

THE EMPOWERMENT AND PROTECTION OF VULNERABLE ADULTS

THE CZECH REPUBLIC

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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.**

Human Rights Dimension

The 20th century is sometimes characterised as the century of international agreements, in particular those centred on the individual. The Czech Republic, or the former Czechoslovakia, acceded to a number of treaties soon after the fall of the communist regime in 1989, in particular universal conventions on human rights. In the years to come, and most notably in the early 21st century, the Czech Republic also became a state party to other international agreements, which brought significant changes for people in general, and for vulnerable persons in particular. The Convention on the Rights of Persons with Disabilities (“CRPD”) was signed by the Czech Republic on 30 March 2007. The instrument of ratification was deposited on 28 September 2009. It entered into force in the Czech Republic on 28 October 2009 upon publication in the Czech Collection of Laws and Treaties (No. 10/2010 Sb. m. s.). The monitoring body in the Czech Republic is the Office of the Public Defender of Rights. The Convention on the International Protection of Adults (“The Hague Convention”) was signed on behalf of the Czech Republic on 1 April 2009. The instrument of ratification was deposited on 18 April 2012. It entered into force on 1 August 2012 upon publication in the Czech Collection of Laws and Treaties (No. 68/2012 Sb. m. s.). The Ministry of Justice was designated as the Central Authority. Regarding the Recommendation CM/Rec (2009)11 on Principles concerning continuing powers of attorney and advance di-

rectives for incapacity of the Council of Europe, it was taken into account in relation to the above-mentioned international conventions in the preparation of the Civil Code (see 1.2. below).

By way of introduction, it should be emphasised that the Constitution of the Czech Republic provides that promulgated treaties, the ratification of which Parliament has given its consent to and by which the Czech Republic is bound, form part of the legal order; if a treaty is in opposition to a statute, the treaty prevails (cf. Article 10 of Constitutional Act No. 1/1993 Sb., the Constitution of the Czech Republic, as amended, the “Constitution”).

The constitutional framework for the protection of the person is provided in the Charter of Fundamental Rights and Freedoms, which recognises the inviolability of the natural rights of an individual, develops the universally-shared values of humanity, equality of people in dignity and their rights, and stipulates, in particular, that fundamental rights and freedoms are inherent, inalienable, not subject to a statute of limitations and are irrevocable, and that everyone has the capacity to have rights (see, in particular, the introductory articles of Constitutional Act No. 2/1993 Sb., the Charter of Fundamental Rights and Freedoms, as amended, the “Charter”). The Charter also provides that everyone has the right to be protected from unlawful interference in private and family life (Article 10(2) of the Charter) and that parenthood and family are protected by the law (Article 32 of the Charter). The Charter stipulates that everyone has the right to the protection of their health and that persons with a disability are entitled to special protection of their social rights (Articles 29 and 31 of the Charter). The right to judicial and other legal protection is enshrined in other provisions of the Charter (Article 36 et seq. of the Charter).

The Civil Code

The basic source of law regulating and protecting the civil status of an individual is the Civil Code. It was adopted after long preparations and discussions (Act No. 89/2012 Sb., Civil Code, as amended, in effect from 2014, the “CC”). As mentioned in the Principles and Foundations Underlying the New Code of Private Law¹ and the explanatory memorandum to the Civil Code,² the main authors of the Civil Code sought to break with the communist legal order. They also strived

1 For more see K. Eliáš and M. Zuklínová, *Principy a východiska nového kodexu soukromého práva* [Principles and Foundations Underlying the New Code of Private Law], Linde, Praha 2001.

2 Vláda: Důvodová zpráva k zákonu č. 89/2012 Sb., občanský zákoník, č. 89/2012 Sb. [Government: Explanatory Memorandum to Act No. 89/2012 Sb., Civil Code, No. 89/2012 Sb.]. Available here: <http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-NOZ-konsolidovana-verze.pdf> (accessed on 15 June 2022).

to continue the traditions associated with, in particular, the General Civil Code,³ which was in force in Czechoslovakia until the 1950s. They wanted to return to the values, content, and key civil terminology of that code, such as “svéprávnost” for legal capacity, and these have been re-introduced in the new code of civil law, in the General Part (Book I, Section 30 of the CC).

However, in addition to political separation from an outdated legal order and its terminology, the authors pursued other goals with the recodification of the Civil Code. When drafting the code of private law, the aim of the new concept was to provide the individual with sophisticated protection in all aspects of private life. The introductory provisions of the Civil Code provide that “private law protects the dignity and freedom of an individual and one’s natural right to pursue happiness for oneself and one’s family or people close to the individual in a manner that does not cause unjustified harm to others (Section 3(2) of the CC). It further provides that “everyone has a right to the protection of one’s life and health, as well as freedom, honour, dignity, and privacy” and that “no person may suffer unjustified harm due to insufficient age, mental state or due to dependence” (see Section 3(2) of the CC).

In an effort to create a comprehensive legal regulation, the Civil Code also regulates the protection of personal rights quite extensively, including the right to mental and physical integrity, special provisions regulating the rights of persons admitted to a healthcare facility without their consent, and the rules on the disposal of parts of a human body (Sections 81 to 114 of the CC).

Generally speaking, the primary aim of the authors of the Civil Code was to ensure that all individuals could exercise their rights in relation to the key principles of private law: the autonomy of will and freedom of contract. At the same time, they also intended for the provisions of the Civil Code to provide comprehensive protection to the private rights of persons who find themselves in a vulnerable situation due to insufficient age, mental state, or due to dependence, i.e., especially those who are in the position of being the weaker party. This protection is reflected in the General Part (Book I), as well as in the special parts, especially in Family Law (Book II).

As for the topic of the present paper, it should be noted that the main authors managed to include a comprehensive and detailed regulation of the protection of vulnerable persons when drafting the new Civil Code, the General Part (Book I). As a result, in particular of the case-law of the Constitutional Court, the Supreme Court, and the treaties further specified below (Part 4), a completely new and comprehensive concept of the protection of vulnerable persons was created based on

3 Cf. Act No. 946/1811 Sb. z. s., the General Civil Code.

universally recognised values and development in human rights. The relevant provisions are included under the heading “Supportive Measures for Cases where the Ability of an Adult to Make Legal Acts Is Impaired” (see Section 38 et seq. of the CC), followed by the provisions governing the “Limitation of Legal Capacity” (Section 55 et seq. of the CC) and the regulation of “*Ex Lege* Representation and Guardianship” (Section 457 et seq. of the CC). It should be noted, however, that the UN Committee on the Rights of Persons with Disabilities believes that the new Czech legal regulation does not fully comply with the international obligations of the Czech Republic; nonetheless, it is undoubtedly a major improvement over the previous regulation.⁴

As has been mentioned above, the Civil Code is based on the principle that every individual should be protected and it is necessary to protect the uniqueness, needs, and wishes of the individual. The key underlying principles in this specific area are the autonomy of will of individuals who anticipate their own incapacity to legally act (see Section 38 et seq. of the CC), continuing power of attorney [předběžné prohlášení], the freedom of contract of individuals who have difficulties due to their mental disorder (see Section 45 et seq. of the CC), assisted decision-making [nápomoc při rozhodování], as well as family solidarity (see Section 49 et seq. of the CC), representation by a member of the household [zastoupení členem domácnosti]). The legal regulation emphasises assisted decision-making, which involves the vulnerable person. As a result, “supportive measures for cases where the ability of an adult to make legal acts is impaired” must, as a rule, take precedence over the provisions on guardianship, or even limitation of legal capacity. Furthermore, the said “supportive measures for cases where the ability of an adult to make legal acts is impaired” must be preferred, in particular, over the limitation of legal capacity as a rather radical judicial decision that may be made – *inter alia* – only where less invasive and less limitative measures would not suffice with respect to the interests of the vulnerable person, who would otherwise be at risk of suffering significant harm. The legal capacity of a vulnerable person may be limited only where such measure is in the interest of the person and where the person suffers from a mental disorder not only of a temporary nature, after said person has been seen by the court, and always only for a fixed period of time. The transitional provisions of the Civil Code therefore included rules applicable to incapacitated persons and persons with limited legal capacity, under the previous legal regulation (see Sections 3032, 3033 and 3034 of the CC).

4 Závěrečná doporučení Výboru OSN pro práva osob se zdravotním postižením k úvodní zprávě České republiky [Concluding Recommendations of the UN Committee on the Rights of Persons with Disabilities on the Initial Report of the Czech Republic]. 2015. UN Committee on Rights of Persons with Disabilities. Available here: https://www.mpsv.cz/documents/20142/225526/Zaverecna_doporuceni_Vyboru_OSN_pro_prava_osob_se_ZP_CZ.pdf/d42c33c2-05f9-6018-e62b-fc47ac31676f (accessed on 29 July 2023).

The new concept of legal acts should also be briefly mentioned in this introduction, namely the non-existence and invalidity of legal acts.

A non-existent legal act is an act where there is no will on the part of the actor (Section 551 of the CC), where serious will to conclude the contract has not been clearly expressed (Section 552 of the CC) or where the content of the act cannot be ascertained by interpretation due to its vagueness or incomprehensibility (Section 553 of the CC).

As for the invalidity of a legal act, the law provides that “legal acts should be construed as valid rather than invalid” (see Section 574 of the CC). Unlike under the previous legal regulation, the Civil Code considers absolute invalidity as an exceptional solution applied in the case of clear (flagrant) violations of the law. Absolutely invalid legal acts also include acts which are – *inter alia* – contrary to the law and clearly in violation of the public order. The court takes such invalidity into account by virtue of office – *ex officio* (Section 588 of the CC). In the context of this paper, these cases might involve legal acts made by a person with limited legal capacity who does not have the capacity to make the specific legal act, or legal acts made by a person acting under the influence of a mental disorder that makes the person unable to legally act (Section 581 of the CC). On the contrary, the objection of the relative invalidity of a legal act may be raised only by a person whose interest is protected by this right established by the law (Section 586 of the CC).

In relation to the protection of vulnerable persons, it is worth noting “a thing of sentimental value” as a new term in Czech private law. The law stipulates that a legal representative may not deprive the represented person of a thing of sentimental value, unless it is justified on the grounds of a threat to life or health (and, where a minor without full legal capacity is concerned, also other serious grounds). The represented person must be able to keep the thing of sentimental value even when admitted to a healthcare facility, a social services facility (a facility for the social and legal protection of children) or other similar facility (see Section 459 of the CC, also see Section 483 and Section 492 of the CC).

The regulation of inheritance law includes – *inter alia* – special provisions governing the “incapacity to make disposition mortis causa” in the Property Rights and Succession (Book III). According to the law, an individual whose legal capacity has been limited may, within the extent of such limitation, make disposition mortis causa only in the form of a public instrument (see Section 1528(1) of the CC). Special rules apply to persons with limited legal capacity due to a pathological addiction to substances (see Section 1528(2) of the CC). Also, where the legal capacity of a person has been limited to the effect that the person is incompetent

to make disposition mortis causa, the person may still make valid disposition mortis causa in any form where the person has recovered to the extent of being able to express his or her will (Section 1527 of the CC).

The topic addressed above is also related to special rules for donations to or by vulnerable persons regulated in Obligations (Book IV). The law provides that a person with limited legal capacity is competent to make and accept a gift of small value, or a gift customary given the occasion (Section 2066 of the CC). A donation to a person who operates a facility providing healthcare or social services, or to a person who manages or is employed in such facility, is invalid where it is made at the time when the donor was in the care of the facility or otherwise received its services (see Section 2067(1) of the CC).

As for delictual law, the law provides that “everyone is responsible for his or her acts if the person is able to understand and control them” (Section 24 of the CC). In Obligations (Book IV), there are special provisions grouped under the heading “Harm Caused by a Person who Cannot Assess the Consequences of his or her Acts” (see Section 2920 of the CC). The law stipulates that the injured party is entitled to seek damages from a person suffering from a mental disorder where the person was competent to control his or her acts and assess their consequences, or from the person who neglected supervision over the wrongdoer, or both (Section 2921 of the CC).

Last but not least, protective measures related to vulnerable persons are included in the part of the Civil Code governing Family Law (Book II). Most importantly, a man and a woman have the right to marry unless they have been deprived of this right, that is, their legal capacity in this matter has been expressly limited by a judicial decision (see Section 673 of the CC). The provisions on marriage law regulate, in particular, the right of the spouses to represent each other *ex lege* in ordinary matters (Section 696 of the CC), the protection of the usual equipment of the family household (Section 698 of the CC) and family dwelling (Section 743 et seq. of the CC), the community property of the spouses (Section 708 et seq. of the CC), and include the “hardship clause” to protect the spouse who does not wish to divorce (Section 755(2) of the CC).

As for the relationship between parents and child, a woman becomes a parent upon birth, regardless of any mental disorder (see Section 775 of the CC), and a man based on three presumptions of paternity. Under the first presumption, the husband of the mother is presumed to be the father (Section 776 et seq. of the CC). This *ex lege* status may be denied either by the husband or his guardian where the legal capacity of the husband of the mother has been limited before the expiry of

the period for denial of paternity (see Section 785 of the CC). The second presumption is based on the consenting declaration made by the mother and the presumed father (Section 779 of the CC). It is not possible to apply this presumption where the mother is unable to assess the meaning of her declaration (see Section 781 of the CC). As for persons with limited legal capacity, the declaration on paternity must be made before the court, which examines, considering the circumstances of the case, whether these persons may establish paternity on their own, or whether a guardian will act for them (Section 780 of the CC). The procedure for denying the second presumption is similar to the denial of the first presumption. Where the paternity of a child is not determined, or denied, under the first or second presumption, the court decides the paternity of the child based on sexual intercourse in the relevant period (no fewer than 160 days and no more than 300 days before the birth of the child) and, as a rule, based on a DNA test (see Section 783 of the CC).

The key institution of law through which parents realise parenthood, and, at the same time, protect their minor child, is called parental responsibility (see Section 865 et seq. of the CC). Under the new legal regulation, any parent of a minor child has parental responsibility, regardless of any mental disorder, or limitation of legal capacity. The exercise of the duties and rights included in parental responsibility, however, is a different matter. The Civil Code provides that the exercise of parental responsibility by a parent whose legal capacity has been limited in this matter is suspended *ex lege*, unless the court decides that the parent, with regard to his or her personality, retains the care of the child and the right of personal contact with the child (see Section 868(2) of the CC). A tutor [poručník] must be appointed for the child (Section 928 et seq. of the CC).

Civil Partnership Act

The Civil Partnership Act regulates the relationship status of persons of the same sex (Act No. 115/2006 Sb., regulating civil partnership, as amended, the “CPA”). Civil partnership can be entered into by anyone who is not prohibited from doing so by law, that is, in particular, a person with limited capacity in this matter (see Section 4(4)(b) of CPA). The provisions regulate – *inter alia* – the right of the partners to represent each other *ex lege* in ordinary matters (Section 9 of CPA).

Special Judicial Proceedings Act

Another important source of law in relation to vulnerable persons is the Special Judicial Proceedings Act (Act No. 292/2013 Sb., the Special Judicial Proceedings

Act, as amended, the “SJPA”), adopted within what is termed accompanying legislation to the Civil Code. Generally speaking, it is based on the principle of instituting proceedings by virtue of office with regard to the commencement of many types of proceedings, and the inquisitorial principle with regard to evidence. Questions related to vulnerable persons are expressly addressed, in particular, by provisions regulating the proceedings regarding supportive measures (see Section 31 et seq. of the SJPA), in matters concerning legal capacity (see Section 34 et seq. of the SJPA), in matters concerning guardianship of a person (see Section 44 et seq. of the SJPA) and consent with interference in integrity (Section 65 of the SJPA), and in matters of admissibility of taking and keeping a person in healthcare institutions and social services facilities (Section 66 et seq. of the SJPA). In accordance with a new provision, where the vulnerable person is the parent of a minor child, the court deciding on the legal capacity of the vulnerable person as the parent of a minor child must commence the proceedings in matters of parental responsibility and join both proceedings (see Section 468a of the SJPA, with basis in Act No. 296/2017 Sb.).

Healthcare Services Act

The topic of vulnerable persons is also closely related to healthcare services, governed by the Act regulating healthcare services and the conditions on their provision (Act No. 372/2011 Sb., regulating healthcare services and the conditions on their provision, as amended, “HSA”). This act stresses respect for the individual, dignified treatment, consideration, and respect for the patient’s privacy. The regulation of the rights and duties of the patient provides for the patient’s free and informed consent with the healthcare services. The Act expressly stipulates that, as a rule, in the case of persons with limited legal capacity, the opinion of the person must be taken into account (Section 35 of HSA). Many different circumstances must be considered in each case, as well as the nature of the healthcare service (urgent, acute, necessary, or planned). The act also regulates – *inter alia* – the right of the patient with limited legal capacity to have a guardian, a close person, or a person designated by the patient present at all times during the provision of the healthcare services, but also the right to exclude a person that the patient claims batters, abuses, or neglects him or her (Section 28 of the HSA).

The question of the autonomy of will of the patient is also related to the right to give or deny consent with the provision of healthcare services in the event that the patient finds himself or herself in a condition where he or she is no longer able to do so (Section 36 of the HSA). As for persons with limited legal capacity, the law provides that an advance directive [dříve vyslovené přání] is not applicable (Section 36(6) of the HSA). However, this raises the question whether this rule

applies to all persons with limited legal capacity, or only persons with limited capacity in this matter, similarly to the limitation of the right to marry (see Section 673 of the CC).

Specific Healthcare Services Act

The regulation provided in the Healthcare Services Act is further elaborated in the Specific Healthcare Services Act (Act No. 373/2011 Sb., regulating specific healthcare services, as amended, “SHSA”). The question of assisted reproduction is of most interest in this context. The act stipulates that an anonymous donor or recipient of reproductive cells may not be a person with limited legal capacity to the extent of not being able to assess assisted reproduction and its consequences (Section 7(3) of the SHSA). The act also regulates the issue of sterilisation of persons with limited legal capacity (see Section 13 of the SHSA), and gender change for transsexual patients with limited legal capacity (Section 21(4) of the SHSA). The guardian of the vulnerable person and the guardian’s written consent play a key role in these cases.

In this context, it should be added that as concerns abortion, the legal regulation in the Czech Republic is very liberal. And as for vulnerable persons, the law on abortion does not provide for any special rules regarding women who suffer from a mental disorder or whose legal capacity has been limited; the same cannot be said for minor females (see Section 6 of Act No. 66/1986 Sb., regulating abortions).

Act on the Provision of Lump-Sum Financial Compensation for Unlawfully Sterilised Persons

Following the case-law of the European Court of Human Rights,⁵ criticism from the Office of the Public Defender of Rights⁶ and the League of Human Rights, and calls and recommendations from the UN Committee on the Rights of Persons with Disabilities,⁷ the long-awaited Act was adopted (Act No. 297/2021

5 See case *Maděrová v. the Czech Republic*, no. 32812/13, 16 May 2013, ECHR.

6 Press release of the Public Defender of Rights’s office of 22 July 2021. *Oběti nezákonných sterilizací se po letech dočkají odškodnění – zákon schválil Senát, zbývá jen podpis prezidenta* [Victims of Illegal Sterilizations Will Receive Compensation After Years - the Law Has Been Approved by the Senate, Only the President’s Signature is Needed]. *Veřejný ochránce práv*. 2021. Available here: https://www.ochrance.cz/aktualne/obeti_nezakonnnych_sterilizaci_se_po_letech_dockaji_odskodneni_zakon_schvalil_senat_zbyva_jen_podpis_prezidenta/ (accessed on 22 July 2021).

7 *Závěrečná doporučení Výboru OSN pro práva osob se zdravotním postižením k úvodní zprávě České republiky* [Concluding Recommendations of the UN Committee on the Rights of Persons with Disabilities on the Initial Report of the Czech Republic]. 2015. UN Committee on Rights of

Sb., regulating the provision of lump-sum financial compensation for unlawfully sterilised persons and on the amendment of certain related acts). The lump-sum financial compensation amounts to CZK 300,000.

Act Regulating the Register of Population and Birth Registration Numbers

In connection with this issue, it is also necessary to mention the law that sets out which data on citizens are recorded in the information system (see Act No. 133/2000 Sb., regulating the register of population and birth registration numbers, as amended). The law stipulates that, in addition to the name, surname, date of birth, sex and other information, the information system contains – *inter alia* – the following information on citizens: date of legal effect of a judicial decision to approve a decision-making assistance agreement [nápomoc při rozhodování] or representation by a member of the household [zastoupení členem domácnosti], including the file number and the court which approved the agreement or representation; date of legal effect of a judicial decision to limit legal capacity [omezení svéprávnosti] and appoint the guardian [jmenování opatrovníka], including the file number and the court which approved the limitation of legal capacity; date of legal effect of the judicial decision to revoke the limitation of legal capacity; date of removal of a person from the position of support person; and the date of termination of representation by a member of the household or by the guardian.

Act Regulating Identity Cards and Act Regulating Travel Documents

In connection with the registration of special information concerning citizens, special laws also regulate special rights of the guardian [opatrovník] and the representative as members of the household (Act No. 269/2021 Sb., regulating identity cards, and Act No. 329/1999 Sb., regulating travel documents, as amended).

Act on Notaries and their Activities

As mentioned below, a public deed called a continuing power of attorney [předběžné prohlášení] may be drawn up by a notary in the form of a notarial deed. If the continuing power of attorney expresses the will of a person to become the guardian, it will be registered in the Register of Declarations on the Designation of a Guardian kept in digital form by the Notarial Chamber of the Czech Republic (see Section 35e of Act No. 358/1992 Sb., on notaries and their activities, as amended).

Persons with Disabilities. Available here: https://www.mpsv.cz/documents/20142/225526/Zaverecna_doporuceni_Výboru_OSN_pro_prava_osob_se_ZP_CZ.pdf/d42c33c2-05f9-6018-e62b-fc47ac31676f (accessed on 20 September 2021).

Act Regulating the Minimum Living Amount and the Minimum Subsistence Amount

When it comes to the disposal of the income of the represented person by the representative as a member of the household [zastoupení členem domácnosti], the Civil Code stipulates that the representative may do so to the extent necessary to provide for ordinary affairs as it corresponds to the living conditions of the represented person; however, the law further provides that the representative may only dispose of the funds in the account of the represented person to the extent not exceeding the monthly subsistence minimum of an individual according to another legal regulation (i.e. Act No. 110/2006 Sb., regulating the minimum living amount and the minimum subsistence amount, as amended).

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

Adult: an adult is a person who has reached the age of 18 years; it is the age of majority [zletilost], (Section 30(1) of the CC); before reaching the age of 18 years, full legal capacity is acquired by marriage or emancipation (Section 30(2) of the CC).

Adult protection measures include in particular:

- Supportive measures for cases where the ability of an adult to make legal acts is impaired [podpůrná opatření při narušení schopnosti zletilého právně jednat] (Section 38 et seq. of the CC), that is continuing power of attorney [předběžné prohlášení] (Section 38 et seq. of the CC), assisted decision-making [nápomoc při rozhodování] (Section 45 of the CC), and representation by a member of the household [zastoupení členem domácnosti] (Section 49 et seq. of the CC); in all of the above, the autonomy of will of the vulnerable person is taken in account and the role of the court is emphasised;
- Limitation of legal capacity by the court [omezení svéprávnosti] (Section 55 et seq. of the CC) and appointment of a guardian [opatrovník], natural or legal person (Section 465 et seq. of the CC);

- Appointment of a guardian [opatrovník], natural or legal person, in the absence of limitation of legal capacity (Section 465 et seq. of the CC);
- *Ex lege* representation by spouse or registered partner in ordinary matters (Section 696 of the CC and Section 9 of CPA).

Advance directive: instructions given or wishes made by a capable adult concerning issues that may arise in the event of his or her incapacity;⁸ according to the Czech Civil Code, advance directive may be interpreted as a part of the newly incorporated “continuing power of attorney” [předběžné prohlášení]: an adult can express his or her will to have his or her affairs administered in a certain manner, or to have his or her affairs administered by a particular person or to have a particular person become his or her guardian (Section 38 et seq. of the CC); besides, the special act provides the specific right of the patient [dříve vyslovené přání]: the patient has the right to give or deny consent with the provision of healthcare services in the event that he or she finds himself or herself in a condition where he or she is no longer able to do so (Section 36 of the HSA); as for persons with limited legal capacity, the law provides that an advance directive [dříve vyslovené přání] regarding the health care is not applicable (Section 36(6) of the HSA); in view of the above, the term continuing power of attorney [předběžné prohlášení] as regulated by the Czech Civil Code (Sec. 38 et seq. of the CC) is more suitable for this report because it is more complex and includes the term advance directive.

Attorney [osoba povoláná ke správě záležitostí zranitelné osoby předběžným prohlášením] is a representative appointed by means of a continuing power of attorney, also as a support person [podpůrce] or a member of the household [člen domácnosti] or a guardian [opatrovník].

Continuing power of attorney [předběžné prohlášení] is a mandate given with the purpose that it shall remain in force, or enter into force, in the event of the grantor’s incapacity; where the vulnerable person is competent to do so, the person may, in anticipation of his or her incapacity, act and express his or her will to have his or her affairs (not only of financial nature under Czech law) administered in a certain manner, or to have his or her affairs administered by a particular person or to have a particular person become his or her guardian (Section 38 et seq. of the CC).⁹ It merges with the term “advance directive” (see above).

Ex lege representation [zákonné zastoupení] is an adult protection measure providing legal authority to other persons to act *ex lege* (by operation of law) on behalf of the adult, requiring neither a decision by a competent authority *nor* a voluntary measure by the adult; it normally applies to marriage and partnership law *ex lege*

⁸ Recommendation 2009.

⁹ We refer to the situations addressed in Recommendation 2009.

with respect to “mutual representation” in ordinary matters (Section 696 of the CC, Section 9 of the CPA); however representation of a vulnerable person by a member of the household, e.g., by a spouse, descendant, or parent [zastoupení členem domácnosti], must be approved by the court (Section 49 et seq. of the CC).¹⁰

Granter [člověk v očekávání vlastní nezpůsobilosti právně jednat] is an adult giving the continuing power of attorney [předběžné prohlášení] (Section 38 et seq. of the CC).¹¹

Legal capacity¹² includes:

- passive legal capacity [právní osobnost], i.e., “the capacity to have rights and duties within the limits of the legal order” (Section 15(1) of the CC); an individual has passive legal capacity from birth until death (see Section 23 of the CC);
- active legal capacity [svéprávnost], i.e., “the capacity to acquire rights by one’s legal acts and commit oneself to duties (to legally act)” (see Section 15(2) of the CC); full legal capacity is acquired upon reaching the age of majority [zletilost], that is upon reaching the age of 18 years (Section 30(1) of the CC);¹³
- delictual capacity [deliktní způsobilost], i. e., “the capacity of an individual to be responsible for his or her acts if the individual is able to assess and control his or her acts” (Section 24 of the CC).

Mental capacity [dostatečná rozumová a volní vyspělost] designates the *de facto* decision-making and decision-communication skills of a person.¹⁴

Representative [zástupce] is a natural or legal person who acts on behalf of the adult; it may be an attorney [osoba povoláná ke správě záležitostí zranitelné osoby předběžným prohlášením] as a representative appointed by means of a continuing power of attorney, or a guardian [opatrovník] as a natural or legal person appointed by a court, or a member of the household [člen domácnosti] or a spouse or a

¹⁰ Czech legal regulation does not recognise the representation of a vulnerable person ex lege, only by operation of law. In all cases where the law so provides, a competent state body must decide on representation by operation of law. Nevertheless, ex lege representation is regulated by the Civil Code in several cases (in addition to ex lege representation between spouses and partners). Not relevant for the topic.

¹¹ Recommendation 2009.

¹² GC 1.

¹³ Before reaching the age of 18 years, full legal capacity is acquired by marriage or emancipation (Section 30(2) of the CC).

¹⁴ GC 1.

registered partner [manžel, registrovaný partner] as a representant *ex lege* in ordinary matters.

State-ordered measures are adult protection measures, ordered by a competent state (judicial) authority, at the request of the adult or others; these include, in addition to the above-mentioned intervention by the court in the case of “supportive measures for cases where the ability of an adult to make legal acts is impaired” [podpůrná opatření při narušení schopnosti zletilého právně jednat] (Section 38 et seq. of the CC), in particular, the limitation of legal capacity by the court [omezení svéprávnosti] (Section 55 et seq. of the CC) or the appointment of a guardian [opatrovník] in the absence of limitation of legal capacity (Section 465 et seq. of the CC).

Support person [podpůrce] is a natural person who assists the adult to legally act or who legally acts together with the adult, in particular within the institution of assisted decision-making [nápomoc při rozhodování] (Section 45 et seq. of the CC).

Voluntary measures include instruments of law linked to the autonomy of will of the vulnerable person, classified, in particular, under the “supportive measures for cases where the ability of an adult to make legal acts is impaired” [podpůrná opatření při narušení schopnosti zletilého právně jednat]; these include a continuing power of attorney [předběžné prohlášení] (Section 38 et seq. of the CC), assisted decision-making [nápomoc při rozhodování] (Section 45 et seq. of the CC), representation of a vulnerable person by a member of the household, e.g., by a spouse, descendant, or parent [zastoupení členem domácnosti] (Section 49 et seq. of the CC); however, intervention of the court is necessary in all cases.

A vulnerable adult is an adult who, by reason of an impairment or insufficiency of their personal faculties, is not in a position to protect his or her interests [člověk, kterému brání duševní porucha obtíže při rozhodování nebo samostatně jednat anebo očekává vlastní nezpůsobilost, resp. není schopen pro duševní poruchu či mentální postižení, které není jen přechodné, právně jednat, resp. člověk, který se nachází v situaci, kdy není schopen hájit své zájmy].¹⁵

Guardian [opatrovník] (Section 465 et seq. of the CC) is a general term used for a representative and/or support natural or legal person appointed to an adult by a competent state (judicial) authority (court) who acts on behalf of the adult [osoba povoláná ke správě záležitostí zranitelné osoby předběžným prohlášením] as a representative appointed by means of a continuing power of attorney or without this instrument, i.e. *ex officio*; the guardian may be appointed after limitation of

15 Art. 1 of the HCCH Convention on the International Protection of Adults.

legal capacity or in the absence of limitation of legal capacity; the law also provides for the creation of a guardianship board [opatrovnická rada], (Section 472 et seq. of the CC), which may be established, without limitation, upon application of the vulnerable adult, and is composed of persons close to the him or her, and for the purpose of protection of the adult's interests.

The deprivation of liberty on the ground of “being of unsound mind” (art. 5, e) ECHR) and possible forced psychiatric treatment in such case, is outside the scope of this questionnaire, except insofar as it would be related to a measure as defined in this questionnaire.

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.

The Czech Statistical Office announced that there were 10,519,913 inhabitants in the Czech Republic in the first quarter of the year of 2022.¹⁶ According to the Census held in 2021 regarding people aged 65 and older (hereinafter also referred to as “seniors”), there were 2,150,000 of them in the year 2021 (20,4%).¹⁷

In 2021 the Czech Statistical Office published a demographic handbook called *Seniors in the Czech Republic in Data – 2021* according to which as of 31 December 2020, there were 2,145,276 persons aged 65 years and over in the Czech Republic (hereinafter also referred to as “seniors”).¹⁸ For the first time, seniors accounted for more than 1/5 of the total population in the Czech Republic (20.2%). Compared to 2011, this share increased by 4.6 percentage points.¹⁹ During this time, we can note two fluctuations, namely the period of the Second World War and the 1980s. Since the fall of communism in the Czech Republic (1989), the population over 65 years of age has started to increase again, most notably at the beginning of the new millennium. From the beginning of 2011 to the end of 2020, the number of seniors over 65 years of age increased from 1,640,000 to

16 See here: <https://www.czso.cz/csu/czso/ari/population-change-1st-quarter-of-2022> (accessed on 08 August 2022).

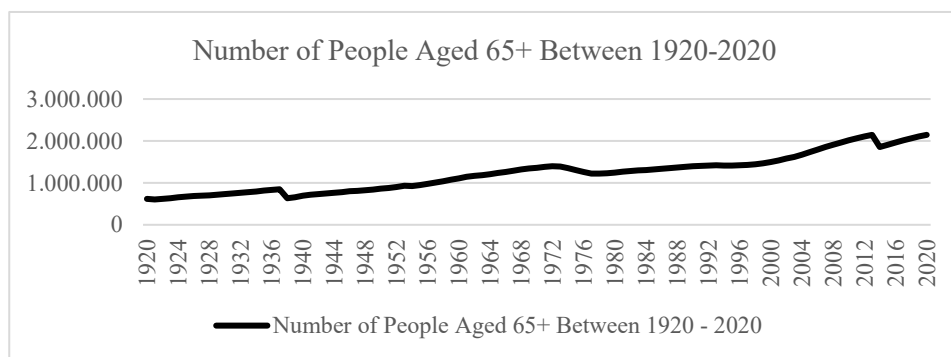
17 See here: <https://www.czso.cz/csu/scitani2021/age-structure> (accessed on 08 August 2022).

18 In the following text we draw on data published by the Czech Statistical Office. The age given is of chronological type, regardless of social age, for better measurability. See *Senioři v ČR v datech – 2021* [Seniors in the Czech Republic in Data – 2021]. Český statistický úřad. Available here: <https://www.czso.cz/csu/czso/seniori-v-cr-v-datech-2021>. Or see *Demografická příručka – 2020* [Demographic Handbook – 2020]. Český statistický úřad. 2021. Available here: <https://www.czso.cz/csu/czso/demograficka-prirucka-2020> (accessed on 20 July 2022).

19 *Senioři v ČR v datech – 2021* [Seniors in the Czech Republic in Data – 2021]. Český statistický úřad. 2022. p. 7. Available here: <https://www.czso.cz/csu/czso/seniori-v-cr-v-datech-2021> (accessed on 20 July 2022).

2,160,000.²⁰ One reason for this is that the age limit of 65 was gradually reached by groups of people born in the numerically strong generations after World War II. The second reason is that life expectancy²¹ is increasing over the long term.²²

Figure 1. Number of People Aged 65+ Between 1920-2020²³



There is very little data on people with disabilities [osoby se zdravotním postižením] (especially those with non-physical disabilities) in the Czech Republic. The Deputy Public Defender of Rights also points to the need for larger and more systematic data collection.²⁴ According to the Czech Statistical Office, in 2018, 13 % of people aged 15 and over living in private households in the Czech

²⁰ Ibid.

²¹ Life expectancy, according to the Czech Statistical Office, is “the average number of years that an individual has ahead of him or her at a certain age if the mortality rates that exist in the period under review were maintained”. See *Naděje dožití aneb v kolika let se můžeme dožít v našem kraji?* [Life Expectancy or How Old Can We Live in Our Region?] Český statistický úřad. 2022. Available here: <https://www.czso.cz/csu/xu/nadeje-doziti-aneb-kolika-let-se-muzeme-dojit-v-nasem-kraji> (accessed on 20 July 2022).

²² *Senioři v ČR v datech – 2021* [Seniors in the Czech Republic in Data – 2021]. Český statistický úřad. 2022, p. 7. Available here: <https://www.czso.cz/csu/czso/seniori-v-cr-v-datech-2021> (accessed on 20 July 2022).

²³ *Obyvatelstvo podle hlavních věkových skupin a pohlaví v letech 1920–2020*. In *Demografická příručka 2020*. Český statistický úřad. 2021. Excel Data. Available here: <https://www.czso.cz/csu/czso/demograficka-prirucka-2020> (accessed on 20 July 2022).

²⁴ Press release of the Public Defender of Rights’s office of 9 September 2021. *Jen systematické sledování a analýza umožní zjistit, jak si Česká republika vede při naplňování Úmluvy o právech osob se zdravotním postižením, zaznělo na mezinárodním semináři* [Only Systematic Monitoring and Analysis Will Make It Possible to Find Out How the Czech Republic Is Doing in Implementing the Convention on the Rights of Persons with Disabilities, an International Seminar Heard]. Veřejný ochránce práv. 2021. Available here: https://www.ochrance.cz/aktualne/jen_systematicke_sledovani_a_analyza_umozni_zjistit_jak_si_ceska_republika_vede_pri_naplnovani_umluvy_o_pravech_osob_se_zdravotnim_postizenim_zaznelo_na_mezinarodnim_seminari/ (accessed on 20 July 2022).

Republic had a disability, which is approximately 1,152,000 people. However, these are just people living in private households.²⁵

Figure 2. Number of People with Disabilities Living in Private Households²⁶

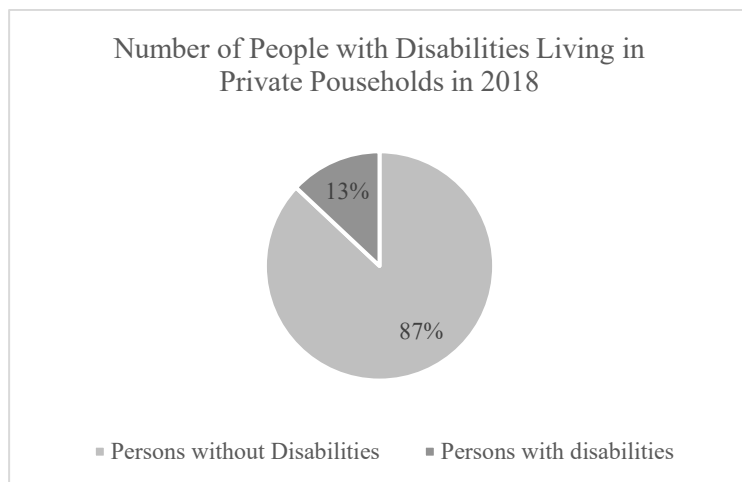
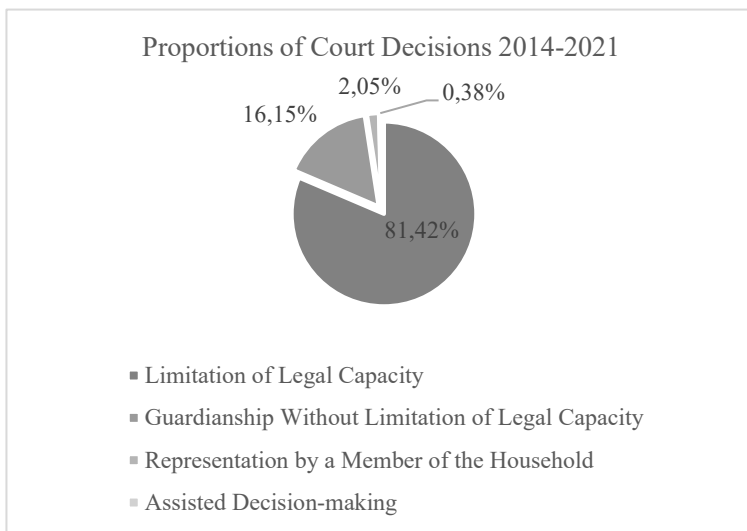


Figure 3. The ratio of the total number of decisions made by guardianship courts in the years 2014-2012 according to individual support measures provided by the Ministry of Justice²⁷

²⁵ Výběrové šetření osob se zdravotním postižením v roce 2018 [Sample Survey of Persons with Disabilities in 2018]. Český statistický úřad. Prague 2019, p. 14. Available here: <https://www.czso.cz/documents/10180/90600407/26000619.pdf/b1d5a2b3-a309-4412-a962-03d847d3d1a0?version=1.5> (accessed on 20 July 2022).

²⁶ Výběrové šetření osob se zdravotním postižením v roce 2018. Český statistický úřad. Prague 2019, p. 14. Available here: <https://www.czso.cz/documents/10180/90600407/26000619.pdf/b1d5a2b3-a309-4412-a962-03d847d3d1a0?version=1.5> (accessed on 20 July 2022).

²⁷ Data provided upon request by the Ministry of Justice of the Czech Republic in Spring 2022 were processed into a figure.



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 Czech Republic is a state party to a number of international agreements, in particular the universal Convention for the Protection of Human Rights and Fundamental Freedoms. It was signed only after the fall of the communist regime, on 21 February 1991, and entered into force on 18 March 1992 upon its publication in the Collection of Laws (see Communication No. 209/1992 Sb.). This international agreement is the value base of the entire legal order as such, with important consequences for all.

It was only later that the Czech Republic acceded to other international agreements related to vulnerable persons. The authors of the Civil Code took into account many of the values underlying these agreements when drafting the final version of the code. This was also the case when drafting the accompanying legislation, in particular, the Special Judicial Proceedings Act, as well as the Healthcare Services Act and the Specific Healthcare Services Act.

The Convention on the Rights of Persons with Disabilities (“CRPD”) was signed by the Czech Republic on 30 March 2007. The instrument of ratification was deposited on 28 September 2009. It entered into force in the Czech Republic on 28 October 2009 upon publication in the Czech Collection of Laws and Treaties

(No. 10/2010 Sb. m. s.). The monitoring body in the Czech Republic is the Office of the Public Defender of Rights.

The Convention on the International Protection of Adults (“The Hague Convention”) was signed on behalf of the Czech Republic on 1 April 2009. The instrument of ratification was deposited on 18 April 2012. It entered into force on 1 August 2012 upon publication in the Czech Collection of Laws and Treaties (No. 68/2012 Sb. m. s.). The Ministry of Justice was designated as the Central Authority.

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

In connection with the process of accession to the international conventions mentioned above, experts engaged in a discussion on the 1960s Civil Code (see Act No. 40/1964 Sb., the Civil Code, as amended, “1964 CC”). This code allowed the court to fully incapacitate a person or limit the person’s legal capacity²⁸ due to a mental disorder or for excessive consumption of alcohol, drugs, or poisons (see Section 10 of the 1964 CC). It is public knowledge that at that time, in practice, courts incapacitated vulnerable persons without legal grounds. It was done to facilitate decision-making, since it sufficed to indicate in the operative part of the judgement that XY is incapacitated without considering a whole spectrum of questions related of human life. To provide a very simplified picture of the practices at that time: the singularity and specific health conditions of the individual in question were not taken into account, and even less so the individual’s wishes and needs. The vulnerable person was only a formal party to the proceedings. Incapacitated persons were not allowed to make any legal acts, or rather these legal acts would be considered absolutely invalid. They were not allowed to marry. Incapacitated parents were not allowed to exercise parental responsibility. Their child could be adopted without their consent. The abuse of the legal regulation governing incapacitation for political reasons will not be discussed in this paper.

As has already been mentioned above, the current Civil Code was adopted after long preparation and a wide debate on the topic. In the Principles and Foundations Underlying the New Code of Private Law, the main authors of the Civil Code state that “the legal regulation of incapacitation or limitation of legal capacity will be

28 The original term for legal capacity in Czech “způsobilost k právním úkonům” was replaced by “svěprávnost” in the new Civil Code.

based on the existing legal regulation”.²⁹ However, at the same time, it was established that “the regulatory provisions to be used will exclude any abuse of the draft regulation, and will be in full compliance not only with the European Convention for the Protection of Human Rights and Fundamental Freedoms, but also the settled case-law of the European Court of Human Rights”.³⁰

The possibility of incapacitation by court was left out of the draft Civil Code during the comment procedure, due to, in particular, the Czech Republic’s international obligations stemming from its accession to the CRPD. The new approach to the question was also corroborated by case-law. The Supreme Court considered that incapacitation is not “a sanction”, but should primarily protect the interests of an individual.³¹ The Constitutional Court stated that the Charter of Fundamental Rights and Freedoms guarantees the rights of an individual as absolute, that an individual may not be deprived of these rights, and that limitation of legal capacity is permissible only for the protection of the vulnerable person.³² As a result, the final version of the Civil Code provides solely for the limitation of legal capacity, which can be resorted to only on the basis of legal grounds, in the interest of the protection of the vulnerable person, where the individual would be at risk of suffering significant harm due to a mental disorder and less invasive measures would not suffice.³³ The explanatory memorandum to the Civil Code states that this approach taken by the new regulation presents “a significant departure from totalitarian law and takes into account the Convention on the Rights of Persons with Disabilities”.³⁴

With respect to the above, the authors of the new Civil Code allowed the court to only limit the legal capacity of an individual, and only for a fixed period of time. The original wording of the Civil Code stated that the legal capacity of a person may be limited for a maximum period of three years. This relatively short period was criticised, primarily by the judiciary. The criticism stemmed from the fact that such regulation was very demanding on the judges, who would have the duty –

29 See K. Eliáš and M. Zuklínová, *Principy a východiska nového kodexu soukromého práva* [Principles and Foundations Underlying the New Code of Private Law], Linde, Praha 2001, p. 137.

30 Ibid, p. 138.

31 See, e.g., Judgement of the Supreme Court of 13 March 2003, Case no. 22 Cdo 104/2001, and Judgement of the Supreme Court of 23 May 2012, Case no. 30 Cdo 3547/2011.

32 See Judgement of the Constitutional Court of 7 December 2005, Case No. IV. ÚS 412/04, and Judgement of the Constitutional Court of 18 August 2009, Case No. I. ÚS 557/09.

33 For more information on the creation of the new Civil Code, see also J. Křiváčková, K. Hamuláková and T. Tintěra et al., *K pojetí člověka a věci v novém soukromém právu* [On the Concept of the Individual and Thing in the New Regulation of Private Law], C. H. Beck, Praha 2015, p. 57.

34 Vláda: Důvodová zpráva k zákonu č. 89/2012 Sb., občanský zákoník, č. 89/2012 Sb. [Government: Explanatory Memorandum to Act No. 89/2012 Sb., Civil Code, No. 89/2012 Sb.], p. 57. Available here: <http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-NOZ-konsolidovana-verze.pdf> (accessed on 20 September 2021).

inter alia – to see the individual, and make another decision within a relatively short period of time. The unfavourable situation was also made difficult by a shortage of certified medical and psychiatric experts.

The Civil Code was soon amended, with the maximum period for the limitation of the legal capacity of an individual set to five years where it is evident that the condition of the individual will not improve in that period (see Act No. 460/2016 Sb.).

In accordance with a new provision, where the vulnerable person is the parent of a minor child, the court deciding on the legal capacity of the vulnerable person as the parent of a minor child must commence the proceedings in matters of parental responsibility, and join both proceedings (see Section 468a of the SJP, with basis in Act No. 296/2017 Sb.).

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.

Today, issues related to vulnerable persons are critically evaluated for the most part by the Office of the Public Defender of Rights, which has published many reports and recommendations in this area. The Public Defender of Rights is of the opinion that “systemic methodical monitoring and analysis is the only way to assess the implementation of the Convention on the Rights of Persons with Disabilities in the Czech Republic”.³⁵ The Office also criticised the “lax approach by the state to the protection of vulnerable persons”, in particular the fact that “there is no comprehensive act on supportive measures, including the designation of the body responsible for this area” and that “the supervision over guardians is mostly inefficient and the powers of the municipalities in their performance of guardianship remain largely unclear”, in particular in “small municipalities, where this role

³⁵ For more see Press-release by the Public Defender of Rights’ office of 9 September 2021: Jen systematické sledování a analýza umožní zjistit, jak si Česká republika vede při naplňování Úmluvy o právech osob se zdravotním postižením, zaznělo na mezinárodním semináři [Only Systematic Monitoring and Analysis Will Make It Possible to Find Out How the Czech Republic is Doing in Implementing the Convention on the Rights of Persons with Disabilities, an International Seminar Heard]. Veřejný ochránce práv, 2021. Available here: https://www.ochrance.cz/aktualne/jen_systematicke_sledovani_a_analyza_umozni_zjistit_jak_si_ceska_republika_vede_pri_naplnovani_umluvy_o_pravech_osob_se_zdravotnim_postizenim_zaznelo_na_mezinarodnim_seminari/ (accessed on 09 September 2021).

is performed by a single person”.³⁶ The practice during the Covid lockdown, when clients of retirement homes or homes with a special regime were “limited unlawfully” and “were able to go outside only once every 6 or 7 days at most” was also criticised.³⁷ The Office of the Public Defender of Rights also published a number of recommendations on the vaccination of clients of healthcare and social services with diminished decision-making ability, or clients to which supportive measures apply.³⁸

Importantly, the protection of vulnerable persons has been addressed in the long term and in a comprehensive manner by the League of Human Rights, whose system recommendations had a significant impact on the current version of the Civil Code and the Act on the Provision of Lump-Sum Financial Compensation for Unlawfully Sterilised Persons.³⁹

As for NGOs, it is worth noting, for example, the Shadow Report for the UN Committee on the Rights of Persons with Disabilities (2011).⁴⁰ The Concluding observations on the initial report of the Czech Republic of the Committee on the Rights of Persons with Disabilities (2015)⁴¹ and, in particular, the Combined sec-

36 Press release of the Public Defender of Rights’s office of 15 June 2021. Zástupkyně veřejného ochránce práv kritizuje laxní přístup státu k ochraně zranitelných dospělých osob [Deputy Public Defender of Rights criticises lax state approach to protecting vulnerable adults]. Veřejný ochránce práv. 2021. Available here: https://www.ochrance.cz/aktualne/zastupkyne_veřejneho_ochrance_prav_kritizuje_laxni_pristup_statu_k_ochrane_zranitelných_dospělých_osob/ (accessed on 15 June 2021).

37 Ibid (accessed on 25 June 2021).

38 Public Defender of Rights’ recommendation No. KVOP-7612/2021. Očkování klientů s podpůrným opatřením a klientů se sníženou schopností rozhodování [Vaccination of clients with supportive measures and clients with reduced decision-making capacity]. Veřejný ochránce práv. 2021. Available here: https://www.ochrance.cz/aktualne/ockovani_klientu_zarizeni_zdravotnich_a_socialnich_sluzeb_se_snizenou_schopnosti_rozhodovani_nebo_s_podpurnym_opatrenim/doporuceni-ockovani.pdf (accessed on 10 January 2021).

39 Rozhodování osob s duševní poruchou: zásady pro poskytování asistence. Systémové doporučení Ligy lidských práv č. 6 z roku 2008 [Decision making for people with mental disorder: principles for providing assistance. League of Human Rights’ Systemic Recommendation No. 6 of 2008]. Liga lidských práv. Mental Disability Advocacy Center. 2008. Available here: <https://old.llp.cz/publikace/rozhodovani-osob-s-dusevni-poruchou-zasady-pro-poskytovani-asistence/> (accessed on 2 September 2021).

40 Alternativní zpráva pro Výbor OSN pro práva osob se zdravotním postižením [Alternative Report to the UN Committee on the Rights of Persons with Disabilities]. Česká republika. 2011. Point 34. Available here: https://www.mpsv.cz/documents/20142/225526/Zprava_NGO_o_plneni_Umluvy_CZ.pdf/00861696-7bb6-a66f-a86f-3b56ff32de0d (accessed on 18 September 2021).

41 Závěrečná doporučení Výboru OSN pro práva osob se zdravotním postižením k úvodní zprávě České republiky [Concluding Recommendations of the UN Committee on the Rights of Persons with Disabilities on the Initial Report of the Czech Republic]. 2015. UN Committee on Rights

ond and third periodic report of the Czech Republic on the performance of obligations set out by the Convention on the Rights of Persons with Disabilities (2020) provide useful and interesting information in this respect.⁴²

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

At this moment, the Parliament of the Czech Republic is not considering any bills to amend the Civil Code or other acts related to vulnerable persons.

In conclusion, the new concept of protection of a vulnerable person enshrined in the Civil Code, with respect to the international obligations of the Czech Republic mentioned above, corresponds more than before in principle to the needs of vulnerable persons. This area has already been reformed. However, it is also clear that many problems persist in practice, including old habits in the decision-making of the courts, simplification in the formulation of judgements concerning the limitation of legal capacity (which content is similar to judgements concerning incapacitation), and failure to apply supportive measures. In “defence” of state bodies, the unwillingness of the relatives of vulnerable persons to take responsibility for them, or to become their support persons or guardians, etc., should also be mentioned in this context.

SECTION II – LIMITATIONS OF LEGAL CAPACITY

8. Does your system allow limitation of the legal capacity of an adult? N.B. If your legal system provides such possibilities, please answer questions 8 - 15; if not proceed with question 16.

- a) on what grounds?**
- b) how is the scope of the limitation of legal capacity set out in (a) statute or (b) case law?**

of Persons with Disabilities. Available here: https://www.mpsv.cz/documents/20142/225526/Zaverecna_doporuceni_Výboru_OSN_pro_prava_osob_se_ZP_CZ.pdf/d42c33c2-05f9-6018-e62b-fc47ac31676f (accessed on 2 October 2021).

42 Spojená druhá a třetí periodická zpráva České republiky o plnění závazků plynoucích z Úmluvy o právech osob se zdravotním postižením schválena vládou České republiky dne 17. srpna 2020 [Combined second and third periodic report of the Czech Republic on the fulfilment of its obligations under the Convention on the Rights of Persons with Disabilities, approved by the Government of the Czech Republic on 17 August 2020]. Available here: <https://www.mpsv.cz/documents/20142/225526/Spojená+druhá+a+třetí%C3%AD+periodická+zpráva+České+republiky.pdf/fcd40346-c950-a3df-045f-c7f9ea5346a8> (accessed on 1 October 2021).

- c) **does limitation of the legal capacity automatically affect all or some aspects of legal capacity or is it a tailor-made decision?**
- d) **can the limited legal capacity be restored and on what grounds?**
- e) **does the application of an adult protection measure (e.g. supported decision making) automatically result in a deprivation or limitation of legal capacity?**
- f) **are there any other legal instruments,⁴³ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?**

The Czech legal order allows the limitation of the legal capacity of an individual. It is regulated in Sections 55 to 65 of the CC. Legal capacity may be limited only by the court. The proceedings regarding legal capacity are regulated in Sections 34 to 43 of Act No. 292/2013 Sb., regulating special judicial proceedings (“SJPA”). Unlike under the previous legal regulation, it is no longer possible to fully incapacitate an individual.

a. on what grounds?

There is only one ground on which the legal capacity of an individual may be limited under the Czech legal order: existence of a mental disorder which is not only of a temporary nature.⁴⁴ Theorists define a mental disorder as certain mental processes with a negative impact on how an individual thinks, experiences, and behaves. Mental disorders are considered to be disorders that predominantly concern thinking, experiencing, and relationships with other people (e. g. dementia), not disorders resulting from diseases of another nature as their secondary consequence (e.g. a coma as a result of a car accident is not a ground for limitation of legal capacity, but may be a ground for the appointment of a guardian under Section 465 of the CC).⁴⁵ As for the temporal aspect, a disorder of only a temporary nature (e.g., caused by the consumption of alcohol or drugs, a

43 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

44 Cf. Section 57(1) of the CC: The court may limit the legal capacity of an individual to the extent to which the individual, due to a mental disorder which is not only of a temporary nature, is not able to make juridical acts, and it determines the extent to which it limits the capacity of the individual to make independent juridical acts.

45 Cf., e.g., K. Svoboda, ‘Rozsah omezení svéprávnosti. Komentář k § 57’ [Extent of the Limitation, Commentary to Section 57], in: J. Švestka, J. Dvořák, J. Fiala et al, *Občanský zákoník. Komentář. Svazek I* [Civil Code. Commentary. Volume I], 2nd ed., Wolters Kluwer ČR, Praha 2020, p. 222.

fit, or stress⁴⁶) may not be a ground for limiting legal capacity, in other words a disorder in the case of which it is not reasonable to expect, at the time it started, or during its course, that it will limit the individual in making juridical acts for more than a few months.⁴⁷ A mental disorder as a ground for limiting legal capacity must always cause that the individual is not able (at least to a certain extent) to make juridical acts. On the contrary, it is expressly stipulated that difficulties communicating alone do not constitute a ground for the limitation of legal capacity (Section 57(2) of the CC).

Section 59 of the CC implies that a decision to limit the legal capacity of an individual always applies only for a definite period of time, i.e., legal capacity may not be limited indefinitely. Under Section 59(1) of the CC, the court may limit legal capacity in relation to a specific matter for the period necessary to settle the matter,⁴⁸ or for a period determined otherwise, but only for a period not exceeding three years. Where it is evident that the condition of the individual will not improve in this period, the court may extend the period of limitation of legal capacity, but not for more than five years. Section 59(2) provides that the legal effects of the limitation terminate upon the expiry of the period of limitation of legal capacity. If proceedings to extend the period of the limitation are commenced within this period, the legal effects of the original decision continue until a new decision is made, but only for a period of one year.

There are also other requirements that must be met to limit the legal capacity of an individual. The legal capacity of an individual may be limited only where the individual would otherwise be at risk of suffering significant harm and where less invasive and less restrictive measures would not suffice with respect to the interests of the individual (Section 55(2) of the CC). The legislature regards the limitation of legal capacity as an *ultima ratio*, an option of last resort, which should apply only where less invasive and less restrictive measures would not suffice.⁴⁹ Legal capacity may be limited only in the interest of the individual whose legal capacity

46 Cf. K. Čuhelová, 'Rozsah omezení. Komentář k § 57' [Extent of the Limitation. Commentary to Section 57], in: P. Lavický et al., *Občanský zákoník. I. Obecná část (§ 1-654). Komentář*. [Civil Code I. General Part (Sections 1–654). Commentary], 1st ed., C. H. Beck, Praha 2014, p. 289.

47 Also K. Svoboda, 'Rozsah omezení svéprávnosti. Komentář k § 57' [Extent of the Limitation. Commentary to Section 57], in: J. Švestka, J. Dvořák, J. Fiala et al., *Občanský zákoník. Komentář. Svazek I* [Civil Code. Commentary. Volume I], 2nd ed., Wolters Kluwer ČR, Praha 2020, p. 222.

48 In such a case, legal capacity will be limited for a shorter period of time, even for just a few weeks or months.

49 The less invasive and less restrictive measures are addressed in the following parts of the questionnaire.

is to be limited, after seeing the individual in person, and with full recognition of the rights and uniqueness of the personality of such individual. The extent and level of inability of the individual to take care of his or her own affairs must be given careful consideration (Section 55(1) of the CC).

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

As for the extent of legal capacity, Section 64 of the CC provides only a negative definition, stating that any decision to limit legal capacity does not deprive the individual of the right to make independent juridical acts in ordinary matters of daily life.⁵⁰ This section emphasises the difference from the previous legal regulation which allowed full incapacitation of an individual.

The extent of the limitation of legal capacity is always determined by the decision of the court. The Civil Code does not provide that the extent of the limitation should be defined by a positive enumeration (i.e., by enumerating the juridical acts that the individual has the legal capacity to make, and stating that the individual does not have the legal capacity to make other juridical acts), or a negative enumeration (i.e., by enumerating the juridical acts that the individual does not have the legal capacity to make, and stating that the individual has the legal capacity to make other juridical acts). In practice, the courts⁵¹ permit both forms of enumeration, however theorists prefer a negative enumeration, and permit a positive enumeration only in exceptional cases. They emphasise the potential non-reviewability of a positive enumeration in proceedings regarding remedial measures (and thereby the risk of nullification of a judgement limiting legal capacity)⁵², as well as Section 40(2) of the SJPA, which expressly states that in a judgement limiting legal capacity, *the court determines the extent to which it limits the capacity of the person under evaluation to make independent juridical acts*,⁵³ and as the case may be, the period of effect of the limitation.

50 Matters of daily life refer to, for example, using public transport and paying for the tickets, buying ordinary items for personal needs, clothes, shoes, cleaners, ordering ordinary repairs or adjustments, using postal services, buying tickets to ordinary cultural and social events; cf. K. Čuהלová, 'Běžné záležitosti. Komentář k § 64' [Ordinary Matters. Commentary to Section 64], in: P. Lavický et al., *Občanský zákoník. I. Obecná část (§ 1-654). Komentář*. [Civil Code I. General Part (Sections 1–654). Commentary], 1st ed., C. H. Beck, Praha 2014, p. 312.

51 Cf. Opinion of the Supreme Court Case No. Cpj 160/76 of 18 November 1977 (also under no. 3/1979 Sb. rozh.).

52 A positive enumeration is permissible in cases where the legal capacity of an individual is limited to the maximum extent possible (except for matters of daily life) because the person is clearly incapable of making any juridical acts. K. Svoboda, 'Rozsah omezení svéprávnosti. Komentář k § 57' [Extent of the Limitation. Commentary to Section 57], in: J. Švestka, J. Dvořák, J. , Fiala et al., *Občanský zákoník. Komentář. Svazek I* [Civil Code. Commentary. Volume I], 2nd ed., Wolters Kluwer ČR, Praha 2020, p. 223.

53 Italics added by the author (Ondřej Frinta).

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

The response to the previous question already suggests that the decision (judgement) is always “tailor-made” to the individual in question and his or her inability to make juridical acts due to a mental disorder which is not only of a temporary nature. Cf. also Section 40(2) of the SJPJ quoted in the previous response.

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?

As mentioned above in point a), a decision to limit legal capacity always applies only for a definite period of time, cf. Section 59 of the CC quoted above. It should be noted that, in addition to the termination of the effect of the decision to limit legal capacity by lapse of time, the decision may be modified at any time. Decisions to limit legal capacity are issued “subject to a change in circumstances”, i.e., in accordance with the principle of *cum clausus rebus sic stantibus*. It is expressly stipulated in Section 60 of the CC that if the circumstances change, the court modifies or nullifies its decision without delay,⁵⁴ also of its own initiative. As a rule, the court learns about the change of circumstances from the person whose legal capacity has been limited (this person has the greatest interest in changing the decision), but it cannot be excluded that also relatives of the person with limited legal capacity, for example, will notify the court of these facts. If the circumstances change (the condition of the individual improves, or worsens), the original decision may be modified (other juridical acts for which the individual does not have legal capacity may be added, or the extent of the limitation may be limited), or the decision may be nullified as such where any limitation of legal capacity is no longer appropriate.

Section 42 of the SJPJ stipulates that the court nullifies its decision if it is later found that the requirements for the limitation of legal capacity have not been met. This situation, specifically the procedure under this provision, must be strictly differentiated from a nullification (or modification) of a judgement limiting legal capacity under Section 60 of the CC. These are two different situations with different pre-conditions, and different legal consequences.

Where the procedure under Section 60 applies, the circumstances change only after the first decision has become legally effective and has caused the legal consequences anticipated in the decision (i.e., the legal capacity of a certain individual has been limited to a certain extent). The decision is issued in accordance with the law based on the facts of the case (= i.e.,

⁵⁴ In other words: the court must (= is obliged to) modify or nullify its decision if the circumstances change, the court does not have any margin of appreciation (discretion).

such decision should have been issued). The second (or following) decision issued under Section 60 is therefore a response to the change in circumstances after the first decision became legally effective, and as such is legally effective *ex nunc*.

However, where a judgement limiting legal capacity is nullified under Section 42 of the SJPA, the original decision should have never been issued (although it was) because it has been shown that there was never any ground for the change (limitation of legal capacity): the person under evaluation has never suffered from any mental disorder, or a less invasive limitation or perhaps a less invasive measure would have sufficed because the mental disorder was not so serious, etc. A nullifying judgement issued under Section 42 of the SJPA is therefore effective *ex tunc*, that is the person under evaluation will be deemed as if his or her legal capacity has never been limited, or limited only to a lesser extent.⁵⁵

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

The legal capacity of an individual may be limited only under the legal regulation provided in Section 55 et seq. of the CC, on the grounds and under the conditions stipulated thereby, and only in the proceedings regarding legal capacity in accordance with Section 34 of the SJPA (cf. above). There is no other legal institution, or adult protection measure, that would *ex lege* (automatically, without any further acts) involve any limitation of legal capacity. After all, adult protection measures exist so that the legal capacity of an individual need not be interfered with, unless absolutely necessary. A decision to limit the legal capacity of an individual is a decision regarding the personal status of an individual, and as such it may only take the form of a judgement (not a resolution) on the merits, in separate proceedings regarding the limitation (it may not be issued, for example, within the examination of a preliminary issue during proceedings regarding another case).

f. are there any other legal instruments,⁵⁶ besides adult protection measures, that can lead to a deprivation or limitation of legal capacity?

The Czech legal order does not provide for any other instruments that would result in the limitation of legal capacity. The legal capacity of an

55 P. Charvát, 'Komentář k § 42' [Commentary to Section 42], in: Jirsa, Jaromír et al, Zákon o zvláštních řízeních soudních. Soudcovský komentář [Special Judicial Proceedings Act. Judge's Commentary] [ASPI System], Wolters Kluwer ČR, Praha [accessed on 2022-6-26], ASPI_ID KO292_p12013CZ, available in the ASPI System, ISSN: 2336-517X.

56 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

individual may be limited only under Section 55 et seq. of the CC, and in the proceedings under Section 34 et seq. of the SJPA. For the remaining part of the question, cf. the response provided in point e) above.

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

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

It follows from the above that a decision to limit legal capacity is always “tailor-made” to the individual in question and his or her inability to make juridical acts due to a mental disorder. Depending on the circumstances of the specific case, the decision may affect one, several, or all of the areas listed below. With regard to the examination of the rights of the individual whose legal capacity has been limited, it is necessary to assume that unless the decision unambiguously states that a certain juridical act has been limited, it must be deemed that the legal capacity to make this juridical act has not been affected. The Civil Code does not provide for any rules governing the limitation of legal capacity in the areas mentioned below. The limitations imposed by the court and their wording in the decision therefore always depend on the facts of the specific case.

a. property and financial matters;

The court may limit legal capacity in this area in different ways, most frequently the right to dispose of certain property exceeding a certain value is limited for a definite period of time. The court may limit legal capacity, for example, with respect to the disposition of money exceeding a certain amount for a definite period of time, or alienation (or acquisition) of property owned by the individual whose legal capacity has been limited (or property that the person might acquire), for example, the prohibition to alienate real estate or securities owned by the individual, etc. This prohibition might be combined with the limitation of legal capacity with respect to individual types of contracts, for example, legal capacity may be limited in terms of entering into a sales contract as the seller where the value of the performance exceeds CZK 20,000, or a contract for work where the value of performance exceeds CZK 30,000, or the possibility to oblige oneself to perform dependent work, etc. The content of a decision in this area may be highly varied.

The limitation of legal capacity results *ex lege* in the termination of the activities as an administrator of the property of another (Sections 1438 and 1444 of the CC) under the institution of administration of the property of another under Section 1400 et seq. of the CC.⁵⁷

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

The limitation of legal capacity may also affect matters regulated by family law. A person whose legal capacity to marry has been limited may not enter into marriage (Section 673 of the CC), i.e., the decision to limit legal capacity must expressly state that the individual does not have the legal capacity to enter into marriage. If nonetheless such a person enters into marriage, the marriage will be invalid, or rather the court will declare the marriage to be invalid (Section 680 of the CC). A marriage is considered to be valid unless declared invalid. If a marriage has been declared invalid it is considered as having never been entered into (Section 681 of the CC).

The majority of mutual duties and rights between parents and children are covered by the institution of parental responsibility. Parental responsibility includes the duties and rights of a parent, primarily including the care for the child's health, physical, emotional, intellectual, and moral development, the protection of the child, maintaining personal contact with the child, ensuring the child's education and upbringing, determining the child's place of residence, representing the child and administering the child's assets and liabilities; parental responsibility commences upon the birth of the child and terminates upon the child's acquisition of full legal capacity. The duration and scope of parental responsibility may be changed only by the court (Section 858 of the CC). Where the court decides on the limitation of the legal capacity of an individual who is a parent (even if only in relation to property matters), Section 865(2) sets out that the court must always also decide on the parental responsibility of the individual. As a result, the court always examines whether it is appropriate to limit the parent's legal capacity in terms of his or her parental responsibility or part thereof. Parental responsibility may therefore be limited *en bloc* (the parent is not able to perform any component of parental responsibility), or partially (this is often the situation where the parent retains physical custody of the child and the right to personal contact with the child, cf. Section 868(2) of the CC). A parent's exercise of parental responsibility is suspended to the extent to which the parent's legal capacity has been limited in terms of parental responsibility (Section 868(2) of the CC).

⁵⁷ Everyone entrusted with the administration of property not belonging to him or her for the benefit of another (beneficiary) is an administrator of the property of another. The administrator is presumed (i.e., a rebuttable presumption) to make juridical acts as a representative of the owner.

Concerning other rights of a personal nature which are not part of parental responsibility, the following applies. Firstly, the right to deny paternity based on the presumption that the husband of the mother is the father (Section 776 of the CC) or based on an affirmative statement of both the mother and the man who is presumed to be the father (shortly said based on acknowledgement of the child, Section 779 of the CC) should be mentioned. Both these presumptions are rebuttable, and the legal regulation expressly provides for the situation where the father's legal capacity is limited to the effect that he himself may not deny paternity (Section 785(2) of the CC regarding the denial of paternity based on the presumption that the father is the husband of the mother, and Section 790(2) of the CC regarding paternity based on a consenting declaration). In this case, paternity may be denied by the guardian appointed for this purpose by the court instead of the father (according to the law). Secondly, another personal right of the parent is the right to give consent to the adoption of a child. This situation is expressly provided for in Section 812 of the CC, which states that a parent whose legal capacity has been limited by a judicial decision, may make juridical acts in matters concerning adoption, including giving consent to adoption, only to the extent to which the parent's legal capacity has not been limited. In other words, where a court is limiting the legal capacity of an individual who is a parent, it must also examine – among others duties and rights towards his child – the limitation of this right. If the legal capacity of a parent in the matter of giving consent to the adoption of his or her child is not expressly limited, the parent retains this right (even where the person's parental responsibility has been limited since the right to give consent to the adoption of a child is not part of parental responsibility, it is a special personal right regarding one's status).

Finally, the divorce of an individual whose legal capacity has been limited is not expressly regulated in the CC. However, it should be noted that Section 458 of the CC stipulates that a legal representative or a guardian may not act for the person represented (i.e., the ward without any further acts) in matters related to entering into marriage and its termination, exercise of parental duties and rights, as well as to disposition mortis causa, or declaration of disinheritance and revocation thereof. In the case of the divorce of a person whose legal capacity has been limited, the special regime regulated under Section 483(1) of the CC applies. This provision stipulates that a guardian may only agree with a change in the personal status of the ward with the approval of the court. Before making a decision, the court shall request the opinion of the guardianship council. However, the opinion of the guardianship council is not binding to a court, as the court is entitled to assess the circumstances of the particular case, i.e. whether the marriage is deeply, permanently and irreversibly broken (in short, whether the ground for divorce is fulfilled in the particular case).

There is no special regulation on contraception for persons whose legal capacity has been limited in the Civil Code, however, cf. point c) below.

c. medical matters;

The Czech Civil Code is based on the premise that, with the exception of cases provided for by the law, no one may interfere with the integrity of another person without the person's informed consent. Where a person agrees to being significantly harmed, such consent is disregarded unless the interference is necessary, considering all the circumstances, in the interest of the life or health of the person concerned (Section 93(1) of the CC). Another general rule states that a legal representative (that includes a guardian) may give consent to an interference with the integrity of the person represented where the interference directly benefits the person represented who is not able to give consent himself or herself (Section 93(2) of the CC). These general rules are further specified in Section 99 et seq. of the CC. In particular, where the life of an individual (even with limited legal capacity) is in sudden and apparent danger, and where it is not possible to obtain the individual's consent in the state of emergency, not even in other than the prescribed form, immediate intervention is allowed if necessary for the benefit of the person concerned (Section 99 of the CC). In case of an interference with the integrity of an adult without full legal capacity who strongly disagrees with the intervention while the legal representative (i.e., guardian) agrees with it, the intervention may not be performed without the court's approval (Section 100 of the CC). Also in the opposite case, where the legal representative (i.e., also the guardian) does not agree with an interference with the integrity of a person whose legal capacity has been limited although the person agrees with it, the intervention may be performed upon the petition of the person with limited legal capacity or a person close to the person only with the court's approval (Section 100(2) of the CC). Finally, in case of an interference with the integrity of an individual incapable of judgement (i.e., regardless of whether the person's legal capacity has been limited or not) in a manner resulting in permanent, irreversible, and serious consequences or in a manner connected with serious threat to the person's life or health, the intervention may be performed only with the leave of court; this provision does not prejudice Section 99 of the CC (Section 101 of the CC).

However, interferences with the physical integrity under the CC must be distinguished from the provision of healthcare services under special legal regulations, i.e., in particular, under Act No. 372/2011 Sb., regulating healthcare services ("HSA") and under Act No. 373/2011 Sb., regulating specific healthcare services ("SHSA"). Section 28(3)(e) introduces the legislative abbreviation "patient with limited legal capacity", which means a person whose legal capacity has been limited to the effect that the person is not competent to assess the provision of healthcare services, or the consequences of their provision. This is therefore another specific area of the limitation of legal capacity, which must be expressly stated in the court's decision to limit legal capacity if the person's legal capacity

in this area is to be limited. Such person has the right to have a guardian present at all times during the provision of the healthcare services (Section 28(3)(e)(2) of the HSA), but also the right to require that the guardian will not be present during the provision of the healthcare services if the person claims the guardian batters, abuses, or neglects him or her (Section 28(4) of the HSA). In the case of patients with limited legal capacity, the guardian and the patient both have the right to receive information and the right to ask questions (regarding the health condition, etc.) if the patient has the intellectual and volitional maturity to do so (Section 31(5) of the HSA). The provision of healthcare services to patients with limited legal capacity (in the sense above) itself is regulated in Section 35 of the HSA. When providing healthcare services to such patients, it is necessary to take into account their opinion on the services to be provided where appropriate given the patient's intellectual and volitional maturity. The opinion must be considered as a factor of increasing importance, proportionally to the patient's intellectual and volitional maturity. The intended healthcare services may be provided based on his or her consent where the performance of the procedure is proportionate to the patient's intellectual and volitional maturity. This provision does not prejudice the provision of healthcare services without consent (Section 35(1) of the HSA). The provision of healthcare services without the consent of a patient with limited legal capacity is provided for in Section 38 of the HSA. A patient with limited legal capacity may be admitted to hospital without the guardian's consent also in the case of a suspicion of battering, abuse, or neglect (Section 38(2) of the HSA). A patient with limited legal capacity may be provided with urgent care without the guardian's consent if the guardian is suspected of battering, abuse, or neglect (Section 38(5) of the HSA). For further details regarding the legal regulation based largely on case interpretation, cf. details in Sections 35 and 38 of the HSA. There are further limitations in the case of the provision of specific healthcare services. For example, in the context of assisted reproduction, a woman whose legal capacity has been limited in the sense of the HSA explained above may not become a recipient of an egg or an anonymous donor of reproductive cells (Section 7 of the SHSA). Sterilisation or gender change for such patients is subject to a guardian's written consent, the favourable opinion of an expert committee, and the court's approval (Sections 13 and 21 of the SHSA). Persons with limited legal capacity may not undergo castration (Section 20 of the SHSA), psychosurgical procedures may be performed only in special justified cases, again subject to a guardian's written consent, the favourable opinion of an expert committee, and the court's approval (Section 24 of the SHSA). Blood or

its components may be drawn subject to a guardian's written consent (Section 31 of the SHSA), etc.

d. donations and wills;

The Civil Code provides special regulation of donations by persons whose legal capacity has been limited in Section 2066. Under this provision, a person with limited legal capacity is competent to make and accept a gift of small value, or a gift customary given the occasion. Other aspects related to donation have already been discussed above in point a).

Disposition mortis causa is provided for by special regulation in Section 1525 et seq. of the CC. In accordance with Section 1525 of the CC, an incapacitated person is not competent to make disposition (mortis causa) with the exception of the cases under Sections 1526 to 1528 of the CC. Section 1527 of the CC further provides that where the legal capacity of a person has been limited to the effect that the person is incompetent to make disposition mortis causa (i.e., the limitation must be again explicitly follow from the decision to limit legal capacity), the person may still make valid disposition mortis causa in any form where the person has recovered to the extent of being able to express his or her will (regardless of the limitation of legal capacity being still valid). Section 1528(1) of the CC stipulates that an individual whose legal capacity has been limited may, within the extent of such limitation, make disposition mortis causa only in the form of a public instrument. This provision should be understood as a limitation of the legal capacity to dispose of property of a certain value (i.e., a general limitation to dispose of property exceeding a certain value). To the extent to which the legal capacity of an individual has not been limited, the individual may make disposition mortis causa, but only in the form of a public instrument, i.e., a notarial deed (cf. Section 3026(2) of the CC⁵⁸). Finally, a person whose legal capacity has been limited due to a pathological addiction to consumption of alcohol, psychotropic substances, or similar products and poisons, or due to a pathological addiction to gambling which constitutes a serious mental disorder, may, within the extent of the limitation, make disposition mortis causa in any prescribed form, but only in relation to up to one half of the decedent's estate. The remaining part of the estate will be inherited by intestate successors; however, where the state should be the only intestate successor, the decedent may dispose of his or her entire estate (Section 1528(2) of the CC).

⁵⁸ Where a juridical act is required in the form of a public instrument, the public instrument means a notarial deed [...].

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

Civil procedure is based on the premise that everyone may act independently before the court, as parties to proceedings (procedural capacity), to the extent of their legal capacity (Section 20(1) of the CPC). In other words, the extent of procedural capacity mirrors the extent of legal capacity. If someone is competent to make a certain juridical act, the individual always also has the procedural capacity to defend his or her rights in this matter in civil proceedings before court. If the legal capacity of individual is not limited by a judicial decision, the person should be considered to have procedural capacity.⁵⁹ The procedural capacity of a party to proceedings whose legal capacity has been limited is determined by the extent to which the person's legal capacity has not been limited.⁶⁰ It could be argued that entering into a simple contract (e.g., a sales contract) is often much simpler than acting before court in highly complicated and formalised proceedings. The legal regulation reflects this fact in Section 23 of the CPC, which stipulates that where the circumstances of the case so require, the presiding judge may decide that natural persons without full legal capacity must be represented in the proceedings by their legal representative or guardian even in cases where these individuals may otherwise act independently. If the case concerns a matter for which the individual does not have legal capacity (his or her legal capacity has been limited in this respect), the individual may not act independently in this matter before court. For this case, Section 22 of the CPC provides that these natural persons must be represented by their legal representative or guardian. In the case of a person whose legal capacity has been limited, it will be a guardian under substantive law, meaning a guardian appointed in accordance with Section 62 of the CC.⁶¹

As for public law (including administrative law), the underlying principle is that the application (the use) of private law is independent of the application (the use) of public law (Section (1)(1) of the CC). At the same time, Section 27 of the SJPA stipulates that the operative part of a final judgment regarding the status of a natural person or a legal entity (including a decision to limit the legal capacity of an individual) is binding on

⁵⁹ Cf. also Resolution of the Supreme Court Case No. 20 Cdo 1637/2000.

⁶⁰ Cf. also Judgement of the Constitutional Court of the Czech Republic Case No. 43/10.

⁶¹ The court appoints a guardian for the individual in the decision to limit legal capacity. In the selection of the guardian, the court takes into consideration the ward's wishes and needs, as well as the suggestions made by persons close to the ward if these persons act in the ward's interest, and takes care not to make the ward distrust the guardian.

all persons, which means also on all other state bodies (including administrative bodies). The legal regulation provided for in Act No. 500/2004 Sb., the Administrative Procedure Code (“APC”) must also be considered. Under this act, all persons are competent to act independently in the proceedings (“procedural capacity”) to the extent to which the law grants legal capacity to such person. Persons with limited legal capacity do not have procedural capacity to the extent of this limitation. The administrative body may give the natural person without procedural capacity an opportunity to provide his or her opinion on the case in the course of the proceedings (Section 29(1) and (3) of the APC).

The provision under Section 55 regulates the requirements for limiting the legal capacity of an individual predominantly in private law. However, there are certain legal regulations in public law which expressly presume that legal capacity may also be limited in public law (cf. Section 3(2) of Act No.155/1995 Sb., regulating pension insurance). In practice, courts have also inferred that it is possible to limit the right to vote within the limitation of legal capacity.⁶² However, theorists have not yet come to an agreement regarding the possibility of limiting legal capacity with respect to the right to vote.⁶³

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

A decision to limit legal capacity is a decision regarding the personal status of an individual. Such decisions (with exceptions) are always effective *ex nunc*, i.e., once the judgment limiting legal capacity becomes legally effective.⁶⁴ A judgment limiting legal capacity therefore can never have a retroactive effect.

62 “I. The court may, in the proceedings to limit legal capacity, also decide whether the legal capacity of the person concerned is limited in the exercise of the right to vote. II. The legal capacity of the person concerned may be limited in the exercise of the right to vote only in the operative part of the judgement (expressly).” Quoted from: Opinion of the Division of the Supreme Court of the CR case no. Cpjn 23/2016.

63 On the impossibility to limit legal capacity with respect to the right to vote, see, for example, K. Čuhelová, ‘Rozsah omezení. Komentář k § 57’ [Extent of the Limitation. Commentary to Section 57], in: P. Lavický et al., *Občanský zákoník. I. Obecná část (§ 1-654). Komentář.* [Civil Code I. General Part (Sections 1–654). Commentary], 1st ed., C. H. Beck, Praha 2014, p. 297; for an opposing opinion, see, for example, K. Svoboda, ‘Podmínky pro omezení svéprávnosti. Komentář k § 55’ [Conditions for the Limitation of Legal Capacity. Commentary to Section 55], in: J. Švestka, J. Dvořák, J. , Fiala et al, *Občanský zákoník. Komentář. Svazek I* [Civil Code. Commentary. Volume I], 2nd ed., Wolters Kluwer ČR, Praha 2020, p. 217 et seq.

64 A judgment is legally effective if it has been delivered and may not be appealed (Section 159 of Act No. 99/1963 Sb., the Code of Civil Procedure (“CPC”) in conjunction with Section 1(3) of the SJP, which stipulates that unless provided herein (i.e., in the SJP) otherwise, the provisions of the CPC apply.

A juridical act made by an individual acting under the influence of a mental disorder that made him or her incompetent make the act at a time when the legal capacity of the individual has not yet been limited by a judicial decision, is regulated in Section 581 of the CC, which provides that a juridical act made by an individual acting under the influence of a mental disorder that makes the individual unable to make the juridical act is also invalid. It seems that in this case (unlike under Section 57 of the CC) the mental disorder might even be temporary or short-term (i.e., it need not be long-term), which means a mental disorder that may not be grounds for limiting legal capacity under Section 55 et seq. of the CC.

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

A decision to limit (but also restore) legal capacity is reserved only to the court, which may do so only in proceedings regarding legal capacity under Section 34 et seq. of the SJPA. The court having subject-matter jurisdiction over the proceedings and the decision regarding legal capacity is the district court (Section 3 of the SJPA), while the court having territorial jurisdiction, but for one exception, is the ⁶⁵general court⁶⁶ with jurisdiction over the person whose legal capacity is examined (Section 34 of the SJPA). There is no other body (such as an administrative body) that would be competent to limit the legal capacity of an individual. The limitation of legal capacity may not be the subject of arbitration,⁶⁷ since arbitration may be used only for property disputes.

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

The commencement of the proceedings is regulated in the SJPA based on the general premise that the proceedings are commenced also of the court's initiative unless the law stipulates that the proceedings may be commenced only upon petition (Section 13(1) of the SJPA). Since the provisions regulating the proceedings regarding legal capacity do not stipulate that they may be commenced only upon petition, the proceedings may also be commenced of the court's initiative. The petition to commence the proceedings may be filed not only by the individual

65 If an individual is admitted to a healthcare institution or a social services facility without his or her consent under Section 84 of the SJPA, the court having territorial jurisdiction is the court with jurisdiction over the healthcare institution or social services facility (second sentence of Section 34 of the SJPA).

66 The general court having jurisdiction over a natural person (individual) is, in principle, the district court with jurisdiction over the person's place of residence, or the district court with jurisdiction over the place where the person lives if the person does not have a place of residence. Further details are stipulated in Section 85 of the CPC.

67 For more details, cf. Section 1 of Act No. 216/1994 Sb., regulating arbitration and execution of arbitral awards.

whose legal capacity will be examined in the proceedings but by any person (natural person or legal entity, cf. Section 19 of the CPC), that is a legal person with legal personality (cf. Sections 15 and 18 of the CC). In addition to a natural person or a legal entity, Section 35(1) of the SJPA expressly states that the petition to commence the proceedings to limit or restore legal capacity may also be filed by a healthcare institution. This means that a healthcare institution may file the petition regardless of whether it has legal personality (which makes the institution a legal entity in accordance with Section 18 of the CC). In the case of a healthcare institution without legal personality, the capacity to be a party to proceedings follows from the wording of Section 35(1) of the SJPA in conjunction with Section 19 of the CPC, specifically the part of the sentence after the semicolon, which states that all persons with legal personality have the capacity to be a party to proceedings; *otherwise only persons who are granted legal personality by the law*.⁶⁸ In order to prevent frivolous and clearly ungrounded petitions, Section 35(2) of the SJPA provides that where the petition to commence the proceedings was not filed by a state body or a healthcare institution, the court may require the petitioner to present, within a reasonable period, a medical certificate regarding the mental condition of the person whose legal capacity is being examined. In case of failure to present such medical certificate within the set period, the court discontinues the proceedings. Finally, as for the petition to nullify or modify the decision to limit legal capacity, it may also be filed by the individual whose legal capacity has been limited. However, if such petition has been dismissed repeatedly by the court and an improvement in the condition of such individual cannot be expected, the court may decide to deprive the individual of this right for a reasonable period, but only for a period not exceeding 6 months as of the legal effect of such decision (Section 35 of the SJPA).

In addition to a petition to commence the proceedings, a person may file a “suggestion”, which means that someone informs the court of facts regarding the potential limitation of the legal capacity of a certain without being part of the proceedings. The court examines the suggestion and decides whether to commence the proceedings of its own initiative.

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.

⁶⁸ Italics added by the author (Ondřej Frinta).

a. a requirement of legal representation of the adult;

The individual whose legal capacity is examined (person under evaluation) must be represented in the proceedings to limit legal capacity. The court appoints a guardian for the person under evaluation. This does not prevent the person under evaluation from choosing a representative, also without the guardian's consent. The person under evaluation must be advised of this right and of other procedural rights and duties. Where there is a conflict between the acts of the guardian and the chosen representative, the court determines which act is in the interest of the person under evaluation (Section 37 of the SJP A).

The representative that may be chosen by the person under evaluation may be a legal entity whose activities listed in its articles of association include protection against discrimination on grounds of sex, race or ethnic origin, religion, belief, opinions, disability, age, or sexual orientation (cf. Section 26(3) of the CPC). In the case of the limitation of legal capacity, it would be a legal entity whose articles of association mention protection against discrimination on grounds of disability.

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

Since the court may commence the proceedings also of its own initiative, the parties to the proceedings are the petitioner and the person whose rights and duties are to be examined in the proceedings (Section 6(1) of the SJP A). That will be, in the first place, the person whose legal capacity is to be limited in the proceedings.

In addition to the person under evaluation, other persons who will not be the subject of the operative part of the judicial decision but who are involved and who might be affected by the judgment will be parties to the proceedings as well. The parties to the proceedings will therefore include the spouse of the person under evaluation (unless the spouse is the petitioner), a minor child of the person under evaluation and the child's second parent if he or she is not the spouse. If the person under evaluation is a minor, his or her parents will also be parties to the proceedings. A judgment limiting legal capacity does not have a direct impact on other legal relationships although it will definitely affect them. The employer and

other relatives (potential successors, etc.) are not parties to the proceedings unless they file a special petition.⁶⁹ As for the position of CSOs, cf. the previous point.

c. requirement of a specific medical expertise / statement;

In proceedings to limit legal capacity, the court must examine an expert (Section 38(1) of the SJPA).⁷⁰ There is an exception to this duty for cases where the court is deciding on the extension of the period of limitation of legal capacity and where it is evident that the condition of the person under evaluation has not changed since the decision to limit legal capacity or since the last decision to extend the period of limitation. Only in these cases may the court waive the presentation of evidence in the form of a new expert opinion and examination of an expert, and replace this evidence with other evidence, in particular a written report by the treating physician accompanied by the most recent expert opinion; examination of the expert who has drafted the opinion is not required in this case (Section 38 of the SJPA).

Based on the expert's conclusion, the court may order that the person under evaluation be investigated in a healthcare institution for a period not exceeding 4 weeks, where this is necessary to examine the health of the individual and where it is not possible to carry out the examination otherwise (Section 38(3) of the SJPA).

d. hearing of the adult by the competent authority;

The court examines⁷¹ the person under evaluation [but also an expert (cf. the previous point) and the physician treating the person under evaluation, where appropriate, and the guardian, and presents any other evidence as appropriate]. The court may waive the examination of the person under evaluation where it is not possible to examine the individual at all, or without causing harm to the health of the person under evaluation; however, the court must always see the individual in person. If the person under evaluation so requires, the court always examines the individual (Section 38(1) and (2) of the SJPA). The requirement to see the person

69 P. Charvát, 'Komentář k § 35' [Commentary to Section 35], in: Jirsa, Jaromír et al, *Zákon o zvláštních řízeních soudních. Soudcovský komentář* [Special Judicial Proceedings Act. Judge's Commentary][ASPI System], Wolters Kluwer ČR, Praha [accessed on 2022-6-26], ASPI_ID KO292_p12013CZ, available in the ASPI System, ISSN: 2336-517X.

70 For details regarding the presentation of evidence in the form of an expert opinion, cf. Section 127 of the CPC.

71 The court has to see the person.

under evaluation is also expressly stated in Section 55(1), which stipulates that legal capacity may be limited only in the interest of the individual whose legal capacity is to be limited, *after seeing the individual in person*⁷², and with full recognition of the rights and uniqueness of the personality of the individual. The requirement of seeing the person under evaluation has raised the question whether the person must always be seen by the judge or (given the overall workload of the courts and the judges in the CR), or whether they might be seen by other judicial staff (e.g., senior court officer, assistant to the judge, etc.). According to the Opinion of the Supreme Court of the CR Case No. Cpjn 201/2015, the person under evaluation is seen under Section 55(1) of the CC and under Section 38(2) of the SJPA in the proceedings regarding the legal capacity of an individual, in principle, by the judge. The wording makes it clear that the intention of the Supreme Court of the CR was to provide for exceptions where the person is seen by someone other than the judge (the term “in principle” in this context means regularly, that is, it is possible to derogate from the rule in special, exceptional cases). In its Judgment Case No. 30 Cdo 5125/2016, the Supreme Court applied a stricter interpretation: “The presumption that, for example, the person under evaluation may be seen in some cases also by a senior court officer or assistant to the judge (Section 11 of Act No. 121/2008 Sb., to regulate senior court officers and senior officers at the public prosecutor's office and to amend related acts, as amended, Section 36a of the Judiciary Act) is limited by the fact that it is not possible to convey the overall conclusion (“impression”) reached by the senior court officer or assistant to the judge (and recorded in the report on this act) in full to the judge, who is to decide the case taking this conclusion into consideration. The aforementioned legal regulation emphasises respect for the person under evaluation [...], expressed also by personal contact between the court (judge) and the individual. The legal regulation clearly stresses the role of the judge as the person representing the court who is, in principle, designated to perform these acts. Also, the case-law of the European Court of Human Rights provides for the rule under which “judges adopting decisions with serious consequences for a person’s private life (such as the limitation of legal capacity but also, for example, interference with the personal liberty of the individual) should in principle also have personal contact with those persons.” (for example, *X and Y v. CROATIA*, Application No. 5193/09, judgment of 3 November 2011).“ The author of this part of the paper also

72 Italics added by the author (Ondřej Frinta).

agrees with the conclusion that the person under evaluation should always be seen by the judge in person.⁷³

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

It is important to distinguish an ordinary remedial measure from the procedure under 42 of the SJPA described above, which does not constitute a remedial measure.

The only ordinary remedial measure in Czech civil procedure is an appeal.⁷⁴ An appeal as an ordinary remedial measure in Czech civil law may be filed only against a decision which has not yet become legally effective. An appeal must be lodged within fifteen days of the delivery of a copy of the decision in writing with the court whose decision is being appealed (Section 204(1) of the CPC). Since there are not any special provisions on remedial measures in the case of the proceedings to limit legal capacity in the SJPA, the general regulation of an appeal in the SJPA (and subsidiarily in the CPC) applies. An appeal against a judgment limiting legal capacity is therefore allowed (i.e., not precluded) and since the decision has not yet become legally effective, it may be lodged by the person under evaluation in person or also, of course, by the person's representative (guardian or representative chosen by the person under evaluation). The review of a decision in the appellate proceedings is based on the principle of a complete appeal. This means that new facts and evidence may be presented in the appellate proceedings that have not been raised before the trial court. The appellate court will take into consideration the new facts or evidence even if they have not previously been raised. If the court has the competence to commence the proceedings also of its own initiative, the appellate court is not bound by the scope in which the appellant is seeking the review of the decision. A decision may be reviewed even if the ground for the appeal has not been invoked in the appeal after being given notice (Section 28 of the SJPA).

In the case of the limitation of legal capacity, extraordinary remedial measures are also allowed (that is, measures against a final decision), namely an application for an appeal review on points of law, an application for retrial, and an application for mistrial. An application for an appeal review on points of law may be lodged to challenge final decisions

73 I.e., Ondřej Frinta.

74 Cf. Section 201 of the CPC, under which a party to proceedings may challenge the decision of a district court or a regional court issued in trial proceedings by appeal, unless this possibility is precluded by the law.

of the appellate court in cases permitted by the law (Section 236 of the CPC). The court examining the application is not bound by the scope of the application for the review of the decision in cases in which it may commence the proceedings of its own initiative (Section 30(2) of the SJPA), including the proceedings to limit legal capacity. A party to proceedings may lodge an application for retrial to challenge a final judgment or a final resolution on the merits: (a) where facts, decisions, or evidence exist which the party could not have used, not of its own fault, in the original proceedings before the trial court or under the conditions stipulated in Sections 205a and 211 of the CPC, and also before the appellate court if they could lead to a more favourable decision for the party in the case; (b) where evidence may be presented which could not have been presented in the original proceedings before the trial court or under the conditions stipulated in Section 205a and 211 of the CPC, and also before the appellate court if they could lead to a more favourable decision for the party in the case (Section 228(1) of the CPC). A party to proceedings may lodge an action for mistrial to challenge a final decision of the trial court or the appellate court that terminated the proceedings, where the proceedings have suffered from substantial errors (e.g., the decision was made by a disqualified judge or a lay judge, the composition of the court was erroneous unless a panel of judges made the decision instead of a single judge, or a decision was made against a party to proceedings due to a crime committed by a judge or a lay judge, etc., for details cf. Section 229 of the CPC. The review on the basis of these applications is also understood broadly, as the court is not bound by the scope of the application for the review of the decision with respect to authorising retrial or nullifying the decision challenged by an application for mistrial in cases in which the court had the competence to commence the proceedings also of its own initiative (Section 29 of the SJPA).

- 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).**

As for mental capacity as defined above as the *de facto* decision-making and decision-communication skills of a person, it is important to distinguish an individual whose legal capacity has been limited by a judicial decision, and an individual who has acted under the influence of a mental disorder which made him or her incompetent to make the juridical act but whose legal capacity has not been limited by the court.

In the case of an individual whose legal capacity has been limited, the first sentence of Section 581 of the CC applies, which provides that where a person does not have full legal capacity, a juridical act which the person is incompetent to make is invalid. However, this provision must be read in the context of Section 65 of the CC, which provides that where the ward makes juridical acts independently despite not being allowed to act without his or her guardian (i.e. the ward's legal capacity has been limited in this respect), such juridical acts may be declared invalid only if these acts cause harm to the ward. Where a remedy is possible only by changing the extent of the ward's duties, the court makes the change without being bound by the petitions filed by the parties. Where the ward makes juridical acts independently despite not being allowed to act without his or her guardian, the ward's act is regarded as valid only if approved by the guardian. This applies also to cases where the juridical act has been approved by the actor after acquiring legal capacity. The above clearly shows the effort to examine the actual will of the ward expressed in the matter even if the ward's legal capacity has been limited in this area.

In the case of an individual who has acted under the influence of a mental disorder, although his or her legal capacity has not been limited by the court, it is necessary to evaluate each juridical act on a case-by-case basis. In particular, it must be evaluated whether the individual was incompetent to make such juridical act at the given moment due to the character of his or her mental disorder. In such cases, the juridical act is invalid under the second sentence of Section 581 of the CC. Changing the rights and duties of the individual or subsequent approval (unlike in the situation regulated Section 65 of the CC) is not possible in this case.

For the remaining part of the question, see the response to question 9.

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?

The legal regulation of the limitation of legal capacity has already been amended by Act No. 460/2016 Sb., to amend Act No. 89/2012 Sb., the Civil Code, and related acts (referred to as the “technical amendment to the Civil Code”). The amendment concerned Section 59 of the CC, which regulates the maximum period

of the limitation of legal capacity by the court. The original legal regulation permitted limiting legal capacity for a maximum period of three years. After the amendment, the regulation allows limiting legal capacity for a maximum period of five years where it is evident that the condition of the individual will not improve in that period. The reasoning behind the amendment was to find a more balanced solution that would protect the interests of persons with limited legal capacity on the one hand, and not add to the workload of the courts on the other (in particular on the local level in jurisdictions where the facilities taking care of significant numbers of these people are located).⁷⁵

The overview of the number of decisions made in cases concerning legal capacity is based on statistical data monitored in the Czech judiciary.⁷⁶ Statistical yearbooks until 2019 were available at the time of completion of this paper (1 July 2022).

Figure 4. Number of Decisions in Cases Concerning Legal Capacity

Year	Decisions to limit legal capacity	Decisions to extend the limitation	Decisions to change the extent of the limitation	Decisions to restore legal capacity
2014	2,683	307	864	222
2015	5,577	1,793	4,542	689
2016	4,902	2,323	6,017	1,242
2017	4,104	1,848	4,455	755
2018	4,077	6,715	2,325	242
2019	4,104	8,886	1,643	171

The overview shows that after the current Civil Code came into effect (i.e., after 1 January 2014), the number of decisions to limit legal capacity grew. However, it is important to remember that the previous legal regulation also allowed

⁷⁵ For more details, cf. D. Frintová and O. Frinta, ‘Svéprávnost v občanském zákoníku a její recentní vývoj’ [Legal Capacity in the Civil Code and Recent Developments], in: Acta Universitatis Carolinae – Iuridica, 2022, Vol. LXVIII, No. 2, p. 27 et seq.

⁷⁶ Available at: <https://cslav.justice.cz/InfoData/statisticke-rocenky.html>.

incapacitation, in addition to the limitation of legal capacity, and cases of incapacitation now fall under the limitation of legal capacity.

SECTION III – STATE-ORDERED MEASURES

Overview

16. What state-ordered measures exist in your jurisdiction? Give a brief definition of each measure.⁷⁷

The Czech legal order recognizes two categories that would fall under state-ordered measures, namely the limitation of legal capacity (Section 55 et seq. of the CC) and guardianship (Section 457 et seq. of the CC). The limitation of legal capacity has already been analysed in the previous part of the paper, so it is not discussed in this part any further. It is important that once legal capacity has been limited, a guardian⁷⁸ will be appointed.

Czech legal theorists define guardianship on a general level as an institution of alternative legal protection of a person who is not able to take care of certain legal matters at all or in an insufficient manner for various reasons.⁷⁹

Vulnerable adults may be protected by guardianship (in other words the appointment of a guardian) under Section 465 et seq. of the CC. There are two main grounds for the appointment of a guardian generally defined in this provision: the need to protect the interests of the individual, and public interest.⁸⁰ There are three situations in which a guardian is appointed for

77 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]).

78 Given the wide variety of situations in which it is necessary to ensure the legal protection of a person in a certain matter by a guardian, the law provides for several different categories of guardianship. With regard to the topic of this paper, the guardianship of a minor child who has not yet acquired full legal capacity (Section 943 et seq. of the CC), guardianship of a legal entity (Section 486 et seq. of the CC), and special guardianship for the purposes of civil proceedings (Section 29 et seq. of the CPC) will not be discussed in this paper.

79 O. Frinta, 'Poručenství a opatrovnictví' [Tutorship and Guardianship], in: M. Zuklínová, J. Dvořák, Švestka et al., *Občanské právo hmotné. Svazek 2. Díl druhý. Rodinné právo* [Substantive Civil Law. Volume II. Second Part], Wolters Kluwer ČR, Praha 2016, p. 143.

80 In general, the court appoints a guardian for an individual also of its own initiative (Section 465 of the CC, Section 13 of the SJPA). The appointment of a guardian for an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights is possible only upon petition (Section 469(1) of the CC and Section 45(1) of the

vulnerable adults: (a) for a person whose legal capacity has been limited (Section 62 of the CC in conjunction with Section 465 of the CC), (b) for an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights (and whose legal capacity has not been limited; the guardian is appointed at the court's initiative; Section 465(1) of the CC), and (c) for a person who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights (and whose legal capacity has not been limited; the guardian is appointed upon petition; Section 469(1) of the CC). The appointment of a guardian for an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights (regardless of whether upon petition or of the court's initiative) and whose legal capacity has not been limited is meant for situations where there is no concern that active juridical acts might cause significant harm to the individual but harm could be caused by the failure of a person to make certain acts (e.g., applying for social benefits) due to being bedridden for a long period of time, etc.

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

It follows from the above that a guardian is appointed in relation to the limitation of legal capacity, but also in cases where the legal capacity of an individual has not been limited.

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

The appointment of a guardian without the limitation of legal capacity takes precedence over the limitation of legal capacity (and the appointment of a guardian related to the limitation). The limitation of

SJPA). However, given the fact that the list of situations in Section 465 of the CC is only illustrative and that there are two grounds for the appointment of a guardian (protection of the interest of the individual, or public interest, cf. above), the court might reach the conclusion that it is necessary to appoint a guardian for an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights even if the individual has not filed a petition under Section 469 of the CC. In that case, a guardian is appointed for such individual under Section 465 of the CC despite the individual not having filed a petition. The fact that courts in fact do so in practice, in other words that there is a distinction made between the appointment of a guardian for a specific reason of the court's own initiative (only) under Section 465 of the CC and the appointment of a guardian for a specific reason upon the petition of the (future) ward under Section 469 of the CC, is supported by the statistical yearbook published by the Czech judiciary (cf. question 30 below).

legal capacity is understood as an option of last resort (*ultima ratio*) in the Czech Civil Code. This conclusion can be drawn from the wording of Section 55(2) of the CC, which states that the legal capacity of an individual may be limited only where the individual would otherwise be at risk of suffering significant harm and *where less invasive and less restrictive measures would not suffice with respect to the interests of the individual*.⁸¹ The appointment of a guardian under Section 465 of the CC without limiting legal capacity is undoubtedly a less invasive and less restrictive measure.

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

The Czech legal order does not provide for any other state-ordered measures in addition to those mentioned above (i.e., the limitation of legal capacity and guardianship).

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 grounds for the appointment of a guardian for a vulnerable adult have already been mentioned in the previous question. Mental impairment may, depending on its severity, result in the limitation of legal capacity (mental disorder not only of a temporary nature), as well as in the appointment of a guardian without limiting legal capacity. Physical impairment itself may not be a ground for the limitation of legal capacity; cf. above Section 57(2) of the CC, which states that the fact that an individual has difficulties communicating (e.g., due to a physical impairment) does not in itself constitute a ground for limitation of legal capacity, but it may undoubtedly lead to the appointment of a guardian without the limitation of legal capacity. If prodigality or addiction reach the intensity of a mental disorder not only of a temporary nature, legal capacity may also be limited. If not, but if the court still reaches the conclusion that the individual is, due to prodigality or addiction, in a condition which constitutes one of the grounds for the appointment of a guardian under Section 465 of the CC, then such situation may also result in the appointment of a guardian without limiting legal capacity.

For the sake of completeness, see response II. 9. d) above, where addiction to alcohol and gambling is mentioned in the context of the interpretation of Section 1528 of the CC and the capacity make disposition mortis causa.

⁸¹ Italics added by the author (Ondřej Frinta).

18. Which authority is competent to order the measure?

Just like in the case of the limitation of legal capacity, only the court is competent to appoint a guardian. Guardianship proceedings are regulated in Sections 44 to 49 of the SJPA. The court having subject-matter jurisdiction over the proceedings and the decision concerning legal capacity is the district court (Section 3 of the SJPA); the court having territorial jurisdiction, but for one exception,⁸² is the court with jurisdiction over the ward's place of residence. If it is not known where the ward lives or the ward is absent, the court competent to hear the case is the court with jurisdiction over the ward's property (Section 44 of the SJPA).

19. Who is entitled to apply for the measure?

As already mentioned above, the court appoints a guardian also of its own initiative (Section 465 of the CC, Section 13 of the SJPA) once it learns that the requirements for such appointment have been met in the specific case. In the case of an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights (Section 469 of the CC, cf. also Section 45 of the SJPA), a guardian may be appointed also upon the petition of the (future) ward. Cf. above the appointment of a guardian of the court's initiative in this case.

A petition to commence the proceedings must be distinguished from an information which may be posted to a court by anyone (e. g. a neighbour informs the court that a person living next door behaves strangely and may be has difficulties to manage own matters) – if the examination of the suggestion shows that a guardian should be appointed for the individual concerned, the court commences the proceedings regarding the guardianship of the individual of its own initiative.

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?

Consent to the appointment of a guardian (or any limitation of legal capacity) is not required. A guardian may be appointed for an individual (and the legal capacity of the individual may be limited) without his or her consent, or even

⁸² In case of proceedings regarding legal capacity, the court commences the guardianship proceedings and joins the cases. In that case, the court having jurisdiction over the proceedings regarding the guardianship of an individual is the court which is examining the legal capacity of the individual (Section 46 of the SJPA).

where the individual disagrees with the appointment. The purpose and objective of the appointment of a guardian (or any limitation of legal capacity) is the protection of the ward's rights and interests, even if the ward disagrees with these steps. It is important to note that the (future) ward may influence the selection of the guardian (cf. question 23 below). Where a guardian is appointed upon petition (Section 469 of the CC), the guardian is designated in the petition, so it is not expected that the petitioner would disagree with the appointment of a guardian (with the guardianship in general, and the guardian specifically).

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

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

Guardianship proceedings are regulated in Sections 44 to 49 of the SJPA. For information about the proceedings regarding legal capacity, cf. part II. 13 above.

a. a requirement of legal representation of the adult;

Section 44 et seq. of the SJPA does not provide for any special rules governing representation in the proceedings regarding the guardianship of an individual. The general regulation of representation in accordance with Section 29(1) of the CPC therefore applies: where a natural person who, as a party to proceedings, may not act independently before the court is not represented, the presiding judge appoints a guardian for the person (a special guardian for the purposes of the proceedings only, not a guardian under Section 465 et seq. of the CC) where there is risk of delay. The court appoints a close person, or other appropriate person as guardian (for the purposes of the proceedings only) unless there are special reasons preventing the appointment. An attorney may be appointed a guardian only if no other person may be appointed. A person other than an attorney may be appointed as guardian only if the person agrees to the appointment.

If the party to proceedings may act independently, the party may also choose his or her representative. The representative that may be chosen by the person under evaluation may be a legal entity whose activities listed in its articles of association include protection against discrimination on grounds of sex, race or ethnic origin, religion, belief, opinions, disability, age, or sexual orientation (cf. Section 26(3) of the CPC). In the case of guardianship proceedings, it would be a legal entity whose

articles of association mention protection against discrimination on grounds of disability.

b. availability of legal aid;

Section 44 et seq. of the SJPJA does not provide for any special rules governing legal assistance, so the general regulation applies. The right to legal assistance is enshrined in Article 37(2) of the Charter, which states that everyone has the right to legal assistance in proceedings held before courts, other state bodies or bodies of public administration from the commencement of the proceedings. The right to legal assistance is further specified in Section 24 of the CPC, which states that a party to proceedings may be represented in the proceedings by a representative of his or her choice, that is, among other persons, by an attorney or a legal entity whose articles of association mention protection against discrimination (cf. previous point). Further details are regulated in Section 24 et seq. of the CPC.

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

Since the court may commence the proceedings also of its own initiative, the parties to the proceedings are the petitioner (if the proceedings are commenced upon petition) and the person whose rights and duties are to be examined in the proceedings (Section 6(1) of the SJPJA). Those persons will be, in the first place, the individual for whom a guardian is to be appointed (future ward), and also the person who is to be appointed the guardian, or a guardian who has already been appointed in the case of his or her removal from the position of a guardian. The appointment of a guardian concerns only the ward, not any other persons, which means that the ward's family members are not parties to proceedings (unless a family member is the petitioner or is to be appointed a guardian). For CSOs in the role of the representative, cf. the previous points.

d. requirement of a specific medical expertise / statement;

There are no special provisions in the SJPJA regulating the evidence procedure in guardianship proceedings (as opposed to, for example, the obligatory evidence in the form of an expert opinion in the case of proceedings to limit legal capacity), so the general rules governing the evidence procedure apply (primarily under the SJPJA, and subsidiarily under the CPC). The means of proof depend on the circumstances of the specific case, and in particular, on the grounds for the appointment of a guardian. If the guardian is appointed in relation to the limitation of legal capacity, evidence in the form of an expert opinion [on the mental disorder, cf. above part II. 13. c)] must always be presented.

If the guardian is appointed without the limitation of legal capacity, general rules governing the evidence procedure apply. Under Section 21 of

the SJPA, the court also carries out other evidence necessary to ascertain the facts of the case in addition to the evidence proposed by the parties (special proceedings under the SJPA are governed by the inquisitorial principle). Where the decision depends on facts for which special expertise is necessary, the court requests a professional opinion from a public body. If such procedure is not sufficient due to the complexity of the question evaluated, or if there are doubts concerning the veracity of the professional opinion, the court appoints an expert (Section 127(1) of the CPC). In the case of guardianship proceedings (without the limitation of the legal capacity), such procedure is applied, in particular, where it is necessary to evaluate the health of the (future) ward to decide whether the individual has difficulties administering his or her assets and liabilities or defending his or her rights due to health reasons. However, this means of proof is not obligatory.

e. hearing of the adult by the competent authority;

Where the court decides on the appointment of a guardian for an individual, it must first see the individual in question unless this is prevented by an insurmountable obstacle⁸³; it must also hear the statement of the individual or otherwise ascertain his or her opinion, which must be the basis for its decision-making (Section 471(1) of the CC). Although a procedural rule, the provision is part of the Civil Code, and there are no special provisions regulating the hearing of the (future) ward in guardianship proceedings in the SJPA. The courts must therefore proceed in accordance with Section 471(1) of the CC.

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

There are no special provisions regulating remedial measures in Sections 44 to 49 of the SJPA. This question is therefore fully answered in part II. 13. e).

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

In the Czech Republic, there is a database called AISEO (Population Register Agenda Information System) kept pursuant to Act No. 133/2000 Sb., regulating the register of population and birth registration numbers and to amend certain acts (“Population Register Act”) and Act No. 365/2000 Sb., to regulate the information systems of public administration and to amend certain other acts. Under Section 3(3)(i) of the Population Register Act, the population register information system

⁸³ An insurmountable obstacle might be, for example, the absence of the individual for whom a guardian is to be appointed under Section 465 of the CC, cf. above.

includes, for example, the following information: the date of legal effect of the decision of the court to limit legal capacity including the reference number and the designation of the court which has decided to limit legal capacity and the date of legal effect of the decision of the court to terminate the limitation of legal capacity; information about guardianship is also included under paragraph (j) of the same provision.⁸⁴

These data are not publicly accessible, and are currently not displayed, for example, in identification cards. The unavailability of the data may complicate, for example, the transfer of real estate. If a ward was to enter into a contract to transfer real estate despite not having the legal capacity to do so, it should be discovered by the Real Estate Cadastre in the proceedings to authorise the record of the new owner (the Real Estate Cadastre has access to the AISEO register), and thus the record should not be made. Real estate agents often do not want to rely on the Cadastre doing this procedure (also for practical reasons, because if the transfer of property is not carried out, the purchase price must then be returned to the seller, etc.), and so they verify the potential limitation of the client's legal capacity by requesting a power of attorney from the client in order to request a copy of the client's entry in the population register, which they pick up for the client in person as part of their services – and this is how they learn whether the client's legal capacity has been or limited or whether a guardian has been appointed for him or her.

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?**

⁸⁴ The following information on guardianship is registered: (1) name, or names, surname, maiden name, birth registration number, if any, and the agenda identifier of a natural person, if any, in the case of a guardian who is a natural person; if the guardian has not been assigned a birth registration number, then the date, place and district of his or her birth is registered, the place and country of birth for a guardian who was born abroad; (...), (2) name and address of the seat of a guardian that is a legal entity; (...) and (3) date of legal effect of the decision of the court to appoint a guardian, reference number of the decision, and the designation of the court which decided to appoint a guardian, and the date of legal effect of the decision to nullify the decision of the court to appoint a guardian.

- 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?**

Firstly, it should be noted that an individual may, in anticipation of his or her own incapacity to make juridical acts, express his or her will for a specific person to become his or her guardian (continuing power of attorney, Section 38 of the CC, cf. below).

The rules governing the selection of a specific guardian are stipulated in Section 471(2) of the CC, which states that the court appoints the person proposed by the ward as guardian. Where it is not possible, the court normally appoints a relative or another person close to the ward as guardian, who must show long-term and serious interest in the ward and show that such interest will last in the future. Where it is not possible, the court appoints another person who meets the requirements as guardian, or a public guardian under another act.⁸⁵ The municipality where the ward has residence, or a legal entity established by the municipality to perform these tasks, has the capacity to become a public guardian; a municipality (or a legal entity mentioned) has no possibility to refuse its appointment as a public guardian (Section 471(3) of the CC).

Moreover, in the case of a guardian appointed on grounds of the limitation of legal capacity, a person incompetent to make juridical acts, a person whose interests are in conflict with the ward's interests, the operator of a facility where the ward lives or which provides services to the ward, or a person dependent on such facility may not be appointed as guardian (Section 63 of the CC). In the selection of the guardian, the court takes into consideration the ward's wishes, needs, as well as the suggestions made by persons close to the ward if these persons act in the ward's interest, and takes care not to make the ward distrust the guardian (Section 62 of the CC).

It follows from the above that Czech law differentiates between a public guardian (a municipality, Section 471(3) of the CC and Section 149b(3) of the Municipalities Act) and a "private" guardian. The term "private" guardian is not used in the law but is sometimes used as an unofficial designation in legal theory and practise to emphasise that the guardian is not public.

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

⁸⁵ Cf. Section 149b(3) of Act No. 128/2000 Sb., regulating municipalities ("Municipalities Act").

Since a guardian, among other tasks, represents the ward, it is evident that only a person (natural person or a legal entity, in other words a legal person with legal personality) who is able to perform these tasks – including the representation of the ward – that is, has the legal capacity in this extent (is competent to make the juridical acts), may be appointed as guardian. Although this is expressly stipulated only in the case of a guardian appointed in relation to the limitation of legal capacity, it is not possible for a guardian to be appointed if the guardian is not competent to make juridical acts or if the guardian's interests are in conflict with the ward's interests. In the case of a conflict of interest between a legal representative or a guardian and the person represented, or a conflict of interest between persons represented by the same legal representative or guardian, or where such conflict might arise, the court appoints a guardian ad litem for the person represented (Section 460 of the CC).

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

Cf. the introductory part of the response to question 23 above.

- 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?**

Cf. the introductory part of the response to question 23 above.

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

Cf. the introductory part of the response to question 23 above; guardian ad litem is discussed in point a) above.

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

For the sake of legal certainty for the ward and also the third parties with whom the ward enters into legal relationships, the general rule is that only one guardian may be appointed for a person (Section 464(1) of the CC). There is one exception to this rule, namely for the administration of assets and liabilities. Since the administration of the ward's assets and liabilities may be very complicated (the ward's assets and liabilities might include, for example, a business, securities, or other property the due administration of which requires special expertise), or the ward's assets and liabilities might be of significant value, the law permits the appointment of more than one guardian in these cases (Section 464(1) of the CC). Where

a special guardian is appointed for the administration of the assets and liabilities or part thereof of the person represented and also a guardian for the person (that is, a guardian who will not administer the assets and liabilities of the person represented), the latter is the exclusive representative of the person represented before court, also in cases related to the administration of assets and liabilities (Section 464(1) of the CC). Where the court appoints more than one guardian and does not specify in which matters each of them is competent to make juridical acts for the ward individually, the guardians must act jointly (Section 464(2) of the CC). The position of a guardian (and, as the case may be, a guardian for the administration of assets and liabilities) and the position of a guardian ad litem may be combined. In case of a conflict of interest between the guardian and the ward (cf. Section 460 of the CC above), guardianship does not terminate as such, only the guardian ad litem will act on behalf of the ward instead of the guardian.

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

The appointment of a “private” guardian is subject to the guardian’s consent to assume the position. After all, it is hardly imaginable that a person who does not agree with the appointment is appointed a guardian in the interest of the ward – a vulnerable adult – because clearly, there would be a risk that such guardian will not consistently act in the ward’s interests and protect him or her. However, the appointment of a public guardian (i.e., a municipality under the Municipalities Act, cf. Section 471(3) above) is not subject to the guardian’s consent as this is an option of last resort to provide a guardian for the individual concerned in cases where the preferred “private” guardian has not been appointed.

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 in itself does not affect the legal capacity of the ward. The ward’s legal capacity is affected only by the limitation of legal capacity under Section 55 et seq. of the CC.

Powers and duties of the representatives/support person

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

- a. can the representative/support person act in the place of the adult; act together with the adult or provide assistance in:**
- b. property and financial matters;**
- c. personal and family matters;**
- d. care and medical matters;**

A guardian performs a number of tasks for the ward's benefit. It is important to realise that in some cases, the guardian acts as the ward's representative (e. g. enters into some contract in ward's name), in others, the guardian decides about the ward's affairs in which the ward is not able to express his or her will, but the guardian does not represent the ward legally in these cases. For example, the guardian might decide that it is in the ward's interest to go on a suitable recreational stay to improve the ward's health and condition. In other words, the guardian sometimes substitutes the ward's will which the ward is not able to express (however, booking the stay in ward's name is legal act, where the guardian acts as the ward's representative). As for representation, the guardian is the ward's direct representative, so the representation gives rise to rights and duties directly for the ward.⁸⁶ This means that a guardian may act in the place of the adult (in the case of representation), but also together with the adult (in particular in the case of deciding about the ward's affairs). This dichotomy is expressly reflected in the case of a guardian appointed upon the petition of an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights (Section 469 of the CC, cf. above). In the case of such a guardian (whose position is in fact halfway between guardianship and contractual representation), it is expressly stipulated that a guardian (appointed under Section 469 of the CC) normally acts jointly with the ward; where the guardian acts individually, he or she acts in accordance with the ward's will. If the ward's will cannot be ascertained, the court must make the decision upon the guardian's petition (Section 469(2) of the CC). The guardian may act for the person represented, in principle, in all matters except for those excluded under Section 458 of the CC. Under this provision, the guardian may not make juridical acts for the person represented (i.e., represent the person) in matters related to entering into marriage and its termination, exercise of parental duties and rights, disposition mortis causa, or declaration of disinheritance and revocation thereof.

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

A guardian performs his or her duties by exercising the ward's legal declarations and respects the ward's opinions, including those previously

86 Cf. K. Svoboda, 'Jmenování a odvolání opatrovníka. Komentář k § 463' [Appointment and Removal of a Guardian. Commentary to Section 463], in: J. Švestka, J. Dvořák, J. Fiala et al, *Občanský zákoník. Komentář. Svazek I* [Civil Code. Commentary. Volume I], 2nd ed., Wolters Kluwer ČR, Praha 2020, p. 1035.

expressed by the ward, as well as the ward's beliefs and religion, and takes them into account continuously, and acts accordingly while arranging the ward's affairs. Where this is not possible (e. g. as a result of ward's mental disorder, the ward is not able to express his opinions and beliefs or these would have negative impact on the ward if respected), the guardian acts in the interests of the ward. The guardian ensures that the ward's way of life is not in conflict with the ward's abilities and in accordance with the ward's specific ideas and wishes unless there are justified reasons not to do so (Section 467 of the CC)

f. what are the duties of the representative/support person in terms of informing, consulting, accounting and reporting to the adult, his family and to the supervisory authority?

In addition to the main duties mentioned before, a guardian's other duties include maintaining regular contact with the ward in a convenient manner and necessary scope, expressing real interest in the ward, and caring about the ward's health, and making sure that his or her rights are performed and interests protected. Where the guardian makes decisions regarding the ward's affairs, the guardian explains comprehensibly the nature and consequences of such decisions to the ward (Section 466 of the CC). In justified circumstances, the court may order the guardian to take out insurance with sufficient coverage should the guardian cause damage to the ward or another person while performing the guardian's duties (Section 465(2) of the CC). A legal representative⁸⁷ may not deprive the person represented of a thing of sentimental value, unless it is justified on the grounds of a threat to life or health and, where a minor without full legal capacity is concerned, also other serious grounds. The person represented must be able to keep the thing of sentimental value even when admitted to a healthcare facility, a social services facility, a facility for the social and legal protection of children, or other similar facility (Section 459 of the CC). Where the legal representative or the guardian administers the assets and liabilities, the guardian is to perform ordinary administration⁸⁸ of the assets and liabilities. For matters which are not ordinary (e. g. selling the property or changing its nature), the disposition

87 Even though the provision expressly provides only for a legal representative, the rule applies to a guardian as well. Cf., for example, 'Zákaz odejmutí věci zvláštní oblby. Komentář k § 459' [Prohibition to Deprive a Person of a Thing of Sentimental Value. Commentary to Section 459], in: P. Lavický et al., *Občanský zákoník. I. Obecná část (§ 1-654). Komentář*. [Civil Code I. General Part (Sections 1–654). Commentary], 1st ed., C. H. Beck, Praha 2014, p. 1694.

88 Although the provision refers to "ordinary" administration, it should be understood as "simple" administration under Section 1405 et seq., which states that a person charged with the simple administration of the property of another performs all the acts necessary for the preservation of the property. This differs from full administration under Section 1409 et seq., which states that a person charged with the full administration of the property of another increases the property and makes it productive in the interest of the beneficiary.

of the assets and liabilities of the person represented must be approved by the court (Section 461(1) of the CC).

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

Cf. previous points.

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

The basic rule states that a guardian may not request remuneration for the representation from the person represented. However, if the guardian's duties include the administration of assets and liabilities, remuneration may be awarded. The amount of the remuneration is determined by the court, which takes into consideration the costs of the administration, the value of the property administered, and the proceeds from the property, as well as the time and work demands required to administer the property (Section 462 of the CC). It follows from the above that a guardian is not entitled to remuneration *ex lege*, automatically. The guardian must petition the court to decide on the remuneration (it is the guardian's right; the guardian may not be forced to receive remuneration).

The remuneration for representation is awarded from the ward's resources administered by the guardian. It is limited by the amount of these resources. Since it is an obligation between the guardian and the ward, the ward should be represented by a guardian *ad litem* in the proceedings to award remuneration (Section 460 of the CC).⁸⁹

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

- a. if several measures can be simultaneously applied to the same adult, how do representatives/support persons, appointed in the framework of these measures, coordinate their activities?**
- b. if several representatives/support persons can be appointed in the framework of the same measure, how is authority distributed among them and how does the exercise of their powers and duties**

⁸⁹ Cf. K. Svoboda, 'Odměna za zastoupení. Komentář k § 462' [Remuneration for Representation. Commentary to Section 462], in: J. Švestka, J. Dvořák, J. Fiala et al, Občanský zákoník. Komentář. Svazek I [Civil Code. Commentary. Volume I], 2nd ed., Wolters Kluwer ČR, Praha 2020, p. 1034.

take place (please consider cases of concurrent authority or joint authority and the position of third parties)?

Cf. part III. 23. e)

Safeguards and supervision

27. Describe the organisation of supervision of state-ordered measures. Pay attention to:

a. what competent authority is responsible for the supervision?

The supervision of guardianship takes two forms. Section 472 et seq. of the CC provides for the option of setting up a guardianship board, which – if set up – performs certain tasks of supervision of the guardian.⁹⁰ The remaining tasks of supervision are performed by the court. Where it is not possible to set up the guardianship board due to a lack of interest of a sufficient number of persons or for other reasons, the court may decide upon the petition of persons close to the ward or his or her friends that the powers of the board will be performed by only one of those persons, and at the same time, it will decide on the appointment of such person. Where a guardianship board is not set up and the procedure under the previous sentence is not possible either, the measures regarding the ward

⁹⁰ A guardianship board (council) is enacted in details in Sections 472 to 484 of the CC. If a guardian is appointed, the ward or any of his close persons may request the establishment of a guardianship board; the guardian shall convene a meeting of the persons close to the ward and his friends, if they are known to the guardian, so that the meeting may be held within thirty days after the receipt of the request. If the meeting is not convened in time or does not take place for any other reason, or if the guardianship board is not elected at the meeting, the meeting is convened by a court, even of its own motion (Section 472(1) of the CC). The meeting may be attended by the ward, any close person of the ward and any of his friends, even if uninvited; each of them has one vote. If the meeting is attended by at least five persons, the guardianship board may be elected (Section 472(2) of the CC). A guardianship board has at least three members (Section 474 of the CC). Without the consent of the guardianship board, a guardian may not decide to: (a) change the residence of the ward, (b) place the ward in a closed institution or a similar facility unless evidently required by his health condition, or (c) interfere with the integrity of the ward, unless the interference is without serious consequences (Section 480(1) of the CC). Without the consent of the guardianship board, a guardian may not dispose of the property of the ward in the case of: (a) acquisition or alienation of property with a value exceeding one hundred times the minimum living level for an individual under another legal regulation, (b) acquisition or alienation of property exceeding one third of the property of the ward, unless such one third has only a negligible value, or (c) receipt or provision of a loan for consumption, credit or security in the values under paragraph (a) or (b), unless such a decision also requires court approval (Section 480(2) of the CC). If it is in the interests of the ward, the guardianship board may resolve on other decisions made by the guardian concerning the ward which are to be subject to its approval; such resolutions may not limit the guardian beyond what is reasonable given the circumstances (Section 480(3) of the CC).

or the ward's assets and liabilities taken by the guardian are approved by the court instead of by the guardianship board (Section 482 of the CC).

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

At its regular meeting, a guardianship board discusses the guardian's report on his or her activities related to the ward's affairs, and comments on the inventory of the ward's assets and liabilities, the account of their administration, and the account of the guardian's remuneration for the administration of assets and liabilities, if any. If the board so resolves, an authorised member of the board files a petition with the court to change the amount of the guardian's remuneration for the administration of the ward's assets and liabilities. If the board so resolves, an authorised member of the board files a petition with the court to terminate the guardianship, or to remove the guardian from his or her position and replace the guardian with another person (Section 479 of the CC).

Without the consent of the guardianship board, the guardian may not decide in the following matters: (a) changing the ward's residence, (b) placing the ward in an institution the ward cannot leave or in a similar facility if it is not clearly required due to the ward's health, or (c) interfering with the ward's integrity, unless the intervention is without any serious consequences (Section 480(1) of the CC).

Without the consent of the guardianship board, the guardian may not dispose of the ward's property in the following cases: (a) acquisition or alienation of property of a value exceeding hundredfold the minimum living amount of an individual under another legal regulation, (b) acquisition or alienation of property exceeding one third of the ward's property, unless such third corresponds to only a negligible value, or (c) acceptance or provision of a loan for consumption, of a loan, or of a security of the value under (a) or (b), unless the consent of the court is also required for such decisions (Section 480(2) of the CC).

Where it is in the interest of the ward, the guardianship board may resolve that further decisions regarding the ward made by the guardian are to be subject to its consent; such measure must not limit the guardian to an unreasonable extent considering the circumstances (Section 480 of the CC).

The supervision of a guardian appointed for an individual is also regulated in Section 48 of the SJPA, under which the court supervises whether the guardian is duly performing his or her duties. The court may take other appropriate measures to do so.

In addition to the above, it should be added that where the legal representative or the guardian administers the assets and liabilities of the

person represented, the guardian is to perform the ordinary administration of the assets and liabilities. In case of matters which are not ordinary, the disposal of assets and liabilities of the person represented must be approved by the court. A gift, inheritance, or legacy for the person represented conditioned by the administration by a third party are excluded from the administration under subsection 1. However, the legal representative or guardian may refuse to accept such gift, inheritance, or legacy; the refusal must be approved by the court (Section 461 of the CC). The guardian who administers the assets and liabilities of the ward compiles an inventory of the administration of the assets and liabilities within two months of his or her appointment as guardian, and delivers the inventory to the court, the ward, and the guardianship board (Section 485 of the CC).

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

If the guardian fails to perform his or her duties, the court removes him or her from the position of guardian (most often, is the ward or his relatives, who complain about the performance of guardianship). Since the guardianship is still necessary, the court appoints a new guardian for the ward (Section 463(2) of the CC). In the case of the guardianship of an individual, the guardianship passes onto a public guardian until a new guardian is appointed (Section 468 of the CC).

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

If damage is caused to the ward by the guardian's breach of a duty, the guardian must compensate the damage to the ward (the injured party) under Section 2909 et seq. of the CC. Damage is compensated by restoration to the original state. If it is not reasonably possible or if requested by the injured party, the damage is compensated by money (Section 2951(1) of the CC). The actual damage and the amount which the injured has lost (lost profit) is compensated. Where the actual damage lies in incurring a debt, the injured party has the right to be discharged of the debt or compensated by the wrongdoer (Section 2952 of the CC).

In addition to the duty to compensate damage under civil law, the guardian might also be liable to criminal sanctions.⁹¹ The guardian could commit the crime of breaching a duty while administering the property of another, either by negligence (Section 221 of the Criminal Code) or intentionally (Section 222 of the Criminal Code). Since the guardian has

91 Under Act No. 40/2009 Sb., the Criminal Code ("Criminal Code").

a special duty to act in the interest of the victim (cf. Section 465 and 467 of the CC), harsher punishment might be imposed on the guardian (in the case of both provisions of the Criminal Code mentioned above).

- 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.**

The explanation in the first paragraph of the previous response is also applicable to the guardian's liability for damage caused to third parties.

There is no particular provision on liability of the guardian for damages caused by the ward. There are only general rules about damage caused by a person unable to assess the consequences of his acts in Section 2920 and following of the CC. A person who suffers from a mental disorder shall provide compensation for the damage caused if he was capable of controlling his behaviour and assessing its consequences. However, if this person was not capable of controlling his behaviour and assessing its consequences, the injured party shall be entitled to compensation only if it is fair, having regard to the financial circumstances of the wrongdoer and the injured party (Section 2920 of the CC). The person who has neglected to exercise proper supervision over a tortfeasor (this can be also a guardian) shall compensate the damage jointly and severally with the tortfeasor. If the tortfeasor does not have the duty to provide compensation for damage, the victim is compensated by the person who neglected to exercise supervision over the tortfeasor (Section 2921(1) of the CC).

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;**

Cf. part 27 b) above.

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

The provision governing cases of exceeding the right to represent applies to legal representation, guardianship, as well as contractual representation. Under Section 440 of the CC, where a representative (that is, the guardian) exceeds the right to represent, the juridical act is binding on the person represented (that is, the ward) if the person represented approves the juridical act without undue delay. Otherwise, the act is binding on

the person who has acted on behalf of another (the guardian). The person who has been represented and who acted in good faith may request from the actor to perform what has been agreed or to compensate the damage. In the case of a guardian and a ward, it must be considered that the ward's condition might mean that the ward is not able to approve the juridical act made by the guardian while exceeding his right to represent.

As for acts made by a person whose legal capacity has been limited or acts made by a person suffering from a mental disorder whose legal capacity has not been limited, cf. part II. 14. (on a general level, regarding Section 581 of the CC). An unauthorised act by the adult may not occur in the case of a person for whom a guardian has been appointed but whose legal capacity has not been limited.

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

There are no special provisions concerning ill-conceived acts in the Civil Code. However, given the fact that the guardian acts in the interests of the ward (if it is not possible to take into consideration the ward's opinions and declarations, cf. Section 467 of the CC), it is evident the guardian should try to remedy any ill-conceived act in a suitable manner. For example, a ward enters into a contract, not knowing that the guardian has the opportunity to enter into such contract for the ward under more advantageous conditions. In that case, the guardian should try to use the option of withdrawing from the contract (where the law or the contract allow withdrawal, which is the case, in particular, of relationships between the consumer and the seller, when it is also possible to invoke the unconscionability of certain provisions, etc.) or try to negotiate an amendment to the contract (with the aim to either terminate the obligation under the contract as such or to modify the ward's rights and duties, so that – ideally – they correspond to the more advantageous offer that was available to the guardian.

d. conflicts of interest

For conflicts of interest, cf. part 23 a) above.

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

End of the measure

29. Provide a general description of the dissolution of the measure. Think of: who can apply; particular procedural issues; grounds and effects.

The regulation of the termination of guardianship in the Civil Code is fragmented rather than unified. In general, guardianship terminates if it is no longer necessary.

Guardianship which was established in relation to the limitation of legal capacity terminates if full legal capacity has been restored (by the court), and the ground for the guardianship is no longer applicable. The need for the guardianship no longer exists in this case. However, this does not preclude the possibility that a court might at some time in the future come to the conclusion that the individual needs guardianship for a reason other than the limitation of legal capacity. Guardianship does not terminate upon the guardian's death or removal from his or her position, and until the court appoints a new guardian, it is passed onto a public guardian under another legal regulation (Section 468 of the CC).

A guardian may request to be removed from his or her position, either because (in the guardian's opinion) the guardianship is no longer necessary, or it is still necessary, but the current guardian may no longer be or want to be the guardian (Section 463 of the CC).

The removal of a guardian from his or her position upon the ward's petition is expressly regulated only in the case of a guardian appointed upon the petition of an individual who, due to health reasons, has difficulties administering his or her assets and liabilities or defending his or her rights. If such individual had the possibility to file a petition for the appointment of a guardian, the individual may also file a petition to remove the guardian from his or her position (Section 469 of the CC).

Guardianship terminates also once the juridical act for which it was established has been made.

In the case of the guardianship of a child who has not yet acquired full legal capacity, a guardian who has not been appointed only for the purposes of a specific juridical act is released from his or her position by the court also where the ground for which the guardian has been appointed is no longer applicable (Section 947 of the CC). There is no reason for the procedure to be any different in the case of a vulnerable adult.

If the ward believes that the guardianship is no longer necessary, he or she may file a petition to terminate the guardianship. The petition to terminate guardianship may also be filed by an authorised member of the guardianship board if the guardianship board so resolves (Section 479(3) of the CC).

Reflection

30. Provide statistical data if available.

The data below covers the period from the date of effect of the current Civil Code, i.e., from 1 January 2014. Statistical yearbooks up to the year 2019 were available at the time of completion of this paper (1 July 2022).⁹²

Figure 5. Appointment of a Guardian

Year	Appointment of a Guardian									Removal of a guardian
	For a person with limited legal capacity			For a person who, due to health reasons, has diffi- culties defending his or her rights, without the limitation of legal capac- ity (Section 465 of the CC)			For a person who, due to health reasons, has difficul- ties defending his or her rights, upon the petition of the person (Section 469 of the CC)			
	private	public	in to- tal	private	public	in to- tal	private	public	in total	
2014	2,191	841	3,032	---	---	/*	797	69	866/*	313
2015	7,870	3,068	10,938	---	---	/*	1,334	135	1,469/*	480
2016	9,354	3,898	13,252	---	---	/*	25	12	37/*	639
2017	7,016	3,011	10,027	2,347	327	2,674	44	12	56	611
2018	7,825	3,670	11,495	1,984	193	2,177	47	11	58	673
2019	8,604	4,106	12,710	1,879	169	2,048	80	9	89	735

/* The method used to report the number of guardians under Section 465 of the CC and under Section 469 of the CC from 2014 to 2016 was different from the method introduced from the 2017 statistical yearbook onwards. Based on a detailed study of the yearbooks, it seems that from 2014 to 2015, all cases of guardians appointed for persons who, due to health reasons, have difficulties administering their rights were reported under Section 469 of the CC (regardless of whether under Section 465 of the CC or Section 469 of the

⁹² Available at: <https://cslav.justice.cz/InfoData/statisticke-rocenky.html>.

CC). But in 2016, only guardians under Section 469 of the CC were reported, and guardians appointed on the same grounds, but under Section 465 of the CC, were not reported at all in 2016 by mistake.

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?

Compared to the previous legislation, current legal regulation of guardianship places greater emphasis on respecting the personality of the ward, his opinions or beliefs and on protecting his rights and interests. The legislation also emphasises that the court should obtain information about the person for whom it appoints a guardian directly, by seeing him or her (which can be demanding for the courts), not just indirectly (e.g. from the file only). In this respect, there has been a positive shift from the previous legislation. On the other hand, the regulation of guardianship boards is problematic because it may be too burdensome for the courts (especially if there is a medical facility for persons with mental disorders in the court's district). The purpose and objective of a guardianship board is to enhance the supervision of the guardian without burdening the court. The idea of guardianship boards is not new in the Czech Republic. Already before the Second World War, "tutorship boards" for the supervision of tutors were considered (but the idea was never implemented). However, the basic difference between these two concepts is the number of such boards. Originally, there was to be one tutorship board in the jurisdiction of each court that would supervise all tutors under its jurisdiction. However, the current concept under the Civil Code means that there is one guardianship board for one ward only. The court therefore must make a difference between a ward with a guardianship board and a ward without one in order to adjust its supervision of the specific guardian. This procedure is quite burdensome for the courts.

SECTION IV – VOLUNTARY MEASURES

Overview

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

The current Civil Code provides for several options in terms of voluntary measures.

The first is the continuing power of attorney [předběžné prohlášení], that is a unilateral legal act made by an individual who anticipates his or her own (future) inability to make legal acts autonomously; the inability might arise – or not – in the future. An individual may express the will to have his matters managed in a certain way or by a certain person, or to have a specific person become his guardian within the continuing power of attorney. It functions as a preventive measure.

Another measure available is assisted decision-making [nápomoc při rozhodování] that is suitable if an individual needs assistance in decision-making due to complications resulting from his mental disorder, and the presumptive assisting person agrees on the provision of assistance.

The last possible measure is called representation by a household member [zastoupení členem domácnosti] and it is a kind of voluntary legal representation (that differs from guardianship) that can be a solution to the situation of mentally ill persons who are disabled to make legal acts.

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.**

All above mentioned voluntary measures are governed by the provisions of Book One (General Provisions), Title II (Persons), Chapter 2 (Natural persons) of the Civil Code. Further details on regulation of each voluntary measure are as follows:

The continuing power of attorney [předběžné prohlášení] is primarily regulated under Section 38 et seq. of the CC. It is a unilateral legal act as well as an unaddressed legal act, the creation (perfection) of which does not require a specific addressee.⁹³ Where the granter does not set out the scope and method of administration in the continuing power of attorney (which is not required for the power of attorney to be valid), the general provisions of the Civil Code governing the administration of the property of others (Section 1400 et seq. of the CC⁹⁴) apply.

93 D. Prudíková and M. Matiaško, in F. Melzer, P. Tégel et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 399.

94§ 1400 (1) Každý, komu je svěřena správa majetku, který mu nepatří, ve prospěch někoho jiného (dále jen „beneficient“), je správcem cizího majetku. (2) Má se za to, že správce právně jedná jako zástupce vlastníka. Section 1400 (1): Any person who is entrusted with the administration of property which does not belong to him for the benefit of another (hereinafter a “beneficiary”), is an administrator of the property of another. (2) An administrator is presumed to make juridical acts as the owner’s legal representative.

These provisions create a general framework for the exercise of of the attorney's function, including the rules regarding the simple or full administration of the grantor's affairs. In any case, the attorney exercises his or her powers and duties with due managerial care (Section 1411 of the CC). The power of attorney may also contain the grantor's instructions in which case the relationship may be considered an obligation arising out of a contract of mandate⁹⁵, including any contractual liability.

Assisted decision-making [nápomoc při rozhodování] is primarily regulated under Section 45 et seq. of the CC. It has the form of an agreement (contract) between the supported person and the support person. The general provisions on contracts in the Civil Code shall also apply to the contract giving rise to the assisted decision-making to the extent that the nature of the assisted decision-making does not preclude it.

The core provisions concerning the representation by a household member [zastoupení členem domácnosti] are Section 49 et seq. of the CC.⁹⁶ Because it is a specific legal representation, other provisions on the legal representations (especially Section 457 et seq. of the CC) shall be subsidiary applied. This representation has special features (see below).

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.

The meaning of advance directives (as described in the Definitions section of this questionnaire) merges with the meaning of the continuing power of attorney [předběžné prohlášení] because the continuing power of attorney represents a way

95 A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 96.

96 Section 49 (1): If a mental disorder prevents an adult who has no other representative to make juridical acts, he may be represented by his descendant, ancestor, sibling, spouse or partner, or a person who had lived with the person represented in a common household before the creation of representation for at least three years. (2) The representative shall inform the person represented that he will represent him, and shall clearly explain to him the nature and consequences of representation. If the person to be represented refuses that, the representation is not created; the ability to make a wish is sufficient to express the refusal. [§ 49 (1) Brání-li duševní porucha zletilému, který nemá jiného zástupce, samostatně právně jednat, může ho zastupovat jeho potomek, předek, sourozenec, manžel nebo partner, nebo osoba, která se zastoupeným žila před vznikem zastoupení ve společné domácnosti alespoň tři roky. (2) Zástupce dá zastoupenému na vědomí, že ho bude zastupovat, a srozumitelně mu vysvětlí povahu a následky zastoupení. Odmítne-li to člověk, který má být zastoupen, zastoupení nevznikne; k odmítnutí postačí schopnost projevit přání.]

to appoint the self-chosen representatives/support persons as well as to give instructions or wishes concerning issues that may arise in the event of incapacity.

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)?

The continuing power of attorney [předběžné prohlášení] covers three basic areas: any individual who has the legal capacity to do so, may do the following:

- determine (in a positive or negative way) for his or her affairs to be administered in a certain way, i.e., give instructions regarding a certain factual or legal act related to his or her affairs;
- designate a certain (specific) person to administer his or her affairs, by stating the person's name and surname, or the person's relationship to the individual (e.g., my younger brother);
- express his or her will for a specific person to become the individual's guardian [opatrovník], or also designate a substitute in case the designated guardian is not able or willing to assume the position.

The range of matters that may be covered by the continuing power of attorney includes both property matters (e.g., administration of assets) and personal matters (e.g., determination of future residence).⁹⁷

A continuing power of attorney does not allow authorising, or designating, any person to act for the granter in matters related to entering into marriage and its termination, the exercise of parental right and duties (parental responsibility), and in relation to disposition mortis causa, including disinheritance.⁹⁸

97 K. Čuhelová., in P. Lavický et al., Občanský zákoník I. Obecná část (§ 1–654). [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 162.

98 A. Lomozová and Z. Spáčilová, in J. Petrov et al., Občanský zákoník. Komentář [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 97.

Given the wording of Section 64 of the CC⁹⁹, it is inferred that a continuing power of attorney may not incapacitate an individual to make legal acts autonomously in ordinary matters of daily life¹⁰⁰ (e.g., buying groceries, paying the rent, giving customary gifts to family members and the like).

Where an individual needs assistance in decision-making [nápomoc při rozhodování] because he or she has difficulties with decision-making due to a mental disorder, he or she may enter into an agreement to provide support, which may take several forms:

- the support person is present, with the consent of the supported person, when the supported person makes legal acts;
- the support person procures the necessary data and information to make such legal act; and
- the support person provides advice to the supported person with respect to his or her legal acts.

The law does not define any specific areas where such assistance may be provided, or any other limitations in this respect. In any case, the support person is to act in the interests of the supported person (Section 47 of the CC¹⁰¹).

99 § 64 Rozhodnutí o omezení svéprávnosti nezabavuje člověka práva samostatně právně jednat v běžných záležitostech každodenního života. Section 64: The decision to limit legal capacity does not deprive the individual of the right to make legal acts autonomously in ordinary matters of daily life.

100 D. Prudíková and M. Matiaško, in F. Melzer, P. Tégli et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 399.

101 Section 47 (1): The assisting person must not jeopardise the interests of the person receiving assistance by exerting improper influence or unjustly enrich himself at the expense of the person receiving assistance. (2) In carrying out his duties, the assisting person shall proceed in accordance with the decisions of the person receiving assistance. If the person receiving assistance makes a juridical act in writing, the assisting person may affix his signature, indicating his position and, where applicable, the support provided to the person receiving assistance; the assisting person may also invoke the invalidity of the juridical act made by the person receiving assistance. [§ 47(1) Podpůrce nesmí ohrožit zájmy podporovaného nevhodným ovlivňováním, ani se na úkor podporovaného bezdůvodně obohatit. (2) Podpůrce postupuje při plnění svých povinností v souladu s rozhodnutími podporovaného. Pokud podporovaný právně jedná v písemné formě, může podpůrce připojit svůj podpis s uvedením své funkce, popřípadě i s údajem o podpoře, kterou podporovanému poskytl; podpůrce má i právo namítat neplatnost právního jednání podporovaného.]

According to the Section 52 of the CC¹⁰², the representation by a household member [zastoupení členem domácnosti] covers so-called ordinary matters, as is consistent with the life circumstances of the person represented. These matters comprise property and non-property issues that do not depart from the ordinary life of the person represented. The range of legal acts that the representative is entitled to take is based on the life circumstances of the individual represented and will therefore vary depending on the person and situation of the person represented.

Start of the measure

Legal grounds and procedure

36. Who has the capacity to grant the voluntary measure?

The continuing power of attorney [předběžné prohlášení] may be granted by an individual who has experienced symptoms of a gradually progressing mental disorder, i.e., an anomaly from his or her normal mental state (e.g., Alzheimer's disease, dementia).¹⁰³

It can be made by a person with full legal capacity, but legal doctrine also allows for the power of attorney to be made by a minor without full legal capacity,¹⁰⁴ or an adult who is already experiencing symptoms of a mental disorder, but whose condition still makes it possible for him or her to make the power of attorney, since he or she is fully aware of its effects.

In the case of decision-making assistance [nápomoc při rozhodování], the supported person is an individual who already/now (as opposed to the future)? needs assistance in decision-making because he or she has difficulties with decision-

102 Section 52 (1) Representation covers ordinary matters, as is consistent with the life circumstances of the person represented. However, the representative may not give consent to an interference in mental or physical integrity of the individual with permanent consequences.

§ 52 (1) Zastoupení se vztahuje na obvyklé záležitosti, jak to odpovídá životním poměrům zastoupeného. Zástupce však není oprávněn udělit souhlas k zásahu do duševní nebo tělesné integrity člověka s trvalými následky.

103 O. Frinta and D. Frintová, in J. Dvořák, J. Švestka, M. Zuklínová et al., *Občanské právo hmotné. Svazek 1. Díl první: Obecná část*, [Substantive Civil Law. Volume 1. Part One. General Part], 2nd ed., Wolters Kluwer ČR, Praha 2016, p. 228 et seq.

104 D. Prudíková and M. Matiaško, in F. Melzer, P. Tégl et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 397. Also A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 96.

making due to a mental disorder. The mental disorder might be of a nature that does not require that the legal capacity of the person be limited.

As a rule, the supported person should be able to evaluate the advice given by the support person, i.e., should have sufficient mental capacity in this respect.

The representation by a household member [zastoupení členem domácnosti]: The person represented must be an adult and must suffer from a mental disorder which makes it difficult for him or her to act legally, but he or she need not initiate the representation.

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.

A continuing power of attorney [předběžné prohlášení] must be made in writing, either in the form of a notarial deed, or a dated private instrument confirmed by two witnesses. The witnesses must provide information in the confirmation that allow them to be identified. Only persons without any interest in the power of attorney and who are not blind, deaf, mute, and who know the language of the power of attorney may become witnesses. The witnesses must sign the power of attorney and confirm the ability of the granter to act and understand the content of the power of attorney.

Where the power of attorney executed in the form of a public instrument also includes the designation of a guardian, the notary drafting the public instrument enters, through remote access, information on the author of the power of attorney, the designated guardian, and the author of the public instrument in the non-public Register of Declarations on the Designation of a Guardian, kept in digital form by the Notarial Chamber of the Czech Republic.

If the continuing power of attorney is made by a person who is blind or who cannot or is not able to read or write, the power of attorney must be read out loud by a witness who has not drafted the document. The blind person or the person who cannot or is not able to read or write confirms in the presence of the witnesses that the instrument contains his or her true will (Section 40(1) of the CC).

Where the power of attorney is made by a person with a sensory disability who is not able to read or write, the content of the instrument must be interpreted by the witness who has not drafted the document to the person in a mode of communication chosen by that person.

All witnesses must understand the mode of communication used for interpreting the content of the instrument. The granter confirms, in the chosen mode of communication and in the presence of the witnesses, that the instrument contains his or her true will (Section 40(1) of the CC).

The decision-making assistance agreement between the supported person and the support person can be executed in writing but the parties can also express their will to execute the contract directly before a court.

In the case of representation by a household member [zastoupení členem domácnosti], it is necessary that the representative informs the person represented that he or she intends to represent him or her (there is no specific form prescribed by law for this information). In addition, the person represented should not refuse the representation on his or her behalf (even inexplicitly). If the person represented refuses the representation, no representation by a household member occurs.

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

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

Where a court resorts to limiting the legal capacity of a person who has expressed his or her will in the continuing power of attorney prior thereto, it must take into consideration the ward's wishes when selecting the guardian, i.e., the wishes expressed in the form of a continuing power of attorney, as well as suggestions made by persons close to the ward if these persons act in his or her interest.

With regard to publicity and formalities, what was stated above in response to question 37 applies.

A decision-making assistance agreement becomes effective upon approval by the court. The court would not approve such agreement were it to come to the

conclusion – with regard to the nature of the mental disorder of the supported person – that assisted decision-making is not a suitable measure.¹⁰⁵

With regard to formalities, what was stated above in response to question 37 applies.

The representation by a household member [zastoupení členem domácnosti] shall arise in accordance with Section 50 of the CC if it is approved by the court. The court will not be satisfied with the representative's allegations alone, but will also seek to ascertain the views of the person represented.

With regard to other formalities, what was stated above in response to question 37 applies.

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?**

The continuing power of attorney [předběžné prohlášení]: the court always takes care to ensure that the selection of the guardian does not make the ward distrust the guardian (cf. Section 62 of the CC¹⁰⁶) if the court decides on limiting the legal capacity of the ward.

¹⁰⁵ D. Prudíková and M. Matiaško, in F. Melzer, P. Tégl et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 419.

¹⁰⁶ Section 62: In its decision to limit the legal capacity of an individual, a court shall appoint a guardian for the individual. When choosing a guardian, the court shall take into account the wishes of the ward, his needs as well as the suggestions of close persons of the ward, provided that they pursue his well-being, and ensure that by choosing a guardian the court does not establish a relationship of mistrust of the ward towards the guardian. § 62: V rozhodnutí o omezení svéprávnosti jmenuje soud člověku opatrovníka. Při výběru opatrovníka přihlédne soud k přáním opatrovance, k jeho potřebě i k podnětům osob opatrovanci blízkých, sledují-li jeho prospěch, a dbá, aby výběrem opatrovníka nezaložil nedůvěru opatrovance k opatrovníkovi.

A guardian must be legally capable under Section 63 of the CC, cannot be one whose interests conflict with those of the ward, cannot be the operator of a facility where the ward resides or which provides services to the ward, or a person dependent on such a facility. If one of these obstacles exists, the court shall not appoint the person named as guardian (Section 471(2) of the CC).

The conflict of interests between the guardian and the ward is then resolved by the appointment of a conflict guardian [kolizní opatrovník] by the court (Section 460 of the CC). According to Section 464 of the CC, only one guardian may be appointed for a person, unless it is for the administration of his or her property.

If a special guardian is appointed for the administration of the property (or of part of the property) of the ward and at the same time the guardian of the ward is appointed, the latter shall exclusively represent the ward before the court, even if the matter concerns the property of the ward.

There may be one or more support persons.¹⁰⁷ The support person [podpůrce] is typically a natural person, in particular a person close to the supported person [a member of the family or household], but it may also be a legal entity.¹⁰⁸ The law leaves the choice of the support person exclusively to the supported person.

The court will not approve a decision-making assistance agreement if the interests of the support person are in conflict with the interests of the supported person (Section 46 of the CC).

The representative in case of the representation by a household member [zastoupení členem domácnosti] may be a descendant, ancestor, sibling, spouse or partner, or a person who had lived with the person represented in a common household before the creation of representation for at least three years and who has legal capacity to act. The next statutory requirement is that the person represented does not have another representative, which according to the legal doctrine means that he or she cannot have another representative for matters to be handled by the representative within the representation by a household member¹⁰⁹. The person represented may have more than one representative, as will be described.

107 O. Frinta and D. Frintová, in J. Dvořák, J. Švestka, M. Zuklínová et al., *Občanské právo hmotné. Svazek 1. Díl první: Obecná část*, [Substantive Civil Law. Volume 1. Part One: General Part], 2nd ed., Wolters Kluwer ČR, Praha 2016, p. 230.

108 A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 102.

109 K. Čuhelová., in: P. Lavický et al., *Občanský zákoník I. Obecná část (§ 1–654)*. [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 193.

During the measure

Legal effects of the measure

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

The wishes and the instructions contained in the continuing power of attorney [předběžné prohlášení] are binding to the extent that the attorney or guardian must comply with them.

In the case of the representation by a household member [zastoupení členem domácnosti], the wishes of the person represented have an effect in the sense that if it is his/her wish not to be represented by a particular representative, the representation will not arise.

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

The continuing power of attorney [předběžné prohlášení] as such does not incapacitate an individual. Legal capacity may only be limited ad hoc for a specific legal act on the grounds of a mental disorder not only of temporary nature, or limited by court to a specific category of legal acts on a more long-term basis.

The decision-making assistance agreement [smlouva o nápomoci] made between the supported person and the support person does not mean that the person's capacity to make legal acts autonomously is limited either.

In accordance with the legal commentary literature, it is possible for a person to be limited in legal capacity and, to the extent that he or she is not limited in legal capacity, to be represented by a household member.¹¹⁰

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:**

¹¹⁰ K. Čuhelová., in P. Lavický et al., Občanský zákoník I. Obecná část (§ 1–654). [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 193.

- **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)?**
 - e. what are the criteria for decision-making (e.g. best interests of the adult or the will and preferences of the adult)?**
 - f. is there a duty of the representative/support person to inform and consult the adult?**
 - g. is there a right to receive remuneration (how and by whom is it provided)?**

Under a continuing power of attorney [předběžné prohlášení], the designated person becomes the attorney for the granter's affairs and based on the character of the power of attorney, the person becomes a general attorney, or an attorney only with respect to a certain affair, or a specific category of affairs.

The attorney assumes the position, in fact, once the person becomes incapacitated (incapacitation itself based on court decision), without any special judicial decision being required.¹¹¹ Pursuant to Section 462 of the CC¹¹², the guardian may not demand a remuneration for the representation. However, if the guardian has a duty to administer the estate, the court may award a remuneration for the administration.

Assisted decision-making [nápomoc při rozhodování] is based on the principle of providing support for making decisions, not substitute decision-making, i.e., the support person does not act for the supported person [representation], but rather acts together with the person.

111 Also K. Svoboda, 'Předběžné prohlášení v praxi' [Continuing Power of Attorney in Practice] (2017) Právní rozhledy Issue No. 15-16, p. 548.

112 Section 462: A legal representative or guardian may not require remuneration for representation from the person represented. However, if he is obliged to administer assets and liabilities, remuneration for the administration may be granted. Its amount is determined by a court with regard to the cost of administration, the value of the property under administration and the yields therefrom, as well as the amount of time and work required for the administration.

§ 462: Zákonný zástupce ani opatrovník nemůže požadovat od zastoupeného odměnu za zastoupení. Má-li však povinnost spravovat jmění, lze za správu přiznat odměnu. O její výši rozhodne soud s přihlédnutím k nákladům správy, k hodnotě spravovaného majetku a k výnosům z něho, jakož i k časové i pracovní náročnosti správy.

Assisted decision-making therefore cannot be considered as representation of an individual where the representative acts on behalf of and the account of the represented person. In this situation, the individual legally acts autonomously, but receives formalised and direct assistance from a third person (advisor, support person) when making the acts.¹¹³

As for the duties of the support person, the support person may not endanger the interests of the supported person by undue influence, or unjustly enrich him or herself at the expense of the supported person.

The support person proceeds in conformity with the decisions of the supported person in the performance of his or her duties. If the supported person makes legal acts in writing, the support person may affix his or her signature and indicate his or her position, or also information about the support provided to the supported person; the support person also has the right to invoke the invalidity of a legal act made by the supported person (cf. Section 47 of the CC).

As mentioned above, the support person does not act as the representative of the supported person. Assisted decision-making means that the supported person makes legally relevant acts autonomously with the assistance of the support person.

The representation by a household member [zastoupení členem domácnosti] covers so-called ordinary matters, as is consistent with the life circumstances of the person represented. These matters comprise property and non-property issues and it may also include, for example, the receipt of an identity card or paying debts.¹¹⁴ Section 51 of the CC lays down that the representative shall mainly ensure the protection of the interests of the person represented and the exercise of his rights. The representative is entitled to dispose of the income of the person represented to the extent necessary to arrange ordinary matters. Section 52 (2) of the CC¹¹⁵ includes a relatively casuistic regulation for disposition of the funds deposited in the account of the person represented.

113 L. Jemelka, K. Pondělíčková and D. Bohadlo, *Správní řád. Komentář*. [Administrative Procedure Code. Commentary], 5th ed., C. H. Beck, Praha 2016, p. 203.

114 K. Čuhelová, in: P. Lavický et al., *Občanský zákoník I. Obecná část (§ 1–654)*. [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 200.

115 Section 52: (2) The representative may dispose of the income of the person represented to the extent necessary to arrange ordinary matters, as is consistent with the life circumstances of the person represented; however, the representative may dispose of the funds deposited in the account of the person represented only to the extent which does not exceed the amount of monthly level for an individual under another legal regulation. [§ 52 (2) (2) Zástupce může nakládat s příjmy zastoupeného v rozsahu potřebném pro obstarání obvyklých záležitostí, jak to odpovídá

The support person's as well as representative's remuneration or the right to reimbursement of expenses reasonably incurred is not expressly regulated in the General Provisions of the Civil Code and, given the circumstances of the case, the application of the provisions on attorney's remuneration under the Advocacy Act, if the supporter is an attorney at law, is possible. Contractual remuneration arrangement is not excluded.

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)?**

According to Section 464 of the CC, only one guardian may be appointed for a person, unless it is for the administration of his or her property (as explained above).

The doctrine states that in the case of assisted decision-making, there may be multiple support persons either from the outset, or new support persons may gradually wax and wane.

Unless there is a division of the matters among the individual support person, each support person will be entitled to provide support on all matters (which follows in light of Section 439 of the CC¹¹⁶ governing situations where the principal has multiple representatives for the same matter and where there is a presumption that each representative can act independently).¹¹⁷

The person represented may have more than one representative. If these representatives act together, their actions may not contradict each other according to § 53 CC¹¹⁸ – when they do, the acts of any of the representatives do not lead to

životním poměrům zastoupeného; s peněžními prostředky na účtu zastoupeného však může nakládat jen v rozsahu nepřesahujícím měsíčně výši životního minima jednotlivce podle jiného právního předpisu.]

116 Section 439: If a person represented has multiple representatives for the same matter, each of them is presumed to be entitled to act individually. § 439: Má-li zastoupený pro tutéz záležitost více zástupců, má se za to, že každý z nich může jednat samostatně.

117 K. Čuhelová., in P. Lavický et al., *Občanský zákoník I. Obecná část* (§ 1–654). [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 183.

118 Section 53: If the person represented has multiple representatives, an act of one of them shall suffice. However, if there are multiple representatives performing acts towards another person

legal effects. The representatives may, however, act independently according to the aforementioned provision.

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?**

Under Section 54 of the CC¹¹⁹ representation by a household member is extinguished if a court appoints a guardian of the person represented. When an assisted decision-making contract is concluded, above mentioned representation is extinguished to the extent in which the person represented is capable of making juridical acts.

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.

See point 46 below.

together and these acts are contradictory, their expressions of will are disregarded. § 53: Má-li zástoupený více zástupců, postačí, pokud jedná jeden z nich. Jedná-li však vůči další osobě více zástupců společně a odporují-li si, nepřihlíží se k projevu žádného z nich.

119 Section 54(1): Representation is extinguished if waived by the representative, or if the person represented refuses to be further represented by the representative; the ability to make a wish is sufficient to express the refusal. Representation is also extinguished if a court appoints a guardian of the person represented. (2) If a contract for assistance in decision-making is concluded, representation is extinguished on the effective date of the contract to the extent in which the person represented is capable of making juridical acts.

- 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.**

As a result of the proximity of the issues addressed in questions 45 and 46, a summary answer to both questions has been prepared:

Safeguards include the fact that the continuing power of attorney [předběžné prohlášení] may be revoked at any time after its execution. An express revocation of the power of attorney requires an expression of will in the form prescribed for the continuing power of attorney (Section 41(1) of the CC).

If the instrument containing the power of attorney is destroyed by the granter, such act also has the effect of a revocation (Section 41(2) of the CC). Where the power of attorney provides for a matter other than the designation of a guardian (e.g., measures regarding the administration of property), and where the effect of the power of attorney requires a certain condition to be met, to avoid any doubt, the court (ex officio) decides whether the condition has been met or not.

The conflict of interests between the guardian and the ward is resolved by the appointment of a conflict guardian by the court (Section 460 of the CC).

The Civil Code provides for a number of safeguards also in the case of the decision-making assistance.

Firstly, the court might not approve the decision-making assistance agreement where it considers that it would be in conflict with the interests of the supported person.

Secondly, the court may remove the person from the position of support person, either upon application by the supported person (e.g., the supported person no longer trusts the support person) or of its own initiative where the support per-

son seriously breaches his or her duties (Section 48 of the CC). Both of these safeguards serve to protect individuals suffering from a mental disorder from any manipulation and harm.¹²⁰

The court will not approve a decision-making assistance agreement if the interests of the support person are in conflict with the interests of the supported person (Section 46 of the CC).

The prevention of abusive conduct by a representative is, in the case of the representation by a household member, the very fact that the representation will not arise if the person represented refuses representation. Similarly, the person represented is entitled to refuse further representation after it has arisen, in which case the representation will lapse.

A further prevention is the impossibility of adversarial behaviour by more than one representative, which is explained in the answer to question 43.

Where the support person or the representative breaches a statutory duty and thus infringes upon the supported person's absolute rights [property or personal rights], thereby causing harm to the supported person or the person represented, the support person or the representative becomes liable to compensate the damage under delictual law.

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.

The continuing power of attorney [předběžné prohlášení] terminates upon revocation, i.e., an explicit expression of will of the individual who made the power of attorney.

The continuing power of attorney may terminate also upon an implicit expression of will by destroying the instrument containing the continuing power of attorney.

¹²⁰ D. Prudíková and M. Matiaško, in F. Melzer, P. Tégl et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 419.

It may also be terminated by a judicial decision if the granter would otherwise be at risk of serious harm.

Assisted decision-making [nápomoc při rozhodování] may be terminated upon the will of the supported person, who removes the support person from the position, or by the court, which removes one or all the support persons.

Where the support person is removed by a judicial decision, the relationship arising from the decision-making assistance agreement ceases to exist upon the decision becoming legally effective.

If there was more than one support person, the agreement terminates only vis-à-vis the support person removed from the position.

The decision-making assistance agreement may terminate upon the expiry of the term of the agreement.

Also, the support person may abandon the position assumed under the decision-making assistance.

The reasons of the termination of representation by a household member [zastoupení členem domácnosti] are comprised in Section 54 of the CC.¹²¹ Likewise, the representation will terminate in the event of the death of one of the parties.

Reflection

48. Provide statistical data if available.

Based on a communication with the Supreme Court and the Ministry of Justice of the Czech Republic dated 15 June 2022, these statistics are not kept. However, there are data provided upon a special request by the Ministry of Justice of the Czech Republic and Notary Chamber of the Czech Republic in Spring 2022 processed into following figures.

121 Section 54: (1) Representation is extinguished if waived by the representative, or if the person represented refuses to be further represented by the representative; the ability to make a wish is sufficient to express the refusal. Representation is also extinguished if a court appoints a guardian of the person represented. (2) If a contract for assistance in decision-making is concluded, representation is extinguished on the effective date of the contract to the extent in which the person represented is capable of making juridical acts.

Figure 6. Data on Continuing Power of Attorney

Data on Continuing Power of Attorney (CPA)									
	2014	2015	2016	2017	2018	2019	2020	2021	Total
CPA with appointment of a guardian (Section 39/3 CC)	64	67	119	102	112	163	141	134	902
Fulfilment of the condition for CPA (Section 42 CC)	26	3	5	12	10	5	10	9	80
Amendment or cancellation of CPA (Section 43 CC)	6	0	0	0	1	3	1	0	11

Figure 7. Data on (un)approved Decision-making Assistance

Data on (un)approved Decision-making Assistance								
Year	2014	2015	2016	2017	2018	2019	2020	2021
Approved	25	64	66	43	48	38	55	2
Unapproved	2	0	2	1	0	1	1	2

Figure 8. Data on (un)approved Representation by a Member of the Household

Data on (un)approved Representations by a Member of the Household

Year	2014	2015	2016	2017	2018	2019	2020	2021
Approved	364	568	406	139	164	144	143	164
Unapproved	4	5	6	2	2	3	7	3

Unfortunately, no qualitative research has been conducted on these data to investigate the reasons for the fluctuating numbers. We can only draw the following inferences from the Ministry of Justice's data: More than 50% of decisions to approve representation by a household member were from the jurisdiction of two regional courts: the Regional Court in České Budějovice and the Regional Court in Ústí nad Labem. These inferences suggest that the staffing of those courts and their good practice may be a factor in the high approval rates.

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)? Have the measures been evaluated, if so, what are the outcomes?

A practical problem with the continuing power of attorney is, for example, the fact that Section 42 of the CC (which provides that if the continuing power of attorney concerns a matter other than the appointment of a guardian and if the effectiveness of the continuing power of attorney is subject to a condition, the court shall decide whether the condition has been met) allows for multiple interpretations, as evidenced by the legal literature.¹²²

In the context of an assisted decision-making contract, there is, among other things, the problematic question of whether the court may approve the contract only in part, which has been inconsistently addressed in the doctrine.¹²³

Some authors wonder whether a court decision (of a declaratory nature) is needed to terminate the representation by a household member when the representative no longer wishes to perform his or her function.¹²⁴

SECTION V – EX LEGE REPRESENTATION

Overview

122 K. Čuhelová., in P. Lavický et al., *Občanský zákoník I. Obecná část* (§ 1–654). [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 176.

123 Ibid.

124 K. Čuhelová., in P. Lavický et al., *Občanský zákoník I. Obecná část* (§ 1–654). [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 203. (This author states that this obligation cannot be inferred from the current legislation, but considers it, *de lege ferenda*, appropriate.)

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.

Start of the ex-lege representation

In certain cases, the Czech Civil Code allows an adult who cannot make legal acts autonomously due to a mental disorder to be protected through representation by a member of the household (Section 49 et seq. of the CC). Although representation commences *ad hoc*, i.e., when such need arises in the life of the individual, and the limitation of legal capacity as a last-resort means of protection would be an inadequate measure in the given case, prior approval from the court is nevertheless required. The consent solely of the represented person is therefore not sufficient for the commencement of the representation.¹²⁵ Unlike under the Austrian regulation, which was used as a model for the Czech regulation of representation by a member of the household, the right to represent requires approval by the court, while in Austria, registration with the notary is sufficient.¹²⁶

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?

The key statutory requirement for applying this measure is that the individual cannot make legal acts autonomously and, at the same time, the limitation of legal capacity is not necessary in the given case. The individual concerned must be an adult. The law also provides that the adult may not have another representative. This means that representation by a member of the household may not be applied where the legal capacity of a person has been limited and a guardian has been appointed for the person, nor where valid contractual representation would be in conflict with the representation by a member of the household.¹²⁷

The court examines the statutory requirements and makes a decision regarding the commencement of representation by a member of the household in special

125 O. Frinta and D. Frintová, in J. Dvořák, J. Švestka, M. Zuklínová et al., *Občanské právo hmotné. Svazek 1. Díl první: Obecná část*, [Substantive Civil Law. Volume 1. Part One: General Part], 2nd ed., Wolters Kluwer ČR, Praha 2016, p. 231.

126 *Ibid.*, p. 426.

127 Also D. Prudíková and M. Matiaško, in F. Melzer, P. Tégl et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 425.

proceedings under Section 31(e) of the SJPA. The proceedings may also be instituted of the court's initiative and result in a judicial resolution establishing the legal relationship.

Prior to making the decision, the court takes all the necessary steps to ascertain the opinion of the represented person, using a mode of communication chosen by that individual (Section 50 of the CC) – e.g., sign language or Lorm's (tactile) alphabet. Individual (i.e., specific) acts of representation do not require any further approval by the court.

Representation by a member of the household commences only upon the resolution becoming legally effective.¹²⁸ Representation commences, in fact, once the representative informs the represented person about the representation, and clearly explains the nature and consequences of such representation to the represented person. If the person refuses to be represented, the representation fails to commence; refusal in the form of expressing a wish is sufficient (Section 49(2) of the CC).

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

As mentioned above, the key statutory requirement for applying this measure is that the individual cannot make legal acts autonomously due to a mental disorder and, at the same time, the limitation of legal capacity is not necessary in the given case, the mental disorder should be alleged and proved by a report of specialized doctor [zpráva specializovaného lékaře], at least to prevent abuse of this institution by a member of the household or a person close to the vulnerable adult.¹²⁹ An expert opinion (medical expertise) [znalecký posudek] is not necessary.

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

Information on the legal effect of the judicial decision to approve the representation by a member of the household, or information about the termination of such representation, is entered in the register of the population information system¹³⁰ under a special act (Section 3(3)(i) of the Act Regulating the Register of

128 A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 106.

129 K. Čuhelová, in P. Lavický et al., *Občanský zákoník I. Obecná část (§ 1 až 654). Komentář* [Civil Law. General Part (Sections 1 to 654). Commentary], 2nd ed., C. H. Beck, Praha 2022, p. 193.

130 A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 107.

Population and Birth Registration Numbers).¹³¹

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.

The law provides for an exhaustive list of persons who may represent an adult under this measure. First, an adult may be represented by his or her descendant, ancestor, spouse, or registered partner. They may also be represented by a person who has lived with the represented person in one household for at least three years before the commencement of the representation (Section 49 of the CC).

If a represented person has more than one representative, it suffices for only one of them to act. However, where several representatives act jointly vis-à-vis another person and they contradict each other, their expressions of will are disregarded (Section 53 of the CC). The representatives should therefore try to find consensus so as to resolve the matter at hand; if they fail to agree, it is necessary to appoint an *ad hoc* guardian to protect the interests of the individual (Section 465(1) of the CC).

During the ex-lege representation

Representation by a member of the household applies only to standard matters with respect to the life circumstances of the represented person. However, the category of standard matters is wider than the category of ordinary matters of daily life, which is reserved by the legislature exclusively to each individual even if his or her legal capacity has been limited (cf. Section 64 of the CC).

The assessment of standard matters is always very subjective, and it is necessary to take into account the health and mental condition of the individual.

Legal theorists agree that standard matters include, for example, paying the rent, applying for social support from the state, entering into contracts for social

131 See the Act No.133/2000 Sb., regulating the register of population and birth registration numbers, as amended. Under Section 3(3)(i), the information system contains the following information on citizens: date of legal effect of a judicial decision to approve a decision-making assistance agreement or representation by a member of the household, including the file number and the court which approved the agreement or representation; date of legal effect of a judicial decision to limit legal capacity, including the file number and the court which approved the limitation of legal capacity; date of legal effect of the judicial decision to revoke the limitation of legal capacity; date of removal of a person from the position of support person; and the date of termination of representation by a member of the household.

services, collecting the mail, giving consent to medical interventions without permanent effects, paying the combined collection of charges, insurance premiums, taxes, fees, etc.¹³²

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.

(i) Property and financial matters

The representative may dispose of the income of the represented person to the extent necessary for arranging standard matters with respect to the life circumstances of the represented person; however, the representative may dispose of the cash in the account of the represented person only in the amount which does not exceed the monthly minimum living amount of the individual under another legal regulation.¹³³

(ii) Personal and family matters

A representative has – *inter alia* – the right *ex lege* to apply for the identification card of the represented person and to collect the identification card for him or her;¹³⁴ in analogy, the representative also has the right to apply for a passport.¹³⁵ For family law matters see other parts of this report.

(iii) Care and medical care

A representative may never give consent to an interference with the mental or physical integrity of an individual with permanent effects; and, moreover, most of these interferences with integrity would not fall under the category of standard matters anyway. Furthermore, the represented person's refusal to give consent to

132 A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 107; D. Prudíková and M. Matiaško, in F. Melzer, P. Tégl et al., *Občanský zákoník. Velký komentář. Svazek I* [Civil Code. Comprehensive Commentary. Volume I], Leges, Praha 2013, p. 429.

133 Act No. 110/2006 Sb., regulating the minimum living amount and the minimum subsistence amount, as amended.

134 Cf. Section 68 in conjunction with Section 8(1) of Act No. 269/2021 Sb., regulating identity cards.

135 Cf. Section 17(8) of Act No. 329/1999 Sb., regulating travel documents, as amended.

hospitalisation may not be replaced by the representative's consent; these situations are regulated in the detention proceedings under the Special Judicial Proceedings Act.

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

Representation by a member of the household is an institution of substitute decision-making, i.e., not assisted decision-making. It is traditional representation, that is direct representation where the will of the represented person is expressed by the representative, but the effects of the legal act, i.e., the intended creation, modification, or termination of rights and duties, arise directly for the represented person; they appear directly in his or her sphere. The general provisions governing representation therefore apply in this case (Sections 436 to 440 of the CC), in particular the provisions regarding the attributability of good faith, exceeding the right to represent and its consequences, etc.

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?

The law expressly stipulates that the representative takes care to protect the interests of the represented person and to perform his or her rights, as well as to ensure that the way of life of the represented person is not in conflict with his or her abilities, and is in accordance with his or her specific ideas and wishes, unless there are justified reasons not to do so (Section 51 of the CC). In this way, the Civil Code emphasises the autonomy of the will of the represented person to the greatest possible extent; the representative should therefore respect decisions made by the represented person which he or she does not agree with, but do not cause harm to the represented person.¹³⁶

As it was already mentioned above, representation commences, in fact, once the representative informs the represented person about the representation, and clearly explains the nature and consequences of such representation to the represented person. If the person refuses to be represented, the representation fails to commence; refusal in the form of expressing a wish is sufficient (Section 49(2) of the CC). Representation terminates – *inter alia* – if the represented person refuses to be further represented by the representative; the ability to express a wish is sufficient for refusal (i.e., orally, or implicitly, e.g., by a gesture) (Section 54(1) of the CC).

¹³⁶ A. Lomozová and Z. Spáčilová, in J. Petrov et al., *Občanský zákoník. Komentář* [Civil Law. Commentary], 2nd ed., C. H. Beck, Praha 2019, p. 107.

To conclude: an adult, while still mentally capable, can 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**

As mentioned above, the key statutory requirement for applying this measure is that the individual cannot make legal acts autonomously and, at the same time, the limitation of legal capacity and the appointment of guardian is not necessary in the given case. That is why the law provides that representation also terminates where the court appoints a guardian to the extent to which representation by the guardian would overlap with the right to represent of a member of the household.¹³⁷

There must not be other support persons. If a decision-making assistance agreement is made, the representation terminates upon the agreement becoming effective in the extent of the legal capacity of the represented person (Section 54(2) of the CC).

Safeguards and supervision

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

A representative – unlike a guardian – is not supervised by the court, which is also the reason why the law limits the extent of the right to represent only to the standard matters of the represented person.

End of the ex-lege representation

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

Representation terminates if the representative abandons the position or if the represented person refuses to be further represented by the representative; the ability to express a wish is sufficient for refusal (i.e., orally, or implicitly, e.g., by a gesture).

If a represented person has more than one representative, it suffices for only one of them to act. However, where several representatives act jointly vis-à-vis

¹³⁷ Ibid, p. 108.

another person and they contradict each other, their expressions of will are disregarded (Section 53 of the CC). The representatives should therefore try to find consensus so as to resolve the matter at hand; if they fail to agree, it is necessary to appoint an *ad hoc* guardian to protect the interests of the individual (Section 465(1) of the CC).

Representation also terminates where the court appoints a guardian in the extent to which representation by the guardian would overlap with the right to represent of a member of the household.¹³⁸

If a decision-making assistance agreement is made, the representation terminates upon the agreement becoming effective in the extent of the legal capacity of the represented person (Section 54(2) of the CC).

Reflection

60. Provide statistical data if available.

See Figure above.

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)?

With regard to the statistical information and Figures provided in this report, it should be critically noted that the appointment of a guardian (in the absence of limitation of legal capacity) is often considered as the only alternative to the limitation of legal capacity. In time, all supportive measures might be applied more frequently in decision-making in practice.

It is common knowledge that household members or persons close to vulnerable persons do not know about this legal possibility or do not show interest in it.

Specific cases of *ex lege* representation

¹³⁸ Ibid, p. 108.

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?

As it was mentioned above (Part I/1.2), protective measures related to vulnerable persons are included mainly in the General Part of the Civil Code (Book I). However, there are some provisions in the part governing Family Law (Book II), too.

Most importantly, a man and a woman have the right to marry unless they have been deprived of this right, that is, their legal capacity in this matter has been expressly limited by a judicial decision (see Section 673 of the CC).¹³⁹ This measure must be seen as absolute exceptional one, taken on the basis of the statutory and case law.¹⁴⁰

Marriage is considered a key institution which main purpose is mutual assistance and solidarity between spouses. The provisions on marriage law regulate, in particular, the right of the spouses to represent each other *ex lege* in ordinary matters (Section 696(1) of the CC). However, a spouse does not have the right, if the spouse to be represented informs in advance the person with respect to whom his or her spouse is to or intends to make a juridical act, that he or she does not consent to being represented, or if a court, on the application of a spouse, extinguishes the spouse's right of representation. Moreover, a spouse does not have this right, if the spouses do not live together.

Regarding deciding on family matters, the law states that family matters, including the choice of the place of the family household or, where applicable, the

139 Z. Králíčková, in Z. Králíčková, M. Hrušáková, and L. Westphalová at al. *Občanský zákoník II. Rodinné právo* (§ 655-975). Komentář. [Civil Code II. Family Law (§ 655-975). Commentary], 2nd ed., C. H. Beck, Praha 2020, p. 38 ff.

140 See Judgement of the Supreme Court of 29 July 2016, Case No. 30 Cdo 1607/2015. It was stressed that "The current legal regulation of this legal institute takes into account the aforementioned Convention on the Rights of Persons with Disabilities It thus takes into account, above all, the requirement of respect for natural dignity, personal independence, including freedom of choice, the assumption of the autonomy of persons, their non-discrimination or full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities as part of human diversity and nature, as well as equality of opportunity ... With this institute, the State, in each individual case and always through an individual (judicial) act of application of law - under the conditions set by law, interferes with a defined range of natural rights of a person, and always only to the extent of assessing the capacity of a person to acquire rights and to undertake obligations for himself or herself by his or her own legal action, i.e. to act legally."

household of one of the spouses and other family members, in particular children who have not yet acquired full legal capacity, and the way of life of the family, is to be agreed by spouses. If spouses fail to agree on a substantial family matter, a court may, on the application of one of the spouses, substitute the consent of the other spouse by its decision if the spouse refuses to give his consent in such a matter of family life without a serious reason and contrary to the interests of the family, or if he or she is unable to express his or her will. However, the court shall primarily encourage the spouses to reach an agreement (Section 692 of the CC).

There are provisions regarding providing for family matters in general, too. The law states that family matters are provided for by spouses jointly, or by one of them (Section 693 of the CC).

Then, the law states that in ordinary family matters, a juridical act made by one of the spouses obliges and entitles both spouses jointly and severally; this does not apply if the spouse who did not make the juridical act informed a third person in advance that he disagreed with the juridical act. Also a court may, on the application of a spouse, exclude the spouse from the effects of future juridical acts made by the other spouse with respect to third persons. Such measures do not apply to juridical acts whereby a spouse provides for usual life necessities of the family and its members, especially children who have not yet acquired full legal capacity. In other family matters, a juridical act of one of the spouses obliges and entitles both spouses jointly and severally if the other spouse gave his or her consent to the former's juridical act. However, if a spouse who does not consent to a juridical act of the other spouse has not managed to obtain help from a court in advance, he or she may invoke the invalidity of such a juridical act. If spouses do not live together, a juridical act of one of the spouses in family matters does not oblige or entitle the other spouse without his or her consent (Section 694 of the CC).

So called economically weaker spouse is protected by many provisions, i.e. provision regulating mutual maintenance duty between the spouses based on the principle of the same living standard (Section 697 of the CC), the provisions protecting the usual equipment of the family household (Section 698 of the CC) and family dwelling (Section 743 et seq. of the CC).

It is provided that usual family household equipment consists of a set of movable things which normally serve for usual essential needs of life of the family and its members; whether individual things belong to both spouses or just one of them is not decisive. A spouse needs the consent of the other spouse to dispose of a thing which is a part of the usual equipment of a family household; this does not apply to things of negligible value. A spouse may invoke invalidity of a juridical act whereby the other spouse disposed of a thing that is part of the usual equipment of the family household without his consent (Section 698 of the CC).

Regarding the family dwelling, spouses can live together on many legal grounds, e.g. as joint owners or joint tenants. Importantly, a joint tenancy of the

dwelling by the spouses is created by the marriage. In some cases, a so-called derivative legal ground of family dwelling also arises. It is important that the sole owner of a family dwelling may not dispose of the house or flat without the consent of the other spouse.¹⁴¹

It is provided that if the house or the flat is essential for the residence of the spouses or family, the owner must refrain from and avoid all that may prevent or endanger such residence. Without the consent of the other spouse, a spouse may not, in particular, alienate such a building or an apartment or create such a right to the building, its part or the whole apartment the exercise of which is incompatible with the housing of the spouses or family, unless he or she provides his or her spouse or family with housing which is in all respects similar to the existing one. If a spouse acts without the consent of the other spouse contrary to the rules, the spouse may invoke invalidity of such a juridical act (Section 747 of the CC).

Besides that, there are many provisions governing the community property of the spouses (Section 708 et seq. of the CC, for more details see below, part 58).

And finally, there is the “hardship clause” to protect the spouse who does not wish to divorce (Section 755(2) of the CC) and provisions regulating maintenance duty after divorce (Section 760 at seq. of the CC).

Regarding registered partners, the legal protection is weaker as there is only the right of representation *ex lege* in ordinary matters and mutual maintenance duty between the partners and ex partners similar to matrimonial law.¹⁴²

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.

As it was mentioned above, there are many provisions governing the community property of the spouses (Section 708 et seq. of the CC). It must be stressed that the spouses may opt for variety of property regimes according to the Civil Code: statutory regime of community property or contractual regime of community property, which can be modified statutory regime (limited or extended scope

141 M. Hulmák, in Z. Králíčková, M. Hrušáková, and L. Westphalová at al. *Občanský zákoník II. Rodinné právo (§ 655-975). Komentář*. [Civil Code II. Family Law (§ 655-975). Commentary], 2nd ed., C. H. Beck, Praha 2020, p. 375 ff.

142 M. Hrušáková, in M. Hrušáková at al., *Zákon o rodině. Zákon o registrovaném partnerství* [Act on the Family. Act on Registered Partnership], 4th ed., C. H. Beck, Praha 2009, p. 517 ff.

of the statutory regime), deferred community property or a separation of property. Besides, there can be a regime formed by the decision of the court.¹⁴³

The law governing administration of community property under statutory regime states that both or one of the spouses use, take the fruits and revenues of, maintain, dispose of, manage and administer the community property as agreed. Rights and duties associated with community property or parts thereof pertain to both spouses jointly and severally. Juridical acts relating to community property or parts thereof oblige and entitle both spouses jointly and severally (Section 713 of the CC). In matters relating to community property and parts thereof which cannot be considered common, the spouses make juridical acts jointly, or one of the spouses acts with the consent of the other. If one of the spouses refuses to give consent without a serious reason and contrary to the interests of the spouses, family or family household or is unable to express his or her will, the other spouse may apply to a court to substitute the consent of his or her spouse. If a spouse makes a juridical act without the consent of the other spouse where consent is required, the latter may invoke invalidity of such a juridical act (Section 714 of the CC).

If part of the community property is to be used for business activities of one of the spouses and the property value of what is to be used exceeds a level appropriate to the property situation of the spouses, consent of the other spouse is required upon the first such use. If the other spouse has been omitted, he or she may invoke invalidity of such an act (Section 715 of the CC).

Regarding contractual regimes, the (pre)marital contract between spouses or the fiancés stipulates which of the spouses will administer the community property or part thereof, and how. It is provided that the spouse who administers community property makes juridical acts independently in matters relating to the community property, even in judicial or other proceedings, unless otherwise provided below. The spouse who administers the entire community property may make juridical acts only with the consent of the other spouse:

- (a) when disposing of community property as a whole,
- (b) when disposing of the dwelling in which the family household of the spouses is located, if the dwelling is part of community property, or a dwelling of one of the spouses or a dwelling of a minor child who has not yet acquired full legal capacity and is in the care of the spouses, as well as when stipulating a permanent encumbrance of an immovable thing which is part of community property (Section 723 of the CC).

And finally, as regards as administration under the regime formed by the decision of a court, it is provided that, when administering community property, a

¹⁴³ In case of a serious reason, a court shall, on the application of a spouse, cancel community property or reduce its existing scope (Section 724(1) of the CC). There may be a separation of property by operation of law, *ex lege*, for instance in the event of bankruptcy or criminal activity of a spouse.

spouse acts in a manner which is clearly contrary to the interests of the other spouse, family or family household and the fiancés or spouses have not concluded a contract governing the administration of what forms part of community property, a court may, on the application of the other spouse, decide how community property will be administered (Section 728 of the CC).

There are no special provisions regulating a situation of a spouse who has mental impairment.

As there is no statutory community of property between the registered partners and they are not allowed to opt for marital property law, the question cannot be answered.

ex lege representation resulting from negotiorum gestio and other private law provisions

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

The Civil Code regulates agency without mandate [nepříkázané jednatelství] in the Obligations (Book IV), together with provisions regulating prevention of damage [odvrácení škody], salvaging a thing of another [záchrana cizí věci] and acts for the benefit of another person [jednání k užítku jiné osoby].

It is provided that if a person interferes in the matters of another person without being entitled to do so, he or she bears the resulting consequences (Section 3006 of the CC). Regarding the consequences, it is stated in general within the common provisions that a person who assumed a matter of another without mandate shall see it through, present the relevant accounts and transfer everything acquired in doing so to the person whose matter was arranged (Section 3010 of the CC). If an agent without mandate is not entitled to reimbursement of costs, he or she may take what he acquired at his or her own expense, if it is possible and if it does not deteriorate the essence of the thing or unreasonably hampers its use (Section 3011 of the CC).

Above mentioned instruments have practical significance in cases involving vulnerable adults similarly as for anyone else.

SECTION VI – OTHER PRIVATE LAW PROVISIONS

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

There are no other private law instruments allowing for representation besides *negotiorum gestio*, except provisions regulating prevention of damage [odvrácení škody], salvaging a thing of another [záchrana cizí věci], acts for the benefit of another person [jednání k užitku jiné osoby] regulated in the Obligations (Book IV) together with agency without mandate [nepřikázané jednatelství] (Section 3006 at seq. of the CC), and the provisions regulating a trustee [důvěrník] (Section 107 et seq. of the the CC).

The provisions of a trustee are applied in cases of hospitalization of a person in a medical institution without his or her consent. The trustee is usually a person close to the hospitalized person (or, for example, an NGO) and his or her purpose is to help the involuntarily hospitalized person to defend his or her rights and interests. The trustee has the right to receive information about the patient's hospitalisation, to exercise the patient's procedural rights on his or her behalf (to file motions, to propose evidence, to file appeals, etc.) or to be present at other court proceedings.

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?

As it was mentioned above (Part I., 1.2.), the Czech legal regulation does not recognise the representation of a vulnerable person *ex lege*, only by operation of law. In all cases where the law so provides, a competent state body must decide on representation. Nevertheless, *ex lege* representation is regulated by the Civil Code in several cases (in addition to *ex lege* representation between spouses and partners).

Within the concept of parental responsibility, parents represent their minor children without full legal capacity by operation of law (*ex lege*) in all acts for which the children do not have legal capacity (Section 892 of the CC). Once children reach the age of majority, or acquire legal capacity, the parents' right to represent and parental responsibility cease to exist. The law does not allow for the prolongation of parental rights or representation by the spouse or other family member.¹⁴⁴

However, when family solidarity “works”, parents of vulnerable adults often take on the role of representatives, support persons or guardians of their adult chil-

¹⁴⁴ For more R. Šínová, L. Westphalová and Z. Králičková, Rodičovská odpovědnost [Parental Responsibility]. C. H. Beck, Praha 2017.

dren, including personal care in the family home. It can be considered that if parents can indicate who should be the tutor [poručník] of their minor children in the event of their death Section 868(2) of the CC), they can, for example, express they wishes in the will as to who should become a representative, support person or a guardian of their vulnerable adult children.

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;**

It is a slow transition. The most talked about transition started in connection with the preparation and adoption of the Convention on the Rights of Persons with Disabilities (“CRPD”). As it was mentioned above, the Czech Republic signed it in 2007, but ratification did not take place until two years later (for details see I. 4). Experts, including human rights NGOs, drew attention to the fact that the Czech legislation on vulnerable adults at that time was based on the principle of substitute decision-making [princip náhradního rozhodování] and that, in accordance with the Convention on the Rights of Persons with Disabilities, it should be abandoned and switched to the principle of supportive decision-making [princip podpůrného rozhodování].¹⁴⁵

The shift came with the adoption of the new Civil Code, effective since January 2014 (see I., 1.2.). Until then, the Czech Republic had been dominated by the approach of substitute decision-making, which was mainly reflected in limitation and incapacitation, or deprivation of legal capacity. The Civil Code aims more towards the approach of supported decision-making and as it is reflected, for example, in the regulation of voluntary measures.¹⁴⁶

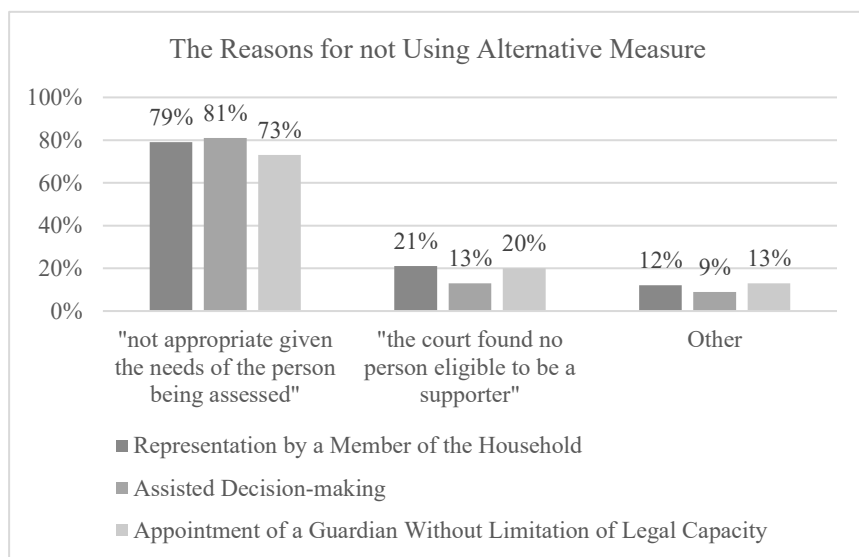
¹⁴⁵ Rozhodování osob s duševní poruchou: zásady pro poskytování asistence. Systémové doporučení Ligy lidských práv č. 6 z roku 2008 [Decision making for people with mental disorder: principles for providing assistance. League of Human Rights' Systemic Recommendation No. 6 of 2008]. Liga lidských práv. Mental Disability Advocacy Center, 2008, p. 5 Available here: <https://old.llp.cz/publikace/rozhodovani-osob-s-dusevni-poruchou-zasady-pro-poskytovani-asistence/> (accessed on 20 July 2022).

¹⁴⁶ Vláda: Důvodová zpráva k zákonu č. 89/2012 Sb., občanský zákoník, č. 89/2012 Sb. (k § 45 až 48) [Government: Explanatory Memorandum to Act No. 89/2012 Sb., Civil Code, No. 89/2012

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

The Public Defender of Rights' research shows that the condition of subsidiarity is usually examined in proceedings for the limitation of legal capacity [omezení svéprávnosti] (89% of cases), but the reasoning of the judgment [odůvodnění rozhodnutí] shows that examining of the subsidiarity condition is only very superficial. The courts often simply refer to the Section 55 of the Civil Code and state that a more lenient and less restrictive measure is not sufficient given the needs of the person under consideration.¹⁴⁷ According to the Supreme Court, the court should always resort to a less restrictive measure when it is clear that it is sufficient to protect the rights and interests of the person under consideration.¹⁴⁸ However, the degree of obviousness is for the court to assess in each individual case.

Figure 9. The Reasons for not Using Alternative Measures¹⁴⁹



Sb. (on Sections 45 to 48)]. Available here: <http://obcanskyzakonik.justice.cz/images/pdf/Du-vodova-zprava-NOZ-konsolidovana-verze.pdf> (accessed on 20 July 2022).

147 Křižovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 36. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 20 July 2022).

148 Judgement of the Supreme Court of 25 May 2016, Case no. 30 Cdo 944/2016.

149 Křižovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 34. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 24 June 2022).

As we noted above courts in proceedings to limit legal capacity often (in up to 40% of judgments) limit a person's legal capacity in almost all areas of life, except for the basic affairs of everyday life, as required by law.¹⁵⁰ This shows that some courts still rule according to the approach of substitute decision-making [přístup náhradního rozhodování] rather than supported decision-making [přístup podpůrného rozhodování]. However, the substitute decision-making approach can also be observed in practice by guardians [opatrovníci] themselves or by health care providers, for example, who discuss the patient's health and treatment only with the guardian, or in the practice of courts in cases of so-called involuntary voluntary hospitalization [nedobrovolně dobrovolná hospitalizace].¹⁵¹

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

In proceedings for the limitation of legal capacity [omezení svéprávnosti], the courts must examine – *inter alia* – whether the person who would not be limited in his or her legal capacity would be at risk of serious harm. If such a threat exists, it may constitute a legitimate reason for limiting a person's legal capacity (see Section 55(2) of the Civil Code). According to the Constitutional Court, the harm must be real, not merely hypothetical.¹⁵² The court must consider whether the threatened danger is greater than the interference with the person's legal capacity and whether it is in the person's interest to do so.

According to the Public Defender of Rights' research, the courts almost always examine the threat of harm in proceedings for the limitation of legal capacity (in 93% of cases). However, this is usually reflected in the judgement by the wording "otherwise the person under review would be at risk of harm". Otherwise, according to the research, the courts have mainly inferred the threat of harm from the person's personal history, where he or she has caused harm to himself or herself by his or her own conduct.¹⁵³

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

150 Křížovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 36. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 24 June 2022).

151 This includes cases where a person is hospitalised against his or her will but his or her guardian consents to the hospitalisation. In such a situation, there is no judicial review of the hospitalisation and the person can spend years in a health facility (for example, a psychiatric hospital) without his or her consent.

152 Judgement of the Constitutional Court of 13 December 2016, Case no. II. ÚS 934/16.

153 Křížovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 36. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 24 June 2022).

It is clear from the previous points that the supporting measures have a direct impact on the person's legal capacity [svěprávnost]. According to the Czech legislator, in certain cases and under certain legal conditions it is legitimate for a person to be limited in his or her legal capacity to a reasonable extent. The fact that in practice such a limitation sometimes almost amounts to a former complete deprivation of legal capacity [zbavení způsobilosti k právním úkonům] is a problem with the application of the law. However, it should be pointed out that, in terms of the Convention on the Rights of Persons with Disabilities, no person should be limited in his or her legal capacity [omezen ve svěprávnosti], even if the national law allows it.¹⁵⁴ However, the Czech Republic does not plan to change the legislation in this respect.¹⁵⁵

e. the possibility to provide tailor-made solutions;

The Czech Civil Code is based on the principle of autonomy of the will, therefore, if a particular person is capable of doing so, he or she can manage the affairs of his or her life according to his or her own wishes within the limits of the law. In the case of state-ordered measures, the court must assess each case individually and comprehensively, taking into account the needs, wishes and interests of the person assessed.

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

The best interest principle is currently applied mainly in matters concerning the child. In the case of adults, the principle of the autonomy of the human will prevails. This is manifested – *inter alia* – when the court appoints a guardian [opatrovník] for a person. In choosing a guardian, the court must take into account the wishes of the ward, his or her needs and the suggestions of persons close to him or her (see Section 62 of the Civil Code).

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.).*

154 L. Series and A. Nilsson, in I. Bantekas, M.A. Stein and D. Anastasiou (eds), *The UN Convention on the Rights of Persons with Disabilities, a commentary*. Oxford University Press, Oxford, United Kingdom: 2018, pp. 354-358.

155 Spojená druhá a třetí periodická zpráva České republiky o plnění závazků plynoucích z Úmluvy o právech osob se zdravotním postižením schválena vládou České republiky dne 17. srpna 2020 [Combined second and third periodic report of the Czech Republic on the fulfilment of its obligations under the Convention on the Rights of Persons with Disabilities, approved by the Government of the Czech Republic on 17 August 2020]. Point 107. Available here: <https://www.mpsv.cz/documents/20142/225526/Spojená+druhá+a+třetí%C3%AD+periodická+zpráva+České+republiky.pdf/fcd40346-c950-a3df-045f-c7f9ea5346a8> (accessed on 24 June 2022).

Assess your system in terms of:

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

The court always decides on questions of limitation of legal capacity [omezení svéprávnosti]. The person under review must always have a guardian [opatrovník] in these proceedings or may choose his or her representative [zástupce] (regardless of the consent of his or her substantive guardian [hmotněprávní opatrovník]). The assessed person must always be informed of his or her right to choose a representative. The court must hear, or at least see, the person being examined. An expert opinion [znalecký posudek] must be produced in the proceedings. An exception is when the court decides to extend the period of limitation of legal capacity and it is clear that the person's condition has not changed for the better. In such a case, an expert opinion does not need to be given. The court must take into account the wishes and preferences of the person assessed (e.g. when appointing a guardian, as mentioned above). When the court chooses a guardian, it should prefer a close person to a stranger if this is in the interests of the person under consideration. From the point of view of proportionality, the court examines the real threat of harm that could justify the limitation of the person's legal capacity. The court must also consider whether, in the interests of the person concerned, a more lenient measure than the limitation of legal capacity would be sufficient. The limitation of legal capacity must then be reviewed periodically (the limitation of legal capacity is for a maximum of three years, exceptionally five years).

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

See the comment to the previous point.

c. protection during the operation of adult support measures:

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

It always depends on the support measure in question. In the case of assisted decision-making [nápomoc při rozhodování], the supporter [podpůrce] can argue that the legal action of the supported person is invalid. In the case of representation by a household member [zastoupení členem domácnosti], the court will define the scope of the representation [zastoupení]. The commentary literature states that the more the represented person is able to understand the meaning and purpose of a particular legal action, the more the representative should respect his or her will and wishes, of course also taking into account the possible occurrence of harm and its amount. However, it is also important to note that the represented person has the right to make a wrong decision, just like anyone else. The representative should

also take this into account.¹⁵⁶ With both the limitation of capacity [omezení svéprávnosti] and the appointment of a guardian without limitation of capacity [jmenování opatrovníka bez omezení svéprávnosti], the scope of the guardian's authority is also determined by the court. If the represented person has acted independently, even though he or she has been limited in a legal capacity, that action can be declared invalid if it causes harm to that person. However, the court can also just change the scope of the person's legal capacity. The act of the guardian can also be subsequently approved by the guardian and will be considered valid.

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

If the interests of the person for whom one of the support measures has been used are threatened or in conflict with the interests of the supporter [podpůrce], representative [zástupce] or guardian [opatrovník], the law offers several options to eliminate or mitigate the threat of harm or the harm that has already occurred (e.g. by removing and/or changing the supporter or guardian, declaring the legal act null and void, etc.).

- **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;**

In the case of guardianship [opatrovnictví], the guardian [opatrovník] cannot be a provider (or his or her employee) of social or health services [poskytovatel sociálních nebo zdravotních služeb] used by the person.

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

The Czech legislation in this respect is based on the principle that the dignity and freedom of a person with his or her natural right to take care of his or her own happiness and the happiness of his or her family and loved ones enjoy due protection. This basic principle of Section 3(1) of the Civil Code is then elaborated in Section 81 et seq. of the Civil Code, which guarantees the protection of a person's overall personality [osobnost] (physical and mental integrity), including his or her natural rights. These rights include the right to live as one wishes and to make one's own choices. Anyone whose personality rights [osobnostní práva] have been infringed has the right to seek this protection. When that person dies, persons close

¹⁵⁶ K. Čuhelová in P. Lavický et al. *Občanský zákoník I. Obecná část* (§ 1-654). [Civil Code I. General part (Sec. 1-654)]. 2nd edition. C. H. Beck, Praha 2022, p. 199.

to him or her may also seek the protection of his or her personality rights posthumously.

SECTION VIII– ADDITIONAL DATA

Although the Ministry of Justice collects statistical data on the activity of courts in proceedings related to voluntary support measures and state-ordered measures, the Deputy Public Defender of Rights points out that in order to properly monitor and evaluate the implementation of the Convention on the Rights of Persons with Disabilities, it is necessary to systematically collect more of the necessary data.¹⁵⁷

As mentioned above, supportive measures are not being used as much as they could. The data below shows that the number of persons with limited legal capacity [osoby s omezenou svéprávností] has been increasing over the years. Currently, there are around 45,000 persons.

Figure 10. Number of Pending Court Cases Regarding Limitation of Legal Capacity¹⁵⁸

Number of Pending Court Cases Regarding Limitation of Legal Capacity							
2014	2015	2016	2017	2018	2019	2020	2021
38,315	37,635	36,877	37,399	41,052	42,487	43,830	44,342

It can be assumed that there are several reasons why the number of persons limited in their legal capacity is still increasing. First of all, after the adoption of the new Civil Code, the courts had to review all the files of persons limited and deprived of legal capacity [osoby omezené nebo zbavené způsobilosti k právním úkonům]. This took a lot of time, for example, because in each review procedure a new expert opinion [znalecký posudek] had to be prepared, for which the court waited up to 6 months.¹⁵⁹ As mentioned above, the limitation of legal capacity

157 Press release of the Public Defender of Rights's Office from 9 September 2021. Jen systematické sledování a analýza umožní zjistit, jak si Česká republika vede při naplňování Úmluvy o právech osob se zdravotním postižením, zaznělo na mezinárodním semináři [Only Systematic Monitoring and Analysis Will Make It Possible to Find Out How the Czech Republic Is Doing in Implementing the Convention on the Rights of Persons with Disabilities, Has Been Heard at the International Seminar]. Veřejný ochránce práv. 2021. Available here: https://www.ochrance.cz/aktualne/jen_systematicke_sledovani_a_analyza_umozni_zjistit_jak_si_ceska_republika_vede_pri_naplnovani_umluvy_o_pravech_osob_se_zdravotnim_postizenim_zaznelo_na_mezinarodnim_seminari/ (accessed on 24 June 2022).

158 Data provided upon request by the Ministry of Justice of the Czech Republic.

159 České soudnictví 2020: Výroční statistická zpráva [Czech judiciary 2020: Annual Statistical Report]. Ministerstvo spravedlnosti. 2021. p. 67. Available here: https://www.justice.cz/documents/12681/719244/Ceske_soudnictvi_2020.pdf/43b3020e-fc02-44a4-bb2c-a124ce85f57b (accessed on 24 June 2022).

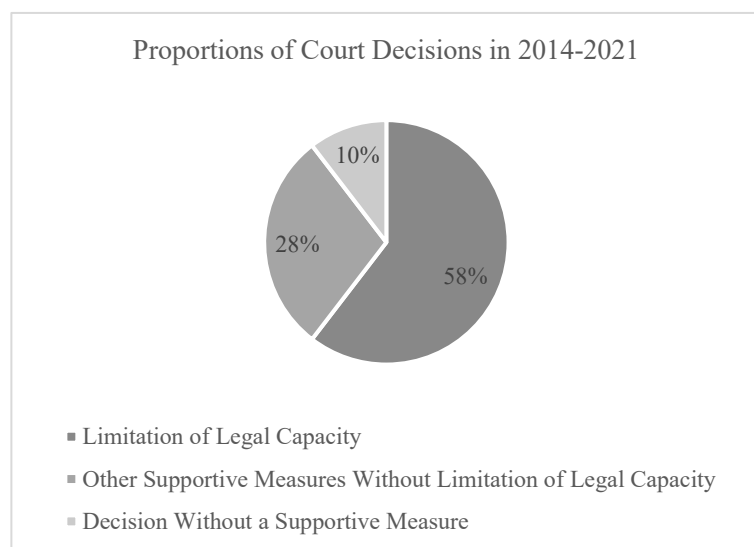
[omezení svéprávnosti] has been subject to regular review once every 3 years and exceptionally once every 5 years (since 2016).¹⁶⁰ Besides, limitation of legal capacity has a relatively long “tradition” in the Czech Republic. In contrast, alternatives to limitation of legal capacity have only been regulated in the Czech legal system for a short time and their legal regulation is rather austere. That is why they are not in the public consciousness or the courts. And moreover, a person with limited legal capacity often has no close person who could be his or her representative [zástupce] or supporter [podpůrce].¹⁶¹ According to an alternative report to the UN Committee on the Rights of Persons with Disabilities from 2011, courts made also sometimes decisions in proceedings on limitation of capacity on the basis of uncritically accepted expert opinion [znalecký posudek].¹⁶² The question is whether this practice has changed and how to reduce the number of limitations of legal capacity. The data below shows the proportions of the number of persons with limited legal capacity [osoby s omezenou svéprávností] and other measures.

160 B. Brozová Rittichová and A. Redlichová, ‘Podpůrná opatření pohledem statistik [Support Measures in the View of Statistics]’ in Lidé s postižením jako „nová menšina“ – právní výzvy a souvislosti [People with Disabilities as a “New Minority” - Legal Challenges and Context]. Kancelář veřejného ochránce práv and Právnická fakulta Univerzity Karlovy, Praha 2021, p. 59. Available here: https://www.ochrance.cz/dokument/lide_s_postizenim_jako_nova_mensina_pravni_vyzvy_a_souvislosti/lide_s_postizenim_jako_nova_mensina.pdf (accessed on 24 June 2022).

161 Z. Durajová, ‘Praxe okresních soudů při uplatňování podpůrných opatření při narušení schopnosti zletilého právně jednat’ [Practice of District Courts in the Application of Support Measures in Case of Impaired Legal Capacity of an Adult]. in: Lidé s postižením jako „nová menšina“ – právní výzvy a souvislosti [People with Disabilities as a “New Minority” - Legal Challenges and Context]. Kancelář veřejného ochránce práv and Právnická fakulta Univerzity Karlovy, Praha, 2021, p. 75. Available here: https://www.ochrance.cz/dokument/lide_s_postizenim_jako_nova_mensina_pravni_vyzvy_a_souvislosti/lide_s_postizenim_jako_nova_mensina.pdf (accessed on 24 June 2022).

162 Alternativní zpráva pro Výbor OSN pro práva osob se zdravotním postižením [Alternative Report to the UN Committee on the Rights of Persons with Disabilities]. Česká republika, 2011. Point 34. Available here: https://www.mpsv.cz/documents/20142/225526/Zprava_NGO_o_plneni_Umluvy_CZ.pdf/00861696-7bb6-a66f-a86f-3b56ff32de0d (accessed on 24 June 2022).

Figure 11. Proportions of Court Decisions in 2014-2021 According to the Public Defender of Rights' Research¹⁶³



The Public Defender of Rights' research shows that the practice of courts in the Czech Republic is diverse, somewhat conservative and formalistic.¹⁶⁴ As stated in the Figure 11 above, according to the Public Defender of Rights' research the limitation of legal capacity is mostly used (58% of cases). Alternatives to this measure are used in less than a third of cases (28%). This is confirmed by the data obtained from the Ministry of Justice. The provided data also show clear paternalistic tendencies in the courts' decision-making on support measures. The wording of decisions is often very restrictive. The courts do not always address

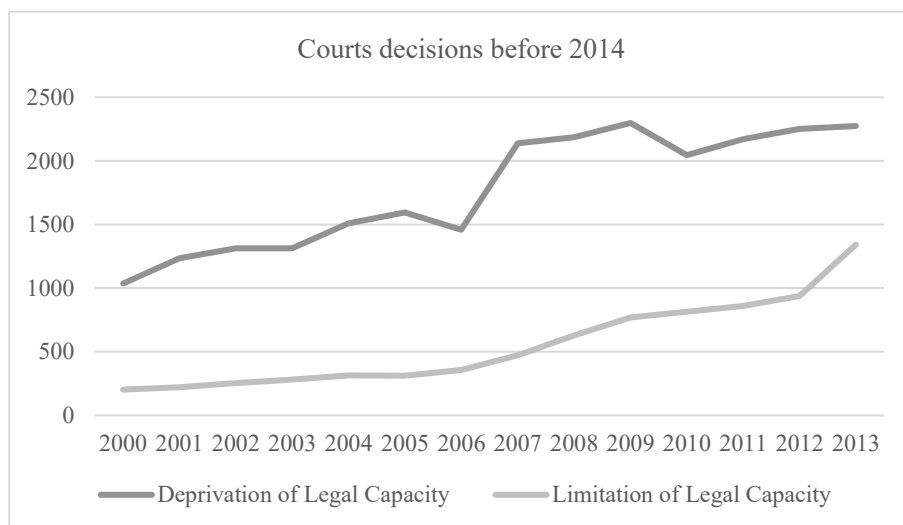
¹⁶³ See Křižovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 12. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 24 June 2022).

¹⁶⁴ The research was carried out in 2018 to find out how the proceedings for the limitation of legal capacity and other supportive measures are conducted. The Public Defender of Rights contacted 86 district courts. Subsequently, 256 decisions were subjected to a quantitative content analysis. However, as the research was based on a selection of individual courts, the results may be somewhat biased. See Křižovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 6. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 24 June 2022).

the question of subsidiarity of the measure taken, and when they do, they are often very austere.¹⁶⁵

According to the Public Defender of Rights, in up to 40% of the judgments on the limitation of legal capacity, the courts limited the person's legal capacity in almost all areas of life (except for matters of everyday life, as required by law). This approach is actually very close to "the old bad practice" of incapacitation, or deprivation of legal capacity [zbavení způsobilosti k právním úkonům] regulated by the 1960's Civil Code that was in force in the Czech Republic until the end of 2013 (for details see I.5 above).¹⁶⁶ The data below shows the proportions of the number of measures.

Figure 12. Court Decisions Before 2014¹⁶⁷



¹⁶⁵ Křižovatky autonomie. Praxe soudů při rozhodování o podpůrných opatřeních [Crossroads of Autonomy. The Practice of Courts in Deciding on Support Measures]. Veřejný ochránce práv 2020, p. 36. Available here: https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf (accessed on 24 June 2022).

¹⁶⁶ Ibid, p. 38.

¹⁶⁷ J. Marečková and M. Matiaško, Člověk s duševním postižením a jeho právní jednání-otázka opatrovnictví dospělých [People with Mental Disabilities and Their Legal Behaviour - the Issue of Adult Guardianship]. Linde, Praha 2010; Opatrovnictví a lidská práva v České republice. Analýza právní úpravy a politiky v oblasti opatrovnictví [Guardianship and Human Rights in the Czech Republic. Analysis of Legislation and Policy in the Field of Guardianship]. 2007. Mental Disability Advocacy Center, p. 19. Available here: https://mdac.org/sites/mdac.info/files/Czech_Guardianship_and_Human_Rights_in_the_Czech%20Republic.pdf (accessed on 24 June 2022); data from (justice.cz), available here: <https://cslav.justice.cz/InfoData/prehledy-statistickych-listu.html> (accessed on 24 June 2022).

SECTION IX – CONCLUSION

In conclusion, the legal framework for the protection of vulnerable persons in the Czech Republic has already been reformed. The Civil Code devotes considerable attention to this issue in the General Part (Book I). The protection of vulnerable persons is also reflected in the part of the Civil Code governing Family Law (Book II.). Special provisions protecting vulnerable persons are found in the part of the Civil Code dedicated to Property Rights and Succession, in particular about the “incapacity to make disposition *mortis causa*” (Book III). In the part regulating obligations, related issues are addressed specifically in provisions governing donation and the delictual capacity of vulnerable persons (Book IV).

Following the adoption of the new Civil Code, and the legal regulations referred to as accompanying legislation, in particular procedural acts and regulations related to healthcare, new institutions were established, in particular the supportive measures for cases where the ability of an adult to make legal acts is impaired. The special acts discussed in detail above protect vulnerable persons in specific situations, e.g., concerning the provision of healthcare services. The question of abortion in the case of women suffering from a mental disorder should undoubtedly be revised *de lege ferenda*.

However, generally speaking, it is possible to conclude that the Czech legal order, following the international obligations of the Czech Republic, provides more adequate protection to vulnerable persons than before. As mentioned in the introduction, the new legal regulation is progressive in many aspects, in contrast to the previous regulation, as it takes into account the specific circumstances of each vulnerable person. However, it is far from perfect. The UN Committee on the Rights of Persons with Disabilities believes that the new legal regulation does not fully comply with the international obligations of the Czech Republic (e.g. in consideration to Art. 12 CRPD), but it is still definitely a major step forward to the ideal legal regulation. At the national level, various non-governmental organizations (such as the League of Human Rights), the Office of the Public Defender of Rights, and even expert group for the support of persons with limited legal capacity operating under the Government Committee for Persons with Disabilities have criticized the inconsistency of Czech legislation with Article 12 of the CRPD (and other obligations of the state).¹⁶⁸ They have also criticized the overuse of limitation of legal capacity compared to less invasive support measures,

¹⁶⁸ Závěrečná doporučení Výboru OSN pro práva osob se zdravotním postižením k úvodní zprávě České republiky [Concluding Recommendations of the UN Committee on the Rights of Persons with Disabilities on the Initial Report of the Czech Republic]. 2015. UN Committee on Rights of Persons with Disabilities. Available here: https://www.mpsv.cz/documents/20142/225526/Zaverecná_doporuceni_Výboru_OSN_pro_práva_osob_se_ZP_CZ.pdf/d42c33c2-05f9-6018-e62b-fc47ac31676f (accessed on 2 August 2023).

the poorly set up system of (primarily public) guardianship, and other issues.¹⁶⁹ Some weak spots are addressed above, particularly when discussing the Annual Report of the Office of the Public Defender of Rights and the League of Human Rights.

Despite the shortcomings and interpretation problems, sometimes even bad practise of the courts reported by the above-mentioned Public Defender of Rights' research, the jurisprudence of the Supreme Court and the Constitutional Court move decision-making practice forward in certain ways to protect the fundamental rights of vulnerable adults. Suggestions and recommendations made by the Office of the Public Defender of Rights contribute to the wider use of supportive measures in practice and the improved protection of vulnerable persons, in particular in retirement homes and homes with a special regime. However, concerning the statistical information provided above, it should be critically noted that the appointment of a guardian (in the absence of limitation of legal capacity) is often considered the only alternative to the limitation of legal capacity. In time, all supportive measures might be applied more frequently in decision-making in practice – as a result of raising awareness of their benefits for vulnerable persons among the professional and general public.

169 Zápis ze zasedání Vládního výboru pro osoby se zdravotním postižením ze dne 22. 6. 2023 [Minutes of the meeting of the Government Committee for Persons with Disabilities on 22/06/2023]. 2023. The Government Committee for Persons with Disabilities. Available in Czech here: <https://www.vlada.cz/cz/ppov/vvozp/zasedani-vyboru/zasedani-22--cervna-2023-207383/#>

Appendix

Key provisions of the Civil Code

Act No. **89/2012 Sb.**
of 3 February 2012
the Civil Code

the Parliament has adopted the following Act of the Czech Republic:

BOOK ONE GENERAL PROVISIONS

TITLE I SCOPE OF REGULATION AND ITS BASIC PRINCIPLES

Chapter 1 Private law

Section 1

(1) The provisions of the legal order governing the mutual rights and duties of persons together constitute private law. The application of private law is independent of the application of public law.

(2) Unless expressly prohibited by a statute, persons can stipulate rights and duties by way of exclusion from a statute; stipulations contrary to good morals, public order or the law concerning the status of persons, including the right to protection of personality rights, are prohibited.

TITLE II PERSONS

Chapter 1 General provisions

Section 15

(1) Legal personality is the capacity to have rights and duties within the legal order.

(2) Legal capacity is the capacity to acquire rights and assume duties for oneself by making juridical acts (to make juridical acts).

Chapter 2 Natural persons Division 1 General provisions

Section 23

An individual has legal personality from birth to death.

Section 24

Every individual is responsible for his own actions, if he is able to assess and control them. A person who induces upon himself a self-inflicted condition which would otherwise preclude the responsibility for his actions is responsible for the actions taken under this condition.

Division 2 Subsidiary measures in the case of disrupted capacity of an adult to make juridical acts Declaration in anticipation of incapacity

Section 38

In anticipation of one's own lack of capacity to make juridical acts, an individual may express the will to have his matters managed in a certain way or by a certain person, or to have a specific person become his guardian.

Section 39

(1) Unless the declaration has the form of a public instrument, it must be made by a private instrument dated and acknowledged by two witnesses; in the acknowledgement, the witness shall provide his personal information which allows the witness to be identified.

(2) Only persons without any interest in the declaration and its contents who are not blind, deaf, mute or ignorant of the language in which the declaration is made may become witnesses. Witnesses must sign the declaration and be able to confirm the ability of the declarant to perform acts and the content of his declaration.

(3) Where the content of the declaration made by a public instrument determines who is to become the guardian, the person who wrote the public instrument shall record information about the identity of the person who made the declaration, the person who is selected to act as the guardian and the person who wrote the public instrument in a non-public list maintained under another statute.

Section 40 [Recodification]

(1) Where the declaration is made by a blind person or a person who cannot or is not able to read or write, the declaration must be read aloud to the person by a witness who did not write the declaration. A blind person or a person who cannot or is not able to read or write shall confirm before witnesses that the instrument contains his true will.

(2) Where a declaration is made by a person with a sensory disability who cannot read or write, the contents of the instrument must be interpreted to the person in the way of communication of his choosing and by a witness who did not write the declaration; all witnesses must have command of the way of communication which is used to interpret the content of the instrument. The declarant shall acknowledge before witnesses in the way of communication of his choosing that the instrument contains his true will.

Section 41

(1) Express withdrawal of the declaration requires the expression of will made in the form prescribed in Section 39(1).

(2) If the instrument containing the declaration is destroyed by the declarant, it has the effect of revocation.

Section 42

Where the declaration concerns matters other than selecting a person to act as a guardian and its effectiveness is conditional, the fulfilment of the condition is decided by a court.

Section 43

If the circumstances evidently change in such a substantial way that, under such circumstances, the declarant would not have made the declaration or would have made a declaration with different contents, a court shall amend or cancel the declaration if the declarant were otherwise under a threat of serious harm. Before making any decision, the court shall make the necessary effort to obtain the opinion of the individual whose declaration is subject to the court's decision, also using the way of communication of the individual's choosing.

Section 44

If the declaration or its revocation is invalid, the court shall take it into account, unless there is cause to doubt the will of the declarant.

Assistance in decision-making

Section 45

If an individual needs assistance in decision-making due to complications resulting from his mental disorder, even where his legal capacity has not been limited, he and the assisting person may agree on the provision of assistance; there may be multiple assisting persons.

Section 46

(1) By concluding a contract for assistance, the assisting person undertakes, subject to the consent of the person receiving assistance, to be present at his legal proceedings, provide him with the necessary information and communications and assist him by giving advice.

(2) The contract becomes effective on the date on which it is approved by a court. Unless the contract has been executed in writing, the parties are required to express their will to execute the contract before a court. If the interests of the assisting person are contrary to the interests of the person receiving assistance, the court shall not approve the contract.

Section 47

(1) The assisting person must not jeopardise the interests of the person receiving assistance by exerting improper influence or unjustly enrich himself at the expense of the person receiving assistance.

(2) In carrying out his duties, the assisting person shall proceed in accordance with the decisions of the person receiving assistance. If the person receiving assistance makes a juridical act in writing, the assisting person may affix his signature, indicating his position and, where applicable, the support provided to the person receiving assistance; the assisting person may also invoke the invalidity of the juridical act made by the person receiving assistance.

Section 48

On the application of the person receiving assistance or the assisting person, a court shall remove the assisting person; the court shall also remove him, even of its own motion, if the assisting person commits a substantial breach of his duties.

Representation by a household member

Section 49

(1) If a mental disorder prevents an adult who has no other representative to make juridical acts, he may be represented by his descendant, ancestor, sibling, spouse or partner, or a person who had lived with the person represented in a common household before the creation of representation for at least three years.

(2) The representative shall inform the person represented that he will represent him, and shall clearly explain to him the nature and consequences of representation. If the person to be represented refuses that, the representation is not created; the ability to make a wish is sufficient to express the refusal.

Section 50

The creation of representation must be approved by a court. Before making any decision, the court shall make the necessary effort to obtain the opinion of the person represented, also using the way of communication chosen by the person represented.

Section 51

The representative shall ensure the protection of the interests of the person represented and the exercise of his rights as well as make sure that his way of life is not in conflict with his abilities and that, unless it can be reasonably challenged, it corresponds to the specific ideas and wishes of the person represented.

Section 52

(1) Representation covers ordinary matters, as is consistent with the life circumstances of the person represented. However, the representative may not give consent to an interference in mental or physical integrity of the individual with permanent consequences.

(2) The representative may dispose of the income of the person represented to the extent necessary to arrange ordinary matters, as is consistent with the life circumstances of the person represented; however, the representative may dispose of the funds deposited in the account of the person represented only to the extent which does not exceed the amount of monthly level for an individual under another legal regulation.

Section 53

If the person represented has multiple representatives, an act of one of them shall suffice. However, if there are multiple representatives performing acts towards another person together and these acts are contradictory, their expressions of will are disregarded.

Section 54

- (1) Representation is extinguished if waived by the representative, or if the person represented refuses to be further represented by the representative; the ability to make a wish is sufficient to express the refusal. Representation is also extinguished if a court appoints a guardian of the person represented.
- (2) If a contract for assistance in decision-making is concluded, representation is extinguished on the effective date of the contract to the extent in which the person represented is capable of making juridical acts.

Limitation of legal capacity

Section 55

(1) Legal capacity may only be limited in the interests of the individual concerned, after he has been seen by a court and with full recognition of his rights and his personal uniqueness. In so doing, the extent and degree of the individual's inability to take care of his own matters must be carefully taken into account.

(2) An individual's legal capacity may only be limited if he were otherwise under a threat of serious harm and unless milder and less restrictive measures suffice to protect his interests.

Section 56

(1) An individual's legal capacity may only be limited by a court.

The court shall take all the necessary steps to obtain the opinion of the individual whose legal capacity is subject to the court's decision also using the way of communication of the individual's choosing.

Section 57

(1) A court may limit the legal capacity of an individual to the extent to which the individual is unable to make juridical acts due to a mental disorder which is not only temporary, and shall define the extent to which it has limited the capacity of the individual to make independent juridical acts.

(2) If an individual has difficulty to communicate, this is not in itself a reason to limit his legal capacity.

Section 58

During the proceedings on the limitation of legal capacity, a court may entrust a third person with making certain individual juridical acts or administering property, if it is necessary to prevent serious harm.

Section 59

(1) The court may limit the legal capacity in relation to a particular matter for the time necessary for the disposal of the matter or for such other specified period, but not exceeding three years. If it is clear that the person's condition will not improve within that time, the court may limit the person's legal capacity for a longer period, but not more than five years.

(2) On the expiry of the period of limitation of legal capacity, the legal effects of the limitation shall cease. However, if proceedings to extend the period of limitation are commenced at that time, the legal effects of the original decision shall continue until a new decision is made, but for no longer than one year.

Section 60

If the circumstances change, a court shall, even of its own motion, change or cancel its decision without delay.

Section 61

If a court decides to limit the legal capacity of an individual, the person selected by the court to act as a guardian may apply for appointment as a guardian; if he does not file such an application, the court shall obtain his opinion. If this person is eligible to become a guardian, the court shall, with his consent, appoint the person as a guardian.

Section 62

In its decision to limit the legal capacity of an individual, a court shall appoint a guardian for the individual. When choosing a guardian, the court shall take into account the wishes of the ward, his needs as well as the suggestions of close persons of the ward, provided that they pursue his well-being, and ensure that by choosing a guardian the court does not establish a relationship of mistrust of the ward towards the guardian.

Section 63

A person lacking legal capacity, or a person whose interests are contrary to the interests of the ward, or the operator of a facility where the ward stays or which provides him with services, or a person dependent on such a facility, may not be appointed as a guardian.

Section 64

The decision to limit the legal capacity does not deprive an individual of the right to individually make juridical acts in ordinary matters of everyday life.

Section 65

(1) If the ward acted on his own without being allowed to act without a guardian, his juridical act may only be declared invalid if it has caused him harm. However, if a change of scope of the duties of the ward is sufficient as a remedy, the court shall do so without being bound by the parties' motions.

(2) If the ward acted on his own without being allowed to act without a guardian, the act of the former is considered to be valid if approved by the guardian. This also applies if the person acting approved such a juridical act himself after acquiring legal capacity.

Section 107

(1) If an individual has an agent or a fiduciary, the health care provider shall notify the agent or fiduciary of the measures taken without undue delay after becoming aware of them.

(2) A fiduciary may, in his own name and for the benefit of the individual, assert all rights of the individual created in connection with his admission to or detention in such a facility. An assisting person has the same rights as a fiduciary.

Section 108

An individual who has been admitted to or detained in a facility providing health care has the right to discuss with his representative, fiduciary or assisting person his own matters in a personal conversation and without the presence of third persons.

Section 109

(1) An individual admitted to or detained in a facility providing health care has the right to have his health condition, medical records or the attending physician's statement regarding his inability to reason and express wishes independently reviewed by a physician independent of the health care provider in this facility and its operator. A fiduciary or assisting person has the same right.

(2) If the right to review is asserted before a court decides pursuant to Section 105(2), its exercise must be allowed so that the court may consider the results of the review in the proceedings on the admissibility of the measure taken.

Section 110

If the court rules that the measure taken is admissible, the involuntary stay at a facility providing health care shall thereby be approved; however, this does not exclude the right to refuse a certain intervention or medical procedure.

BOOK TWO

FAMILY LAW

TITLE I

MARRIAGE

Chapter 1

General provision

Section 655

Marriage is a permanent union of a man and a woman formed in a manner provided by this Act. The primary purpose of marriage is the foundation of a family, proper upbringing of children and mutual support and assistance.

Section 671

Capacity to enter into marriage

Marriage may be entered into by anyone unless prevented from doing so by a legal impediment pursuant to Sections 672 to 676.

Legal impediments to marriage

Section 672

(1) Marriage may not be entered into by a minor lacking full legal capacity.

(2) A court may, in exceptional cases, allow a minor who lacks full legal capacity and has reached sixteen years of age to enter into marriage, if justified by important grounds.

Section 673

A person whose legal capacity to enter into marriage has been limited may not enter into marriage.

Division 2

Invalidity of marriage

Section 680

If a marriage has been entered into despite the existence of a legal impediment, the court shall declare the marriage invalid on the application of anyone having a legal interest therein, unless the marriage was impeded by limited legal capacity.

Chapter 4

Rights and duties of spouses

Division 1

General provisions

Section 687

(1) Spouses have equal rights and duties.

(2) Spouses are obliged to respect each other, they are obliged to live together, be faithful to each other, respect each other's dignity, support each other, maintain the family community, create a healthy family environment and jointly care of children.

Section 688

A spouse has the right be given, by the other spouse, information on his income and amount of his assets and liabilities, as well as on his existing and planned work, study and similar activities.

Section 689

When choosing his work, study and similar activities, a spouse shall take into account the interests of the family, the other spouse and a minor child who has not yet acquired full legal capacity and lives in the family household with the spouses, and the interests of other family members, where applicable.

Section 690

Satisfying family needs

Each spouse shall contribute to the needs of family life and the needs of the family household according to his personal and property situation, abilities and potential so that in principle the standard of living of all family members is comparable. Contributing property has the same relevance as personal care of the family and its members.

Section 691 [Recodification]

(1) If spouses do not have a family household, each of them bears the costs of his respective household; this does not relieve them of the duty to help and support each other.

(2) Where a common child of spouses to whom both spouses have a duty to maintain and support, or a minor child who has not yet acquired full legal capacity and has been entrusted to the care of both or one of spouses, lives with one of the spouses and the other spouse leaves the family household without having a reason deserving special consideration and refuses to return, the latter must also contribute to the costs of the family household. The reason for leaving the family household or refusing to return is assessed by a court according to the principles of decency and good morals.

Section 692

Deciding on family matters

(1) Family matters, including the choice of the place of the family household or, where applicable, the household of one of the spouses and other family members, in particular children who have not yet acquired full legal capacity, and the way of life of the family, is to be agreed by spouses.

(2) If spouses fail to agree on a substantial family matter, a court may, on the application of one of the spouses, substitute the consent of the other spouse by its decision if the spouse refuses to give his consent in such a matter of family life without a serious reason and contrary to the interests of the family, or if he is unable to express his will. However, the court shall primarily encourage the spouses to reach an agreement.

Providing for family matters

Section 693

Family matters are provided for by spouses jointly, or by one of them.

Section 694

(1) In usual family matters, a juridical act made by one of the spouses obliges and entitles both spouses jointly and severally; this does not apply if the spouse who did not make the juridical act informed a third person in advance that he disagreed with the juridical act. Also a court may, on the application of a spouse, exclude the spouse from the effects of future juridical acts made by the other spouse with respect to third persons. Such measures do not apply to juridical acts whereby a spouse provides for usual life necessities of the family and its members, especially children who have not yet acquired full legal capacity.

(2) In other family matters, a juridical act of one of the spouses obliges and entitles both spouses jointly and severally if the other spouse gave his consent to the former's juridical act; Section 692(2) applies by analogy. However, if a spouse who does not consent to a juridical act of the other spouse has not managed to obtain help from a court in advance, he may invoke the invalidity of such a juridical act.

(3) If spouses do not live together in a situation under Section 691(2), a juridical act of one of the spouses in family matters does not oblige or entitle the other spouse without his consent.

Section 695

Sections 693 and 694 do not apply to matters governed by the provisions on matrimonial property law.

Section 696

Mutual representation of spouses

(1) A spouse has the right to represent the other spouse in usual matters.

(2) A spouse does not have the right under Subsection (1) if the spouse to be represented informs in advance the person with respect to whom his spouse is to or intends to make a juridical act, that he does not consent to being represented, or if a court, on the application of a spouse, extinguishes the spouse's right of representation.

(3) Moreover, a spouse does not have the right under Subsection (1) if the spouses do not live together in a situation under Section 691(2).

Section 697

Maintenance and support between spouses

(1) Spouses have a duty to maintain and support each other to such an extent that, in principle, ensures the same material and cultural standard for both of them. The duty to maintain and support between spouses takes precedence over the children's or parents' duty to maintain and support.

(2) In other respects, the duty to maintain and support between spouses is governed by the general provisions on maintenance and support.

Usual family household equipment

Section 698

(1) Usual family household equipment consists of a set of movable things which normally serve for usual essential needs of life of the family and its members; whether individual things belong to both spouses or just one of them is not decisive.

(2) A spouse needs the consent of the other spouse to dispose of a thing which is a part of the usual equipment of a family household; this does not apply to things of negligible value.

(3) A spouse may invoke invalidity of a juridical act whereby the other spouse disposed of a thing that is part of the usual equipment of the family household without his consent.

Section 699

(1) If a spouse leaves the family household with the intention to do so permanently and refuses to return, he may request that his spouse surrender to him what belongs to the usual equipment of a family household and belongs exclusively to him. What spouses own jointly is divided equally between them, unless excluded by the nature of the thing; in that case, the general provisions of this Act on cancellation and settlement of co-ownership apply.

(2) If a spouse needs what belongs to the usual equipment of a family household, in particular also for a common minor child of the spouses who has not yet acquired full legal capacity and with respect to whom both have the duty to maintain and support, or a minor child who has not yet acquired full legal capacity was entrusted to the joint care of the spouses living in a family household and has remained in the family household, Subsection (1) does not apply.

Division 2

Matrimonial property law

Section 708

(1) What belongs to spouses, has property value and is not excluded from the legal relations forms part of the community property of the spouses (hereinafter “community property”). This does not apply if community property is extinguished by means of a statute during the marriage.

(2) Community property is subject to a statutory regime, contractual regime or a regime formed by the decision of a court.

Statutory regime

Section 709

(1) Community property includes what was acquired during the marriage by one of the spouses individually or both spouses jointly, except for what:

- a) serves the personal needs of one of the spouses,
- b) was acquired as a gift, inheritance or legacy by only one of the spouses, unless the donor in the donation or decedent in the disposition *mortis causa* expressed a different intention,
- c) was acquired by one of the spouses as compensation for non-pecuniary harm to his natural rights,
- d) was acquired by one of the spouses by a juridical act relating to his separate property,
- e) was acquired by one of the spouses as compensation for damage, destruction or loss of his separate property.

(2) Community property includes profits from what belongs exclusively to one of the spouses.

(3) Community property also includes a spouse’s share in a company or cooperative if, during the marriage, a spouse becomes a shareholder in a company or a member of a cooperative. This does not apply if one of the spouses has acquired the share in a manner constituting his separate property under Subsection (1).

Section 710

Community property includes debts assumed during the marriage, unless:

- a) they relate to property that belongs exclusively to one spouse, to the extent which exceeds the profits from such property, or
- b) they were assumed by only one spouse without the consent of the other except for debts incurred to provide for the everyday or usual needs of the family.

Section 711

(1) Acquisition and loss of individual items of community property is governed by the general provisions of this Act.

(2) The amounts of earnings, salary, wage, profit and other values for work and other gainful activities become part of community property when the spouse who contributed to obtaining them became able to dispose of them.

(3) Claims under the separate property of only one of the spouses that are to become part of the community property become part thereof on the due date.

Section 712 [Recodification]

Unless otherwise provided by this Book of this Act, the provisions of this Act on a partnership or, where applicable, on co-ownership apply by analogy to community property.

Administration under the statutory regime

Section 713

- (1) Both or one of the spouses use, take the fruits and revenues of, maintain, dispose of, manage and administer the community property as agreed.
- (2) Rights and duties associated with community property or parts thereof pertain to both spouses jointly and severally.
- (3) Juridical acts relating to community property or parts thereof oblige and entitle both spouses jointly and severally.

Section 714

- (1) In matters relating to community property and parts thereof which cannot be considered common, the spouses make juridical acts jointly, or one of the spouses acts with the consent of the other. If one of the spouses refuses to give consent without a serious reason and contrary to the interests of the spouses, family or family household or is unable to express his will, the other spouse may apply to a court to substitute the consent of his spouse.
- (2) If a spouse makes a juridical act without the consent of the other spouse where consent is required, the latter may invoke invalidity of such a juridical act.

Section 715

- (1) If part of the community property is to be used for business activities of one of the spouses and the property value of what is to be used exceeds a level appropriate to the property situation of the spouses, consent of the other spouse is required upon the first such use. If the other spouse has been omitted, he may invoke invalidity of such an act.
- (2) If part of the community property is to be used for the acquisition of a share in a company or cooperative, or if the acquisition of a share results in liability for the debts of the company or cooperative to the extent exceeding a level appropriate to the property situation of the spouses, Subsection (1) applies by analogy.

Contractual regime

Section 716

- (1) Fiancés and spouses may agree on a matrimonial property regime different from the statutory regime. If contractual regime has been agreed by spouses, they typically provide for their rights and duties relating to existing community property. If a contractual regime has been agreed as retroactive, it is disregarded.
- (2) A contract on matrimonial property regime must be in the form of a public instrument.

Section 717

- (1) Contractual regime may consist in a separate property regime, a regime reserving the creation of community property as of the date the marriage terminates, as well as a regime constituting an extension or reduction of the scope of the statutory regime of community property. The provisions on a separate property regime apply by analogy under the regime reserving the creation of community property as of the date on which the marriage terminates.
- (2) A contractual regime may be changed by agreement of the spouses or a court decision; such a change requires agreement of the spouses or a court decision on the parts of the community property in the existing regime.

Section 718

- (1) The contract may contain any stipulation and relate to any matter, unless prohibited by a statute; it may relate in particular to the scope, content and time of creation of the statutory or other community property regime, as well as individual things and sets thereof. The contract may also change the classification of the existing as well as modify the classification of the future parts of assets and liabilities differently from the statutory regime.
- (2) The contract may also specify property situation in the case of termination of marriage; where the contract stipulates arrangements in the case of termination of marriage by death, the relevant part of the contract is considered to be an inheritance contract, if it contains its elements.
- (3) The contract may not exclude or change the provisions on usual family household equipment, unless one of the spouses has permanently left the household and refuses to return.

Section 719

- (1) The consequences of a contract on matrimonial property regime may not exclude a spouse's ability to provide for the family.

(2) The content or purpose of a contract on matrimonial property regime may not affect the rights of a third person, unless the third person has consented to the contract; such a contract concluded without the consent of the third person has no legal effects with respect to the third person.

Section 720

(1) A contract of fiancés on matrimonial property regime becomes effective upon entering into marriage. If the contract relates to an already existing thing registered in a public register, the change may be registered in the register only after the marriage has been entered into.

(2) If a contract between the spouses on matrimonial property regime relates to an already existing thing registered in a public register, the contract shall, in this part, become effective with respect to third persons upon registration in that register, unless otherwise provided by this Act.

Section 721

(1) A contract on matrimonial property regime is registered in a public register if so stipulated therein, or otherwise at the request of both spouses. Everything that changes the statutory property regime of the spouses is registered in the register.

(2) The registration is made without undue delay by the person who prepared the contract, and if this is not possible, by the person who maintains the register.

Administration under the contractual regime

Section 722

(1) Fiancés and spouses may conclude a contract for the administration of what is part of their community property which derogates from the provisions of Section 713 and 714; the provisions of Sections 719 and 720 also apply to this contract.

(2) The contract under Subsection (1) stipulates which of the spouses will administer the community property or part thereof, and how.

Section 723

(1) The spouse who administers community property makes juridical acts independently in matters relating to the community property, even in judicial or other proceedings, unless otherwise provided below.

(2) The spouse who administers the entire community property may make juridical acts only with the consent of the other spouse:

a) when disposing of community property as a whole,

b) when disposing of the dwelling in which the family household of the spouses is located, if the dwelling is part of community property, or a dwelling of one of the spouses or a dwelling of a minor child who has not yet acquired full legal capacity and is in the care of the spouses, as well as when stipulating a permanent encumbrance of an immovable thing which is part of community property.

(3) Section 714(2) applies by analogy.

Regime established by a court decision

Section 724

(1) In case of a serious reason, a court shall, on the application of a spouse, cancel community property or reduce its existing scope.

(2) A serious reason shall always mean the fact that a spouse's creditor requires his claim to be secured to an extent exceeding the value of what belongs exclusively to that spouse, that a spouse may be considered prodigal, or that the spouse constantly or repeatedly takes unreasonable risks. The fact that a spouse has started pursuing business activities or become a partner of a legal person with unlimited liability may also be considered to be a serious reason.

Section 725

A regime established by a court decision may be changed by a contract between the spouses or a court decision.

Section 726

(1) A court may renew community property after having cancelled it; a court shall decide so especially where the reasons to cancel community property have ceased to exist. This applies even where a spouse applies to a court to extend community property whose scope was limited to the statutory scope.

(2) If community property has been extinguished by means of a statute, a court shall, on the application of a spouse, renew it if it is in the interest of both spouses.

Section 727

(1) A court decision may not exclude or amend provisions governing usual family household equipment.

(2) The consequences of a court decision on the change, cancellation or renewal of community property must not exclude the ability of a spouse to provide for the family, and its content or purpose may not affect the rights of a third person, unless the third person has consented to the decision.

Section 728

Administration under the regime formed by the decision of a court

If, when administering community property, a spouse acts in a manner which is clearly contrary to the interests of the other spouse, family or family household and the fiancés or spouses have not concluded a contract governing the administration of what forms part of community property, a court may, on the application of the other spouse, decide how community property will be administered.

Separate property regime

Section 729

In the separate property regime, a spouse may dispose of his property without the consent of the other spouse.

Section 730

If, under the separate property regime, spouses pursue business activities jointly or one of the spouses pursues business activities with the help of the other spouse, they shall divide the income from business activities as agreed earlier in writing; otherwise, the income is divided equally.

Protection of third persons

Section 731

If only one of the spouses incurred debt during the existence of community property, a creditor may, in the framework of enforcement of a decision, satisfy his claims from community property.

Section 732

If debt was incurred by only one of the spouses against the will of the other spouse who expressed his disagreement to the creditor without undue delay after becoming aware of the debt, community property may only be affected up to the amount equalling to a share that would belong to the debtor were community property cancelled and settled pursuant to Section 742. This also applies to a spouse's duty to provide maintenance and support or to debt arising from an unlawful act of only one of the spouses, or where debt was incurred by only one of the spouses before entering into marriage.

Section 733

If one of the spouses assumed an obligation at a period within six months before the statutory property regime was changed or excluded, either by a contract between spouses or a court decision, the claim of his creditor may be satisfied from anything that would have been part of community property but for the contract between spouses or the court decision.

Section 734

If a contract between spouses or a court decision changing or excluding the statutory property regime affects a right of a third person, in particular of a creditor, the person concerned may assert his right on the occasion of the settlement of what was formerly part of community property in the same manner as if no contract between spouses has been concluded or court decision made; in this context, Section 742 applies.

Section 735

Special provisions

Unless spouses who intend to divorce in a manner set out in Section 757 conclude an agreement on the arrangement of property rights and duties in the event of a divorce, in which, under the condition that the marriage is divorced, they also stipulate the manner in which they will acquire rights and assume

duties during separate management, the provisions on community property apply to the period of separate management with the necessary modifications, unless otherwise provided by this Act.

Settlement of community property

Section 736

If community property is cancelled or extinguished or their current scope is reduced, the common rights and duties are liquidated by means of a settlement. Until community property which is reduced, cancelled or extinguished has been settled, it is governed by the provisions on community property with the necessary modifications.

Section 737

(1) Settlement of assets and liabilities must not affect any right of a third person. If a right of a third person has been affected by a settlement, the third person may claim that a court declare the settlement ineffective with respect to this third person.

(2) Settlement of debts is effective between spouses only.

Section 738

(1) A settlement agreement is always effective as from the date on which the community property was reduced, cancelled or extinguished, regardless of whether the agreement was concluded before or after the reduction, cancellation or extinction of the community property. However, if the settlement concerns a thing which is subject to registration in a public register, the part of the agreement concerning this thing becomes legally effective upon its registration in the public register.

(2) The validity of a settlement agreement is not impeded if it concerns only a part of the common rights and duties relating to property.

Section 739

(1) A settlement agreement must be in writing if it is concluded during marriage or if the settlement concerns a thing for which an agreement on transfer of the right of ownership is also required in writing.

(2) If the settlement agreement is not required in writing and if requested by one of the spouses, the other spouse shall deliver to the former a confirmation of the contents of their settlement.

Section 740

If spouses fail to agree on a settlement, any of them may apply to a court for a decision. The settlement is decided on by a court based on the state existing at the time when the reduction, cancellation or extinction of community property became effective.

Section 741

If, within three years from reduction, cancellation or extinction of community property, no settlement of what was formerly part of the community property takes place, even by agreement, and no application for settlement by a court decision is filed, the spouses or former spouses are conclusively presumed to have settled as follows:

- a) corporeal movable things are owned by the spouse who uses them exclusively as an owner for his own needs or the needs of his family or family household,
- b) other corporeal movable things and immovable things are under undivided co-ownership of both spouses; their shares are equal,
- c) other property rights, claims and debts belong to both spouses jointly; their shares are equal.

Section 742

(1) Unless the spouses or former spouses agree otherwise or if Section 741 does not apply, the settlement is governed by the following rules:

- a) the shares of both spouses on the assets and liabilities being settled are the same,
- b) each of the spouses shall reimburse the part of the common property which was expended on his exclusive property,
- c) each of the spouses has the right to request that he be reimbursed for the part of his exclusive property which he expended on the common property,
- d) account is taken of the needs of dependent children,
- e) account is taken of the way each of the spouses cared for the family, in particular how he took care of the children and the family household,

f) account is taken of the way each of the spouses contributed to the acquisition and maintenance of property values pertaining to the community property.

(2) When settling community property, the value of the part of the community property which was expended on exclusive property of a spouse, as well as the value of the part of the exclusive property of a spouse which was expended on community property, is included after having been increased or decreased depending on the increase or decrease in the value of the part of the property on which the cost was incurred in a period from the date the property was expended until the date the community property was reduced, cancelled or extinguished.

Certain provisions on the housing of spouses

Section 743

(1) A family household is at the place of the dwelling of the spouses.

(2) If a spouse requests, for serious reasons, that the family household be relocated, the other spouse should accommodate such a request unless the reasons for staying outweigh the reasons for such a change.

(3) Spouses may agree to permanently live separately. An agreement of spouses on separate housing has the same legal effect as leaving the family household with the intent to live permanently elsewhere.

Section 744 [Recodification]

If the dwelling of spouses is a building or an apartment to which one of the spouses has an exclusive right allowing him to live in the building or apartment other than a right arising from an obligation, the other spouse shall acquire a right of residence upon entering into marriage. If such an exclusive right of one of the spouses is created during marriage, the other spouse acquires thereby a right of residence.

Section 745

(1) If the dwelling of spouses is a building or an apartment which one of the spouses uses on the basis of a lease as of the date on which the marriage was entered into, both spouses shall acquire joint lease of the building or apartment upon entering into marriage; if a lease contract is concluded at a later time, joint lease of both spouses is created upon the effective date of the contract. This also applies, by analogy, to other similar rights arising from an obligation.

(2) Subsection (1) does not apply if spouses agree otherwise.

Section 746

(1) Spouses having a joint lease of a building or an apartment are entitled and obliged jointly and severally.

(2) A spouse having the right of residence is in the position of a surety for his spouse.

Section 747

(1) If at least one of the spouses has a right to dispose of a building or apartment in which the family household of the spouses or the family is located and the building or apartment is essential for the residence of the spouses or family, he must refrain from and avoid all that may prevent or endanger such residence. Without the consent of the other spouse, a spouse may not, in particular, alienate such a building or an apartment or create such a right to the building, its part or the whole apartment the exercise of which is incompatible with the housing of the spouses or family, unless he provides his spouse or family with housing which is in all respects similar to the existing one.

(2) If a spouse acts without the consent of the other spouse contrary to Subsection (1), the spouse may invoke invalidity of such a juridical act.

Section 748

(1) If spouses have a joint lease of a building or an apartment in which the family household of the spouses or family is located, first sentence of Section 747(1) applies by analogy. Without the consent of the other spouse, a spouse may not end the lease or limit the lease by a right, the exercise of which is incompatible with the housing of the spouses or family.

(2) If a spouse acts without the consent of the other spouse contrary to Subsection (1), the spouse may invoke invalidity of such a juridical act.

Section 749

The consent of a spouse under Sections 747 and 748 must be in writing.

Section 750

(1) If spouses or fiancés agree by way of derogation from Sections 747 and 748, such an agreement may not deteriorate the position of their common minor child who has not acquired full legal capacity and lives with them in the family household, and to which they have the duty to maintain and support, or a minor child who has not acquired full legal capacity and has been placed in the joint care of both or one of the spouses; furthermore, the agreement may not affect the rights of third persons, unless they have consented to such an agreement.

(2) The agreement and consent of third persons under Subsection (1) must be in writing.

BOOK FOUR

RELATIVE PROPERTY RIGHTS

Chapter 2

Agency without mandate and the use of a thing of another for the benefit of another person

Division 1

Agency without mandate

Section 3006

Basic provisions

If a person interferes in the matters of another person without being entitled to do so, he bears the resulting consequences.

Section 3007

Prevention of damage

If a person, without being called upon to do so, arranges a matter of another to prevent imminent damage, the person whose matter was arranged shall reimburse the reasonably incurred costs, even where no result was achieved for reasons not attributable to the agent without mandate.

Section 3008

Salvaging a thing of another

A person who salvages a thing of another from an inevitable loss or decay is entitled to adequate remuneration of no more than a tenth of the price of the thing, and to reimbursement of reasonably incurred costs. The owner of the thing is relieved of the duty to provide the payment if he does not reclaim the salvaged thing.

Section 3009

Acts for the benefit of another person

(1) If someone assumes a matter for the benefit of another person without the person's consent, the person shall reimburse him for the reasonably incurred costs if the matter has been arranged for the predominant benefit of the person. Whether a matter has been carried out for the benefit of another is not assessed according to general considerations, but by having regard to his understandable interests and intentions.

(2) If a benefit is not predominant, an agent without mandate is not entitled to reimbursement of costs. The person whose matters the agent without mandate assumed may require the agent without mandate to restore everything to its original state, and where this is not reasonably possible, to compensate for the damage.

Common provisions

Section 3010

A person who assumed a matter of another without mandate shall see it through, present the relevant accounts and transfer everything acquired in doing so to the person whose matter was arranged.

Section 3011

If an agent without mandate is not entitled to reimbursement of costs, he may take what he acquired at his own expense, if it is possible and if it does not deteriorate the essence of the thing or unreasonably hampers its use.

Division 2

Using a thing of another for the benefit of another person

Section 3012

Basic provisions

If someone uses a thing of another for the benefit of another person without the intention to arrange a matter of another, and if it is not reasonably possible to achieve the surrender of the thing, the owner of thing may require him to provide compensation for the value of the thing at the time it was used, even where the benefit was not achieved.

Section 3013

A person who incurs a cost for another person which that person was required to incur himself has right to claim reimbursement.

Section 3014

If a person in difficulties sacrifices a thing in order to prevent greater damage, each of the persons benefiting from the situation shall provide the victim with a proportionate compensation.

89/2012 Sb.

ZÁKON
ze dne 3. února 2012

občanský zákoník
Změna: 460/2016 Sb. (část)
Změna: 460/2016 Sb.
Změna: 460/2016 Sb. (část), 303/2017 Sb.
Změna: 111/2018 Sb.
Změna: 171/2018 Sb.
Změna: 163/2020 Sb.
Změna: 33/2020 Sb.
Změna: 192/2021 Sb.

Parlament se usnesl na tomto zákoně České republiky:

ČÁST PRVNÍ

OBEČNÁ ČÁST

HLAVA I

PŘEDMĚT ÚPRAVY A JEJÍ ZÁKLADNÍ ZÁSADY

Díl 1
Soukromé právo

§ 1

(1) Ustanovení právního řádu upravující vzájemná práva a povinnosti osob vytvářejí ve svém souhrnu soukromé právo. Uplatňování soukromého práva je nezávislé na uplatňování práva veřejného.

(2) Nezakazuje-li to zákon výslovně, mohou si osoby ujednat práva a povinnosti odchylně od zákona; zakázána jsou ujednání porušující dobré mravy, veřejný pořádek nebo právo týkající se postavení osob, včetně práva na ochranu osobnosti.

HLAVA II

OSOBY

Díl 1
Všeobecná ustanovení

§ 15

(1) Právní osobnost je způsobilost mít v mezích právního řádu práva a povinnosti.

(2) Svěprávnost je způsobilost nabývat pro sebe vlastním právním jednáním práva a zavazovat se k povinnostem (právně jednat).

Díl 2

Fyzické osoby

Oddíl 1
Obecná ustanovení

§ 23

Člověk má právní osobnost od narození až do smrti.

§ 24

Každý člověk odpovídá za své jednání, je-li s to posoudit je a ovládnout. Kdo se vlastní vinou přivede do stavu, v němž by jinak za své jednání odpovědný nebyl, odpovídá za jednání v tomto stavu učiněná.

Oddíl 2

Podpůrná opatření při narušení schopnosti zletilého právně jednat

Předběžné prohlášení

§ 38

V očekávání vlastní nezpůsobilosti právně jednat může člověk projevit vůli, aby byly jeho záležitosti spravovány určitým způsobem, nebo aby je spravovala určitá osoba, nebo aby se určitá osoba stala jeho opatrovníkem.

§ 39

(1) Nemá-li prohlášení formu veřejné listiny, musí být učiněno soukromou listinou opatřenou datem a potvrzenou dvěma svědky; svědek o sobě uvede v potvrzení údaje, podle nichž ho lze zjistit.

(2) Svědky mohou být jen osoby, které na prohlášení a jeho obsahu nemají zájem a nejsou nevidomé, neslyšící, němé nebo neznalé jazyka, v němž je prohlášení učiněno. Svědci musí prohlášení podepsat a být schopni potvrdit schopnost prokládajícího jednat a obsah jeho prohlášení.

(3) Je-li obsahem prohlášení pořízeného veřejnou listinou určení, kdo se má stát opatrovníkem, ten, kdo veřejnou listinu sepsal, запиše údaje o tom, kdo prohlášení pořídil, kdo je povolán za opatrovníka a kdo veřejnou listinu sepsal, do neveřejného seznamu vedeného podle jiného zákona.

§ 40

(1) Činí-li prohlášení nevidomý, nebo osoba, která neumí nebo nemůže číst nebo psát, musí jí být prohlášení nahlas přečteno svědkem, který prohlášení nepsal. Nevidomý, nebo osoba, která neumí nebo nemůže číst nebo psát, před svědky potvrdí, že listina obsahuje jeho pravou vůli.

(2) Činí-li prohlášení osoba se smyslovým postižením, která nemůže číst nebo psát, musí jí být obsah listiny tlumočen takovým způsobem dorozumívání, který si zvolila, a to svědkem, který prohlášení nepsal; všichni svědci musí ovládat způsob dorozumívání, kterým je obsah listiny tlumočen. Kdo prohlášení činí, potvrdí před svědky zvoleným způsobem dorozumívání, že listina obsahuje jeho pravou vůli.

§ 41

(1) K výslovnému odvolání prohlášení se vyžaduje projev vůle učiněný ve formě předepsané v § 39 odst. 1.

(2) Zničí-li listinu obsahující prohlášení ten, kdo je učinil, má to účinky odvolání.

§ 42

Týká-li se prohlášení jiné záležitosti než povolání opatrovníka a je-li účinnost prohlášení vázána na podmínku, rozhodne o splnění podmínky soud.

§ 43

Změní-li se okolnosti zjevně tak podstatným způsobem, že člověk, který prohlášení učinil, by je za takových okolností neučinil nebo by je učinil s jiným obsahem, soud prohlášení změní nebo zruší, pokud by jinak člověku, který prohlášení učinil, hrozila závažná újma. Před vydáním rozhodnutí soud vyvine potřebné úsilí, aby zjistil názor člověka, o jehož prohlášení rozhoduje, a to i za použití takového způsobu dorozumívání, který si člověk zvolí.

§ 44

Je-li prohlášení nebo jeho odvolání neplatné, soud k nim přihlédne, není-li příčiny pochybovat o vůli toho, kdo je učinil.

Nápomoc při rozhodování

§ 45

Potřebuje-li člověk nápomoc při rozhodování, protože mu v tom duševní porucha působí obtíže, třebaže nemusí být omezen ve svéprávnosti, může si s podpůrcem ujednat poskytování podpory; podpůrců může být i více.

§ 46

(1) Smlouvou o nápomoci se podpůrce zavazuje podporovanému, že bude s jeho souhlasem přítomen při jeho právních jednáních, že mu zajistí potřebné údaje a sdělení a že mu bude nápomocen radami.

(2) Smlouva nabývá účinnosti dnem, kdy ji schválí soud. Není-li smlouva uzavřena v písemné formě, vyžaduje se, aby strany projevily vůli uzavřít smlouvu před soudem. Soud smlouvu neschválí, odporují-li zájmy podpůrce zájmům podporovaného.

§ 47

(1) Podpůrce nesmí ohrožit zájmy podporovaného nevhodným ovlivňováním, ani se na úkor podporovaného bezdůvodně obohatit.

(2) Podpůrce postupuje při plnění svých povinností v souladu s rozhodnutími podporovaného. Pokud podporovaný právně jedná v písemné formě, může podpůrce připojit svůj podpis s uvedením své funkce, popřípadě i s údajem o podpoře, kterou podporovanému poskytl; podpůrce má i právo namítat neplatnost právního jednání podporovaného.

§ 48

Na návrh podporovaného nebo podpůrce soud podpůrce odvolá; soud ho odvolá i v případě, že podpůrce závažně poruší své povinnosti, a to i bez návrhu.

Zastoupení členem domácnosti

§ 49

(1) Brání-li duševní porucha zletilému, který nemá jiného zástupce, samostatně právně jednat, může ho zastupovat jeho potomek, předek, sourozenec, manžel nebo partner, nebo osoba, která se zastoupeným žila před vznikem zastoupení ve společné domácnosti alespoň tři roky.

(2) Zástupce dá zastoupenému na vědomí, že ho bude zastupovat, a srozumitelně mu vysvětlí povahu a následky zastoupení. Odmítne-li to člověk, který má být zastoupen, zastoupení nevznikne; k odmítnutí postačí schopnost projevit přání.

§ 50

Ke vzniku zastoupení se vyžaduje schválení soudu. Před vydáním rozhodnutí soud vyvine potřebné úsilí, aby zjistil názor zastoupeného, a to i za použití takového způsobu dorozumívání, který si zastoupený zvolí.

§ 51

Zástupce dbá o ochranu zájmů zastoupeného a naplňování jeho práv i o to, aby způsob jeho života nebyl v rozporu s jeho schopnostmi a aby, nelze-li tomu rozumně odporovat, odpovídal i zvláštním představám a přáním zastoupeného.

§ 52

(1) Zastoupení se vztahuje na obvyklé záležitosti, jak to odpovídá životním poměrům zastoupeného. Zástupce však není oprávněn udělit souhlas k zásahu do duševní nebo tělesné integrity člověka s trvalými následky.

(2) Zástupce může nakládat s příjmy zastoupeného v rozsahu potřebném pro obstarání obvyklých záležitostí, jak to odpovídá životním poměrům zastoupeného; s peněžními prostředky na účtu zastoupeného však může nakládat jen v rozsahu nepřesahujícím měsíčně výši životního minima jednotlivce podle jiného právního předpisu.

§ 53

Má-li zastoupený více zástupců, postačí, pokud jedná jeden z nich. Jedná-li však vůči další osobě více zástupců společně a odporují-li si, nepřihlíží se k projevu žádného z nich.

§ 54

(1) Zastoupení zaniká, pokud se jej zástupce vzdá nebo pokud zastoupený odmítne, aby ho zástupce dále zastupoval; k odmítnutí postačí schopnost projevit přání. Zastoupení rovněž zaniká, pokud soud jmenuje zastoupenému opatrovníka.

(2) Je-li uzavřena smlouva o nápomoci při rozhodování, zanikne zastoupení účinností smlouvy v rozsahu, v jakém je zastoupený způsobilý právně jednat.

Omezení svéprávnosti

§ 55

(1) K omezení svéprávnosti lze přistoupit jen v zájmu člověka, jehož se to týká, po jeho zhlédnutí a s plným uznáváním jeho práv a jeho osobní jedinečnosti. Přitom musí být důkladně vzaty v úvahu rozsah i stupeň neschopnosti člověka postarat se o vlastní záležitosti.

(2) Omezit svéprávnost člověka lze jen tehdy, hrozila-li by mu jinak závažná újma a nepostačí-li vzhledem k jeho zájmům mírnější a méně omezující opatření.

§ 56

(1) Omezit svéprávnost člověka může jen soud.

(2) Soud vyvine potřebné úsilí, aby zjistil názor člověka, o jehož svéprávnosti rozhoduje, a to i za použití takového způsobu dorozumívání, který si člověk zvolí.

§ 57

(1) Soud může omezit svéprávnost člověka v rozsahu, v jakém člověk není pro duševní poruchu, která není jen přechodná, schopen právně jednat, a vymezí rozsah, v jakém způsobilost člověka samostatně právně jednat omezil.

(2) Má-li člověk obtíže dorozumívat se, není to samo o sobě důvodem k omezení svéprávnosti.

§ 58

Soud může v průběhu řízení o omezení svéprávnosti svěřit třetí osobě provedení určitých jednotlivých právních jednání nebo správu majetku, je-li to nutné, aby se zabránilo závažné újmě.

§ 59

(1) Soud může svéprávnost omezit v souvislosti s určitou záležitostí na dobu nutnou pro její vyřízení, nebo na jinak určenou určitou dobu, nejdéle však na tři roky. Je-li zjevné, že se stav člověka v této době nezlepší, může soud svéprávnost omezit na dobu delší, nejdéle však na pět let.

(2) Uplynutím doby omezení svéprávnosti právní účinky omezení zanikají. Zahájí-li se však v této době řízení o prodloužení doby omezení, trvají právní účinky původního rozhodnutí až do nového rozhodnutí, nejdéle však jeden rok.

§ 60

Změní-li se okolnosti, soud své rozhodnutí bezodkladně změní nebo zruší, a to i bez návrhu.

§ 61

Rozhoduje-li soud o omezení svéprávnosti člověka, může osoba jím povoláná za opatrovníka navrhnout, aby byla opatrovníkem jmenována; pokud návrh nepodá, zjistí soud její stanovisko. Je-li tato osoba způsobilá k opatrovnictví, soud ji s jejím souhlasem opatrovníkem jmenuje.

§ 62

V rozhodnutí o omezení svéprávnosti jmenuje soud člověku opatrovníka. Při výběru opatrovníka přihlédne soud k přáním opatrovance, k jeho potřebě i k podnětům osob opatrovanci blízkých, sledují-li jeho prospěch, a dbá, aby výběrem opatrovníka nezaložil nedůvěru opatrovance k opatrovníkovi.

§ 63

Opatrovníkem nelze jmenovat osobu nezpůsobilou právně jednat nebo osobu, jejíž zájmy jsou v rozporu se zájmy opatrovance, ani provozovatele zařízení, kde opatrovanec pobývá nebo které mu poskytuje služby, nebo osobu závislou na takovém zařízení.

§ 64

Rozhodnutí o omezení svéprávnosti nezabavuje člověka práva samostatně právně jednat v běžných záležitostech každodenního života.

§ 65

(1) Jednal-li opatrovanec samostatně, ač nemohl jednat bez opatrovníka, lze jeho právní jednání prohlásit za neplatné, jen působí-li mu újmu. Postačí-li však k nápravě jen změna rozsahu opatrovancových povinností, soud tak učiní, aniž je vázán návrhy stran.

(2) Jednal-li opatrovanec samostatně, ač nemohl jednat bez opatrovníka, považuje se opatrovancovo jednání za platné, pokud je opatrovník schválil. To platí i v případech, že takové právní jednání schválil jednající sám poté, co nabyl svéprávnosti.

ČÁST DRUHÁ
RODINNÉ PRÁVO
HLAVA I
MANŽELSTVÍ

Díl 1
Všeobecné ustanovení

§ 655

Manželství je trvalý svazek muže a ženy vzniklý způsobem, který stanoví tento zákon. Hlavním účelem manželství je založení rodiny, řádná výchova dětí a vzájemná podpora a pomoc.

§ 671

Způsobilost uzavřít manželství

Manželství může uzavřít každý, pokud mu v tom nebrání zákonná překážka podle § 672 až 676.

Zákonné překážky manželství

§ 672

(1) Manželství nemůže uzavřít nezletilý, který není plně svéprávný.

(2) Soud může ve výjimečných případech povolit uzavření manželství nezletilému, který není plně svéprávný a dovršil šestnácti let věku, jsou-li pro to důležité důvody.

§ 673

Manželství nemůže uzavřít osoba, jejíž svéprávnost byla v této oblasti omezena.

Oddíl 2

Neplatnost manželství

§ 680

Došlo-li k uzavření manželství, přestože tomu bránila zákonná překážka, soud prohlásí manželství za neplatné na návrh každého, kdo na tom má právní zájem, ledaže manželství bránila překážka omezené svéprávnosti.

Díl 4

Povinnosti a práva manželů

Oddíl 1
Obecná ustanovení

§ 687

(1) Manželé mají rovné povinnosti a rovná práva.

(2) Manželé si jsou navzájem povinni úctou, jsou povinni žít spolu, být si věrni, vzájemně respektovat svou důstojnost, podporovat se, udržovat rodinné společenství, vytvářet zdravé rodinné prostředí a společně pečovat o děti.

§ 688

Manžel má právo na to, aby mu druhý manžel sdělil údaje o svých příjmech a stavu svého jmění, jakož i o svých stávajících i uvažovaných pracovních, studijních a podobných činnostech.

§ 689

Manžel je povinen při volbě svých pracovních, studijních a podobných činností brát zřetel na zájem rodiny, druhého manžela a nezletilého dítěte, které nenabýlo plné svéprávnosti a které žije spolu s manžely v rodinné domácnosti, a popřípadě dalších členů rodiny.

§ 690

Uspokojování potřeb rodiny

Každý z manželů přispívá na potřeby života rodiny a potřeby rodinné domácnosti podle svých osobních a majetkových poměrů, schopností a možností tak, aby životní úroveň všech členů rodiny byla zásadně srovnatelná. Poskytování majetkových plnění má stejný význam jako osobní péče o rodinu a její členy.

§ 691

(1) Nemají-li manželé rodinnou domácnost, nese každý z nich náklady své domácnosti; to je nezbavuje povinností navzájem si pomáhat a podporovat se.

(2) Žije-li s jedním z manželů společné dítě manželů, vůči kterému mají oba vyživovací povinnost, popřípadě nezletilé dítě, které nenabýlo plné svéprávnosti a které je svěřeno do péče manželů nebo jednoho z nich, a druhý manžel opustí rodinnou domácnost, aniž k tomu má důvod zvláštního zřetele hodný, a odmítá se vrátit, je tento manžel povinen přispívat i na náklady rodinné domácnosti. Důvod opuštění rodinné domácnosti, popřípadě důvod odmítání návratu, posoudí soud podle zásad slušnosti a dobrých mravů.

§ 692

Rozhodování o záležitostech rodiny

(1) O záležitostech rodiny, včetně volby umístění rodinné domácnosti, popřípadě domácnosti jednoho z manželů a dalších členů rodiny, především dětí, které nenabýly plné svéprávnosti, a o způsobu života rodiny, se mají manželé dohodnout.

(2) Nedohodnou-li se manželé o podstatné záležitosti rodiny, může soud na návrh jednoho z nich nahradit svým rozhodnutím souhlas druhého manžela, odmítá-li svůj souhlas v takové záležitosti rodinného života bez vážného důvodu a v rozporu se zájmem rodiny, anebo není-li schopen vůli projevit. Soud však vede manžele především k dohodě.

Obstarávání záležitostí rodiny

§ 693

Záležitosti rodiny obstarávají manželé společně, nebo je obstarává jeden z nich.

§ 694

(1) V běžných záležitostech rodiny právní jednání jednoho manžela zavazuje a opravňuje oba manžele společně a nerozdílně; to neplatí, sdělil-li manžel, který právně nejednal, předem třetí osobě, že s právním jednáním nesouhlasí. Také soud může na návrh manžela pro něho vyloučit následky budoucího právního jednání druhého manžela vůči třetím osobám. Taková opatření se netýkají právních jednání, jimiž manžel obstarává běžně nezbytné životní potřeby rodiny a jejích členů, zejména dětí, které nenabýly plně svéprávnosti.

(2) V ostatních záležitostech rodiny právní jednání jednoho manžela zavazuje a opravňuje oba manžele společně a nerozdílně, dal-li druhý manžel k právnímu jednání manžela souhlas; ustanovení § 692 odst. 2 se použije obdobně. Nedovolá-li se však manžel, který s právním jednáním druhého manžela nesouhlasí, pomoci soudu předem, může se dovolat neplatnosti takového právního jednání.

(3) Nežijí-li manželé spolu za situace uvedené v § 691 odst. 2, právní jednání jednoho manžela v záležitostech rodiny druhého manžela bez jeho souhlasu nezavazuje ani neopravňuje.

§ 695

Ustanovení § 693 a 694 se nepoužijí pro záležitosti upravené ustanoveními o majetkovém právu manželském.

§ 696

Vzájemné zastupování manželů

(1) Manžel má právo zastupovat svého manžela v jeho běžných záležitostech.

(2) Manžel právo uvedené v odstavci 1 nemá, sdělí-li předem manžel, který má být zastoupen, tomu, s nímž jeho manžel má právně jednat nebo má v úmyslu právně jednat, že se zastoupením nesouhlasí, anebo zruší-li soud na návrh manžela zástupčí právo druhého manžela.

(3) Právo uvedené v odstavci 1 manžel nemá ani tehdy, nežijí-li manželé spolu za situace uvedené v § 691 odst. 2.

§ 697

Výživné mezi manžely

(1) Manželé mají vzájemnou vyživovací povinnost v rozsahu, který oběma zajišťuje zásadně stejnou hmotnou a kulturní úroveň. Vyživovací povinnost mezi manžely předchází vyživovací povinnosti dítěte i rodičů.

(2) Pro vyživovací povinnost mezi manžely jinak platí obecná ustanovení o výživném.

Obvyklé vybavení rodinné domácnosti

§ 698

(1) Obvyklé vybavení rodinné domácnosti tvoří soubor movitých věcí, které slouží běžně nezbytným životním potřebám rodiny a jejích členů; přitom není rozhodné, zda jednotlivé věci náleží oběma manželům nebo jen jednomu z nich.

(2) K nakládání s věcí, která je součástí obvyklého vybavení rodinné domácnosti, potřebuje manžel souhlas druhého manžela; to neplatí, jedná-li se o věc zanedbatelné hodnoty.

(3) Manžel se může dovolat neplatnosti právního jednání, jímž druhý manžel s věcí, která je součástí obvyklého vybavení rodinné domácnosti, naložil bez jeho souhlasu.

§ 699

(1) Opustí-li manžel rodinnou domácnost v úmyslu učinit tak trvale a odmítá se vrátit, může žádat, aby mu manžel vydal to, co patří k obvyklému vybavení rodinné domácnosti a náleží výhradně jemu. Co náleží manželům společně, si manželé rozdělí rovným dílem, ledaže to povaha věci vylučuje; v takovém případě se použijí obecná ustanovení tohoto zákona o zrušení a vypořádání spoluvlastnictví.

(2) Potřebuje-li manžel to, co patří k obvyklému vybavení rodinné domácnosti, zejména také pro společné nezletilé dítě manželů, které nenabýlo plné svéprávnosti a vůči kterému mají oba vyživovací povinnost, nebo pro nezletilé dítě, které nenabýlo plné svéprávnosti, bylo svěřeno do společné péče manželů žijící v rodinné domácnosti a v rodinné domácnosti zůstalo, odstavec 1 se nepoužije.

Oddíl 2

Manželské majetkové právo

§ 708

(1) To, co manželům náleží, má majetkovou hodnotu a není vyloučeno z právních poměrů, je součástí společného jmění manželů (dále jen „společné jmění“). To neplatí, zanikne-li společné jmění za trvání manželství na základě zákona.

(2) Společné jmění podléhá zákonnému režimu, nebo smluvenému režimu, anebo režimu založenému rozhodnutím soudu.

Zákonný režim

§ 709

(1) Součástí společného jmění je to, čeho nabyl jeden z manželů nebo čeho nabyli oba manželé společně za trvání manželství, s výjimkou toho, co

- a) slouží osobní potřebě jednoho z manželů,
- b) nabyl darem, děděním nebo odkazem jen jeden z manželů, ledaže dárce při darování nebo zůstavitel v pořízení pro případ smrti projevil jiný úmysl,
- c) nabyl jeden z manželů jako náhradu nemajetkové újmy na svých přirozených právech,
- d) nabyl jeden z manželů právním jednáním vztahujícím se k jeho výlučnému vlastnictví,
- e) nabyl jeden z manželů náhradou za poškození, zničení nebo ztrátu svého výhradního majetku.

(2) Součástí společného jmění je zisk z toho, co náleží výhradně jednomu z manželů.

(3) Součástí společného jmění je také podíl manžela v obchodní společnosti nebo družstvu, stal-li se manžel v době trvání manželství společníkem obchodní společnosti nebo členem družstva. To neplatí, pokud jeden z manželů nabyl podíl způsobem zakládajícím podle odstavce 1 jeho výlučné vlastnictví. Nabytí podílu nezakládá účast druhého manžela na této společnosti nebo družstvu, s výjimkou bytových družstev.

§ 710

Součástí společného jmění jsou dluhy převzaté za trvání manželství, ledaže

a) se týkájí majetku, který náleží výhradně jednomu z manželů, a to v rozsahu, který přesahuje zisk z tohoto majetku, nebo

b) je převzal jen jeden z manželů bez souhlasu druhého, aniž se přitom jednalo o obstarávání každodenních nebo běžných potřeb rodiny.

§ 711

(1) O nabytí a pozbytí jednotlivých součástí společného jmění platí obecná ustanovení tohoto zákona.

(2) Částky výdělků, platu, mzdy, zisku a jiných hodnot z pracovní a jiné výdělečné činnosti se stávají součástí společného jmění v okamžiku, kdy manžel, který se o jejich získání přičinil, nabytí možnost s nimi nakládat.

(3) Pohledávky z výhradního majetku jen jednoho z manželů, které se mají stát součástí společného jmění, se součástí společného jmění stávají dnem splatnosti.

§ 712

Není-li v této části zákona stanoveno jinak, použijí se pro společné jmění obdobně ustanovení tohoto zákona o společnosti, popřípadě ustanovení o spoluvlastnictví.

Správa v zákonném režimu

§ 713

(1) Součástí společného jmění užívají, berou z nich plody a užitky, udržují je, nakládají s nimi, hospodaří s nimi a spravují je oba manželé nebo jeden z nich podle dohody.

(2) Povinnosti a práva spojená se společným jměním nebo jeho součástmi náleží oběma manželům společně a nerozdílně.

(3) Z právních jednání týkajících se společného jmění nebo jeho součástí jsou manželé zavázáni a oprávněni společně a nerozdílně.

§ 714

(1) V záležitostech týkajících se společného jmění a jeho součástí, které nelze považovat za běžné, právně jednají manželé společně, nebo jedná jeden manžel se souhlasem druhého. Odmítá-li manžel dát souhlas bez vážného důvodu a v rozporu se zájmem manželů, rodiny nebo rodinné domácnosti, či není-li schopen vůli projevit, může druhý manžel navrhnout, aby souhlas manžela nahradil soud.

(2) Jedná-li právně manžel bez souhlasu druhého manžela v případě, kdy souhlasu bylo zapotřebí, může se druhý manžel dovolat neplatnosti takového jednání.

§ 715

(1) Má-li být součástí společného jmění použita k podnikání jednoho z manželů a přesahuje-li majetková hodnota toho, co má být použito, míru přiměřenou majetkovým poměrům manželů, vyžaduje se při prvním takovém použití souhlas druhého manžela. Byl-li druhý manžel opomenut, může se dovolat neplatnosti takového jednání.

(2) Má-li být součástí společného jmění použita k nabytí podílu v obchodní společnosti nebo družstvu, nebo je-li důsledkem nabytí podílu ručení za dluhy společnosti nebo družstva v rozsahu přesahujícím míru přiměřenou majetkovým poměrům manželů, platí odstavec 1 obdobně.

Smluvený režim

§ 716

(1) Snoubenci a manželé si mohou ujednat manželský majetkový režim odlišný od zákonného režimu. Ujednají-li si smluvený režim manželé, upraví zpravidla své povinnosti a práva týkající se již existujícího společného jmění. Ujednají-li se pro smluvený režim zpětný účinek, nepřihlíží se k tomu.

(2) Smlouva o manželském majetkovém režimu vyžaduje formu veřejné listiny.

§ 717

(1) Smluvený režim může spočívat v režimu oddělených jmění, v režimu vyhrazujícím vznik společného jmění ke dni zániku manželství, jakož i v režimu rozšíření nebo zúžení rozsahu společného jmění v zákonném režimu. Ustanovení o režimu oddělených jmění se použijí obdobně v režimu vyhrazujícím vznik společného jmění ke dni zániku manželství.

(2) Smluvený režim lze změnit dohodou manželů nebo rozhodnutím soudu; taková změna vyžaduje dohodu manželů nebo rozhodnutí soudu o součástech společného jmění v dosavadním režimu.

§ 718

(1) Smlouva může obsahovat jakékoli ujednání a týkat se jakékoli věci, ledaže to zákon zakazuje; může se týkat zejména rozsahu, obsahu, doby vzniku zákonného nebo jiného režimu společného jmění, jednotlivých věcí i jejich souborů. Smlouvou lze změnit zařazení již existujících i upravit zařazení budoucích součástí jmění rozdílně od zákonného režimu.

(2) Smlouvou lze rovněž uspořádat majetkové poměry pro případ zániku manželství; jedná-li se o uspořádání pro případ zániku manželství smrtí, považuje se v této části smlouva za smlouvu dědickou, má-li její náležitosti.

(3) Smlouvou nelze vyloučit ani změnit ustanovení o obvyklém vybavení rodinné domácnosti, ledaže jeden z manželů opustil trvale domácnost a odmítá se vrátit.

§ 719

(1) Smlouva o manželském majetkovém režimu nesmí svými důsledky vyloučit schopnost manžela zabezpečovat rodinu.

(2) Smlouva o manželském majetkovém režimu se nesmí svým obsahem nebo účelem dotknout práv třetí osoby, ledaže by se smlouvou souhlasila; tato smlouva uzavřená bez souhlasu třetí osoby nemá vůči ní právní účinky.

§ 720

(1) Smlouva snoubenců o manželském majetkovém režimu nabývá účinnosti uzavřením manželství. Týká-li se smlouva již existující věci zapsané do veřejného seznamu, lze provést do tohoto seznamu zápis změny až po uzavření manželství.

(2) Týká-li se smlouva manželů o manželském majetkovém režimu již existující věci zapsané do veřejného seznamu, nabývá smlouva v této části účinky vůči třetím osobám zápisem do tohoto seznamu, ledaže tento zákon stanoví jinak.

§ 721

(1) Smlouva o manželském majetkovém režimu se zapisuje do veřejného seznamu, je-li to v ní ujednáno; jinak na žádost obou manželů. Do seznamu se zapisuje vše, co mění zákonný majetkový režim manželů.

(2) Zápis provede bez zbytečného odkladu ten, kdo smlouvu sepsal, a není-li to možné, ten, kdo seznam vede.

Správa ve smluveném režimu

§ 722

(1) Snoubenci i manželé mohou uzavřít smlouvu o správě toho, co je součástí společného jmění, která se odchyluje od ustanovení § 713 a 714; ustanovení § 719 a 720 platí i pro tuto smlouvu.

(2) Smlouva podle odstavce 1 obsahuje ujednání o tom, který manžel bude spravovat společné jmění nebo jeho součást a jakým způsobem.

§ 723

(1) Manžel, který spravuje společné jmění, právně jedná v záležitostech týkajících se společného jmění samostatně, a to i v soudním nebo jiném řízení, ledaže je dále stanoveno jinak.

(2) Manžel, který spravuje všechno společné jmění, může právně jednat jen se souhlasem druhého manžela

a) při nakládání se společným jměním jako celkem,

b) při nakládání s obydílím, v němž je rodinná domácnost manželů, je-li toto obydlí součástí společného jmění, nebo které je obydílím jednoho z nich, anebo obydílím nezletilého dítěte, které nenabylo plné svéprávnosti a o něž manželé pečují, jakož i při ujednání trvalého zatížení nemovité věci, která je součástí společného jmění.

(3) Ustanovení § 714 odst. 2 platí obdobně.

Režim založený rozhodnutím soudu

§ 724

(1) Je-li pro to závažný důvod, soud na návrh manžela společné jmění zruší nebo zúží jeho stávající rozsah.

(2) Závažným důvodem je vždy skutečnost, že manželův věřitel požaduje zajištění své pohledávky v rozsahu přesahujícím hodnotu toho, co náleží výhradně tomuto manželu, že manžela lze považovat za marnotratného, jakož i to, že manžel soustavně nebo opakovaně podstupuje nepřiměřená rizika. Jako závažný důvod může být shledáno také to, že manžel začal podnikat nebo že se stal neomezeně ručícím společníkem právnické osoby.

§ 725

Režim založený rozhodnutím soudu lze změnit smlouvou manželů nebo rozhodnutím soudu.

§ 726

(1) Soud může společné jmění poté, co je zrušil, obnovit; soud tak rozhodne zejména, když pominou důvody zrušení společného jmění. To platí i v případě, že manžel navrhne, aby společné jmění, jehož rozsah byl zúžen, bylo rozšířeno do zákonného rozsahu.

(2) Zaniklo-li společné jmění na základě zákona, soud jej na návrh manžela obnoví, pokud je to v zájmu obou manželů.

§ 727

(1) Rozhodnutím soudu nelze vyloučit ani změnit ustanovení upravující obvyklé vybavení rodinné domácnosti.

(2) Rozhodnutí soudu o změně, zrušení nebo obnovení společného jmění nesmí svými důsledky vyloučit schopnost manžela zabezpečovat rodinu a nesmí se obsahem nebo účelem dotknout práv třetí osoby, ledaže by s rozhodnutím souhlasila.

§ 728

Správa v režimu založeném rozhodnutím soudu

Jedná-li manžel při správě společného jmění způsobem, který je ve zřejmém rozporu se zájmem druhého manžela, rodiny nebo rodinné domácnosti, a snoubenci nebo manželé neuzavřeli smlouvu o správě toho, co je součástí společného jmění, může soud na návrh druhého manžela rozhodnout, jakým způsobem bude společné jmění spravováno.

Režim oddělených jmění

§ 729

V režimu oddělených jmění smí manžel nakládat se svým majetkem bez souhlasu druhého manžela.

§ 730

Podnikají-li v režimu oddělených jmění manželé společně nebo jeden z manželů podniká s pomocí druhého manžela, rozdělí si příjmy z podnikání, jak si v písemné formě ujednali; jinak se příjmy rozdělí rovným dílem.

Ochrana třetích osob

§ 731

Vznikl-li dluh jen jednoho z manželů za trvání společného jmění, může se věřitel při výkonu rozhodnutí uspokojit i z toho, co je ve společném jmění.

§ 732

Vznikl-li dluh jen jednoho z manželů proti vůli druhého manžela, který nesouhlas projevil vůči věřiteli bez zbytečného odkladu poté, co se o dluhu dozvěděl, může být společné jmění postiženo jen do výše, již by představoval podíl dlužníka, kdyby bylo společné jmění zrušeno a vypořádáno podle § 742. To platí i v případě povinnosti manžela plnit výživné nebo jde-li o dluh z protiprávního činu jen jednoho z manželů nebo v případě, že dluh jen jednoho z manželů vznikl ještě před uzavřením manželství.

§ 733

Zavázal-li se jeden z manželů v době, od které do změny nebo vyloučení zákonného majetkového režimu, ať smlouvou manželů nebo rozhodnutím soudu, uplynulo méně než šest měsíců, může být pohledávka jeho věřitele uspokojena ze všeho, co by bylo součástí společného jmění, kdyby ke smlouvě manželů nebo k rozhodnutí soudu nedošlo.

§ 734

Je-li smlouvou manželů nebo rozhodnutím soudu, kterými byl zákonný majetkový režim změněn nebo vyloučen, dotčeno právo třetí osoby, zejména věřitele, může tato osoba své právo uplatnit u příležitosti vypořádání toho, co bylo dříve součástí společného jmění, stejně, jako by ke smlouvě manželů nebo k rozhodnutí soudu nedošlo; přitom se použije § 742.

§ 735

Zvláštní ustanovení

Neuzavřou-li spolu manželé, kteří mají v úmyslu dosáhnout rozvodu manželství způsobem uvedeným v § 757, dohodu o uspořádání majetkových povinností a práv pro případ rozvodu, v níž pod podmínkou, že manželství bude rozvedeno, rovněž ujednají, jak budou v době odděleného hospodaření nabývat práva a zavazovat se, platí pro dobu odděleného hospodaření manželů ustanovení o společném jmění přiměřeně, ledaže tento zákon stanoví jinak.

Vypořádání společného jmění

§ 736

Je-li společné jmění zrušeno nebo zanikne-li, anebo je-li zúžen jeho stávající rozsah, provede se likvidace dosud společných povinností a práv jejich vypořádáním. Dokud zúžené, zrušené nebo zaniklé společné jmění není vypořádáno, použijí se pro ně ustanovení o společném jmění přiměřeně.

§ 737

(1) Vypořádáním jmění nesmí být dotčeno právo třetí osoby. Bylo-li její právo vypořádáním dotčeno, může se třetí osoba domáhat, aby soud určil, že je vypořádání vůči ní neúčinné.

(2) Vypořádání dluhů má účinky jen mezi manžely.

§ 738

(1) Dohoda o vypořádání má vždy účinky ke dni, kdy společné jmění bylo zúženo, zrušeno nebo zaniklo, bez ohledu na to, zda dohoda byla uzavřena před anebo po zúžení, zrušení nebo zániku společného jmění. Je-li však předmětem vypořádání věc, která se zapisuje do veřejného seznamu, nabývá dohoda právních účinků v části týkající se této věci zápisem do veřejného seznamu.

(2) Platnosti dohody o vypořádání nebrání, týká-li se jen části společných majetkových povinností a práv.

§ 739

(1) Dohoda o vypořádání vyžaduje písemnou formu, pokud byla uzavřena za trvání manželství nebo pokud je předmětem vypořádání věc, u které vyžaduje písemnou formu i smlouva o převodu vlastnického práva.

(2) Nevžaduje-li dohoda o vypořádání písemnou formu a požádá-li o to jeden z manželů, doručí mu druhý manžel potvrzení, jak se vypořádali.

§ 740

Nedohodnou-li se manželé o vypořádání, může každý z nich navrhnout, aby rozhodl soud. O vypořádání rozhoduje soud podle stavu, kdy nastaly účinky zúžení, zrušení nebo zániku společného jmění.

§ 741

Nedojde-li do tří let od zúžení, zrušení nebo zániku společného jmění k vypořádání toho, co bylo dříve součástí společného jmění, ani dohodou, ani nebyl podán návrh na vypořádání rozhodnutím soudu, platí, že se manželé nebo bývalí manželé vypořádali tak, že

- a) hmotné věci movité jsou ve vlastnictví toho z nich, který je pro potřebu svou, své rodiny nebo rodinné domácnosti výlučně jako vlastník užívá,
- b) ostatní hmotné věci movité a věci nemovité jsou v podílovém spoluvlastnictví obou; jejich podíly jsou stejné,
- c) ostatní majetková práva, pohledávky a dluhy náleží společně oběma; jejich podíly jsou stejné.

§ 742

(1) Nedohodnou-li se manželé nebo bývalí manželé jinak nebo neuplatní-li se ustanovení § 741, použijí se pro vypořádání tato pravidla:

- a) podíly obou manželů na vypořádávaném jmění jsou stejné,
- b) každý z manželů nahradí to, co ze společného majetku bylo vynaloženo na jeho výhradní majetek,
- c) každý z manželů má právo žádat, aby mu bylo nahrazeno, co ze svého výhradního majetku vynaložil na společný majetek,
- d) přihlédne se k potřebám nezaopatřených dětí,
- e) přihlédne se k tomu, jak se každý z manželů staral o rodinu, zejména jak pečoval o děti a o rodinnou domácnost,
- f) přihlédne se k tomu, jak se každý z manželů zasloužil o nabytí a udržení majetkových hodnot náležejících do společného jmění.

(2) Hodnota toho, co ze společného majetku bylo vynaloženo na výhradní majetek manžela, stejně jako hodnota toho, co z výhradního majetku manžela bylo vynaloženo na společný majetek, se při vypořádání společného jmění započítává zvýšená nebo snížená podle toho, jak se ode dne vynaložení majetku do dne, kdy společné jmění bylo zúženo, zrušeno nebo zaniklo, zvýšila nebo snížila hodnota té součásti majetku, na niž byl náklad vynaložen.

Některá ustanovení o bydlení manželů

§ 743

(1) Manželé mají obydli tam, kde mají rodinnou domácnost.

(2) Žádá-li manžel z vážných důvodů o přeložení rodinné domácnosti, má mu druhý manžel vyhovět, ledaže důvody pro setrvání převažují nad důvody pro tuto změnu.

(3) Manželé se mohou dohodnout, že budou bydlet trvale odděleně. Dohoda manželů o odděleném bydlení má stejné právní účinky jako opuštění rodinné domácnosti s úmyslem žít trvale jinde.

§ 744

Je-li obydlím manželů dům nebo byt, k němuž má jeden z manželů výhradní právo umožňující v domě nebo bytě bydlet, a je-li to jiné právo než závazkové, vznikne uzavřením manželství druhému manželu právo bydlení. Vznikne-li jednomu z manželů takové výhradní právo za trvání manželství, vznikne tím druhému z manželů právo bydlení.

§ 745

(1) Je-li obydlím manželů dům nebo byt, k němuž měl jeden z manželů ke dni uzavření manželství nájemní právo, vznikne uzavřením manželství k domu nebo bytu oběma manželům společné nájemní právo; při pozdějším uzavření nájemní smlouvy vzniká oběma manželům společné nájemní právo účinností smlouvy. To platí obdobně i v případě jiného obdobného závazkového práva.

(2) Ustanovení odstavce 1 se nepoužije, ujednají-li si manželé něco jiného.

§ 746

(1) Mají-li manželé k domu nebo bytu společné nájemní právo, jsou zavázáni a oprávněni společně a nerozdílně.

(2) Manžel, který má právo bydlení, má postavení ručitele svého manžela.

§ 747

(1) Má-li alespoň jeden z manželů právo nakládat domem nebo bytem, ve kterém se nachází rodinná domácnost manželů nebo rodiny, a tohoto domu nebo bytu je k bydlení manželů nebo rodiny nezbytně třeba, musí se zdržet všeho a předejít všemu, co může bydlení znemožnit nebo ohrozit. Manžel zejména nesmí bez souhlasu druhého manžela takový dům nebo byt zcizit nebo k domu, jeho části nebo k celému bytu zřídit právo, jehož výkon je neslučitelný s bydlením manželů nebo rodiny, ledaže zajistí manželovi nebo rodině po všech stránkách obdobné bydlení s bydlením dosavadním.

(2) Jedná-li manžel bez souhlasu druhého manžela v rozporu s odstavcem 1, může se tento manžel dovolat neplatnosti takového právního jednání.

§ 748

(1) Mají-li manželé společné nájemní právo k domu nebo bytu, ve kterém se nachází rodinná domácnost manželů nebo rodiny, platí § 747 odst. 1 věta první obdobně. Manžel nesmí bez souhlasu druhého manžela nájem ukončit, nebo jej omezit právem, jehož výkon je neslučitelný s bydlením manželů nebo rodiny.

(2) Jedná-li manžel bez souhlasu druhého manžela v rozporu s odstavcem 1, může se tento manžel dovolat neplatnosti takového právního jednání.

§ 749

Souhlas manžela podle § 747 a 748 vyžaduje písemnou formu.

§ 750

(1) Dohodnou-li se manželé, popřípadě snoubenci, odchýlně od ustanovení § 747 a 748, nesmí dohoda zhoršit postavení jejich společného nezletilého dítěte, které nenabylo plné svéprávnosti, které žije s nimi v rodinné domácnosti a vůči kterému mají vyživovací povinnost, popřípadě nezletilého dítěte, které nenabylo plné svéprávnosti a bylo svěřeno do společné péče manželů nebo jednoho z nich; dohoda se dále nesmí dotknout práv třetích osob, ledaže s takovou dohodou souhlasily.

(2) Dohoda i souhlas třetích osob podle odstavce 1 vyžadují písemnou formu.

Některá ustanovení o bydlení manželů

§ 743

(1) Manželé mají obydli tam, kde mají rodinnou domácnost.

(2) Žádá-li manžel z vážných důvodů o přeložení rodinné domácnosti, má mu druhý manžel vyhovět, ledaže důvody pro setrvání převažují nad důvody pro tuto změnu.

(3) Manželé se mohou dohodnout, že budou bydlet trvale odděleně. Dohoda manželů o odděleném bydlení má stejné právní účinky jako opuštění rodinné domácnosti s úmyslem žít trvale jinde.

§ 744

Je-li obydlim manželů dům nebo byt, k němuž má jeden z manželů výhradní právo umožňující v domě nebo bytě bydlet, a je-li to jiné právo než závazkové, vznikne uzavřením manželství druhému manželu právo bydlení. Vznikne-li jednomu z manželů takové výhradní právo za trvání manželství, vznikne tím druhému z manželů právo bydlení.

§ 745

(1) Je-li obydlim manželů dům nebo byt, k němuž měl jeden z manželů ke dni uzavření manželství nájemní právo, vznikne uzavřením manželství k domu nebo bytu oběma manželům společné nájemní právo; při pozdějším uzavření nájemní smlouvy vzniká oběma manželům společné nájemní právo účinností smlouvy. To platí obdobně i v případě jiného obdobného závazkového práva.

(2) Ustanovení odstavce 1 se nepoužije, ujednají-li si manželé něco jiného.

§ 746

(1) Mají-li manželé k domu nebo bytu společné nájemní právo, jsou zavázáni a oprávněni společně a nerozdílně.

(2) Manžel, který má právo bydlení, má postavení ručitele svého manžela.

§ 747

(1) Má-li alespoň jeden z manželů právo nakládat domem nebo bytem, ve kterém se nachází rodinná domácnost manželů nebo rodiny, a tohoto domu nebo bytu je k bydlení manželů nebo rodiny nezbytně

třeba, musí se zdržet všeho a předejít všemu, co může bydlení znemožnit nebo ohrozit. Manžel zejména nesmí bez souhlasu druhého manžela takový dům nebo byt zcizit nebo k domu, jeho části nebo k celému bytu zřídit právo, jehož výkon je neslučitelný s bydlením manželů nebo rodiny, ledaže zajistí manželovi nebo rodině po všech stránkách obdobné bydlení s bydlením dosavadním.

(2) Jedná-li manžel bez souhlasu druhého manžela v rozporu s odstavcem 1, může se tento manžel dovolat neplatnosti takového právního jednání.

§ 748

(1) Mají-li manželé společné nájemní právo k domu nebo bytu, ve kterém se nachází rodinná domácnost manželů nebo rodiny, platí § 747 odst. 1 věta první obdobně. Manžel nesmí bez souhlasu druhého manžela nájem ukončit, nebo jej omezit právem, jehož výkon je neslučitelný s bydlením manželů nebo rodiny.

(2) Jedná-li manžel bez souhlasu druhého manžela v rozporu s odstavcem 1, může se tento manžel dovolat neplatnosti takového právního jednání.

§ 749

Souhlas manžela podle § 747 a 748 vyžaduje písemnou formu.

§ 750

(1) Dohodnou-li se manželé, popřípadě snoubenci, odchýlně od ustanovení § 747 a 748, nesmí dohoda zhoršit postavení jejich společného nezletilého dítěte, které nenabylo plné svéprávnosti, které žije s nimi v rodinné domácnosti a vůči kterému mají vyživovací povinnost, popřípadě nezletilého dítěte, které nenabylo plné svéprávnosti a bylo svěřeno do společné péče manželů nebo jednoho z nich; dohoda se dále nesmí dotknout práv třetích osob, ledaže s takovou dohodou souhlasily.

(2) Dohoda i souhlas třetích osob podle odstavce 1 vyžadují písemnou formu.

ČÁST ČTVRTÁ
RELATIVNÍ MAJETKOVÁ PRÁVA
HLAVA IV
ZÁVAZKY Z JINÝCH PRÁVNÍCH DŮVODŮ
Díl 2

Nepříkázané jednatelství a upotřebení cizí věci k prospěchu jiného

Oddíl 1

Nepříkázané jednatelství

§ 3006

Základní ustanovení

Vmísí-li se někdo do záležitostí jiné osoby, ač k tomu není oprávněn, jdou k jeho tíži následky z toho vzniklé.

§ 3007

Odvracení škody

Obstará-li někdo, ač k tomu nebyl povolán, cizí záležitost, aby odvrátil hrozící škodu, pak mu ten, jehož záležitost byla obstarána, nahradí účelně vynaložené náklady, třebaže se výsledek bez zavinění nepříkázaného jednatele nedostavil.

§ 3008

Záchrana cizí věci

Osobě, která zachrání cizí věc od nevyhnutelné ztráty nebo zkázy, náleží přiměřená odměna, nanejvýš desetina ceny věci, a náhrada účelně vynaložených nákladů. Vlastník věci se povinnosti k úhradě zbaví, nepožaduje-li zachráněnou věc nazpět.

§ 3009

Jednání k užítku jiné osoby

(1) Ujme-li se někdo záležitosti ve prospěch jiné osoby bez jejího svolení, nahradí mu tato osoba účelně vynaložené náklady, zařídil-li záležitost k jejímu převážnému užítku. Zda byla záležitost provedena k užítku jiného, se neposoudí podle obecných hledisek, ale se zřetelem k jeho pochopitelným zájmům a záměrům.

(2) Není-li užitek převážný, nemá nepříkázaný jednatel právo na náhradu nákladů. Osoba, jejíž záležitost na sebe vzal, může po nepříkázaném jednatelem požadovat, aby vše uvedl do předešlého stavu, a není-li to dobře možné, aby nahradil škodu.

Společná ustanovení

§ 3010

Kdo se ujal cizí záležitosti bez příkazu, dovede ji až do konce a podá o ní vyúčtování a převede vše, co při tom získal, osobě, jejíž záležitost obstaral.

§ 3011

Nemá-li nepřikázaný jednatel právo na náhradu nákladů, může si vzít, co pořídil na vlastní náklady, je-li to možné a nezhorší-li se tím podstata věci nebo neztíží-li se nepřiměřeně její užívání.

Oddíl 2

Upotřebení cizí věci k prospěchu jiného

§ 3012

Základní ustanovení

Upotřebí-li někdo cizí věc k prospěchu jiného, aniž má úmysl obstarat cizí záležitost, a není-li dobře možné domoci se vydání této věci, může vlastník věci po něm požadovat náhradu hodnoty, kterou věc měla v době upotřebení, a to i tehdy, nebylo-li prospěchu dosaženo.

§ 3013

Kdo učiní za druhou osobu náklad, který tato osoba byla povinna učinit sama, má právo požadovat náhradu.

§ 3014

Obětuje-li se něčí věc v nouzi, aby se odvrátila větší škoda, dá každý, kdo z toho měl užitek, poškozenému poměrnou náhradu.