

Bulgaria

Dr. Velina Todorova

1. Bulgaria ratified the CRPD in 2012 but not yet its Optional Protocol and the Hague Convention 2000. The Bulgarian Constitution of 1991 stipulates that the old persons that do not have close relatives and cannot support themselves as well as the persons with physical and mental disabilities are under the special protection of the state and society (Art. 51, para 3 of the Constitution).

2. The regime of adult protection has not yet undergone a profound reform although a Bill on Physical Persons and Supported Decision Making is pending for discussion into the Parliament since 2016. The process of its drafting started in 2012 immediately after the CRPD ratification and involved a lot of civil society organisations including organisations of persons with disabilities. The Bill abolishes the incapacitation of persons with intellectual disabilities, mental health problems and dementia and introduces the irrefutable presumption of legal capacity. Those persons should be able to take decisions on their own with the necessary support – ‘the supported decision making’, in all spheres of their life, as well as and to enter into relationships depending on their own wishes and preferences. This refers to all personal and life care decisions, social and health care consent, management of property and financial issues, property transactions, making decisions and participation in legal proceedings. Support measures shall not be determined for: contracting a marriage or requesting the dissolution thereof; making a will; exercising the right to association under the Non-Profit Legal Entities Act and exercising reproductive rights. Those rights shall be exercised independently after providing the person with appropriate consultation. The CRPD Committee (2018) recommended to Bulgaria to adopt the above mentioned Bill. The Bill also introduced the lasting power of attorney and advanced medical directives – two MoP that are still not legalised in Bulgaria.

3. In two important judgements – *Stankov v Bulgaria*¹ (2007) and *Stanev v. Bulgaria* (a Grand Chamber judgement of 2012)², the European Court of Human Rights found a violation of Article 3 of the ECHR because of the placement in institutions of incapacitated adults against their will. The placement was also found to constitute a deprivation of liberty without any possibility of challenging it as breaching obligations under Articles 5 (liberty and security) and 6 (right to a fair trial) of the Convention. The judgments also found Bulgaria to have violated the human rights of people with mental disabilities by placing them under guardianship and into institutions. The Court also criticised Bulgaria for continuing to maintain a legal framework which denies people with mental disabilities the opportunity to achieve redress for human rights violations by denying them access to court. The two judgments resulted in minor changes in the Social Assistance Act and in the Civil Procedure Code but not in reform in the capacity legislation.

4. The protection of vulnerable adults is framed in the old paradigm of guardianship. The Law on Persons (1949) stipulates for full and partial incapacitation of mentally sick person that cannot take care of his/her own interests. The regime following incapacitation is the one of minor children (aged 0-14) and of adolescent children (14-18) respectively. The MoP are envisaged in the Family Code of 2009. The regulation encompasses two measures of protection: guardianship and curatorship. Guardianship implies almost a total lack of capacity (comparable to minority) and a representation by a guardian. Curatorship allows the person to act but under

¹ Application no. 68490/01.

² Application no. 36760/06.

the control of the curator through authorization of the acts performed by the person under protection (assistance). The legal capacity to exercise some personal rights is restricted only for adults under guardianship (right to marry, right to acknowledge paternity, right to exercise parental responsibilities or to write a will). In both cases adults are prevented from the right to vote under the Constitution (art. 42). The restriction of capacity follows a special procedure before the Regional Court. The court should have a personal impression of the person and could (articles 336-340 of the Civil Procedure Code). The application may be submitted by the spouse, the cohabitee, by any relative, by the Public Attorney Service or by any interested third person. The incapacitation may be applied by the guardianship and curatorship body (which is the mayor of the municipality), by the guardian or by the person put in partial interdiction.

5. Guardians and curators should be persons from the circle of close relatives of the incapacitated adult (art.156 Family Code). The job of a guardians or a curator is voluntary (not paid). The spouse becomes ex lege guardian or curator of his/her incapacitated spouse. If there is no such, the parents continue to exercise their parental rights and obligations on the adult, unless they are known, dead or deprived from them (art.173, para 2 Family Code). The guardianship and curatorship body shall dismiss the guardian or curator in case of conflict of interests between the incapacitated person and the spouse or the parents. The guardian is obliged to take care of person, his or her rights, obligations and well-being, administer property and report yearly before the guardianship and curatorship body (articles 164 – 171 Family Code). Guardians/curators should live with and care of the person under guardianship/ curatorship, but they also may facilitate his/her placement in social institutions under the Social Assistance Act. Amendments were introduced to this Act in 2016. They stipulate that even that the person is under full (plenary) guardianship, the social services should be delivered in compliance to his/her desire and in parallel to take account to the guardian acceptance. It is explicitly provided that if there is a contradiction between the desire of the person and the consent of the guardian, the desire of the person should be taken into consideration (art. 16a et seq).

6. In 2018 a new Persons with Disabilities Law was passed that is providing the possibility to ensure access to justice and legal protection for people with disabilities on equal basis with other by providing them with social interventions that will improve their ability to make decisions. The special social interventions described as support measures aims to ensure that in the process of making the decision the wish and preferences of the person are taken into consideration, but do not provide new legal status. The support in making the decisions may affect all spheres of life and may have legal consequences. The Law also provides for various means for social and financial protection, rehabilitation and other support.

7. General private law techniques such as *negotiorum gestio* may also apply as MoP.