



## Reply to questionnaire for the country reports – Czech Republic

Anita Smith



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

As the Czech Republic is a unitary state, there is no division into federal and state law. The most relevant legislation with respect to supporters or legal representatives is the Civil Code. With respect to the appointment of a legal representative in a proceedings before a court or a public authority, the procedural acts (Civil Procedure Act, Criminal Procedure Act, Administrative Procedure Act, Administrative Justice Act) contain specific legal rules.

Involuntary medical measures are regulated also by the Civil Code, by the Medical Services Act and Protection of Public Health Act.

In broader sense, protection of adults also contains such areas of law as social security (incl. social services) or criminal law. However, it is assumed from the rest of this questionnaire that these areas are not relevant.

### **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)**

Such measures are listed in the Civil Code (§ 38 – 65).

When a person expects she will lose legal capacity, she can express her will to have her affairs administrated in a certain way, or to have them administrated by certain person, or to have a certain person appointed as her legal representative. Following sections provide detailed rules for such a preliminary declaration.

Another option in this phase is the power of attorney, on the basis of which the agent represents the principal. The necessary precondition for the power of attorney to be valid is the legal capacity with respect to this conduct.

Next option is the assistance in decision-making. There is a contract between the person with mental disorder and the supporter. The supporter assists the other party to a contract in exercising her legal capacity.

Representation by a member of the household is another option. An adult with mental disorder who has no other representation can be represented by listed relatives or by a person sharing the household with her for at least 3 years.

When a court decides to restrict the legal capacity of a person, it also appoints a legal representative for this person.

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

Preliminary declaration: It has to be made in the form of a public deed or confirmed by two witnesses. A court approval is not required.

Supporter: There is a contract of support between the person with mental disorder and the supporter. A court approval is necessary for this contract to be valid.

Representation by a member of the household: The representative informs the person about the representation. Unless the person rejects it, the representation is established. It requires a court approval.

Legal representative: She is appointed by the court.

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

All the above-mentioned forms of representation or support, except for legal representation, arise out of the initiative of the person with mental disorder or his/her (future) representative. The court approval is necessary (except for preliminary declaration). In general, the court should endeavor to find out the opinion of the person concerned (the one to be represented).

Legal representative is appointed by the court. When choosing a legal representative, the court has to take into account the wishes and needs of the person who will be represented, as well as the initiatives of relatives and the relationship between the two persons concerned.

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

*Addendum:*

*In essence we are asking whether there is not only an assessment by the court or authority of the adult's abilities and his/her needs for support and protection when making an order on a measure of support and protection, but also a decision on the legal capacity of the adult removing or restricting the legal capacity of the adult. This may either be a separate order, or be just the (legal or de facto) consequence of an order on a measure of support and protection.*

In general, there is no decision on the legal capacity of the adult removing or restricting the legal capacity of the adult. However, as the court is obliged to assess the opinion of the person concerned (the one to be represented), this may be part of such assessment.

Moreover, the Civil Code (§ 63) expressly provides that a person with restricted legal capacity shall not be appointed as a legal representative.

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

A supporter shall not jeopardize the interests of the person being supported by the means of improper persuasion nor can she enrich herself at the expense of the person being supported. A supporter fulfils her duties in compliance with supportee's decisions. A supporter has a right to object the validity of a legal conduct of the supportee.

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Representation by a household member: The representative shall pay attention to the protection of the person being represented and to the fulfilment of her rights, as well as to have her lifestyle not in contradiction with her abilities nor with her special desires and wishes unless such desires or wishes are unreasonable. The representation covers ordinary affairs in the way they correspond to the life standard of the person being represented. However, the representative is not allowed to give consent to the interference with the mental or physical integrity with permanent consequences. The representative may administer the income of the person being represented in an extent that is necessary to arrange for the ordinary affairs corresponding to the life standards of the person being represented. However, the representative may administer the money deposited on the bank account of the person being represented in amount not exceeding the living minimum.

Legal representative must comply with similar standards. Moreover, the court may obligate a legal representative to get insured in case of causing damage when representing if it is justified by the circumstances. A legal representative shall maintain regular and proper contact with the person being represented, express genuine interest about her, pay attention to her health conditions and fulfil her rights and protect her interests. When deciding on her affairs, the legal representative shall explain her the nature and consequences of the decision. The legal representative is also obliged to make regular statements on the administration of the property (assets) of the person being represented.

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

Family members play an important role when the person concerned has not arranged for a different form of representation herself. In such a case, representation by a member of the household can be used.

When the court chooses whom to appoint as a legal representative, it appoints a person proposed by the person being represented. When it is not possible, a relative or another person close to the person being represented is appointed.

Such persons can also request an establishment of a legal representation council. This council, among other things, regularly debates legal representative's report on her activity. It can propose a change of legal representative's reward, her dismissal or annulment of legal representation. Moreover, their consent is required in the cases of certain significant decisions taken by the legal representative.

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

If a legal representative cannot be chosen from relatives or other persons close to the person whose representation is being decided on (and when she has not proposed a legal representative herself), the court appoints as a legal representative a different person who meets the requirements for being a legal representative. Therefore, she can be called a volunteer. Except for this, volunteers pay no special role.

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

Despite the fact that the Civil Code does not expressly mention the term "professional supporter/legal representative", such people can exist. We can define them as persons who perform legal representation as their "occupation".

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Contrary to professional supporters/legal representatives, who are not mentioned in the Civil Code, the Civil Code recognizes a public legal representative. A public legal representative is a municipality and it is appointed when no (private) legal representative can be appointed.

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

When the court decides on the approval to the contract of support, the parties bear their costs themselves. For the supporter is “appointed” by a contract between the parties, a reward for her services can be part of such a contract. In such a case, the person being supported pays it herself.

When the court decides on the legal capacity of a person, the state bears the costs.

When deciding on the legal representation of a person (in the sense dealt with in this survey), this proceeding is joined to the legal capacity proceeding. Therefore, basically the same rules apply. A legal representative may not request a reward for the representation from the person being represented. However, when she has to administer the property of the person concerned, the court may award her a reward. Its amount shall be based on the costs of such an administration, value of the property, its profits and the time and work demands.

#### **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)**

On the request of the person being supported or the supporter, the court dismisses the supporter. The court shall also dismiss her when she gravely breaches her duties.

As for legal representatives, the court supervises whether they perform their duties in a proper way. With respect to this power, the court shall adopt adequate measures. The legal representation council has also important powers in this respect (see question 7).

#### **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 § 93 and following of the Civil Code, except for the cases provided by law, no one shall interfere with the (bodily or mental) integrity with a consent of the person concerned. Such a person shall be comprehensibly informed about the nature of such an interference.

When such a person is not able to give consent for her incapability to express her will and she has no legal representative, a consent of a spouse, parent or a close person is required. If one’s life is in a sudden and apparent danger and a consent in any form cannot be obtained, it is possible to perform the intervention if it is necessary in favor of the person concerned.

When an intervention with the integrity of a person unable to assess the situation should take place and such an intervention will have permanent, inevitable and serious consequences or when there is a serious risk to life or health, the intervention may be performed only with the consent of the court. The court shall give consent when the intervention is reasonable.

The deprivation of liberty in criminal law in the form of detention can be performed only by the court or with the court’s approval.

It is possible to take over a person to an institution providing medical care or to keep it therein without her consent only for reasons provided for by a statute (in particular when there is a court order for medical treatment in such an institution; there is an order for isolation, quarantine or other measures under the Protection of Public Health Act; when the person endangers in an immediate and serious way herself or her surrounding and is under the influence of a mental disorder or addictive substances and there is no less intrusive means) on condition that the necessary care for her cannot be performed by a less intrusive and less restrictive means. If this happens, the medical care institution shall inform her legal representative (and other listed persons) about it. The court shall be informed in 24 hours. The court decides about the measure taken in 7 days. The situation (incl. legal consequences and rights) shall be explained to the person concerned in a proper way. The person concerned has the right to discuss anything with her representative (incl. e. g. supporter) without presence of third persons. The person concerned (or her supporter) has the right to have her health conditions reviewed by an independent doctor.

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

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