



Reply to questionnaire for the country reports – Slovenia

Prof. Dr. Barbara Novak, University of Ljubljana

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

The **Marriage and Family Relations Act**¹ is relevant for the protection of adults, which regulates placing a person with partial or complete deprivation of legal capacity under guardianship, extending the parental rights of physically or mentally handicapped persons and placement in guardianship for special cases when this is required for protection of the rights and benefits of an individual. The Marriage and Family Relations Act supplements the **Non-litigious Civil Procedure Act**,² which determines the conditions and procedures for depriving legal capacity and the procedure of extending parental rights. In connection with medical measures, the **Patient Rights Act**³ and the **Mental Health Act**⁴ are also relevant, which regulate deprivation of liberty and involuntary medical measures.⁵

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)

An adult⁶ who has been deprived by a court **of legal capacity partially or in full** is placed **under guardianship** by a social work centre. A guardian is responsible for care of the ward in entirety: by law she or he is bound conscientiously to care for the ward's personality, her or his rights and interests and prudently to manage her or his assets (art 187 of the Marriage and Family Relations Act). The basic task of a guardian, the protection of the ward's personality, is carried out primarily by care, treatment and training for an independent life and by protection of the property rights of the ward (para 2 art 178 of the Marriage and Family Relations Act). Although the law only requires with the business and management of the ward's assets that the guardian consults with the ward prior to any more significant task (para 2 art 190 of the Marriage and Family Relations Act), this must also apply for the adoption of more important decisions about the person of the ward.⁷ Guardianship, namely, must enable a ward to shape her or his own life according to her or his own ideas, in accordance with other capacities. A guardian must also respect the will of the ward in making

¹ Official Gazette of the Socialistic Republic of Slovenia (SRS), no. 15/1976, 30/1986, 1/1989, 14/1989, Official Gazette of the Republic of Slovenia (RS), no. 69/2004 (consolidated text), 101/2007, 90/2011, 84/2012, 82/2015.

² Official Gazette of the SRS, no. 30/1986, 20/1988, Official Gazette of the RS, no. 87/2002, 131/2003, 77/2008.

³ Official Gazette of the RS, no. 15/2008.

⁴ Official Gazette of the RS, no. 77/2008, 46/2015.

⁵ The Republic of Slovenia is not a federal state so the problem of the division of responsibilities between federak and individual units is not relevant.

⁶ An adult is a person who has reached 18 years of age.

⁷ B. Novak in: Zupančič K. (editor), Novak B., Žnidaršič Skubic V., Končina Peternel M., Reforma družinskega prava – predlog novih predpisov s komentarjem (Reform of family law – proposal of new regulations with commentary), 2nd amended and supplemented edition, Uradni list Republike Slovenije, Ljubljana, 2009, p. 311.

decisions, which she or he has already expressed about specific questions when she or he was capable of independent decision making.

A guardian is not automatically competent to decide about all personal matters of a ward who has been deprived of legal capacity. Deprivation of legal capacity, namely, does not automatically effect the capacity of an individual to make decisions about strictly personal matters. Judgement of this is generally applied at the moment when the individual makes the decision. A person who has been deprived of legal capacity, for example, can thus still conclude a valid marriage, make a will, recognise paternity and decide on medical measures.⁸ A guardian is only competent for this if it is shown that the ward is not of sound mind, and the law allows a substitute to decide. Such matters are in particular: termination of pregnancy, sterilisation for medical reasons⁹ and other medical measures.

In a similar manner as depriving of legal capacity, the legal capacity of an adult person is also restricted by the legal institute **of extension of parental rights**. Parental rights are extended past a child's adulthood if because of physical or mental disability the child is not capable of taking care of her or his own rights and interests (art 57 of the Civil Procedure Act). A proposal for such a measure may only be made if the reason because of which it is necessary to extend parental rights already existed in the time prior to adulthood. A decision on extending parental rights excludes the presumption of full legal capacity that would otherwise occur with adulthood. Parents take care of a person when parental rights are extended. Legislative use of the institution of extended parental rights with a physically handicapped person is not restricted to the condition of incapacity to accept reasonable decisions.¹⁰ The legal arrangement that allows parental rights to be extended on the proposal of one of the parents or on the proposal of an official body of social protection without the consent of a physically handicapped person, otherwise capable of independently making reasonable decisions, is therefore in conflict with a person's right to make her or his own decisions. In accordance with its social function to protect the weak, the state should offer a physically handicapped person who is not capable of exercising her or his rights, although she or he is capable of making reasonable decisions, help in enforcing rights only on the proposal of the affected person or with her or his consent and only in matters in which help is needed.¹¹

Help only in specific matters or in a dispute situation for someone who is incapable herself or himself of looking after her or his rights or a person who at the time only does not have the possibility of protecting her or his rights because, for example, she or he is absent, is provided by **guardianship for a specific case**. Guardianship for a specific case does not mean placing a person under guardianship and does not presuppose depriving them of legal capacity.

According to general rules of obligational law, an adult person may also arrange her or his affairs through an **authorised person**, but legal capacity is required for granting this authority. Such

⁸ A patient may consent to a medical measure if she or he is of sound mind and was previously fully informed of their diagnosis, of the course or consequences of waiving treatment and of the risks of treatment (art 20 and 21 of the Patient Rights Act).

⁹ Art 22 and para 1 art 11 of the Act on medical measures in exercising the right to free decision making on the birth of a child, Official Gazette of the SRS, no. 11/1977, Official Gazette of the RS, no. 29/1995, 70/2000.

¹⁰ Provision of art 118 of the Marriage and Family Relations Act and art 58 in connection with art 57 of the Non-litigious Civil Procedure Act.

¹¹ A similar standpoint is also found in the German literature: Schwab D., Familienrecht, 20. Auflage, C. H. Beck, München, 2012, p. 428; Prinz von Sachsen Gessaphe K. A., Der Betreuer als gesetzlicher Vertreter für eingeschränkt Selbstbestimmungsfähige, Mohr Siebeck, Tübingen, 1999, p. 7.

authority ceases with the loss of legal capacity of a physical person or with the death of the person, as the source of the authority, unless the business started cannot be terminated without damage to the legal successor, or if the authority by the intention of the authorising person or in relation to the nature of the business also applies in or precisely for the case of death (para 3 art 79 of the Code of Obligations). Special rules apply for deciding about medical care, for which an adult person may in a written and notarised document appoint a **medically authorised person** (art 32 of the Patient Rights Act). In the case of a patient's incapacity to decide for herself or himself, an authorised person will decide on her or his medical care and other rights under the Patient Rights Act. A patient, in the case of her or his incapacity to decide, can in this way prevent a guardian appointed by a social work centre from making decisions. Because of the personal and confidential relationship between the authorised person and the patient, it is not permissible for the authorised person to transfer the authority to anyone else.

Only an adult person with the capacity to make her or his own decisions may be a medical authorised person. The right to representation derives from certified authority, whereby it does not matter how much time has elapsed since the authorization was given, since the Patient Rights Act does not limit the validity of an authorization. In order to make a decision, the authorised person needs appropriate medical data about the patient, so the Patient Rights Act gives the right to be acquainted with the patient's medical documentation, her or his state of health and the right to the physician's explanations in connection with the patient's treatment that are relevant for deciding about the patient. A patient may restrict these legal rights of the authorised person (but not take them away in entirety since deciding without any kind of information about the patient is no longer possible) and specify instructions and guidelines in relation to her or his medical care. These instructions may also be such that the authorised person must refuse specific medical care: for example, medical care on the death of a sick patient or medical care for prolonging life with a patient's final loss of capacity to care for herself or himself (point 1 para 1 and 2 art 34 of the Patient Rights Act) – in this case the written authorisation, with a certified signature of the authorising person, may not be older than five years (analogously to para 6 art 34 of the Patient Rights Act).

A patient who is capable of deciding for herself or himself may recall the authorisation at any time by a written statement (it does not need to be notarised). The Patient Rights Act does not regulate the question of what to do in the case of the medically authorised person not respecting the patient's instructions or in any other way threatening the patient's interest and the patient is no longer capable of deciding for herself or himself and thus cannot recall the authorisation. In order to prevent such abuse of authorisation, it should be determined in the future, on the model of foreign legislation, that in order to consent to a measure that could be irreparable and seriously damage the health of the patient or threaten her or his life an authorised person must seek the consent of the official body competent for guardianship of adults (in Slovenia this is currently a social work centre).¹² An authorised person may by written statement at any time renounce the consent (it is not necessary for the renunciation to be notarised). However, she or he may not renounce it at an inappropriate time, when the patient could be caused serious medical difficulties by the renunciation.

¹² Similarly in the German Literature Deutsch E., Spickoff A., Medizinrecht, 6th newly worked and extended edition, Springer, Berlin, Heidelberg, 2008, p. 437.

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

A court decides in a non-litigious civil procedure on the complete or partial deprivation of legal capacity. A person is deprived of legal capacity who because of mental illness, mental retardation, dependence on alcohol or drugs or from other causes that effect the psychophysical condition is not capable of looking after herself or himself, her or his rights and interests (art 44 of the Non-litigious Civil Procedure Act). Depriving of legal capacity only occurs if sound mind is permanently lacking and therefore the matter cannot be arranged by deferment of a decision or by establishing a guardian only for the particular case. A court before which a procedure for deprivation of legal capacity is initiated must report this to the social work centre immediately. The social work centre as necessary appoints a temporary guardian for the person against whom the procedure of deprivation of legal capacity has been initiated, who performs the tasks of a guardian only until the appointment of a permanent guardian or to a final decision that there are no grounds for deprivation of legal capacity. The court must immediately send a final decision on deprivation of legal capacity to the social work centre, which places the person under guardianship and decides a guardian for them (para 2 art 206 of the Marriage and Family Relations Act).

A court decides in a non-litigious civil procedure on extending parental rights beyond a child's full age if a child is incapable themselves of looking after her or his own rights and interests due to physical or mental handicap (art 57 of the Non-litigious Civil Procedure Act).

A social work centre before whom the procedure is conducted appoints a guardian for a specific case, whenever this is required for protection of the rights and interests of the individual (general clause, art 211 of the Marriage and Family Relations Act). The general clause "whenever this is required for protection of the rights and interests of the individual" is supplemented by typical examples of appointing a guardian for a specific case. Some are contained in the Marriage and Family Relations Act or other regulations of family law and some also in regulations outside family law. A guardian for a specific case is appointed in the case of the absence of a person whose residence is unknown and who does not have a representative, of an unknown owner of assets for whom assets must be looked after, or of a foreign citizen who needs protection.

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

The procedure for the **deprivation of legal capacity** is commenced on the proposal of a competent social work centre, a state prosecutor, spouse or person who has been living in a durable life community with the person whose legal capacity is to be removed, a relative in a straight line or in a lateral line to the second degree. A proposal for initiation of the procedure may also be filed by a person about whom a procedure will be conducted, if she or he is capable of understanding the significance and legal consequences of her or his proposal. A court may also commence a procedure ex officio if it is aware of circumstances from which follow a fundamental reason because of which it is necessary to deprive a specific person of legal capacity (art 45 of the Non-litigious Civil Procedure Act). If a person is deprived of legal capacity, the court sends the decision to the social work centre, who ex officio places the person under guardianship.

The following are bound to inform the social work centre of the need to appoint a guardian for a specific case: a registrar, administrative and other bodies, whenever through their work they know that someone must be placed under guardianship, the closest relatives, members of the household, neighbours, employers, local communities and other organisations and communities (art 217 of the

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

Marriage and Family Relations Act). A social work centre that is aware¹³ that it is necessary to place someone under guardianship must ex officio immediately take all necessary measures for the protection of her or his interests and commence a procedure for appointing a guardian.

A procedure for **extending parental rights** is started on the proposal of one of the parents or a social work centre. The person who is most affected by the extension of parental rights may not initiate a procedure (para 2 art 45 of the Non-litigious Civil Procedure Act).

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

The position of an adult person under guardianship depends on whether the person has been deprived of legal capacity in full or only partially. A **person who has been deprived of legal capacity in full** has the same legal position as a minor up to fifteen years of age (art 208 para 1 of the Marriage and Family Relations Act). All legal transactions that she or he concludes herself or himself are void.¹⁴ This has the consequence that she or he may no longer independently appear in legal transactions.¹⁵ **A person whose legal capacity has been partially removed** has the same legal position as a minor over fifteen years old but with the difference that such a person needs the consent of the guardian for the validity of all legal transactions and not just for important legal transactions, as applies with a minor. A social work centre may, after the handing down of a court decision on partial deprivation of legal capacity in a procedure of placing someone under guardianship, adjust the situation by defining the legal transactions that a person who has been partially deprived of legal capacity may nevertheless conclude herself or himself (para 2 art 208 of the Marriage and Family Relations Act).¹⁶ For other transactions, a person partially deprived of legal capacity needs the prior agreement of the guardian. A legal transaction concluded without the necessary agreement of the guardian may be challenged. The law does not envisage the possibility that a person after having been deprived of legal capacity could still conclude certain transactions herself or himself, determined only by agreement of the guardian, or not specified at all. This has the

¹³ A social work centre may also know of the need to appoint a guardian for someone from the person who needs the guardian.

¹⁴ Cigoj S., Teorija obligacij, Splošni del obligacijskega prava (Theory of obligations, general part of obligational law), Časopisni zavod Uradni list SR Slovenije, Ljubljana, 1989, p. 109; N. Plavšak in: Juhart M. (editor), Plavšak N. (editor), Obligacijski zakonik s komentarjem - splošni del (Code of Obligations with commentary – general part), Book 1, GV Založba, Ljubljana, 2003, p. 190 and 329.

¹⁵ A void contract of a person without legal capacity does not become valid if later approved by the legal representative (art. 90 of the Code of Obligations, Official Gazette of the RS, no. 97/2007). Foreign literature has long warned that such an arrangement is disproportionate from the point of view of fundamental human rights and therefore anti-constitutional – C.-W. Canaris, Verstöße gegen das verfassungsrechtliche Übermaßverbot im Recht der Geschäftsfähigkeit und im Schadenersatzrecht, JZ 1987, p. 993.

¹⁶ A court decision on partial deprivation of legal capacity in the majority of cases is a disproportionate encroachment on the rights of an individual since the capacities of an individual to make a reasonable decision independently are very varied, even within the context of the same cause. The majority of persons whom a court has partially deprived of legal capacity therefore do not dispose of precisely such a degree of lack of capacity for independently making a reasonable decision that they need the consent of a guardian for all legal transactions. According to decision of the Supreme Court RS, no. II Ips 306/2011 of 1. 12. 2011 (SOVS base), a court must therefore, at least in framework, specify the transactions or fields in which a legally restricted person retains legal capacity or the transactions or fields in which an individual's legal capacity has been deprived and who requires a guardian, and the social work centre then with its decision merely makes concrete the decision handed down by the court.

consequence that a court decision on deprivation of legal capacity in a specific case means a disproportionate encroachment on the rights of an individual.

The legal **position of a person subject to extended parental rights** is generally the same as prior to this.¹⁷ This means that a person has the position of a minor who has completed fifteen years. Such a minor needs the consent of parents for concluding a legal transaction if the transaction is so important that it impacts essentially on her or his life. A minor who has completed fifteen years may herself or himself conclude other legal transactions. With extended parental rights, the legal order clearly derives from the legal position of a child, although it is an adult person, since it is not envisaged that a court could decide more important transactions than the adult person may conclude herself or himself. The arrangement of extended parental rights, which requires parental consent for all more important legal transactions does not therefore generally respect an individual's capacity for independent decision making. It thus creates a dangerous disproportionate encroachment on an individual's right to self-decision making.

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

A guardian is **independent in her or his work**; only with major property transactions¹⁸ does she or he need the agreement of the social work centre (art 184 of the Marriage and Family Relations Act). A deficiency of the Marriage and Family Relations Act is that it does not also require the consent of the social work centre when it is a major decision of the guardian concerning the person of the ward (for example placement in a home for the elderly). Such a requirement is only envisaged outside the Marriage and Family Relations Act and only in cases in which it concerns sterilisation of a ward for medical reasons (art 11 of the Act on medical measures in exercising the right to freedom of decision on the birth of children). A guardian is also, on the basis of her or his independence, responsible for her or his work. She or he must retribute damage caused to the ward by her or his unconscientious work.

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

Any person may perform guardianship who has the necessary personal attributes and capacities for performing guardianship and consents to this (art 180 of the Marriage and Family Relations Act). A person from whom parental rights have been removed, who does not have legal capacity, a person whose interests are in conflict with the interests of the ward, and similarly a person who, in view of her or his personal character or relation to the ward or her or his parents, cannot be expected adequately to perform the obligations of a guardian, does not have these personal attributes and capacities (art 181 of the Marriage and Family Relations Act).

In appointing a guardian, the social work centre respects the wishes of the ward, if the ward is capable of expressing them and the wishes of close relatives of the ward if this is in the interests of the ward (art 183 of the Marriage and Family Relations Act). Because it is important for the successful implementation of guardianship that the guardian and ward get along and cooperate with

¹⁷ Wedam Lukić D., Polajnar Pavčnik A., Nepravdni postopek – zakon s komentarjem (Non-litigious procedure – law with commentary), Časopisni zavod Uradni list Republike Slovenije, Ljubljana, 1991, p. 56.

¹⁸ Consent of the social work centre is required to: estrange or burden the ward's real estate; estrange from the ward's property assets of major value or dispose of property rights of major value; renounce an inheritance or bequest or refuse a gift.

each other, the social work centre must above all respect the wishes of the ward, useful advice of relatives (it would be better if the law spoke of family and thus allowed a say also to spouses, extra-marital partners and same-sex partners of the ward) but only as additional information for its decision. In the choice of a person as guardian, the centre must suitably take into account not only the wishes of a ward who is capable of expressing them but also the wishes that a ward expressed prior to the complete loss of capacity to decide for herself or himself.

If it is possible and if this not in conflict with the interests of the ward, **a relative is appointed as guardian** (for example an aunt for a nephew, grandparents for a grandchild) but it can also be a spouse, extramarital or same sex partner, if her or his interests are not in conflict with the interests of the ward. Guardianship may also be entrusted to a suitable legal entity, who then appoints a responsible person for exercising guardianship (art 182 of the Marriage and Family Relations Act). A legal entity to whom guardianship is entrusted is in practice often a social security institution, such as a home for the elderly. In such a case, the legal person itself takes care of performing the tasks of guardianship that belong within the context of its activities and the social work centre must appoint an additional guardian for the ward for other guardianship tasks (art 184 of the Marriage and Family Relations Act). A social work centre may decide not to appoint an individual guardian for a person deprived of legal capacity but will itself perform this responsibility with its own workers (para 1 art 185 of the Marriage and Family Relations Act). A social work centre will decide on this in particular when a suitable guardian cannot be found for the person (for example a relative, spouse). A social work centre may also as necessary decide to limit the guardian's responsibility and itself take on some of the guardian's tasks (para 2 art 185 of the Marriage and Family Relations Act). With the exception of the described cases, when the tasks of guardianship are divided between workers of a specific institution and the guardian (art 184 of the Marriage and Family Relations Act) and between workers of the social work centre and a guardian (para 2 art 185 of the Marriage and Family Relations Act), the Marriage and Family Relations Act does not envisage guardianship being shared among a number of people. Generally only one guardian is appointed for a ward, who is then responsible for all matters in relation to the ward.

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

The function of guardian is voluntary and honorary (art 179 of the Marriage and Family Relations Act), and a guardian may be anyone. Slovene legislation has no special provisions on volunteers in the field of guardianship.

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

Slovene legislation **does not contain a special arrangement on professional guardians** specially trained for performing guardianship functions, although it also does not exclude the possibility that an official body responsible for guardians could appoint an individual professional when it is a matter of performing particularly demanding tasks of guardianship. In practice the appointment of guardians with special professional knowledge does not occur because the problem of payment of such guardians then appears (see section 10).

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

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

Costs of the procedure of deprivation of legal capacity under the general principles of non-litigious procedures are born by the participants,¹⁹ in the exclusive interests of whom the procedure is carried out (art 35 of the Non-litigious Civil Procedure Act). The procedure of deprivation of legal capacity is intended primarily for the protection of the person who is to be deprived of legal capacity so this person also bears the costs of the procedure.

The costs of the administrative procedure for placing under guardianship,²⁰ which follows deprivation of legal capacity are born by the party for whom the procedure ended unfavourably (art 113 of the General Administrative Procedures Act).²¹ It is considered that the procedure ended »unfavourably« for the party who was placed under guardianship.

A person who performs the functions of guardianship has the right to the refund of justified expenses. The social work centre may also **determine a reward.** In practice, there is not usually a reward because there are no funds for its payment. Expenditures for carrying out guardianship measures in the interest of the ward are covered from the ward's income, from funds of persons responsible for the subsistence of the ward, from the ward's assets and from the national budget (art 223 of the Marriage and Family Relations Act). The question of reward and refund of expenses are in practice the thorniest problem so guardians are hard to obtain. Their work is responsible and demanding and rewards and refund of expenses are uncertain.

See below in section 12 on the costs of a procedure for involuntary admission of a person into a department of a psychiatric hospital under special supervision or into a secure department of a social care institution and other costs of procedures of deprivation of liberty and involuntary medical measures.

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)

A guardian's work is monitored by a social work centre. A guardian must annually report to it on her or his work, on the person and assets of the ward and provide to it an account of the management of the ward's assets. She or he must also give an **account** if the social work centre calls for it (art 194 of the Marriage and Family Relations Act). For the sake of easier monitoring of a guardian's work in connection with the ward's assets, the ward's property is evaluated and inventoried prior to it being handed over to the management of the guardian (art 189 of the Marriage and Family Relations Act). The social work centre must conscientiously examine the guardian's **report** and, as necessary, take all measures required to protect the ward's interests. If the social work centre finds that the guardian threatens the interests of the ward or that it would be more beneficial for the ward to have another guardian, it can dismiss the guardian and appoint a new one. The social work centre also dismisses a guardian at her or his own request (art 198 the Marriage and Family Relations Act).

¹⁹ A participant is the proposer (i.e., social work centre, state prosecutor, spouse or extramarital partner, relative in a straight line or relative in a lateral line to the second degree, the person from whom legal capacity is to be taken), the person about whom the procedure is conducted, the guardian of the person who is to be deprived of legal capacity and the responsible social work centre.

²⁰ In particular, travelling expenses of official persons, expenditures of witnesses, expert witnesses, interpreters, examination, legal representation, arrival, loss of income, professional assistance, compensation for damage occurring during examination.

²¹ Official Gazette of the RS, no. 80/1999, 70/2000, 52/2002, 73/2004, 119/2005, 105/2006, 126/2007, 65/2008, 8/2010, 82/2013.

The ward and her or his relatives (the law should also give this possibility to a partner), responsible bodies and professional institutions (for example a home for the elderly) have the opportunity of filing an objection to the work of the guardian and social work centre. **An objection to the work of a guardian** is resolved by a social work centre and **an objection to the work of a social work centre** by the ministry responsible for family affairs (art 200 of the Marriage and Family Relations Act).

The Slovene arrangement does not contain more guarantees for ensuring the rights and for actually respecting the wishes of a ward.²²

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?

A person is admitted for treatment in a department of a psychiatric hospital under special supervision with a referral or without one if the receiving physician ascertains that the conditions are met for treatment in such a department (see conditions for the involuntary treatment of persons in a department under special supervision in this section below) and a person provides **written consent** to admission and the plan of treatment. Her or his consent must be an expression of her or his free will, which is based on understanding the situation and is formed on the basis of a suitable explanation about: her or his state of health and the probable development and consequences of the illness; the aims, type and method of implementation, probability of success and expected benefits and results of the proposed treatment; possible risks, undesired (side) effects, negative consequences and other unpleasant aspects of the proposed treatment, including consequences of its abandonment; potential other possibilities of treatment (art 36 of the Mental Health Act).

A person who has consented to admission to a department under special supervision can at any time, explicitly or by actions by which it is possible to conclude this, revoke the consent and demand that she or he be discharged from treatment in a department under special supervision. In this case, the person must be discharged immediately. If the physician considers that conditions are given with this person for admission for involuntary treatment in urgent cases, he detains the persons in treatment despite consent being revoked and instructs them on the reasons for restraint and the right to a lawyer. The physician informs the director of the hospital in writing within four hours on the detention of the person. The director or his authorised person immediately informs the court of jurisdiction, who decides on the detention according to the procedure for admission for treatment in urgent cases (see the procedure in this section below). The director of the psychiatric hospital also informs the person's close family and representative about the restraint,²³ and if it is an adult person

²² Slovenia has not signed and ratified the Convention on the rights of persons with disabilities (UN CRPD).

²³ In procedures of treatment in a department under special supervision, in a secure department and in supervised treatment, a person has the right to a representative. An individual may be appointed a representative who has at least three-year tertiary education, has performed the exam for representatives, five years of working experience in the field of mental health and has not been finally convicted to an unconditional prison sentence (art 25 of the Mental Health Act).

A person chooses a representative from the list of representatives by written authority. If the person does not choose a representative, she or he can authorise a close family member to do so. The legal representative authorises a representative for an adult person deprived of legal capacity (art 25 of the Mental Health Act).

A representative performs above all the following tasks: informs the person in a suitable manner on the content of rights and on ways and possibilities of exercising them; provides specific guidelines for exercising rights and proposes possible solutions; advises a person in relation to exercising rights; strives for the respect

who has been deprived of legal capacity also the legal representative (art 38 of the Mental Health Act).

A court decides in a non-litigious procedure on involuntary admission for treatment in a department of a psychiatric hospital under special supervision and on admission to a secure department of a social security institution and to supervised treatment (art 30 of the Mental Health Act). In all the aforementioned procedures, representation of the person by an authorised representative who is an attorney is compulsory. For an adult person who has been deprived of legal capacity, the legal representative authorises an attorney unless the procedure was initiated on his proposal. In this case, the court appoints an attorney (art 31 of the Mental Health Act). In the procedure, the rights and legal interests of a person who, because of mental disorder or other circumstances is not capable of looking after her or his own rights and interests, must be protected. If the person does not have legal capacity, the court enables them independently to perform procedural acts if she or he is capable of understanding the significance and legal consequences of such acts. The court questions the person unless it considers, on the basis of direct contact with the person, that given her or his state of health this is not possible (art 32 of the Mental Health Act). The procedure before the court is urgent and the public is excluded by law (art 33 of the Mental Health Act).

Involuntary treatment of a person in a department of a psychiatric hospital under special supervision is allowable: 1. if a person threatens her or his own life or the life of others or if she or he seriously threatens her or his own health or the health of others or causes serious material damage to herself or himself or others and 2. if such a threat is a consequence of mental disorder because of which the person has seriously disturbed judgement of reality and capacity to control her or his own behaviour and 3. if the stated causes and threats cannot be avoided by other forms of help (i.e., by treatment in a psychiatric hospital outside a department under special supervision, by out-patient treatment or by supervised treatment, para 1 art 39 of the Mental Health Act).

A person is provided treatment in a department under special supervision on the basis of **suitable, individually planned treatment**, which is specified in the plan of treatment. If a person is capable of expressing her or his own will, her or his opinion is also taken into account in preparation of the plan of treatment, insofar as this is in her or his best medical interests. The plan of treatment is regularly checked and revised as necessary (art 35 of the Mental Health Act). In departments under special supervision²⁴ **special protective measures of physical restraint with belts and restriction of movement within a single space** are used. They may be used only exceptionally and may last only so long as is urgently necessary in relation to the reason for their introduction. The special protective measure of physical restraint with belts may last no longer than four hours and the special protective measure of restriction of free movement within a single space no more than 12 hours. After the expiry of the stated period, a doctor checks the grounds for reintroduction of the special protective

of the rights and personality of the person; checks whether records are kept for the person on restricting the rights of persons, records on the use of special protective measures and records on treatment with special methods of treatment (art 24 of the Mental Health Act).

A representative has the right to reward for her or his work and to the refund of expenses incurred in performing her or his tasks. Criteria for determining the level of reward are defined by the minister of social security. Funds for the functioning of representatives are provided from funds of the ministry responsible for social security (art 28 of the Mental Health Act).

²⁴ The measure may also be used in secure departments of social security institutions.

measure. A person with whom a special protective measure has been used is supervised, her or his vital functions monitored and she or he is professionally treated throughout the duration of the special protective measure. On the implementation of a special protective measure, exact data on the reason, purpose, duration and monitoring of the implementation of the measure are entered in the medical documentation of the person. Psychiatric hospitals are bound to keep special records on the implementation of special protective measures. A doctor who orders such a measure, not later than 12 hours after ordering such a measure must inform the director of the psychiatric hospital, the closest family member, attorney and representative, about the ordering and implementation of a special protective measure.²⁵ If such a measure is ordered for an adult person who has been deprived of legal capacity it is also necessary to inform the legal representative. A special protective measure may also be introduced by another medical worker in a psychiatric hospital²⁶ if the physician is not personally present. She or he must immediately inform the physician, who decides without delay on the grounds for introduction of the measure. If the physician does not order the measure, implementation of the measure is immediately abandoned. The medical worker²⁷ makes a written note of informing the physician. The person, attorney, legal representative, closest family member of the person and representative can propose implementation of administrative control of the ordering and implementation of a special protective measure in accordance with regulations governing administrative control of healthcare activities (art 29 of the Mental Health Act).

Involuntary admission for treatment in a department under special supervision is carried out on the basis of a court order, which is issued on the proposal for admission to a department under special supervision, **or in urgent cases** prior to the issue of a court order (para 2 art 39 of the Mental Health Act).

The procedure for **involuntary admission** of a person to a department under special supervision **on the basis of a court order** commences on the proposal of the provider of psychiatric treatment, social work centre, coordinator of supervised treatment,²⁸ closest family member of the person or state prosecutor. A legal representative may also make a proposal for an adult person who has been deprived of legal capacity. The proposal is filed with the court of jurisdiction in the region in which the person has permanent or temporary residence or if the person has registered neither permanent nor temporary residence, with the court in the region in which she or he actually resides. The proposal must contain data that any application must contain and a statement of the reasons that provide grounds for the existence of conditions for involuntary admission to a department of a psychiatric hospital under special supervision. The opinion of the chosen personal physician or psychiatrist who examined the person, which may not be older than seven days, must be attached to the proposal. If an examination of the person is not possible, a statement from the chosen personal physician or psychiatrist that an examination was not possible is attached to the proposal (art 41 of the Mental Health Act).

The court sends the proposal to the person within one day from its receipt. At the same time, it instructs them on the right to respond to the proposal within two days of it being serviced. The court also instructs the person on the right to an attorney who she or he chooses themselves within one day of service of the proposal and informs the court of this, otherwise the court appoints an attorney ex officio. The court does this within one day from the expiry of the time in which the person can chose

²⁵ Or the director of a social security institution if the measure is carried out in a secure department of a social security institution.

²⁶ Or professional worker in a social security institution if the measure is carried out in a secure department of a social security institution.

²⁷ Or professional worker in a social security institution if the measure is carried out in a secure department of a social security institution.

²⁸ See below in this section on supervised treatment and on the coordinator of such treatment.

an attorney themselves. No appeal is allowed against a decision on the appointment of an attorney ex officio. The court also delivers a copy of the proposal for initiation of the procedure and opinion or statement of the physician to the person's attorney, who can respond to it within two days from its delivery (art 42 of the Mental Health Act).

After receipt of the proposal the court orders that the person be examined by an expert witness of the psychiatric profession, who provides an opinion on her or his state of health within three days. The opinion also contains an assessment of whether there is the possibility of treatment in supervised treatment or the possibility of treatment in a secure department. In the order, the court specifies the provider of psychiatric treatment, by whom an examination is performed, and communicates this to the person, attorney, expert witness and provider of psychiatric treatment. The expert witness may also examine the person against her or his will, since on the proposal of the expert witness the court may by ruling decide that the person be detained in a psychiatric hospital for a maximum of two days if this is necessary because of the nature of the mental disorder or because she or he does not want voluntarily to submit to an examination and it is not otherwise possible to establish the existence of conditions for restraint. An appeal is allowed against such an order within one day from service of the decision. The court of second instance decides on an appeal under the previous sentence within three days. If it is not possible voluntarily to execute the order, the provisions of performing involuntary admission to treatment are used mutatis mutandis for executing the order (see art 52 of the Mental Health Act below). If it is found during the detention of the person that conditions are met for involuntary admission for treatment in urgent cases, the person is admitted for treatment in accordance with provisions regulating admission in urgent cases (see below in this section). It is necessary to explain to the person in an understandable manner the reasons for detention and the rights that she or he has during detention (art 44 of the Mental Health Act).

After obtaining the opinion of the expert witness, the court calls a hearing to which it invites the proposer, the person, the attorney, legal representative, closest family member of the person, representative and others who can provide data significant for a decision. The court decides on the basis of direct contact with the person, so that it sees the person before handing down a decision and talks with them, if her or his state of health allows this (art 46 of the Mental Health Act). A person who cannot take part at the hearing because of her or his state of health may be questioned at her or his home (art 47 of the Mental Health Act). If the court finds after carrying out the evidentiary procedure that conditions are met for admission to a department under special supervision, it decides by ruling that the person be admitted to a department under special supervision and also determines the duration of detention, which may not be longer than six months, and the psychiatric hospital which should accept the person. If the court finds that conditions are met for involuntary admission to a secure department, it decides by ruling that the person be admitted to a secure department. It also determines the duration of detention in the secure department, which may not be longer than one year and the social security institution that should accept the person (see below in this section on admission to a secure department). If the court finds that the conditions are met for admission to supervised treatment, it decides by ruling that the person be admitted to supervised treatment for a period that may not be longer than six months. The court also determines, on the proposal of the psychiatric hospital in the area in which the person has permanent or temporary residence, or when she or he has no registered permanent or temporary residence, in the region in which she or he actually lives, the coordinator of supervised treatment (see below in this section on supervised treatment and on the coordinator of such treatment) and the type and extent of her or his authorities. The court may in the aforementioned decision also restrict the individual rights of the person, for example the right to correspondence and the use of electronic mail, the right to send and receive packages, receive visits, use of a telephone, right to movement, right to a representative. An appeal may be lodged against the aforementioned

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

orders within three days of service of the order. An appeal does not restrain execution of the order. An appeal may also be lodged by the proposer, the person, attorney, psychiatric hospital or social security institution in which the person would be received, the coordinator of supervised treatment, the legal representative, the closest family member of the person and a social work centre if the person was being dealt with. The court of second instance decides on an appeal within three days from receipt of the appeal. Revision is allowed against the decision of the court of second instance.

The costs of the evidentiary procedure, interpreters and attorney of the person are covered in advance from court funds. If the court rejects the proposal for acceptance, the proposer covers the costs of the procedure. If the proposer is a provider of psychiatric treatment, social work centre, coordinator of supervised treatment or state prosecutor, the costs of the procedure are covered from court funds. If the court grants the proposal, the costs of the procedure are covered from court funds except the costs of a possible authorised person of the proposer, which the proposer covers (art 51 of the Mental Health Act).

On the basis of an order on admission, the psychiatric hospital or social security institution within three days from service of the order calls on the person to report to the psychiatric hospital or social security institution on a specific day, not later than seven days after the call. It also posts a copy of the call to the court that issued the order and to the attorney of the person. If the person does not report to the psychiatric hospital or social security institution on the specified day and her or his absence is not justified, the director of the psychiatric hospital or social security institution informs the court that issued the order, the chosen personal physician and lawyer of the person and orders transport of the person by ambulance. The director of the psychiatric hospital or social security institution may also request the help of the police in carrying out urgent transport. If it was also not possible to execute the order of the court in the manner stated in the previous sentence, the director of the psychiatric hospital or social security institution informs the court of this. If the court finds that the call for admission to the department under special supervision or secure department was properly served, it orders production (art 52 of the Mental Health Act).

A person may only be involuntarily admitted to a department **under special supervision prior to the handing down of a court order (in urgent cases)** if the general conditions are met for admission for treatment in a department of a psychiatric hospital under special supervision and if it is urgently necessary, because of the nature of the person's mental disorder, that the person's freedom of movement is restricted or contact with the surroundings is prevented, even prior to the regular procedure for involuntary admission to a department of a psychiatric hospital under special supervision being carried out (art 53 of the Mental Health Act).

Involuntary admission to a department under special supervision prior to the handing down of a court order is performed on the basis of a referral of the chosen personal physician, psychiatrist or other physician who has examined the person. To the referral, which may not be older than three days, is attached a report on the state of health of the person, in which in particular are stated the circumstances from which it follows that admission is urgent.

A person may also be admitted to a department under special supervision without a referral if the police, on intervening in a public area, in private premises or in tracing a foreign citizen for whom an arrest warrant or search has been issued, suspect that reasons are given for the person's admission in urgent cases and without delay informs the emergency medical service. A physician, a member of the unit of emergency medical aid, immediately examines the person at the site and if she or he finds that reasons are given for urgent admission, orders transport of the person by ambulance to the nearest psychiatric hospital (art 54 in connection with art 57 of the Mental Health Act). The physician who refers the person to a psychiatric hospital orders transport by ambulance if necessary. The physician may restrain a person who has been referred to a psychiatric hospital and for whom

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

transport by ambulance has been ordered, against her or his will until the arrival of the ambulance. In carrying out restraint and ordering transport by ambulance he can request the help of the police.²⁹ During transport by ambulance, the person is accompanied by the physician who referred the person to the psychiatric hospital or another health worker determined in writing by the aforementioned physician (art 55 of the Mental Health Act). If the receiving physician on examination of the person finds that the reasons for urgent restraint are not given, she or he refuses the admission, otherwise she or he detains the person in treatment and instructs her or him on the reasons for the detention and the right to an attorney. The admitting physician within four hours of admission informs the family of the person, legal representative and representative, of the admission to a department under special supervision. During this time, he must also inform the director of the psychiatric hospital in writing about the detention. The director must immediately inform the court of jurisdiction of the detention, with an explanation of the reasons that provide grounds for involuntary admission for treatment (art 59 of the Mental Health Act).

The court in the region of which the admitting psychiatric hospital is located is competent for deciding on involuntary admission in urgent cases. The court commences the procedure ex officio when it receives the report of the director of the psychiatric hospital on admission of the person or learns of it in any other way. The court within one day from receipt of the report of the director or from the day that it learns that a person has been involuntarily admitted to a psychiatric hospital, by order initiates the procedure in which it appoints an expert witness and attorney for the person and instructs the person that she or he may change the appointed attorney. The order is served on the person and the attorney, to whom is also served the report of the director of the psychiatric hospital, the legal representative, the closest family member of the person and representative. There is no special appeal against this order. If the court instigates the procedure without a report from a psychiatric hospital, the court also informs the psychiatric hospital in which the person is detained about the initiation of the procedure (art 61 of the Mental Health Act).

The court, within one day after the issue of the order on initiation of the procedure, visits the person in the department under special supervision and examines them in the presence of an attorney, expert witness and representative,³⁰ unless it finds on the basis of direct contact with the person that examination is not possible in view of her or his state of health. The court may also inform the attorney and the expert witness of the date and time of the visit to the psychiatric hospital by telephone or e-mail. The examination takes place without the presence of those who are treating the person or who are cooperating in the treatment. The court explains to the person the reasons for initiation of the procedure of detention and calls on them to make a statement on the detention. If the person during the visit states that she or he agrees with the detention and consents to admission in writing, the court halts the procedure by decision. During the visit, the expert witness examines the person and gives an opinion on the record on her or his state of health, which also contains an assessment of whether the possibility exists of treatment in supervised treatment or admission to a secure department (art 62 of the Mental Health Act). If the court judges during the visit that it is necessary to perform further medical investigations for a finding of whether grounds are given for detention in a department under special supervision, it decides by temporary order that the person shall remain under observation in the department under special supervision for a maximum of two

²⁹ When the Mental Health Act determines that a physician or the director of the psychiatric hospital or social security institution can request the help of the police, the police are bound to cooperate with medical personnel and the emergency medical services and provide them with the necessary help as long as the threat that the person is causing cannot be limited by medical measures (para 1 of art 56 of the Mental Health Act).

³⁰ The court during the visit examines the expert witness and can also examine the legal representative, the closest family member of the person, the treating physician and others who can provide data important for the decision.

days from the issue of the temporary order. No individual appeal is possible against the decision on a temporary order.

Within three days after the visit to the person, the court issues an order by which it decides that the person be detained in or discharged from the department under special supervision; or orders admission to a secure department of a social security institution or supervised treatment. With the order on detention, admission or supervised treatment, it may also restrict the rights of the person, for example the right to correspondence and use of e-mail, sending and receiving packages, receiving visits, use of telephone, movement (art 65 of the Mental Health Act). An appeal against the cited order may be lodged by the person, the attorney, legal representative, closest family member of the person, the psychiatric hospital in which the person is detained or is authorised to propose the coordinator of supervised treatment and the social security institution containing the secure department to which the person is admitted, within three days of serving of the order. An appeal does not restrain execution of the order. The court of second instance decides on the appeal within three days of receipt of the appeal. Revision is allowed against the decision of the second instance court.

The costs of the procedure for involuntary admission to a department under special supervision in urgent cases are covered from court funds (art 68 of the Mental Health Act).

A deficiency of the Mental Health Act is that in the procedure of deciding on admission to a department of a psychiatric hospital under special supervision in urgent cases, it does not prescribe court judgement of the legality of detention prior to the issuing of an order on detention, which is not in accordance with the right to effective judicial protection. In addition, it does not regulate the urgent procedure for admission to a secure department of a social security institution and the procedure for a case when a person revokes consent to admission to a secure department and reasons are given for the admission and admission is urgent. The Mental Health Act also does not regulate the procedure for treatment in an open department of a psychiatric hospital, in which complete or effective control of treatment and movement of persons can also occur.

Detention of a person in a department of a psychiatric hospital may be extended, she or he may be transferred to a secure department or discharged from the department under special supervision.

The attending physician regularly informs the person on the reasons for extending detention, transfer or discharge. Extending detention in a department under special supervision is proposed to the court at least 14 days prior to the expiry of the time limit, by the director of the psychiatric hospital who finds that further treatment in the department under special supervision is required to avert threats from the general reasons for detention (see above). In the procedure for extending detention in a department under special supervision, the provisions on involuntary admission for treatment on the basis of a court order are mutatis mutandis used. The court can extend the time of detention in a department under special supervision each time for a maximum of six months (art 70 of the Mental Health Act).

If the state of health of the person improves so much that there is no longer reason for detaining them in a department under special supervision, the psychiatric hospital discharges them from the department under special supervision even prior to the expiry of the time limit from the court order and informs the court of this. The person or her or his attorney may before the expiry of the time limit specified in the court order on detention propose to the court that the person be discharged. Discharge of the person may also be proposed by the closest family member of the person and the legal representative. If the court rejects the proposal for discharge, it may determine in the decision a time limit within which it is not possible to lodge a new proposal for discharge if from the circumstances in connection with the state of health of the person it follows that it is not possible to expect an improvement of her or his state of health before the expiry of this time limit. The time limit

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

before which it is not possible to lodge a new proposal for discharge may not be longer than one month and runs from the day of issuing the decision. The court may also initiate the procedure for discharge ex officio (art 71 of the Mental Health Act).

If the procedure for discharge is initiated ex officio, the costs of the procedure are covered from court funds. If the procedure for discharge is initiated on the basis of a proposal, the costs of the procedure are covered by the rules for covering costs in involuntary admission for treatment on the basis of a court order (see above).

If it is necessary to transfer a person from a department of a psychiatric hospital under special supervision to a secure department, general provisions on admission of a person into such a department are used (see above).

The special legal basis for detention in a psychiatric health organisation is regulated in the Non-litigious Procedure Act in connection with the deprivation of legal capacity. In a procedure for deprivation of legal capacity, a court may order that the person who is to be deprived of legal capacity is temporarily, but no longer than seven days, detained in a psychiatric health organisation if in the opinion of physicians this is urgently required for ascertaining her or his state of health (para 1 art 47 of the Non-litigious Civil Procedure Act). The procedure for detention for ascertaining the state of health of a person who is to be deprived of legal capacity is not envisaged, so in the future it is urgently necessary to prescribe material legal conditions and procedural legal rules for it.

Admission of a person to a secure department of a social security institution (secure department) is carried out with or without the consent of the person.

A person is admitted to a secure department **with consent**, if all the following conditions are met: if acute hospital treatment is concluded or not required; if constant care and protection is required, which cannot be provided in the home environment or in another way; if she or he threatens her or his own life or the life of others or seriously threatens her or his own health or the health of others or causes serious material damage to herself or himself or others; if the threat is a consequence of mental disorder because of which the person has seriously disturbed judgement of reality and capacity to control her or his own behaviour; if the aforementioned causes and threats cannot be avoided by other forms of help (outside a social security institution, under supervised treatment); if other conditions for admission to a social security institution are met, which are specified in regulations in the field of social security. Consent must express the free will of the person, which is based on understanding the situation and is formed on the basis of a suitable explanation of the nature and purpose of the treatment. Consent must be written. For a person deprived of legal capacity, consent is given by the legal representative. A person who has consented to admission to a secure department may at any time explicitly or by actions from which it is possible to conclude this, revoke consent and demand to be discharged from the secure department. In this case the person must be immediately discharged. A social security institution behaves in the same way if the legal representative revokes consent. In the case of the person revoking consent and placement in a secure department is necessary, the law does not have a procedure, which was already criticised above. The law only regulates **regular involuntary admission to a secure department on the basis of a court order**. For this procedure, the provisions on the procedure for involuntary admission for treatment in a department of a psychiatric hospital under special supervision on the basis of a court order are mutatis mutandis used. A social security institution may also lodge a proposal for admission of a person to a secure department. The opinion of the social security institution on the fulfilment of conditions for admission is attached to a proposal for admission to a secure department on the basis of a court order, unless the procedure was initiated on its proposal. Special protective measures of physical restraint with belts and restricted movement within a single space may also be used in

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

secure departments (see under departments of a psychiatric hospital under special supervision in this section above for conditions of use).

A person who has been admitted to a department under special supervision of a psychiatric hospital in compliance with the provisions of the Mental Health Act may, on the fulfilment of suitable conditions, be transferred to a secure department prior to the expiry of the time limit of detention in a psychiatric hospital. Transfer from a department under special supervision of a psychiatric hospital to a secure department can be done with the consent of the person, whereby it is necessary to obtain the prior opinion of the social security institution to which the person is to be transferred, on fulfilment of conditions for admission or on the basis of a court order. In the procedure for transfer, the provisions on involuntary admission to a secure department on the basis of a court order are *mutatis mutandis* used (art 76 of the Mental Health Act).

Detention in a secure department on the basis of a court order may be specified for a maximum of one year. If the director of the social security institution finds that further detention in a secure department is urgently necessary for deterring threats, he proposes to the court at least 14 days prior to the expiry of the time limit from the court order that detention in the secure department be extended. In the procedure for extending detention the provisions on involuntary admission for treatment on the basis of a court order are *mutatis mutandis* used (art 77 of the Mental Health Act).

The provisions on discharge from a department of a psychiatric hospital under special supervision are *mutatis mutandis* used for the procedure of discharge from a secure department. A person who was admitted to the secure department on the basis of a court order may be transferred to a department under special supervision of a psychiatric hospital, whereby the provisions on involuntary admission to treatment on the basis of a court order are *mutatis mutandis* used (art 78 of the Mental Health Act). In the procedure of deciding on admission and transfer to a secure department on the basis of a court order, in determining the social security institution the court takes into account the wishes and personal circumstances of the person and possible proposals of the family of the person. Prior to the decision the court also obtains the opinion of the social security institution in which the person is to be admitted or transferred (art 79 of Mental Health Act).

On the basis of a court order, the **supervised treatment** of a person with serious and repeating mental disorder is also carried out under the supervision of a psychiatric hospital. Treatment of a person in supervised treatment is allowable if all of the following conditions are met: if it is a person with serious and repeating mental disorder; if she or he has already been involuntarily treated in a psychiatric hospital; if she or he has already threatened her or his life or the life of others or if she or he has seriously threatened her or his own health or the health of others or caused serious material damage to herself or himself or others; if the aforementioned threat is a consequence of mental disorder because of which the person has seriously disturbed judgement of reality and capacity to control her or his own behaviour and if the person can be adequately treated in the home environment (art 80 of the Mental Health Act). For the procedure of admission to supervised treatment on the basis of a court order provisions on admission to a department of a psychiatric hospital under special supervision are *mutatis mutandis* used. The court also determines with the order a coordinator of supervised treatment for monitoring and coordinating the supervised treatment. The coordinator is an employee of a psychiatric hospital, which professionally monitors her or his work. Funds for her or his work are provided from funds of the ministry responsible for health (art 86 Mental Health Act). On the proposal of the coordinator of supervised treatment, the psychiatric hospital adopts a plan of supervised treatment. Funds for carrying out the plan of supervised treatment are provided from funds of compulsory health insurance.

On the proposal of the director of the psychiatric hospital, a court may extend the period of treatment in supervised treatment, each time for a maximum of six months. A proposal for extending

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01

treatment is lodged in 15 days prior to discharge of the person from the psychiatric hospital or prior to the expiry of the time limit determined for supervised treatment (art 83 of the Mental Health Act).

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

The described legal arrangement of full or partial deprivation of legal capacity with later placing of a person who has been deprived of legal capacity under guardianship does not allow a sufficiently flexible and individualised adaptation of help to an individual's needs. **Slovenia** is therefore **considering removing** this two-level **system of restricting** legal capacity and transforming the institution of guardianship for adults into a more adaptable and layered system.³¹ According to a draft reform of family law³² the institute of guardianship would be within the competence of the courts and no longer social work centres. The courts would specify legal transactions that a person would not be able to conclude themselves at all and transactions for which only the consent of a guardian would be needed. A person would continue to be able to conclude other transactions herself or himself. Transactions that a person concluded herself or himself even though her or his wishes should in entirety be replaced by a guardian, under the new arrangement would also be void and transactions concluded without the necessary consent would be challengeable. The fact that a court appointed a guardian for specific business for a person, under the new arrangement would be inscribed in the register of births, marriages and deaths. The rule would continue to apply that the court that conducts the procedure for appointing a guardian for a person with real estate orders that the initiation of the procedure on appointing a guardian, the decision on appointing a guardian and the decision of cessation of the guardian's function are entered in the land register. The fear that the security of legal transactions would be threatened with deprivation of legal capacity would thus be removed.

According to the reform of family law, **the institution of extension of parental rights would also be removed**. The institution is controversial since an adult who cannot look after her or his own rights and interests must nevertheless be enabled to shape, within the framework of her or his capacities, life according to her or his own wishes and conceptions. The help that the state gives within the framework of its social function must realise the interests of the affected person and not alien interests. It is thus unacceptable that the state treats an adult person as a child and, in addition to representing her or him, as assistance that she or he genuinely needs, enforces the full range of parental rights,³³ thus going far beyond only legal care and including above all actual care,³⁴ especially in the form of upbringing. Upbringing according to the ideas of a third person, even if she

³¹ Novak B., Civilnopravni položaj polnoletne osebe z omejeno sposobnostjo za samostojno odločanje (Civil law position of adults with limited capacity for independent decision-making), *Pravnik* 9-12/2003, p. 585 and Žnidaršič V., Institut odvzema poslovne sposobnosti v luči sprememb slovenske zakonodaje (The institution of depriving of legal capacity in the light of changes to Slovene legislation), *Kaljenje* 4/2001, p. 15.

³² Novak B. in: Zupančič K. (editor), Novak B., Žnidaršič Skubic V., Končina Peternel M., *Reforma družinskega prava – Predlog novih predpisov s komentarjem* (Reform of family law – Proposal of new regulations with commentary), 2nd amended and supplemented edition, *Uradni list RS*, Ljubljana, 2009, pp. 317.

³³ The law allows the possibility that the procedure for extending parental rights starts on the proposal of one of the parents or a social work centre. The person who is most affected by extension of parental rights may not initiate the procedure, as they may for example do with deprivation of legal capacity (para 2 art 45 of the Non-litigious Civil Procedure Act).

³⁴ Parental rights in terms of content are primarily care of parents for the life and health of a child. They also extend to the child's upbringing, representation and management of assets.

or he is a parent, for an adult signifies a great danger of paralysis of the free development of her or his personality.

The institution of parental rights in terms of its content and legal nature is intended for children and not the special protection of adults who cannot look after themselves so it should be restricted to the care of parents for children since its use for adults is not suitable. The reform of family law, which has already been long in preparation,³⁵ therefore envisages the removal of the institution of extended parental rights. For a child who, after reaching adulthood, cannot protect her or his own rights herself or himself, in future must be cared for in the same way as other adult persons who are not capable themselves of independently making reasonable decisions, i.e., by deprivation of legal capacity or rather with the modernised institution of guardianship without the prior deprivation of legal capacity.³⁶

³⁵ Novak B. in: Zupančič K. (editor), Novak B., Žnidaršič Skubic V., Končina Peternel M., Reforma družinskega prava – predlog novih predpisov s komentarjem (Reform of family law – Proposal of new regulations with commentary), 2nd amended and supplemented edition, Uradni list Republike Slovenije, Ljubljana, 2009, p. 46.

³⁶ This also corresponds to contemporary guidelines of development since the majority of European countries do not recognise extension of parental rights.

Organisationskomitee
organizing committee

Prof. Dr. Dagmar Brosey
Vizepräsidentin · vice-president

www.wcag2016.de

Prof. Dr. Volker Lipp
Präsident · president

Karl-Heinz Zander
Geschäftsführer · secretary

orga@wcag2016.de

c/o
Betreuungsgerichtstag e.V.
Kurt-Schumacher-Platz 9
D-44787 Bochum
Deutschland · Germany

Bankverbindung
bank account

Bank für Sozialwirtschaft Köln
BIC: BFSWDE33XXX
IBAN:
DE73 3702 0500 0008 2767 01