

Hungary

Dr. Orsolya Szeibert

1. The CRPD and the Optional Protocol was ratified by Hungary in 2007. The Act No XCII of 2007 announced the CRPD and its Optional Protocol (in Hungarian it is “Fogyatékosággal élő személyek jogairól szóló egyezmény és az ahhoz kapcsolódó Fakultatív Jegyzőkönyv kihirdetéséről szóló 2007. évi XCII. törvény). Hungary was actually the first country in Europe which ratified the CRPD and its Optional Protocol. The first country report on implementation of the requirements of CRPD was written in October 2010. At that time the Civil Code of 1959 was in force which contained regulation on capacity and incapacity of adults. Those rules concerning capacity and incapacity were introduced in 2001. In the meantime and in the background the recodification of the new Civil Code was continuously moving ahead. This recodification process began in 1998 and the regulation on capacity and incapacity of adults had been fiercely discussed from the very beginning. The Committee on the Rights of Persons with Disabilities released its concluding observations on the initial periodic report of Hungary in 2012. When these observations were accepted in September 2012 the ‘old’ Civil Code was in force but actually at the same time the bill of the ‘new’ Civil Code was already before the parliament with its rules on capacity/incapacity of adults. Some positive aspects were emphasized in the observations (such as the explicit prohibition of disability-based discrimination in its Fundamental Law and publication of the Convention in the Hungarian Gazette in Braille print, sign language) but a lot of recommendations were made. Among others the committee observed that Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities were not reviewed since the adoption of CRPD. What concerns the equal recognition before law (Art 12 CRPD) they recommended that the then current review process of the Civil Code should have been used effectively with the aim to ‘take immediate steps to derogate guardianship in order to move from substitute decision-making to supported decision-making which respects the person’s autonomy, will and preferences and is in full conformity with article 12 of the Convention’. The observations did not influence the bill’s rules on legal capacity of adults and the new Civil Code, namely the Act No. V of 2013 (HCC) entered into force in March 2014. The Hungarian Ombudsman turned to the Constitutional Court in 2013 primarily because of Art 2:22(1) of HCC [Legal statements of an adult having no capacity to act; Legal statements of an adult having no capacity to act shall be null and void; his custodian shall act on his behalf.]. The Constitutional Court refused this initiation in 2014 and declared that the HCC is in harmony with Art 12(2) CRPD. The validity of this interpretation seems to be unsure.

2. The definition of vulnerable adults does not exist in the Hungarian law as the main institutions are incapacity and custodianship. An independent part of the HCC regulates the capacity to act. According to Art 2:8(1) everyone shall have the capacity to act unless his or her capacity is limited by this Act or by court judgment on placement under custodianship. The HCC regulates the capacity of minors and that of adults. A minor can have limited capacity or can be incapacitated.

What concerns the adults, an adult’s capacity can be limited partially or fully by the court. According to Art 2:19(1)-(2) an adult shall have partially limited capacity to act if placed by the court under custodianship to that effect and the court shall place an adult under custodianship partially limiting his capacity to act, if, due to his mental disorder, his ability required to take care of his own affairs is significantly reduced, permanently or in a temporarily recurring manner, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under custodianship is justified with regard to specified

categories of affairs. In the judgment on partial limitation of the capacity to act, the court shall specify those categories of affairs of a personal or property nature in which the capacity to act is to be limited. For legal statements by a person having partially limited capacity to act to be valid in the categories of affairs specified by the court judgment, the consent of his custodian shall be required. According to Art 2:22(1)-(2) an adult shall have no capacity to act if placed by the court under custodianship fully limiting his capacity to act and the court shall place an adult under custodianship fully limiting his capacity to act if, due to his mental disorder, he permanently and completely lacks the ability required to take care of his own affairs, and consequently, having regard to his personal circumstances, family ties and social relations, his placement under custodianship is justified. Legal statements of an adult having no capacity to act shall be null and void; his custodian shall act on his behalf. Custodianship is regulated in details in HCC. The procedural rules of placement an adult under custodianship are contained in the Act No CXXX of 2016 on Civil Procedural Law (which entered into force in January 2018). A custodian can be the adult's spouse, cohabitant, other relative or suitable person or also a professional custodian. [I have to remark that I use the phrase of custodian as the guardianship (only for minors) and custodianship (only for adults) are clearly distinguished in HCC.]

For legal statements by a person having partially limited capacity to act to be valid in the categories of affairs specified by the court judgment, the consent of his custodian shall be required. In the categories of affairs specified by the court judgment, persons having partially limited capacity to act may make legal statements of a personal nature to which they are entitled by law, may enter into low-value contracts covering common everyday needs, may dispose of their income to a proportion specified by the court and may make commitments to that extent, may enter into contracts by which they obtain only advantages, may give gifts up to a commonly accepted degree without the consent of their custodians. Legal statements of an adult having no capacity to act shall be null and void; his custodian shall act on his behalf and only contracts of minor importance concluded and performed by an adult having no capacity to act shall not be null and void for the lack of capacity to act if their conclusion is widely practiced in everyday life and does not require special consideration.

3. Two new institutions assisting vulnerable or potentially vulnerable adults have been introduced by the HCC in 2013. One is the possibility for adults having capacity to act to make a prior legal statement in a public deed, a private deed countersigned by an attorney-at-law, or in person before the guardianship authority, concerning future limitation of their capacity to act, whether full or partial. It serves the autonomy of adults. The other institution is the supported decision-making without prejudice to capacity to act. The guardianship authority shall at the adult's request and in order to avoid limiting his capacity to act appoint a supporter for the adult who, due to not being entirely of sound mind, needs help in administering some of his affairs or making his decisions. An Act, namely the Act No CLV of 2013 on supported decision-making was accepted and entered into force in 2014.

4. According to the data required by the Ombudsman in mid-2015 at that time 49,503 adults were under custodianship, 747 professional custodians represented for cc 17,243 adults under custodianship. 44 professional supporters and 26 non-professional supporters were ordered by the guardianship authority.

5. One of the main problems emerges from the fact that autonomy of vulnerable adults is in the background and the paradigm-shift has not happened yet. The Ombudsman released reports recently concerning the problems in relation with professional custodians and also the legal

position of disabled adults including psychosocially disabled adults. Both problems of substantial law and procedural law emerging.