

## Croatia

*Prof. Branka Rešetar*

1. The Croatian Constitution obliges the State to provide protection of vulnerable adults e.g. persons incapable to taking care of themselves (Art. 64 of the Constitution). Croatia ratified CRPD as well as its Optional Protocol in 2007 while the 2000 Hague Convention has not still been signed.

MoPS are generally regulated by the Family Act 2015 (hereinafter: FA 2015), which entered into force on 1 November 2015<sup>1</sup> and the Mental Health Act 2015 (hereinafter: MHA), which entered into force on 1 January 2015. MHA 2015 regulates the protection of rights and freedoms of people with mental health conditions. These legislations, implemented in 2015, are products of the Croatian reform in the field of empowerment and protection of vulnerable adults including people with mental health conditions. The reform of family law regarding the protection of vulnerable adults took into account few decisions of the ECHR, that deal with the rights of people with disabilities in the field of family law, Art 8 and Art 6 ECHR (relationship between children and parents, adoption, deprivation of legal capacity and the right to a fair trial).

2. The FA 2015 is the main legal source that regulates the protection and empowerment of vulnerable adults. The protection of vulnerable adults is organized under the institute of guardianship. According to the FA 2015, vulnerable adults are persons who are subject to guardianship. The FA 2015 defines guardianship as a form of protection of *persons who are deprived of legal capacity and of persons who, due to some other reasons, are unable to protect their rights and interests* (Art 201).

3. According to the FA 2015 guardianship of vulnerable adults deprived of legal capacity implies protection of their personal and proprietary rights. Deprivation of legal capacity can be only partially according to the principle of necessity. A guardian is obliged to take conscientious care of person, his or her rights, obligations and well-being, administer property and undertake measures to enable him/her to live and work independently (Art 252).

Prior to undertaking relevant measure, a guardian is obliged to respect the will of the person under his/her guardianship unless it is contrary to his or her interests (Art. 257).

A guardian is obliged to file a report on his work and on the situation regarding the vulnerable person he/she safeguards to social welfare centres twice a year (Art 262).

4. Despite the fact that Croatian legislative approach relating to vulnerable adults is still characterised by state protection through the system of guardianship, new developments are reflected in the application of the principle of autonomy, self-determination and the principle of proportionality (Art 233). This is a result of the reform implemented in 2015.

The FA 2015 contains three checklist of legal acts concerning the personal and property interests of a person under guardianship. The first checklist contains legal acts concerning personal family rights (acknowledgement of paternity or consent to adoption), based on which a person under guardianship can act independently (Art. 258). The second checklist contains legal acts, based on which guardians are entitled to make a decision in the name of vulnerable adults, but only with authorization of a social welfare centre (placement, change of residence, extraordinary medical

---

<sup>1</sup> It should be noted that Croatia does not have a Civil Code, thus protection of vulnerable adults is traditionally organized under the Family Act, both substantive and procedural law.

treatment or extraordinary administration of property (Art 259). It means that such administration is subject to the control of social welfare centres. The third checklist contains legal acts which can only be authorized by court (sterilization, end of life care decision, organ and tissue donations, Art. 260). However, if a person gives a living will (legal instructions regarding preferences for medical care), the doctors shall follow it and a court decision will not be necessary (Art. 260).

The FA 2015 prescribes two kinds of protection of a person's autonomy, Lasting Powers of Attorney (LPA) and a living will (LW). Pursuant to LPA, a donor can appoint one or several agents who will be appointed as guardians by a social welfare centre in case of protection of either his or her property and personal interests. LPA shall be authenticated by a notary public (Art 247/5). LW which shall be authenticated by a notary public too and as such, it instructs doctors and caregivers what do if the vulnerable person is terminally ill, seriously injured, in a coma, in the late stages of dementia or near the end of his/her life.

**5.** According to the data in the Croatian National Strategy for Equalization of Opportunities for Persons with Disabilities 2017 - 2020, 511,194 persons have a disability (11,9%). Among them, there are 203,606 women (39,8%) and 307,588 (60,2%) man. Pursuant to the National Register, there are 35,367 children with disabilities (6,9%), 13,334 (38%) girls and 22,033 (62%).

The UN Committee recommends that Croatia *“has to abolish substitute decision-making regimes, to provide a wide range of measures that respect the autonomy, will and preferences of persons with disabilities, including their rights to give and withdraw their individual informed consent for medical treatment, to access justice, to vote, to marry, to full parental rights. It further recommends that the Croatia must take tangible steps to introduce systems of supported decision-making and, to this end, train social workers, legal professionals and public authorities on the rights enshrined in the Convention.”*

#### **Literature:**

Šarčević, P., Josipović, T., Gliha, I., Hlača, N. and Kunda, I., **Family Law in Croatia**, Wolters Kluwer, The Netherland, 2011.

#### **UN**

<https://undocs.org/en/CRPD/C/HRV/CO/1>

#### **ECHR**

X v Croatia (App no 11223/04) ECHR 17 July 2008.

Krušković v Croatia (App no 46185/08) ECHR 21 June 2011.

X.Y. v Croatia (App no 5193/09) ECHR 03. November 2011.

A.K.L. v Croatia (App no 37956/11) ECHR 08. January 2013.

Ivinović v Croatia (App no 13006/13) ECHR 18. September 2014.