

Greece

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1. General overview of the specific comprehensive framework of Measures of Protection and/or Support (MoPS), e.g. in a title of the Civil Code, in a Mental Capacity Act, etc.

The protection of vulnerable adults is not especially regulated in the Greek Civil Code (hereafter: GCC) or in any other special law statute. Protection could be provided with the institution of *Judicial Assistance* (Art. 1666-1688 GCC): **i. Judicial Assistance – Main characteristics:** The provisions on legal (in)capacity and on measures to protect and support (MoPS) those who are not in a physical or/and mental position to protect their interests were introduced into the Greek Civil Code (Art. 1666-1688 GCC) and respectively in the Greek Civil Procedure Code (Art. 801-805 GCPC) in 31.12.1996 through the Law 2447/1996. The legal ground is the physical or mental decrease or impairment that prevent a person from taking his/her own legal decisions. The main characteristic is that the legal capacity of the vulnerable person is modified and restricted. His/her will doesn't give any effective consent to legal acts which are legally deemed voidable in case that the appointed (as legal representative) judicial assistant doesn't act for the vulnerable person (*privative judicial assistance, in whole, for every legal act, or partially*) or doesn't provide his/her own consent (*concurrent legal assistance, in whole, for every legal act, or partially*). **ii. Judicial Assistance – Care of vulnerable adults in personal every-day relations (i.e. in establishments):** According to Art. 1680 GCC the care of the adults [in terms of family law, such as the parental care for the children (see *mutatis mutandis* Art. 1518 GCC)] who are placed under judicial assistance can be entrusted by the court decision also to the appointed for that reason judicial assistant (legal representative)¹, even to a non-natural but a legal person (see Art. 1671 GCC). Exceptionally and analogous to the tutelage of minors the adult under judicial assistance can be entered in a special establishment or an institution (see Art. 1682 sentence 1 GCC in combination with Articles 1609-1610 GCC on tutelage for minors).

2. If applicable, provide the definition of vulnerable adult in each jurisdiction

Greek legislation provides no specific definition of a vulnerable adult. So it is a term open to interpretations as there is little explicit definition. The vulnerable adults (or elderly people) are not targeted as a category to be protected by any new legal regime. However, the law refers to age as a relevant element to be taken into account in the matter of contractual capability. So, the protection of minors is regulated but the protection of adults, i.e. individuals above 18 years old is *neither* especially *nor* separated regulated. In case of minors who are in any case vulnerable, the parents of a minor can file the petition and start the proceeding in order to extend their legal power of representation once the child reaches the age of legal majority (18 years old). On the level of constitutional provisions the Greek Constitution of 1975/2001/2008 provides in the Art. 4 protection for any form of discrimination (among others against of the ground of disability)². Furthermore the Greek legal order doesn't discrete between vulnerable minors and vulnerable adults according to Art. 21 para 1, para 3, para 6 of the Constitution.

3. If necessary, general overview of the general private law techniques that allow empowering or protecting vulnerable adults, e.g. *negotiorum gestio*, representation *ex lege*

¹ According to Article 1680, sentence 2 GCC: "In exercising such care the judicial assistant is under obligation to secure for the person assisted the possibility to handle alone his personal relations in so far as his condition so permits".

² According to Art. 4 Para 1, Para 2 of the Greek Constitution: "1. All Greeks are equal before the law. 2. Greek men and women have equal rights and equal obligations".

by a spouse, powers of attorney, etc. – Other instruments/legal provisions offering protection

Other institutions/legal provisions, offering protection of the vulnerable adults, could be the following: **i. Judicial administration of another's affairs (Articles 1689-1694 GCC):** The institution could only restrictively serve as MoPS for vulnerable adults. Its purpose is to protect adults who due to their absence are unable to take care of their personal affairs (unknown place of residence or well-known place of residence but preventions for the persons from returning in order to take care personally of the their own affairs). After a petition of anyone who has justified interests in the matter (but also *ex officio*) the court appoints a person to manage the estate of the absent adult or reappoints (replaces) the representative who has already been appointed (Art. 1689 GCC). The rules of the tutorship of minors are applicable by analogy on this institution (Art. 1693 GCC). **ii. Mutual obligation for assistance, affection and respect and obligation to render services in the relationships between the family members:** Parents and children are under the obligation of mutual assistance, affection, and respect (Art. 1507 GCC). Both *minors* and *adult children* are under the same obligation. Further, as long as the child lives in the parents' household and is brought up or provided for by them, he/she is under the obligation to offer services commensurate to his/her own abilities and living conditions – as well as to the living conditions of his/her family – regarding the management of the household or the practice of the parents' profession (Art. 1508 GCC). **iii. Ex lege (non-judicial) maintenance claims between the family members:** There are claims for maintenance which stem from the law, which could be considered as a support for the vulnerable adult. Especially: **a.** The spouses are obliged to contribute jointly to the needs of the family, each according to his/hers means (Art. 1389 GCC). **b.** There is also a mutual obligation to contribute to the management of their common household (Art. 1390 GCC). All this obligations refer to income, asset managing or personal work. **c.** Claim for maintenance one spouse has vis-à-vis the other in case there has been interruption of the conjugal life and the spouses no longer live together (Art. 1391 GCC). **d.** The same holds in the case of alimony due on account of divorce (Art. 1442 GCC). **e.** Ascendants and descendants are under the reciprocal obligation to provide maintenance (Arts. 1485 et seq. GCC) when certain conditions are met. According to Article 1488 GCC the descendants have an obligation to provide maintenance according to the order of the succession in case of intestacy and each one of them in proportion to his share in the estate only exist if the spouse having regard to the latter's other obligation is not in a position to furnish to the beneficiary the maintenance without endangering his/her own conservation. **f.** The same rule shall apply with regarded to a divorced person as his former spouse carries an obligation of maintenance toward he divorced person (see Art. 1491 GCC). **iv. Annuity:** Transfer or property or money in the form of life annuity (Art. 840-843 GCC) and the care or the service in life time contractual form. **v. Usury:** Control of the contract according to 179 GCC (where one, by exploiting the need, levity, or inexperience of the other, succeeds in obtaining for a certain performance pecuniary advantages that are extremely disproportional to his supply). **vi. Foster care for adults:** According to Art 9 Para 3 of Law 2082/1992 (as amended by Art 65 Para 1 of Law 2447/1996) a third person in charge assumes the daily care of the senior, who lives under the same roof in a family-like setting. Despite the absence of a detailed legal framework (a presidential decree which should further regulate and specify this institution hasn't yet been issued). The "foster care of minors" (Art. 1589 et seq. GCC) is the equivalent to the foster care of adults one can assume that the provisions are to be analogous applicable (*mutandis mutatis*). **vii. Negotiorum gestio (management of another's affairs):** According to the institution of management of another's affairs (*negotiorum gestio*) when a person, without having the right or the obligation to do so, manages another person's affairs, then he/she has to conduct the other person's affairs in the interest and according to the actual or presumptive will of the principal of the affairs (Art. 730 sentence 1 GCC). Furthermore the

manager has to render account to the principal regarding the affair he managed (Art. 734 GCC) and to restitute to the principal what was acquired by reason of the management (Art. 734 GCC). While *the* principal of the affair is obliged to render to the manager the expenses he incurred while conducting the principal's business (Art. 736 GCC) and to compensate the manager for the prejudice he suffered while conducting the principal's business (Art. 736 GCC). **viii. Representation ex lege by a spouse:** There is no *ex lege* representation by a spouse in the Greek law, as there is a very rarely to meet the system of constitution of 'community property' between spouses, as very rarely spouses choose it for their property relationships (Art. 1403-1416 GCC). Practically the spouses remain to the basic (by default) principle of the Greek Civil Law which is that each spouse's assets are separate and autonomous (Art. 1397 GCC). In practice, spouses have the possibility to continue to handle the affairs of the other spouse, if they share a common bank account. Very often the judicial assistants (as legal representatives) are the spouses. **ix. Representantion (voluntary) on the ground of a power of attorney – a. In generally:** The principal grants authority to the representative (power of attorney, procuration) to conclude a juridical act in the principal's name. The underlying legal relationship between representative and represented is mostly the mandate (Article 713 et seq. GCC). The exercise of the authority of representation in a way that exceeds the bounds of the power, the provisions of the law regarding false representation are applicable (*falsus procuratur*). **b. Termination, revocation:** The power of attorney may be revoked by a simple declaration of the person who granted it (freely revocable at any time, see Art. 219, 221 GCC). If the power of attorney was given by notarial deed, as is for example the case concerning the sale of immovables, it may only be revoked by notarial deed (Art. 220 GCC). Except of the resignation of the 'attorney' himself/herself (effected by a declaration of the 'attorney' to the person who granted him the power of attorney) the power of attorney is terminated by the termination of the subjacent legal relationship on which the power of attorney was based (Art. 222 GCC) and also in the case death of the principal or the 'attorney' (Art. 223 GCC) or the dissolution of the legal person results in the cessation of the power of attorney. Another case of termination is the incapacity of the principal or the 'attorney' to conclude juridical acts, assuming of course that the incapacity occurred after the power of attorney was granted (Art. 223 CC). **c. Interim Conclusion:** In case of voluntary representation on the basis of a power of attorney after the conclusion of which the vulnerable person became practically but not yet legally incapable he/she couldn't revoke the power of attorney (see Art. 218 GCC in comparison with Art. 131 GCC), except of course of the case in which the relationship, i.e. the mandate, gets to an end (Art. 222 GCC). So, it is unavoidable to set the vulnerable person in the status of judicial assistance after which, in any case, the mandate is ended (Art. 726 sentence 1 GCC), even before the judicial assistant as legal representative revokes the power of attorney.

4. Major national reforms since the adoption of the CRPD, incl. ratification of/accession to the relevant international instruments (CRPD, HC etc) – Recent developments and international obligations

i. In general: Regarding international obligation of the Greek Republic, the UNO Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol (OP) was ratified on 31 May 2012 without any reservations³. Greece although signed the Hague Convention on the International Protection of Adults (2000) on 18.9.2008 but hasn't yet ratified it. No further reform deemed necessary in the direction of the adult's protection scope. **ii. Conformity of the**

³ See Law 4074/2012, Official Governmental Gazette (FEK) Part A, No. 88 (11.04.2012) on the "Ratification of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities", which came into force on 30.06.2012; the text of the law reproduces the text of the CRPD.

current status with the international instruments: The institution of judicial assistance in its form of *privative in whole* transfers the person into a status of a minor under 10 years old (Art. 128 GCC). So there are expected conflicts of gravity between the Greek Civil law institution of judicial assistance and the CRPD (especially in personal rights – *intuitu personae* – which are exercised *in personam*). Though, there remain the characteristics of the judicial assistance are (theoretically) the provisory and subsidiary character of it in a frame of proportionality (Art. 1676 sentence 2) which is combined with the flexibility of the institution, as the court examines every case ad hoc and the court decision itself can be changed according to the altered due time circumstances (see Art. 1676, 1677, 1685 GCC). The form of *concurrent judicial assistance*, either *in whole* or *partially*, is conform to the CRPD. In any case, according to the Greek constitution, after the ratification of an International Convention these provision gain a high level rank as a source of law in the domestic national legal order. So judges and administration in Greek should apply every provision of the national law in a manner which is conforming with the provision of the ratified Convention.

5. If available, empirical data on the protection of adults (eg # adults under guardianship, # Lasting Powers of Attorney) – Statistics on measures of protection

No statistical data are available. There is not a register or anything equivalent of legally incapable person or person with limit legal capacity or records.

EXCURS: Assessment of the legal system in terms of protection – Conclusion

i. The measures of support and protection in Greek legal order: Especially for the vulnerable adults, except of the other institutions in general Civil Law of (i.e. *negotiorum gestio*, annuity, mutual obligation for assistance or maintenance claims in the circle of family members, judicial administration of another's affairs, foster care for adults etc.) one could distinguish as more appropriate of the protection of vulnerable adults the following (judicial and non-judicial) MoPS: **a. judicial MoPS:** Two types of permanent regime which differ in the scope of the power granted to the legal representative (judicial assistant): The first one (*privative judicial assistance in whole or partially*) is a type of total substituted decision-making regime, in which the legal representative is responsible for legal acts of the person in order to manage his/her property and economic assets (but not for the every day-care of the person except the court decided that too). The other type (*concurrent judicial assistance in whole or partially*) is an art of only supported decision-making regime, in which the person placed under this measure of judicial assistance decides whether to undertake or not a certain legal act but needs the agreement/verification of the its legal representative. **b. Non Judicial MoPS:** There is also the possibility of lasting powers of legal representation through the conclusion of a proxy in front of the notary but this form of empowerment other person to care for own legal matters is immediately in force and doesn't have the meaning that develops its effects only when the represented lacks in capacity due to mental/psychological or physical impairment. **ii. Conclusion remarks (de lege lata/de lege ferenda):** Currently there lacks on special regime of living wills, as the existing legal frame of general rules of power of attorney and mandate cannot solve the contradiction in case of incapability of the person to revoke the already given power of attorney, except in case of being protected under the judicial assistance regime. So there is no priority of any living will towards the judicial assistance. In that point as main tool for lawyers and judges remain the general rules of the Greek Civil Code, which are not always adequate. One possibility could be seen in the right of the person under justitial assistance to declare according to his/her own will the name of the person who should undertake as his/her judicial assistance. The relatives of the vulnerable adult could further act on behalf of him/her but under the legal uncertainty that the judicial act can be declared as null and void in the context of the *falsus procurator* provisions of Art. 229 et seq. GCC. Even in the case of application of

the *negotiorum gestio* provisions (Art. 730-740 GCC) the *gestor* (intervenor or intermeddler) as manager of the case should find the will of the *dominus* (maybe by asking the circle of relatives, i.e. spouse, children parents, brothers and sisters etc.). So, mere the institutions or provisions of the general Civil Law cannot be assumed as legal effective way without the judicial assistance. There is a need for legislative intervention in the direction of a provision which regulates the “living will” and the complicated problems of power of attorney and mandate revocation in complexity with the judicial assistance in all its forms. In that case, the *anticipatory measures* on behalf of the person himself/herself on regulating (in autonomy and sovereignty status) his legal matters and every-day care for the possible future cases of incapacity should gain priority towards the *responsive measures* on behalf of the court for the person (i.e. judicial assistance) which should be of secondary (subsidiary) rank. The same desirable results could be brought in case the legislator would change the legal consequences of voidance and nullity for the legal acts of a person under judicial assistance, in case he/she would undertake these legal acts alone, by declaring as legal consequences not the absolute nullity (invalidity) but the relative one, i.e. it would be remain to be proved that the person was at the time of the critical legal act in status of capability even if the judicial assistance status hadn't been revoked. A legislative change like that would be welcome, especially in the cases of personal rights (*intuitu personae*) which are exercised only personally (*in personam*). Otherwise, in case of not being under status of judicial assistance, the vulnerable adults remain typically and *in abstracto* capable (Art. 127 GCC) but in each different case (ad hoc) they run the danger to be found as *in concreto* incapable. In that case the judicial act is null and void.