Cessation of Pregnancy in a Healthcare Institution Act pregnant woman who is partially deprived of legal capacity has the right to independently request for an abortion. This solution empowers vulnerable adults in the decision-making on reproductive rights.

The court may allow that the participant without legal capacity to institute actions in addition to the actions for which he/she is authorised under the law, for

the purposes of exercising his rights, if the court believes that he/she is capable of understanding the meaning and legal consequences of such actions. Thus, this person has a right to adversarial trial and has active role in the proceedings. This solution empowers vulnerable adults in the court proceedings.

The person who is deprived of legal capacity may institute proceedings for the restoration of legal capacity if capable of understanding the meaning and legal consequences of this petition. This solution empowers vulnerable adults, giving him/her right to try to change his/her legal status.

The person in relation to whom the proceedings for deprivation of legal capacity are conducted has a right to file a complaint on the decision on removal of his/her legal capacity regardless of his mental state. This provision is the recent novelty of Law on Non-Contentious Proceedings, amendments from 2014 (Article 40 a). This solution empowers vulnerable adults in the court proceedings.

The Draft Law on Amendments to Family Act proposed that the guardian may, but only with a prior consent of the guardianship authority and with the previously obtained opinion and attitude of the ward, decide on medical interventions on the ward and to give consent to the undertaking of legal operations by the ward (Article 137/6).

When it comes to the management and disposal of the ward's property, it is proposed to add the guardian's obligation to obtain the ward's opinion and to respect the decisions, wishes and attitudes of the adult ward (Articles 139, 140).

The aim of these provisions is transition from the 'best interest principle' to the 'will and preferences principle'.

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

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

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

c. protection during the operation of adult support measures:

- **protection of the vulnerable adult against his/her own acts;**
- **protection of the vulnerable adult against conflict of interests, abuse or neglect by the representative/supporting person;**
- **protection of the vulnerable adult against conflict of interests, abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions;**
- **protection of the privacy of the vulnerable adult.**

The novelty of Law on Non-Contentious Proceedings, amendments from 2014, is that the deprivation of legal capacity should be time bound – for a maximum of three years (Article 40/2). The incapacitation has to be re-examined in the

period of maximum three years (Article 40 a). This solution protects vulnerable adults, as the removal of legal capacity is not limitless anymore.

One of the stipulations, which aims to protect the vulnerable adults states that the court shall personally question the person in relation to whom the proceedings are conducted. If such a person is in a health care institution, he/she should be questioned there. The court may abandon the questioning of the person in relation to whom the proceedings are conducted only if this may be harmful to his heath or if the hearing is not possible at all, considering the mental or physical condition of such person (Article 36/3 Law on Non-Contentious Proceedings). However, it could be noticed this provision has some deficiency as it might be used in court practise to avoid the questioning of this person even if the reasons for abandon questioning does not actually exist.

Another suggested amendment to the Family Law is to abandon the existing term „deprivation of legal capacity" and introduce the term „limitation of legal capacity" (Article 146).

In the current law there is a possibility for the manager of a social service institution for accommodation (or a person employed in such an institution), to be appointed as the guardian of all the wards accommodated in that social service institution. The Draft Law on Amendments to Family Act proposes this solution to be abandoned completely. This solution protects vulnerable adult against conflict of interests, abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions.