

THE GUARDIANSHIP IN THE REPUBLIC OF NORTH MACEDONIA. NECESSITY TO TRANSIT FROM SUBSTITUTE DECISION-MAKING FOR THE WARD TO SUPPORTIVE DECISION-MAKING WITH THE WARD¹

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-Abstract-

The author tackles the topic on guardianship in the intersection between family law and human rights that is very important yet neglected in the Macedonian legal theory and jurisprudence. Namely, the Republic of North Macedonia has ratified the Convention on Rights of Persons with Disabilities and has obligations to align its legal system (primarily its Family Law and Law on Non-contentious Procedure, but also other laws) with its spirit. However, it seems as if mental capacity is associated (or at least closely related) with legal capacity and as a result, persons deprived of legal capacity are limited to enjoy and act upon many fundamental rights. The author concludes that the Macedonian legal system is still very paternalistic when it comes to the relationship between vulnerable adults and the persons responsible to protect their interests on their behalf, appointed by the State. Therefore, the principle of presupposed 'best interests' dominates over the 'will and preferences' principle. Accordingly, the system recognizes only substitute decision-making for the ward, instead of supportive decision-making with the ward. This should be changed as a matter of priority in the future.

I. INTRODUCTION

The provisions regulating guardianship have been regulated by the Family Act.² They are imperative and, to a large extent, exclude autonomy of persons involved. The Centre for Social Services is the main institution that decides about establishment, rights and obligations of the guardian and termination of its role. The work of the Centre, as an administrative body, is regulated by the General Administrative Procedure Act.³ The procedure for deprivation (full or

* Elena Ignovska, PhD., Full Professor, Ss. Cyril and Methodius University in Skopje, Iustinianus Primus Faculty of Law, e-mail: e.ignovska@pf.ukim.edu.mk

¹ This text has been developed from a research done for the purposes of writing a Report on Legal Protection and Empowerment of Vulnerable Adults in North Macedonia for Family Law in Europe (FL-EUR) Academic Network - <https://fl-eur.eu/>.

² Закон за семејството, *Службен весник на Република Македонија* 80/1992 - консолидиран текст.

³ Закон за општата управна постапка, *Службен весник на Република Македонија* 124/2015.

partial/limitation) of legal capacity⁴ is regulated by the Law on Non-contentious Procedure.⁵ Guardianship is a state-ordered form of societal protection of persons in need who lack it otherwise.

There are three general categories of guardianship: 1. For minors who lack parental care or victims of human trafficking (will not be elaborated further since the focus of this text is on adults), 2. For persons with limited/restricted legal capacity or deprived of legal capacity and 3. For special cases including a. persons without official residence and without legal representative, b. unknown property owner when there is a need for protection of the property and c. other cases including when a person cannot take care of his/her own interests. The last two categories refer to vulnerable adults. In the second category, there has to be an official decision from a competent Court (in a non-contentious procedure) for a person to be considered having limited or deprived legal capacity. If a person is not able to take care of him/herself because of variety of reasons enumerated in art 34, par 1 of the Law on Non-contentious Procedure, then the Court should as a matter of priority notify the Centre whenever a proceeding for limitation/deprivation of legal capacity is initiated. The Centre could appoint a temporary guardian of that person in the very same proceeding if it finds it necessary. After the final decision of the Court, there has to be an urgent notification of the Center, which should appoint a guardian within 30 days. If the Court decides that the legal capacity of the person should be limited, then the role of the guardian corresponds with the role of a guardian of a minor who has reached 15 years of age. If the Court decides that the person should be deprived of legal capacity, then the guardian appointed by the Centre will have responsibilities as if he/she is a guardian of a minor below 15 years of age. Strangely enough, there is a discrepancy between the Law on Family and the Law on Obligations in the way they treat persons with limited or deprived legal capacity (the Law on Family - art. 168 considers the borderline to be 15 years while the Law on Obligations – art. 45 – 14 years).

In addition to these general categories, there are two more specific ones: 4. “special guardian“ which may be appointed in cases when: a. the ward is in conflict with the guardian him/herself or they are opposite parties in a same legal deed; b. when the ward is in conflict with another ward under the same guardian or they are opposite parties in a same legal deed. Finally, the Family Act in article 176, paragraph 1 stipulates the possibility for 5. any person which due to age, illness, or other justified reasons is not capable of taking care of him/herself to have a guardian for certain deeds or certain types of deeds appointed by the Center. The purpose of this article is to encompass any situation that is not mentioned in the Law, while the scope of rights and responsibilities of such guardian are determined based on the circumstances in each particular case.

Having in mind that all categories of guardianship should be officially approved and appointed by the Centre for Social Services as a body of the Ministry of Labour and Social Policies, it is clear that the country only has state-ordered measures regarding protection of vulnerable adults. Consequently, there is no possibility foreseen in any law for voluntary and *ex-lege* measures. There

⁴ There is a difference between legal capacity in a narrow and a wide sense. In a wide sense it means a capacity to have rights (правна способност) and is acquired at birth (Art. 45 a Law on Obligations). It means the ability of a person to have rights and liabilities; to be a subject before the law. In a narrow sense, legal capacity is a capacity to act or exercise these rights (деловна способност) or sometimes referred to as business capacity and it assumes the ability to make independent decisions about rights and obligations. Legal capacity is defined in art. 165, par. 2 of the Family Act. The Law on Obligations also follows the same definition (art.45-b). Закон за облигационите односи Службен весник на РМ основен текст бр. 18/2001 пречистен текст - <https://aso.mk/wp-content/uploads/2019/04/Zakon-za-obligacii.pdf>.

⁵ Закон за вонпарнична постапка, Службен весник на Република Македонија 79/2005, (пречистен текст) 09/2008 - https://jpacademy.gov.mk/wp-content/uploads/2022/08/zakon_za_vonparicna_postapka.pdf.

is a possibility for capable adults to give a mandate or to authorize a representative in certain situations, types of situations, deeds or cases to take actions on their behalf, in their name and interest,⁶ but this is significantly different from voluntary and *ex-lege* measures in that it does not refer to situations for example if or when the adult would potentially be deprived of capacity to reason etc. Consequently, there is a possibility for a continuing power of attorney that could enter into force immediately (not in the event of the granter's incapacity), but this is not within the meaning or to fit within the meaning given by Recommendation 2009.⁷ Lastly, any person capable of reasoning over 15 years of age could make a will (testament) in which he/she can decide about the transfer of own property rights *mortis causa* (inheritance) or can (even though does not have to) direct, set conditions or terms to a person accepting legacy.⁸ There is no possibility for a living will in the Law on Inheritance or in any other law.

According to the latest statistical data (for 2021 but published in 2023),⁹ the right to social welfare benefit is used by 124.949 people in total, out of which 854 are socially excluded, 7.581 are persons with visual impairments and 12.359 are persons with physical disabilities.¹⁰ The number of persons under custody is 1.778, out of which 695 are situated in families that should provide care. Out of all adult recipients of social welfare benefits, 9.410 are persons with intellectual disabilities, 16.418 are persons with combined disabilities, while 6.634 are elderly people.¹¹ There are a total of 318 recipients of care in institutions, among which 52 with moderate disabilities, 192 with severe disabilities and 7 with profound disabilities.¹² Among adult recipients of social welfare, there are 3.829 persons with intellectual disability, 1.951 persons with combined disability, 3.321 with financial problems, 5.231 elderly persons and 8.702 other persons.¹³ There is 1 institution for Organized Living Support with 28 recipients and 3 institutions for care of persons with disabilities which includes 298 recipients.¹⁴ There are 38 institutions for adults with 1.858 recipients and 172 trade companies for employment of disabled persons with 1.996 recipients.¹⁵

In the latest National Strategy for elderly people from 2010, which includes a period of 10 years¹⁶ it is stated that the country has 15% (303.534) of elderly people over 60 years (out of which 46% (139.636) are males while 54% (163.898) are females according to 2002 the Census, meaning that the country has overreached the coefficient of 12% for elderly people.¹⁷ The mortality rates increase with age and they are 13,4% for people aged between 55 and 64, 28% for people aged between 65-74 and 43% for people over 75.¹⁸ The UN World Population Prospects predicted back

⁶ See for instance art. 81 Law on Civil Procedure, art. 95 Law on the Notary Закон за нотаријатот, *Службен весник на РМ* бр.72/16, 172/16 и 233/18), Одлука на Уставен суд У.бр.129/16 од 24 јануари 2018 година, *Службен весник на РМ* бр.25/18.

⁷ Recommendation CM/Rec (2009)11 on Principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe.

⁸ Закон за наследувањето, *Службен весник на РМ* бр.47/96, art. 62 and 103.

⁹ Republic of North Macedonia, State Statistical Office, *Social Welfare of Children, Juveniles and Adults 2021*, Скопје, 2023.

¹⁰ *Ibid.* pg. 20.

¹¹ *Ibid.* pg. 23.

¹² *Ibid.* pg. 28.

¹³ *Ibid.* pg. 47.

¹⁴ *Ibid.* pg. 48.

¹⁵ *Ibid.* pg. 49.

¹⁶ Министерство за труд и социјална политика на Република Македонија, *Национална стратегија за стари лица 2010-2020*, јуни, 2010.

¹⁷ *Ibid.* pg. 4.

¹⁸ *Ibid.* pg. 11.

then that the this percentage will increase and will be 16,5 in 2009 (out of which 2,0% will be over 80 years) and 33,0 (out of which 6,8% will be over 80 years) in 2050.¹⁹ Even though the expected life-expectancy is lower than the average of the other European countries, the UN also predicted that it is expected to increase and reach 74,9 years of age in the period 2010-2015 and 79,5 years of age by 2050.²⁰ When it comes to the social protection of elderly people, the Family Act stipulates that the family members are responsible of taking care of their elderly, so the family is the primary caregiver. Only secondarily, if the family members are at social risk and cannot provide for their elderly, they are entitled to social protection according to the Law on Social Protection.²¹

It is important to mention that there is a lack of research and interest on this topic in the country. The latest National Strategy for elderly people is from 2010, which includes a period of 10 years.²² There is only one active association for support and development – Humanity (Хуманост)²³ that was working in the field of publishing comments on the Strategy²⁴ and developing suitable models for care of the elderly at home.²⁵ The main problem stated there is that while the European Union standards in terms of care for the elderly stipulate that each country should ensure a minimum of 3% facilities for institutional accommodation of the elderly, Macedonia only has capacity for institutional placement of 0,66% of the total number of the elderly in the country.²⁶ Some authors have suggested that the concept of active aging corresponds with healthy aging and that this is mainly supported by the Red Cross of the country and the Association of retired in the country.²⁷ Ever since 2010, the country did not make a new strategy, nor there have been significant political debates on the issue. Most of the national efforts were placed on the National Strategy on the Rights of Persons with Disabilities 2023-2030 with an Action Plan 2023-2026²⁸ since the country ratified the UN Convention of Rights for Persons with Disabilities but not the 2000 Hague Convention on the International Protection of Adults. The Strategy is adjusted with the UN and EU Strategy 2021-2030 as well as the Agenda 2030 and the sustainable development goals, appreciating human rights and the principle “Leave no one behind “.²⁹

North Macedonia does not have a unified system of long-term care for persons in need. Instead, the long-term care functions via systems for social and health protection, providing financial allowances and support to the family members that should provide the care.³⁰ The system for social protection does not even recognize the term long-term care,³¹ even though the services are appointed towards supporting the daily activities of persons with restricted functional capacities

¹⁹ *Ibid.* pg. 8. See also UN *World Population Prospects 2009*, the 2008 Revision.

²⁰ *Ibid.* pg. 12.

²¹ *Ibid.*, see more on the different models for social protection on pg. 15-19.

²² Министерство за труд и социјална политика на Република Македонија, *Национална стратегија за стари лица 2010-2020*, јуни, 2010.

²³ Web-site: <https://humanost.org.mk/>.

²⁴ Робановска Е., Хуманост, ГАП *Национална стратегија за стари лица 2020-2030*, 2019.

²⁵ *Suitable Model – Care of the Elderly at Home in Macedonia, Case Study Macedonia*, 2016.

²⁶ *Ibid.* pg. 7.

²⁷ Тргачевска А., *Програми за поддршка на старите лица за активно и здраво стареење во локалните заедници*, Евродигалог, стр. 100. - https://studiorum.org.mk/evrodijalog/23/pdf/MKD/04_MAK_Trgacevska.pdf.

²⁸ Strategy – Влада на РСМ, *Национална стратегија за правата на лицата со попреченост 2023-2030 со акциски план 2023-2026*, Скопје, март, 2023.

²⁹ *Ibid.* pg. 5.

³⁰ Бабовиќ М., Велковиќ Т., Дакиќ Б., *Пристап до услуги за долготрајна нега во Северна Македонија*, Хуманост, Скопје, 2023.

³¹ *Ibid.* pg. 13.

(persons with disability, persons over 65 years of age or persons under social risk or with social problems). These services may include residential care in institutions, caring families or small group homes.³² The beneficiaries who are financially maintained by other family member, have regular monthly incomes or have property in which they don't live or another property with an extra income finance these services themselves.³³ If that is not a case, then the costs should be fully or partially covered by the public health insurance, i.e. the State. The health protection is primarily oriented towards medical treatments, but also covers accommodation for ill persons, rehabilitation and palliative care.³⁴ In the Republic of North Macedonia there is a system of mandatory public health insurance and special care for vulnerable groups in the system for health protection. Beneficiaries of social insurance for elderly people have the right to health protection according to the Law on Social Insurance and Health Insurance.³⁵

There are numerous systematic violations³⁶ and abuses³⁷ within the institutions where persons with disability are situated and the State did not take any concrete measures. In the Institution of Demir Kapija, 375 persons have died within 22 years; in 2016 - 9 people have died. These facts open questions about the circumstances of their death.³⁸

When it comes to the elderly, a recent study on long-term services in the Republic of North Macedonia clearly depicts the current situation on the topic and identifies several problems.³⁹ The problems identified are: lack of information and statistical data on the number of elderly persons in need of long-term care as well as the type of care they may need, lack of institutional residential capacities, lack of finances, lack of employees in such institutions as well as exhaustion of the staff due to lack of staff. The study concludes that the role of informal caregivers (family members who live in the same household and provide the care) is not recognized and appreciated, while they cope with stress and exhaustion.⁴⁰ These are mostly family members who act as guardians, appointed by a State institution but not protected or supported enough by the institution or the State who claims to rest upon solidarity. Persons in need mostly rely on their spouses and children followed by neighbors and friends. This informal care is crucial in a system that lacks developed long-term care services. Therefore, the study finds that the information about the profile, burdens and needs of guardians as caregivers is essential to uplift their satisfaction and well-functioning.⁴¹ The vast majority of respondents of the study (85,9%), who rely upon informal care, reported that their caregivers never received any help or compensation from the State for their activities. Only

³² Закон за социјална заштита, *Службен весник на Република Северна Македонија*, 104/19.

³³ Art. 2 and 3 Правилник за видот и обемот на услугите од социјална заштита кои се плаќаат од страна на корисникот и висината на учеството во трошоците на корисникот и лицата кои се должни да го издржуваат врз основа на други прописи, *Службен весник на Република Северна Македонија*, 177/2018.

³⁴ Art. 10 Закон за здравствена заштита, редакциски пречистен текст *Службен весник на Република Северна Македонија*, 37/16

³⁵ Закон за социјална сигурност за старите лица, *Службен весник на Република Северна Македонија*, 104/19

³⁶ <https://vecer.mk/ognot-vo-banjata-bil-podmetnat>

³⁷ <https://www.flickr.com/photos/yanska/sets/72157623887093943/>

<https://humansnullandvoid.wordpress.com/investigation/>

³⁸ Helsinki Committees in Macedonia Special Report for Demir Kapija. Available at: http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1551/Izvestaj_Specijalen_zavod_Demir_Kapija_2016.pdf

³⁹ Бабовиќ М., Вељковиќ Т., Дакиќ Б., *Пристап до услуги за долготрајна нега во Северна Македонија*, Хуманост, Скопје, 2023.

⁴⁰ *Ibid.* pg. 19. See also what the study means by informal care - European Commission, *Ageing Report, Economic and budgetary projections for the 28 EU Member States (2016–2070)*, Luxembourg: Publications Office of the European Union, 2018, pg. 136.

⁴¹ *Ibid.* pg. 43.

8,1% of the caregivers received some support and counselling from relevant organizations and institutions, while most of them reported the need for additional help of their guardians mostly due to exhaustion or chronic illnesses.⁴² In the study sample 25,6% of persons over 65 years of age and 64% of persons with disability were in need of long-term care.⁴³ Most of them relied on informal care, while the institutional care was scarcely used. 21,3% of them were forced to take care of themselves alone, without help. Some of the reasons for avoiding institutional care were identified as lack of information and their own assessment that they can still function alone.⁴⁴ Long-term health services could be conducted at home, in a caring family (in case the family is not capable/does not exist) or in a hospital, where the first option is being preferred.

The Republic of North Macedonia ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2011, however did not undertake any comprehensive review and did not develop strategic framework for harmonization of the legislation with the CRPD. The country has not signed and ratified the Hague Convention of International Protection of Adults.

The National Coordinative Body for Equal Rights of Persons with Disabilities⁴⁵ was established in accordance with the UN Standard Rules for Equal Opportunities of persons with disabilities and has served as a bridge between the Government and the NCOPDs.⁴⁶ This body had the mandate to coordinate the implementation of the National Strategy.⁴⁷ However, its mandate and structure was not in line with CRPD provisions.

The Family Act has been adopted in 1992 and since then it has been changed and amended many times but it has never been harmonized as a whole and therefore it represents a clash between the old and the new concepts and principles. This situation was planned to be changed by a new Civil Code which should incorporate family law provisions as well. However, its ongoing work spans for more than 10 years while citizens and families live in different realities coming from the outdated family law provisions. Nevertheless, even the draft version of the upcoming new Civil Code does not incorporate the essence of the Hague Convention or Recommendation CM/Rec (2009)11 on Principles concerning continuing powers of attorney and advance directives for incapacity of the Council of Europe.

II. GUARDIANSHIP *DE LEGE LATA* - SUBSTITUTE DECISION-MAKING FOR THE WARD

The Summary Report of the State Responses to the Questions related to the initial Report of the Republic of Macedonia in the implementation of the Convention on the Rights of Persons with Disability identifies many problems.⁴⁸ The concept of disability itself is translated literally as "invalidity". There are a variety and a mixture of outdated terms in the legislation. The existing

⁴² *Ibid.* pg. 45.

⁴³ *Ibid.* pg. 21.

⁴⁴ *Ibid.* pg. 27.

⁴⁵

NCBERPWD.

Available

at:

http://www.nkt.gov.mk/index.php?option=com_content&view=article&id=44&Itemid=53

⁴⁶ NCOPD. Available at: <http://www.nsiom.org.mk/>

⁴⁷ *National Strategy for equalization of the opportunities for people with invalidity 2010 – 2018*. Available at: <http://mtsp.gov.mk/WBStorage/Files/FINALNA%20Revidirana%20Nacionalna%20Strategija.pdf>

⁴⁸ Informal coalition and group of authors, *Summary Report of the State Responses to the Questions related to the initial Report of the Republic of Macedonia in the implementation of the Convention on the Rights of Persons with Disability*, July 2018.

definitions reflect the medical paradigm of disability and do not correspond with the principles of dignity, non-discrimination, and equality.

According to the Summary Report, the Law on Family is an obvious example of discrimination and human rights abuse against persons with intellectual disability concerning the right to marriage. The minimum legal age for marriage is 18. A Court can issue a marriage license to persons between the ages of 16 and 18 if it finds them mentally and physically fit for marriage. This provision within the legislation is discriminating against persons with mental and intellectual disability to marry because they need to get a certificate of capability of understanding (the rights and obligations that come along with marriage) prior to obtaining a certificate on the genetic inheritance code. Additionally, the same Law, considering the right to adoption is discriminatory against persons with disability. Namely, within the listed negative criteria that exclude a person to be eligible for adopting a child is physical disability of such a degree that it can reasonably be doubted that they are able to take care of a child.⁴⁹ Comprehensive information, services and support to children with disabilities and their families is missing in order to prevent hiding, abandoning, neglecting and segregation. The support to families is regulated through the Law on Social Protection and the Law on Family. There is a huge discrepancy between the support that the State is giving and providing to families that have a child with disabilities and the foster care families.⁵⁰

There are three general categories of guardianship (старателство): 1. For minors who lack parental care – art. 159-164 of the Family Act and for minors victims of human trafficking - art. 177a-177m of the Family Act (not applicable to adults), 2. For persons with restricted legal capacity or deprived of legal capacity and 3. For special cases including: a. persons without official residence and without legal representative, b. unknown property owner where there is a need for protection of the property and c. other cases where there is a need for protection of rights and interests of certain persons. The last category encompasses the possibility for temporary measures to be issued by the Centre when it comes to a foreign citizen not capable of taking care of him/herself if a competent body from the foreign country asks for it. Competences of the Centre or of the guardian (старател) appointed by the Centre depend on the circumstances in each particular case.

In addition to the general categories, there are two more specific ones: 4. “special guardian“ which may be appointed in cases when: a. the ward (штитеник) is in conflict with the guardian, or they are opposite parties in a same legal deed; b. when the ward is in conflict with another ward protected by the same guardian or they are opposite parties in a same legal deed. Finally, the Family Act in article 176, paragraph 1 stipulates the possibility for 5. any person which due to age, illness, or other justified reasons is not capable of taking care of him/herself to have a guardian for certain deeds or certain types of deeds appointed by the Center. The purpose of this article is to encompass any situation that has not been mentioned in the Law, while the scope of rights and responsibilities of such a guardian are determined based on the circumstances in each particular case. No article excludes the possibility that different types of state-ordered measures could be applied simultaneously. However, the reasons for appointing each one of the measures differ therefore, it is less likely to be in a situation to apply different state-ordered measures simultaneously. An interim or *ad-hoc* measure could be issued when a special guardian is

⁴⁹ *Ibid.* pg. 14.

⁵⁰ Poposka Z, Kochoska E. Shavreski Z, *Holistic report on persons with disabilities in the Republic of Macedonia.* Available at: http://www.openthewindows.org/sites/default/files/0._holisticki_izvestaj_za_licata_so_poprecenost_vo_makedonija-en.pdf

appointed for persons without official residence and without legal representative or in the case of an unknown property owner where there is a need for protection of the property or in other cases where there is a need for protection of rights and interests of certain persons involved in some judicial or administrative proceedings. Apart from the Centre, in such cases, the Court, or another body competent in the particular proceeding, may appoint an *ad-hoc* guardian and notify the Centre thereof immediately.

A guardian is the person appointed as a representative/support person and can either be a natural person or imminently it can be the Centre for Social Services as a public institution. A guardian could be a person who has consented and has personal characteristics and ability to conduct its responsibilities (art. 135, par. 2 Family Act). Priority is always given to close relatives, even though the Centre takes into consideration the ward's wishes and those of the closest family members. There is no explicit priority given to one against the other family member. The guardian has to have legal capacity and personal abilities to conduct the given role. Normally, a legal entity cannot be a guardian, the only exception being when the Centre overtakes the role imminently. The role of the guardian is altruistic (art. 152, par. 1 Family Act), meaning that normally he/she will not receive any compensation, except for the expenses that occurred during the process or undertaken extra activities for protection of the rights and interests of the ward. A guardian cannot be a person deprived of legal capacity or parental rights, a person whose interests are against the ward's interests or a person for whom it could be probable, based on his/her past behavior, that he/she would not be able to conduct the role properly (art. 139 Family Act). It is possible for one person to be a guardian to several wards if there is a consent by all parties concerned and whose interests are not conflicting. It is also possible that the guardian and the person appointed by the Centre (the Centre imminently) be together in the role, each having partial competences in particular cases. In general, if a conflict of interests exists between the guardian and the ward, then that person is not eligible to be a guardian of that particular person. Nevertheless, if the conflict appears only in a particular case, then the Centre could appoint a special guardian for that particular matter (art. 174, par 2 Family Act).

If the legal capacity of the adult is limited or deprived, powers and duties of the guardian could vary – whether taking care of a minor under or over 15 years of age. They can only vary regarding duties surrounding property rights, but not regarding the care of the person under guardianship. The guardian of an adult with deprived legal capacity could only overtake all necessary measures regarding ordinary property issues, while for undertaking major property decisions (for instance, to sell, buy, give-donate a property etc.), a special approval from the Centre is necessary to be obtained. On the other hand, a guardian of an adult with limited legal capacity has smaller amount of power and duties because a minor over 15 is usually considered capable of their own income and its proper management (except in cases where special approval from the Centre is necessary to be obtained).

In general, the guardian should primarily take care of the person, his/her rights and interests, his/her accommodation and health. More specifically, powers and duties of the guardian depend on the reasons that gave way to limited/deprived capacity of the adult. The guardian should try to overcome such reasons (obstacles) if possible, while the final aim is to enable the adult to take care of him/herself independently (art. 167 Family Act). If it is necessary, the guardian should place the adult in a medical institution and notify the Centre thereof.

The guardian should also represent the ward, assure financial means for the needs of the guardianship and report to the Centre on his/her own work.

The guardian can act on behalf of the adult (depending on the matter, in some cases, an approval from the Centre is necessary to be obtained). The guardian cannot give gifts, sell, or perform any other legal changes to the ward's property rights out of higher value, reject inheritance, legacy or gifts or undertake other explicitly forbidden matters stipulated in the law (art. 147, par. 1). The guardian represents the ward as a legal representative in all legal or other relations with third parties on behalf of the ward. They could act together if the person has limited (not deprived) legal capacity and if the nature of the matter allows it.

Wills and preferences of the adult could only be taken into consideration if it is deliberated that the person could reason and express themselves accordingly. However, the best interests of the adult should normally be a guiding principle of the guardian, even though this concept is not specifically and explicitly elaborated in the Family Act.

The duties of the representative to inform, consult, account and report are primarily towards the Centre. In this regard, the guardian should report about his/her work to the Centre at least annually, but also whenever the Centre asks for it (art. 151, par. 1 Family Act). There is no explicit provision about informing, consulting or reporting to the ward or the other family members, even though the Centre may decide about it in each particular case when appointing the guardian or later.

Other duties of the guardian could be explicitly and specifically determined in the Centre's decision to appoint the guardian and those duties could depend on the particular needs of the adult. The guardian can receive compensation of extra expenses he/she might have faced during their duties, as well as remuneration if he/she has invested extra efforts to successfully comply with duties. In such cases, the compensation and the remuneration have to be approved by the Centre, either while they are covered by the ward's own finances, or (if that could endanger the ward's own maintenance) by the State Budget (art. 152 Family Act).

In cases when the guardian is not fully or properly executing their rights, responsibilities and duties, there is a possibility for a complaint or objection to their work lodged by the ward him/herself, if capable, or his/her relatives, and all other persons competent to initiate a procedure for guardianship, as well as any citizen (art. 131, par. 2). The complaint should be distributed to the Center, or if it concerns the Centre itself, to the Ministry of Labour and Social Policies. In the prior case, the Centre investigates the facts from the complaint and could take measures against the guardian or appoint a new one if it finds it necessary. In the latter case, the Ministry gives instructions to the Center, while the Centre reports to the Ministry about undertaken measures. If there is any material damage caused to the ward, the Centre could ask for remuneration from the guardian, provided there are facts that he did not conduct his/her duties with due attention or in good faith (art. 153, par. 1). If the guardian does not remunerate the damage, the Centre does it via Court proceeding. The guardian will also be liable for damages done to third parties by the protégé according to the Tort Law (as the parents are responsible for damages done by their children). Apart from the civil liability, the guardian could also have criminal liability if he/she has abandoned or maltreated the vulnerable adult. On the other hand, the property rights of the ward are protected by the Criminal Law stipulating evasion, unauthorized acts and services (послужување), fraud and trust abuse.

Usually, the role of the guardian is not fixed in time, but it is dependent on the circumstances that initiated it to start with. Nevertheless, if the guardian dies, stops to execute his/her responsibilities on his/her own or due to other certain circumstances, then the Centre is entitled to take urgent measures to protect the ward and/or other persons concerned with the guardianship, as well as to appoint a new guardian (art. 154). The guardianship can be terminated due to several reasons: 1. death of the guardian, 2. time-expiring - if it was appointed for a particular time, 3. malfunctioning

of the guardian and an urgent appointment of a new one (art. 155, par. 2) and 4. request by the guardian to be relieved from duties with a (at least) three months' notice and an appointment of a new one (art. 155, par. 1). Usually, prior to the end of the guardianship, the Centre asks for a Report regarding the work conducted by the guardian as well as regarding the ward's property condition (art. 157. Par 1 of the Family Act).

In the section below, different categories of guardianship will be elaborated through several questions: legal grounds and procedure, competent authority making decisions, entitled person to apply, consent of the adult, general description of the procedure and necessity for publicity of the measure.⁵¹ The focus will be on guardianship for persons with limited legal capacity or deprived of legal capacity. Furthermore, it will be elaborated how wills and preferences of persons with limited or deprived of legal capacity are not appreciated as a matter of principle in other laws apart from the Family Act.

1. For persons with limited legal capacity or deprived of legal capacity

There are two different procedures for appointing a guardian to a person with limited capacity or deprived of legal capacity: 1. For limitation of the legal capacity and 2. For appointment of a guardian.

Legal grounds and procedure: limited/deprived of legal capacity because of mental illness, use of alcohol, drugs or other poisons or psychedelic substances (art. 34, par. 1 Law on Non-contentious Procedure). The proceeding for limitation or deprivation is regulated by the Law on Non-contentious Procedure, while the proceeding for appointing a guardian by the Law on Family. The Centre acts according to the General Administrative Proceeding Act.

Authority: Based on the person's last permanent or temporary place of residence (art.35 Law on Non-contentious Procedure) in a non-contentious procedure, the Court decides upon limiting/depriving of legal capacity and sends the decision to the Centre according to the person's last permanent or temporary place of residence (art. 125 Family Act) which in turn decides to appoint a guardian. The Center's competences are regulated by the Family Act, while its decisions are based upon the provisions in the General Administrative Procedure Act.

Entitled to apply: the spouse, the child, the parent, the grandparent, the siblings of the concerned person or any other person who lives in same household with the concerned person, as well as the Centre for Social Services (art. 36 Law on Non-contentious Procedure). When it comes to the proceeding for appointing a guardian, the initiators could be the Centre *ex officio* or any other interested person (art. 127 Law on Family).

Consent of the adult: In terms of the proceeding for limitation/deprivation of legal capacity, the Court will listen to the adult person, if that is possible, at a hearing regarding temporary guardianship (art. 40, par. 2 Law on Non-contentious Procedure). The Court will also listen to the adult if that does not affect his/her health about any facts relevant to the decision (art. 43 Law on Non-contentious Procedure). However, the Court will also consult at least two medical opinions of doctors, which should examine the adult (art. 45). The Court will make a decision based on a combination of the above hearings. In a proceeding regarding an adult's placement in a health institution for mental illnesses, the Court decides when the adult's freedom to move could be restricted. This proceeding is urgent (art.58). When a health institution receives an adult without a

⁵¹ In concordance with the *Questionnaire Legal Protection and Empowerment of Vulnerable Adults* of the Family Law in Europe (FL-EUR) Academic network - <https://fl-eur.eu/>.

Court's decision or an adult's consent, it has to notify the Court within 48 hours. If the person consents (special written form in front of witnesses), and his movement has to be restricted, the health institution again has to notify the Court (art. 59). Regarding the proceeding for appointing a guardian, the Centre will take into consideration the wishes of the adult if he/she is capable of expressing them, or the wishes of his/her close relatives (art. 135, par. 4 Family Act).

General description of the procedure: Apart from the above mentioned, the Court may order, if it finds it necessary, to place the adult in a health institution for mental illnesses (no longer than 3 months), except in cases when that might influence his/her health in a deteriorating manner (art. 46). Against such order, the adult or his temporary representative or guardian may file a complaint. The final decision has to be made within three days (art. 47). After the completion of the proceeding, the Court will decide to limit or deprive of legal capacity (art. 48). If the reasons for such decision cease to exist, the Court, again in a non-contentious procedure, may return the legal capacity partially or fully (art. 49). The Court may postpone the decision-making process if the ground for limitation of the legal capacity is due to use of alcohol or other drugs while the person begins with a treatment in a specialized institution (art. 50). If the Court has decided to fully deprive the person of legal capacity while the situation of the adult has improved, the Court may *ex officio* or by initiative of everyone else who could initiate such procedure, including the adult or his/her representative/guardian change its decision (art.51 and 52). Furthermore, the Centre may appoint a guardian (priority is given to close relatives of the adult) or act as a guardian imminently (art. 135 Family Act). The Centre issues a document to the guardian in which his/her rights and obligations are clearly specified (art 140 Family Act).

Necessity for publicity of the measure: All decisions made by the Court have to be delivered to the Birth Registry Office, the Institution for Registration of Property Rights (Real Estate Cadaster) if the person has property and the Centre for Social Services (art. 54). All decisions made by the Center, have to be delivered to the registry offices and other state bodies, relatives, family members and neighbors and well as other companies, institutions or organizations (art. 128 and 140 Family Act). The same applies to all categories of guardianship.

2. *For special cases including a. persons without official residence and without legal representative, b. unknown property owner when there is a need for protection of the property and c. other cases when there is a need for protection of rights and interests of certain persons.*

Legal grounds and procedure: the above mentioned (a., b. and c.).

Authority: the Centre or the institution/body competent to decide in cases where the adult is a party. This institution should notify the Centre urgently about its decision (art. 173, par. 2).

Entitled to apply: The Centre or the institution competent to decide in cases where such an adult is a party.

Consent of the adult: only for other cases when there is a need for protection of rights and interest if the person can express consent.

General description of the procedure: described in the Family Act as a general procedure for appointing a guardian.

3. *“Special guardian“ when: a. the ward is in conflict with the guardian him/herself or they are opposite parties in a same legal deed; b. when the ward is in conflict with another ward protected by the same guardian or they are opposite parties in a same legal deed.*

Legal grounds and procedure: the above mentioned (a. and b.).

Authority: The Centre (art. 174 Family Act).

Entitled to apply: the persons concerned or the Center.

Consent of the adult: if they can express it.

General description of the procedure: described in the Family Act as a general procedure for appointing a guardian.

4. For any person which due to age, illness, or other justified reasons is not capable of taking care of him/herself to have a guardian for certain deeds or certain types of deeds.

Legal grounds and procedure: age, illness, other justified reasons.

Authority: the Center.

Entitled to apply: the person him/herself.

Consent of the adult: if they can express them.

General description of the procedure: described in the Family Act as a general procedure for appointing a guardian.

In many laws regulating different parts of human's lives, persons with limited/deprived of legal capacity are excluded from the possibility to make decisions about themselves and act accordingly. They largely depend on the guardian who usually makes decisions on their behalf.

Persons who, due to a manifest form of mental illness with the presence of psychotic symptoms or residual signs of the illness, are unable to understand the meaning of marriage and the obligations arising from it, and who are simultaneously incapable of reasoning, cannot enter into marriage. Also, individuals who have mental development delays and have severe and most severe mental deficiency (IQ below 36°) cannot enter into marriage. Finally, persons with moderate/mild disabilities in their mental development, as well as persons with severe hereditary diseases in the family, can enter into marriage after a previously obtained opinion on the genetic construction issued by the Institute for Children's Mental Health and young people in Skopje or another appropriate institution that deals with genetic research.

Medical matters that regard patients are regulated in the Law on Protection of Patients' Rights.⁵² Article 6, par. 1 of the law stipulates the right to an informed consent to any medical intervention. Article 14 stipulates that a patient has the right to decide (about oneself), with an exception when any postponement may eventually harm his/hers/somebody else's health or life. If the person is blind, deaf or cannot read/write then a written form for acceptance or rejection of medical treatment should be carried out in the presence of a family member/guardian or legal representative (art. 14, par. 4). If the patient is out of conscience, deprived of legal capacity or a minor and admitted to the health institution, the consent should be given and signed by the parent, a legal representative or the guardian (except in cases of urgent medical interventions) - art. 15, par 1. These persons could withdraw the consent at any time if that is in the patient's interest (art. 15, par. 2). If the patient's interests and those of the person that decides on his/her behalf (the parent, the guardian, the legal representative) are in collision, the health institution should notify the Centre that should

⁵² Закон за заштита на правата на пациентите, основен текст *Службен весник на РМ* 82/08. Пречистен текст - <https://zdravstvo.gov.mk/wp-content/uploads/2018/01/ZAKON-ZA-ZASHTITA-NA-PRAVATA-NA-PATSIENTITE-zakluchno-so-br.-150-od-2015.pdf>.

decide as a matter of urgency (art. 15, par. 3). A medical intervention without consent of authorized persons could be conducted only in very urgent cases when the life of the patient/someone else's is imminently endangered (art. 16). The patient or his/her parent/legal representative/guardian (if the patient is deprived of legal capacity or he/she is a minor) should consent with a written statement for participation in a scientific research. If it is in the patient's interest, the statement could be withdrawn from the patient him/herself or his/her representatives (art. 17). Patients deprived of legal capacity, not capable of making sound judgments or minors could be subjected to such investigations if it has additionally been considered that the research results might contribute to their wellbeing and improvement of their health following consent from the representatives and permission from the Centre (art. 20, par 1). An exception could be in a case when the results may contribute to other patients with similar conditions, while the research itself poses a minimum risk and burden towards the patient (art. 20, par. 2).

According to the Law on Mental Health⁵³, a person with mental illness could be accepted in any health care facility only if the person has consented or on the grounds of a Court's decision or in urgent cases (art. 16).

Article 41 from the Constitution stipulates that it is a human right for a person to decide freely about procreation of children. However, art. 3 of the Law on Termination of Pregnancy⁵⁴ stipulates that the termination of pregnancy could be done with written consent of the pregnant woman, except in cases when she is a minor or a person deprived of legal capacity when a written statement from the parent or the guardian is needed.

The Law on Bio-medically Assisted Reproduction⁵⁵ is also restrictive in access when it comes to persons deprived of legal capacity. Namely, article 9 clearly states that the right to be a beneficiary of bio-medically assisted procedure is granted only to holders of full legal capacity. Like most laws, this too does not specify if this right is granted to persons partially deprived of legal capacity. A contract of a person whose legal capacity has been removed is considered void, except for the contract of lower value (everyday contracts) which would be considered valid, unless otherwise determined by law. Contracts can be concluded on behalf of the person whose legal capacity has been removed by his/her legal representative (guardian). An adult whose legal capacity has been limited by a Court decision may, without the approval of the legal representative (guardian), enter into all contracts, the conclusion of which is not prohibited by the Court decision. Other contracts of these persons, if concluded without the approval of the legal representative (guardian), are voidable, but may remain in force with his/her additional approval.

Regarding the person's mental capacity in inheritance law, the capability of reasoning is crucial in relation to the possibility of writing one's own last will and testament. Whereas, a testament can be drawn up by any person capable of reasoning who has reached the age of 15. The will is null and void if the testator was under 15 years of age or was incapable of reasoning at the time of its creation. A loss of judgment that would have occurred after the will was made does not affect its validity.

When it comes to administrative procedures (such as issuing a passport), again, a person with restricted legal capacity cannot file a request on their own. Instead, that can only be done by his/her

⁵³ Закон за ментално здравје, основен текст *Службен весник на РМ* 71/07, пречистен текст - <https://zdravstvo.gov.mk/wp-content/uploads/2018/01/ZAKON-ZA-MENTALNO-ZDRAVJE-zakluchno-so-br.-150-od-2015.pdf>.

⁵⁴ Закон за прекинување на бременоста, *Службен весник на Република Македонија* бр. 101/19.

⁵⁵ Закон за биомедицинско потпомогнато оплодување, основен текст *Службен весник на РМ* 37/08, пречистен текст - <https://zdravstvo.gov.mk/wp-content/uploads/2015/10/0-ZAKON-ZA-BIOMEDITINSKO-POTPOMOGNATO-OPLODUVAN-E.pdf>.

parent/legal representative or guardian (art. 29 Law on Travel Documents for Citizens of North Macedonia).⁵⁶

III. GUARDIANSHIP *DE LEGE FERENDA* - SUPPORTIVE DECISION-MAKING WITH THE WARD

In the Macedonian public sphere, there are no ongoing debates or announced reforms regarding family law provisions on state-ordered measures. Accordingly, there is a lack of awareness, even though there is an urging necessity for eventual change.⁵⁷ There are no attempts to harmonize the legal system with the ratified Convention on the Rights of Persons with Disability in terms of replacement of the regime of substitute decision-making with the regime of supported decision-making, which respects personal autonomy, wills and preferences of the person. This is also in line with the Oviedo Convention (The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine), especially when it comes to medical interventions for persons with disability.

The Ministry of Labour and Social Policy declares to be a protector of persons with disabilities with the parole that they are “enabling equality, dignity and integration of persons with disability in the public life“. Currently, the Ministry is working on improving their position in society with a new National Strategy 2022-2027 (the old one was already mentioned above), a Register for persons with disability as well as on a new system for estimation of the disability and reforms of the system for employment of persons with disability.⁵⁸ However, the fact that the 2000 Hague Convention on the International Protection of Adults has neither been signed nor ratified and that the Constitution itself still does not allow for persons deprived of legal capacity to vote⁵⁹ depicts that more has to be done, especially in the field of appreciating opinions of persons with disability. The legal situation in North Macedonia resembles the one in Serbia in the sense that most of the provisions in the Family Act and in the Law on Non-contentious Procedure have been adopted at a time when persons with disability were excluded (mental or intellectual impairments and the elderly) as a principle. Nowadays, the principle has changed into inclusion of persons with disabilities, yet many laws still remain unchanged and rigid.

It will be a great step if the changes bring forward the replacement of the exiting guardianship system with the supported decision-making system and ensure that the rights, wills and preferences

⁵⁶ Закон за патните исправи за државјани на Република Македонија, *Службен весник на РМ* бр. 73/04. Пречистен текст - <https://ldbis.pravda.gov.mk/PregledNaZakon.aspx?id=9084>.

⁵⁷ See for instance the Red Cross' activities for taking care of elderly, ill or lonely: Радио Слободна Европа на Македонски јазик, *Негувалтелки од Црвен Крст за старост, болест и самотија*, 25. Dec. 2023 - <https://www.youtube.com/watch?v=jcIRx4o7TQM>.

⁵⁸ МТСП *Градиме систем кој е праведен и прилагоден на лицата со попреченост*, 28.7.2022 - https://www.mtsp.gov.mk/juli-2022-ns_article-mtsp-gradime-sistem-koj-e-praveden-i-prilagodен-na-licata-so-poprecenost.nspх.

⁵⁹ According to the Electoral Code - available at: <https://drive.google.com/open?id=0B8ZpCwro9h-zM2lkMkZERFo0NXc> the right to vote is available for all persons above 18 years of age who have legal capacity. A provision formulated in this way is restrictive and limited in its definition of the legal capacity. Moreover, the provision stipulates that citizens can exercise their right to vote only in the place / municipality where they live. This means that the provision excludes certain number of citizens with disabilities who reside in institutions, and citizens with disabilities who are temporarily in medical centers and institutions, or rehabilitation centers, during the election period. See more in the *op. cit. Summary Report*.

of the person are respected.⁶⁰ Namely, the system of guardianship will have to reform in light of enabling supported decision-making with the ward.

The draft versions of the Civil Code including family law provisions,⁶¹ especially provisions regarding guardianship (4:231 – 4:300) clearly indicate the national *status quo* on the matter. Namely, most of the concepts remain the same - the provisions are, more or less, identical to the old/current and still in force Family Act. For instance, the concept of guardianship remains, even though there is a trend of abandoning it in Europe. The concept of extension of parental rights on the basis of disability of the person over 18 years remains with a slightly changed title – extension of parental responsibilities - art. 4:194. This article stipulates as follows: “the Court, following a proposal by the parents or the Centre, may in a non-contentious proceeding decide to extend parental responsibilities if the child is not capable of taking care of his/her own rights, interests and personality by him/herself due to impediments in the psychological development even after maturity“. Nevertheless, there is no provision about appreciation of the wills and opinions of the person concerned.

The Centre remains to be the main body to decide upon guardianships in a decision that sets the scope of rights and responsibilities of the guardian (art. 4:247) after the Court decides to limit or deprive of legal capacity in a Non-contentious proceeding. The legal capacity remains to be defined as a capability to express a legally relevant will to participate in the legal market (art. 4:727). There are rare/no public debates to abandon the concept of full deprivation of legal capacity in order to provide free autonomy to persons with disability, apart from rare written academic works of researchers.⁶²

Further reforms have to be made to the Law on Non-contentious Procedure (in the domain of reforming the current concept of legal capacity and deprivation thereof) and in the Family Act (in the domain of regulating guardianship as well as other provisions that exclude persons with disabilities to express wills and opinions, such as when concluding marriage, recognizing a child etc.). The guardian’s primary concern nowadays has come down to even taking care of the personal rights of the ward. However, this role should be shifted from making paternalistic decisions about the ward into empowering the ward to make decisions on his/her own. This includes information in a timely manner and taking into account, in the utmost extent possible, the ward’s wishes, opinions and as far as possible, decisions. The provision which regulates when the guardian shall be relieved of his/her duties, should as in Serbia be broadened to include the case when the guardian has concluded a Life-care Contract with the ward or another contract that leads to the incompatibility of the rights and obligations from the contract with the duties of the guardian.⁶³

IV. CONCLUSION

Considering all the above-mentioned, it can be concluded that the Macedonian legal system is still very paternalistic when it comes to the relationship between vulnerable adults and the persons responsible for protecting their interests on their behalf, appointed by the State. Therefore, the principle of presupposed ‘best interests’ dominates over the ‘will and preferences’ principle.

⁶⁰ *Op. cit.* Summary Report, 2018.

⁶¹ Работна верзија Граѓански законик, Книга 4 Семејноправни односи.

⁶² See more in Зороска - Камиловска, Т., *Одземање и враќање на деловната способност*, Универзитет „Св. Кирил и Методиј“ Правен факултет „Јустинијан Први“, Годишник на Правниот факултет „Јустинијан Први“ во Скопје во чест на проф.д-р Марјан Марјановски, pg. 93.

⁶³ *Op.cit.* FL-EUR Serbia, pg. 15.

Accordingly, the system recognizes only substitute decision-making for the ward, instead of supportive decision-making with the ward. That should be changed in the future.

Regarding current provisions in the Law on Non-contentious procedure, the person affected cannot initiate a procedure for deprivation (complete or partial) of legal capacity on its own, while he/she can initiate a reversible procedure (for complete or partial restoration of the legal capacity – art. 52. Further on, the Law does not ask for mandatory presence or hearing of the concerned person, while it does ask for mandatory presence of an expert and the judge at the same time. Even though throughout the procedure, the Court is entitled to investigate the situation and based on the findings to make its own decision, in practice, the decision is regularly substituted by the expert's opinion. This could lead to the conclusion that the expert makes the decision instead of the judge, while an administrative body – the Centre further describes which acts can or cannot be taken alone by the person/appointed guardian.

Regarding protection of the vulnerable adult against conflict of interests, there is a possibility of appointing another - impartial guardian as elaborated more profoundly above.

Regarding abuse or neglect in case of institutional representation of persons in residential-care institutions by those institutions, the case of *L.R. v. North Macedonia* clearly depicts the brutal reality.⁶⁴ Despite many criticisms received because of this case, it seems as if the country has not done much to avoid further repetitions.

The draft version of the Civil Code (the work done so far) does not seem to improve the position of vulnerable adults.

The situation is very much the same as in the current Family Act and the position of the ward is inclusive in art. 4:238 (draft version of the Civil Code) that entitles the ward (if capable) to appeal to the work of the guardian, art. 4:250 and 4:264 that entitles the ward (if capable to understand) to be present when his/her property is assessed/returned. The situation has slightly been improved in the novel article 4:241 that introduces mandatory registration of data regarding the number of wards, the measures undertaken to protect their personal and property rights. On the other hand, the situation has deteriorated due to the absence of provisions that entitle the ward to apply for restoration of legal capacity (art 4:278 mentions only the possibility for the guardian – but not for the ward him/herself- to apply for restoration).

Unlike the Republic of North Macedonia, the Republic of Serbia (under very similar legal circumstances) undertakes serious measures that could improve the vulnerable adults' position; yet does not take much of an effort for regulation or implementation. The opinion of the author of this Report is that North Macedonia should at least follow/embrace some of the improved solutions from its neighboring country in order to improve the position of vulnerable adults in the short run. For instance, there (in Serbia), the Court, instead of the Centre, sets the rights and obligations that a person with limited legal capacity can still enjoy (especially the right to vote) according to a special plan. Furthermore, they even propose that the Court should set the scope of matters that the person with limited legal capacity should not undertake, while everything else should be considered as permissive.⁶⁵ Even more, the decision of the Court becomes tailor-made necessity for including a guardianship plan, specified for each person. Regarding women's reproductive rights, unlike in North Macedonia, there the Law on Termination of Pregnancy in a Healthcare Institution allows a pregnant woman who is partially deprived of legal capacity to independently request for an abortion.⁶⁶ When it comes to procedural rights, in Serbia, the Court may allow that

⁶⁴ *L.R. v. North Macedonia*, Application No. 38067/15, Judgment of 23 January, 2020.

⁶⁵ *Op. cit.* Serbia Report FL-EUR pg. 45.

⁶⁶ *Ibid.*

the participant without legal capacity institutes actions in addition to the actions for which he/she is authorized under the law, if the Court believes that he/she is capable of understanding the meaning and legal consequences of such actions. In order to gradually transit from ‘best interest principle’ to the ‘will and preferences principle’, Serbia introduced (and North Macedonia should consider following) a prior consent of the guardianship authority and a previously obtained opinion of the ward when making decisions about medical interventions on the ward. When it comes to the management and disposal of the ward's property, it is proposed to add the guardian's obligation to obtain the ward's opinion and to respect his/her decisions, wishes and attitudes.⁶⁷

The proposed Macedonian Civil Code still heavily relies on the Centre (instead of the Court) regarding the matter of appointing a guardian and setting his/her scope of obligations *vis-à-vis* the rights of the ward (art. 4:247). Article 4:727 defines legal capacity (деловна способност) in a narrow sense as a capacity for a person to be able to express a legally relevant will to participate in the legal market. Again, the age for determining the rights and responsibilities of a guardian of a person with limited/deprived of legal capacity is set to 15 years, instead of aligning it with the Law on Obligations – 14 years (art. 4:275) as it is in Serbia. North Macedonia should too, at least introduce a guardian's obligation to inform and help the ward in making decisions about him/herself according to his/her capacity in order to enable a more autonomous decision-making process. Following the current Family Act, article 4:244 stipulates that if the ward is placed in an institution/organization, family or with a person, the Center should appoint another guardian for all other matters that the institution/organization, family, person do not encompass in their regular activities. This presupposes that there will be one responsible person as part of the institution taking care of more wards. The Serbian legal changes progress in the direction of completely abandoning the possibility for one person employed in such an institution to be appointed as a guardian of all the wards accommodated there, considering it as a potential conflict of interests, abuse or neglect that cannot suit personal needs of individuals.⁶⁸

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⁶⁷ *Ibid.* pg. 46.

⁶⁸ *Ibid.* pg. 47.

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