

CROATIAN LEGAL REFORMS

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Family Act

Basic principles of guardianship for adults

1. There shall be no plenary guardianship.
2. Use of guardianship is foreseen only if all other possible alternatives are exhausted.
3. The principle of minimal restriction should be applied if a person is placed under guardianship.
4. Although will and preferences of the person should be taken into account and guardian should support the person in decision making, the complete concept is still far from Article 12 CRPD since the substitute decision-making model is still remaining and is led by the best interests doctrine.

Procedural aspects

5. A person against whom the proceeding for deprivation of legal capacity is initiated is authorized to issue a power of attorney to be represented in that proceeding. If such a power of attorney issued, the centre for social welfare will not appoint a guardian ad litem.
6. If person concerned did not issue power of attorney, the centre for social welfare will have to appoint guardian ad litem to represent person in the proceeding. However, to avoid conflict of interests, the centre of social welfare will not be able to appoint its worker as a guardian ad litem. Furthermore, if procedure for deprivation of legal capacity is initiated by another person (e.g. family member) then that person is not eligible to be appointed as a guardian ad litem.

(In procedural terms, this would in practice make deprivation of legal capacity less attractive – family members who wish to settle their property issues through abusing legal incapacity of other members will be reluctant to use this instrument if they are not able to take immediate control on legal matters of the abused member. Furthermore, centres for social welfare will be reluctant to initiate these proceedings if they not able to appoint their workers as guardians ad litem. Due to these procedural changes, significantly lower numbers of initiated proceedings per year could be expected.)

7. As to the power of attorney in paragraph 5, the person concerned may, as he wishes, appoint a guardian ad litem through an advance directive signed at the office of the public notary.
8. There will be no automatic judicial revision on legal capacity of person concerned, but the centre for social welfare must perform administrative revisions every three years.



9. A person deprived of legal capacity will be able to appoint her/his guardian in an advance directive. The centre for social welfare is due to appoint that person as a guardian only if the person is eligible to be a guardian according to the law.

10. It will be possible to appoint more than one guardian to person concerned.

Marriage and family rights

11. People deprived of legal capacity will be able to marry with a permission of a guardian. The Court will decide whether to allow marriage only if guardian refuses to give permission.

12. Persons deprived of legal capacity have the right to initiate a dissolution of marriage in judicial proceedings. In judicial proceedings the Court will allow participation of persons deprived of legal capacity independently of her/his guardian after performing test of mental capacity and concluding that person is able to understand meaning of the judicial actions taken.

13. Person deprived of legal capacity can register as a biological father or mother of a child with no interference of the guardian or centre for social welfare. Furthermore, a mother can give permission for her child to be recognized by a father, regardless of a lack of legal capacity.

14. If person deprived of legal capacity is not able to perform parental duties, he/she will not be deprived of parental rights. Instead, parental rights will be 'at rest' until ability to perform such duties is restored.

Other issues

15. Guardians and centres for social welfare will no longer be able to sell the whole property of person concerned and this would be reserved only for extreme situations. Only 2/3 of persons' property can be sold. *(This would significantly reduce interests of potential abusers since they commonly would not like to co-own property with their proteges.)*

16. Some decisions about health of persons deprived of legal capacity would be only done after special judicial proceeding conducted. The decision making is here given to the person concerned who may, at the time when having legal capacity, issue an advance directive and decide on the matter. If not doing so, guardian is not allowed to do that, and only the court can decide. These decisions concern sterilization, abortion, organ and tissue donation, participation in biomedical research and life support measures.

The special proceeding before the court is foreseen by the law. At the first instance, the county civil courts in panel of three judges will bring such decisions. At the second instance, the decision will be finally done by the Supreme Court of the Republic of Croatia in panel of five judges.

Act on Protection of Persons with Mental Health Problems

General terms



1. The concept of legal capacity is separated from the concept of mental capacity. Lack of legal capacity does not mean that person is not capable of making decisions and giving consent to medical treatment.
2. However, there will be no presumption of mental capacity for any person. Psychiatrists would have to assess mental capacity before conducting any medical procedure and if person is not capable of decision making, then special provisions of the law would apply depending on circumstances. Mental capacity assessment test was introduced to the law on the basis of the Mental Capacity Act 2005 (England and Wales).

Involuntary placement in a psychiatric institution

3. When person is placed in a psychiatric institution upon the consent provided by the guardian, such placement will no longer be considered as voluntary. However, it would also not automatically require judicial proceedings as for the purpose of „forced placement“. There will be two categories of persons placed in institutions upon decision of a guardian: (1) non-protesting and (2) protesting persons.
4. In case of non-protesting persons, who never object to the decision of a guardian, the Disability Ombudsman would have authority to check in every single case whether placement into psychiatric hospital was justified. If the Disability Ombudsman is of the opinion that placement is not justifiable, it would inform a competent court which must initiate judicial proceedings for forced placement, according to Article 5 ECHR.
5. In situations when person is objecting to the decision of a guardian on placement into psychiatric hospital, the hospital must initiate judicial proceedings before the same court as mentioned in the previous paragraph.
6. The court will allow person deprived of legal capacity to participate in the proceeding.
7. The concept of advanced directive is also implemented in the law through the 'trusted person' (see later special section). The trusted person can also make a substitute decision for placement in hospital, but if person concerned objects, then the Disability Ombudsman would decide on eventual initiation of judicial proceedings.

Special medical treatments and biomedical research

8. Psychosurgery remains prohibited in absolute terms.
9. Surgical sex-reassignment of transgender and intersexual persons is permitted, but non-therapeutic sterilisation is still prohibited.
10. The use of electroconvulsive therapy is made more strict. Although there were initiatives to prohibit this method, no agreement was done by the psychiatric professionals.
11. The requirements for performing bio-medical research are made more strict. The research would be possible to be done only after valid consent given by each subject involved and after research



approved by the Committee on Rights of Persons with Mental Health Problems. The measures to avoid conflict of interests when psychiatric professional performs research on his patients are regulated.

12. No substitute decision making is possible for special medical treatments or biomedical research.

Measures of restraints

13. Most important change was to introduce special judicial proceeding to protect persons from excessive and nonjustifiable use of restraints or hyper-medication. Person concerned, its guardian or person of trust are able to initiate such a proceeding at the court, and the court would be able to undertake the measures according to special legislation (e.g. to order the hospital to stop using measures). If that special court would find measure of restraint to be not justified, then person concerned would have right to seek damage compensation.

14. The social care homes are allowed to use measures of restraints on the same basis as psychiatric hospitals. High fines are proscribed for those social care homes which do not follow the regulations by the law. *(We had to regulate this because the use of restraints is wide spread in social care homes. Basically, since no of them have psychiatrists employed and they are not able to do that from organizational reasons, no social care home would be able to use measures of restraints.)*

Advance directive

15. Any person will be able to make an advance directive and appoint one trusted person to make decisions on his/her behalf concerning health matters. Decisions of the trusted person have greater power than decisions of a psychiatrist or a guardian. If there would be any significant conflict between the trusted person and a psychiatrist (e.g. when it comes to best interest), a special judicial proceeding would be conducted.

