



## Reply to questionnaire for the country reports – Poland

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### 1. What legislation is relevant for the protection of adults? (If applicable, differentiation between federal law or the law of individual federal states)

The most important Polish legislation relevant for the protection of adults:

- a. Family and Guardianship Code - Act of 25 February 1964
- b. Civil Code - Act of 23 April 1964
- c. Code of Civil Procedure - Act of 17 November 1964

### 2. What are the types of formal measures that exist to support people with disabilities in exercising their legal capacity? (Especially private mandates or legal representatives appointed by a court/authority)

The most important types of formal measures that exist to support people with disabilities in exercising their legal capacity:

- a. Guardianship of legally incapacitated person
- b. Various forms of custody (see answer to question Nr. 3)

### 3. Who decides on the appointment of a supporter/legal representative and what are the requirements for the respective measures?

Under Article 13 of Civil Code a person, not younger than thirteen years and incapable of controlling his own behaviour due to mental illness, mental retardation or another kind of mental disorders (e.g. alcoholism or drug addiction) may be fully incapacitated. For such a person the guardianship shall be established, unless he/she is still under parental authority.

Under Article 16 of Civil Code a person may be partially incapacitated because of mental illness, mental retardation or another kind of mental disorders (e.g. alcoholism or drug addiction), if there are no ground for full incapacitation but he/she requires assistance in managing his/her affairs. For partially incapacitated person the curatorship shall be established.

The custodian of a partly incapacitated person is appointed by court. His/her role is to represent such a person and to administer his property (Article 181 § 1 of Family and Guardianship Code).

The custodian of child conceived but not yet born is appointed by court, if it is necessary to protect the child's future rights (Article 182 of Family and Guardianship Code).

The custodian of a disabled person is appointed by court if such a person needs help in all or specific matters (Article 183 § 1 of Family and Guardianship Code).

The custodian may be also appointed by court when a guardian is temporarily unable to exercise guardianship (Article 157 of Code of Family and Guardianship).

#### **4. Who is involved in the procedure of determining the need for support in legal affairs and in what capacity?**

Under Article 573 of Code of Civil Procedure a person under guardianship shall have the capacity to act in proceedings involving him or her, unless he has not capacity to perform acts in law. The court may limit or exclude personal participation of a minor in proceedings because of educational/childcare grounds. Persons close to that person (e.g. parents, relatives, actual foster family, candidate for guardian) can be involved in the procedure, as well as public prosecutor.

The Constitutional Tribunal stressed in the latest judgement (of 28.6.2016, [K 31/15](#)), that the legally incapacitated person should have the right to an active participation in proceedings initiated by his/her guardian aimed at placing that person in a social assistance house.

#### **5. How significant is the legal capacity of the adult concerned and is there a constitutive ascertainment of (lack of/limited) legal capacity?**

Under Article 13 of Civil Code the guardianship shall be established for a fully incapacitated person (incapable of controlling his own behaviour due to mental illness, mental retardation or another kind of mental disorders), unless he/she is still under parental authority.

Under Article 16 of Civil Code Curatorship shall be established for a person who is partially incapacitated (in need of requires assistance in managing his/her affairs).

As far as other forms of Curatorship are concerned – see answer to question Nr. 3.

#### **6. What are the responsibilities of a supporter /representative and what are the obligations and principles he/she must comply with?**

The exercise of guardianship is *de facto* regulated in Chapter II of Section I of Title III of Family and Guardianship code (see Article 176). If it is not against the interest of a ward, the guardian of a legally incapacitated person shall be first of all his/her spouse or, subsidiarily, his/her father or mother.

A guardian for fully incapacitated person (ward) takes care of the person and his/her property. Guardian shall request the consent of the court in the important matters concerning the person or property of a ward. The court regularly controls the exercising of guardianship and provides the guardian with recommendations (Article 165 of Family and Guardianship Code).

In principle the guardian shall perform his duties with due diligence required by the interest of the ward and by the interests of society (Article 154 of Family and Guardianship Code). After the period of guardianship the guardian shall immediately submit to the court an inventory of the ward's property. The court may oblige the guardian to deposit valuable items of the ward's property.

The ward has the right to claim for redress of damage caused by undue exercise of guardianship. It expires after three years period from the termination of guardianship. The guardian may claim for the reimbursement of expenses connected with exercising the guardianship.

#### **7. What role do family members play and what are the requirements imposed on them?**

Under Article 176 of Family and Guardianship Code as the guardian of a legally incapacitated person shall be in principio appointed his/her spouse or subsidiarily – his/her father or mother, unless it is against the interest of a legally incapacitated person (ward).

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## 8. What role do volunteers play and what are the requirements imposed on them?

The volunteers actually help people with disabilities. The work of most of volunteers are organized by non-governmental organizations, also associated with Catholic Church. The activity of NGO's are governed by Act of 24.4.2003.

## 9. Are there professional supporters/legal representatives and what requirements/ qualifications do they have to satisfy?

There are professional supporters working for social assistance houses, that support people with disabilities (only in some cases free of charge). Such people can be also supported by national health care institutions. For example nurses, who work there, are certificated, i.e. have to satisfy professional qualifications.

## 10. Who bears the costs for procedures and the supporter/legal representative?

## 11. How are supporters/ legal representatives supervised and what is done to ensure that the rights, the will, and the preferences of the adult concerned are respected? (cf. Art. 12 section 4 UN CRPD)

In principle the guardian shall perform his duties with due diligence required by the interest of the ward and by the interests of society (Article 154 of Family and Guardianship Code). Guardian shall request the consent of the court in the important matters concerning the person or property of a ward. The court regularly controls the exercising of guardianship and provides the guardian with recommendations (Article 165 of Family and Guardianship Code). After the period of guardianship the guardian shall immediately submit to the court an inventory of the ward's property.

## 12. Who decides on deprivation of liberty and involuntary medical measures and what requirements does this decision underlie? Is there a distinction between self-endangerment and endangerment of others?

Under Article 31 of Polish Constitution of 1997 freedom of the person shall receive legal protection and any limitation of the exercising of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights. Additionally, under Article 39 no-one shall be subjected to scientific experimentation, including medical experimentation, without his voluntary consent.

Deprivation of liberty and involuntary medical measures are allowed only in precisely defined cases (e.g. extreme alcoholism, drug addiction, mental illness), than may not be interpreted broadly. Generally the courts are exclusively entitled to on deprivation of liberty and involuntary medical measures.

## 13. Additional comments (elements of your country's system that may be of interest and are not covered above)

The reform of Polish guardianship law *sensu largo* (grounds of being fully incapacitated and forms of guardianships) is being discussed in last years. Previously the Constitutional Tribunal criticized the Civil Code's rules on incapacitation of a person (judgement of 7.3.2007, K 28/05). The Codification Commission of Civil Law issued the proposal of new provisions (2014 draft), but at present (1<sup>st</sup> half of 2016) this legislative process is not being continued.

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