

Excerpts relevant to legal capacity from the Act No. CXV of 2009 on the Civil Code, adopted by the Hungarian Parliament on 9 November 2009

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BOOK TWO
PERSONS
Part I
Person As A Subject of Law
Title 1
Statutes and Procedures Governing The Capacity To Have Rights
Chapter I
General Statutes

Article 2:1. [Capacity to have rights]

- (1) All persons shall possess the capacity to have rights: they can have rights and obligations.
- (2) Legal statements limiting the capacity to have rights shall be null and void.

Article 2:2. [The commencement of the capacity to have rights]

- (1) The capacity to have rights shall be given to persons, if born alive, from the day of conception.
- (2) The three hundredth day, calculated back from the date of birth, shall be considered the day of conception; this, however, may be proved to have occurred at an earlier or later date. The date of birth shall be considered as included in a time limit.

Article 2:3. [The guardian of the foetus]

- (1) The guardianship authority shall appoint a guardian to the foetus if this is necessary for the sake of protecting the rights of the foetus.
- (2) Either of the foetus's parents, any of its grandparents, public prosecutors, and the notary competent according to the mother's residence may apply for the appointment of a guardian. It shall also be possible to appoint a guardian *ex officio*.

Article 2:4. [Cessation of the capacity to have rights]

The capacity to have rights shall cease upon death.

"Chapter III

Facilitating the decision-making of persons of legal age, and their making of legal statements"

Legal institutions for protecting persons of legal age

Article 2:15. [Legal institutions that facilitate decision-making by persons of legal age]

(1) The following legal institutions shall assist the decision-making of persons of legal age who require support and/or protection on account of their mental capacity, mental condition or pathological addiction:

- a) advance directive,
- b) supported decision-making,
- c) guardianship restricting legal capacity.

(2) Unless the law provides for otherwise, the legal institutions indicated in paragraph (1) may be applied jointly.

The advance directive

Article 2:16 [The notion and establishment of the advance directive]

(1) Persons of legal age and possessing legal capacity may make an advance directive in a public document, a private document countersigned by an attorney or in person in front of the guardianship authority concerning the case of their legal capacity becoming restricted in the future or – under the provisions of paragraph (5) – even barring such with respect to the reduction of their discretionary ability in the interest of declaring their will associated with certain of their personal and financial relations.

(2) Persons of legal age in possession of their legal capacity may dispose of the following things in particular by means of an advance directive:

- a) may specify one or more person(s) who may give them support for making their decisions, legal statements under the rules of supported decision-making, moreover whom they propose to have appointed as their guardian or substitute guardian,
- b) may exclude certain individuals from the scope of support persons and guardians,
- c) may apply for or prohibit their placement in residential social institutions,
- d) may name a guardian for their children under the legal age or may exclude specific person(s) from those who may be appointed as guardians,
- e) may grant a power of attorney for the management of their financial transactions,
- f) may dispose of the manner in which their movable assets or real-estate, as well as income is managed.

(3) The validity of an advance directive will be conditional to being registered in authentic records under the provisions of the separate law.

(4) An advance directive or any part thereof that is affected by a legally binding court ruling shall come into force – barring the case provided for in paragraph (5) – at the time when the court ruling that disposes of restricting the legal capacity of persons of legal age with respect to one or several groups of affairs is inure.

(5) The court shall rule on the advance directive or a specific part thereof coming into force instead of restricting the legal capacity of persons of legal age according to one or several groups of affairs – if they make a valid advance directive – if the provisions of the advance directive ensure the protection of the person of legal age even without limiting his or her legal capacity.

(6) After the advance directive becomes effective, its provisions must be taken into consideration as a decision applicable to the personal and/or financial affairs of a person of legal age with restricted legal capacity.

(7) Advance directives shall be registered in authentic records regulated under the provisions of a separate law.

(8) The provisions on advance directive shall not apply to the advanced directive for refusal of treatment regulated by the health care act.

Article 2:17. [The application and revoking of the advance directive]

(1) The court, the guardianship authority, a guardian, moreover a person specified in an advance directive shall proceed – with the exceptions under paragraph (2) – to take the provisions of the advance directive into consideration after the advance directive comes into force.

(2) The court, the guardianship authority, the guardian, moreover the person specified in the advance directive may not take the provisions of the advance directive into consideration if:

a) the person named by a person of legal age does not accept the performance of the duties provided for in the advance directive, or grounds for disqualification under law are established in connection with him or her, or

b) the provisions of the advance legal statement would gravely infringe upon the life, health, bodily integrity or lawful interests of the subject person of legal age as a result of a substantial change of circumstances.

(3) Persons of legal age in possession of their legal capacity may revoke or amend the provisions of the advance directive at any time. In case the person of legal age in possession of his/her legal capacity stipulates a further advance directive, his/her previous advance directive shall be considered to have been revoked. The provisions of the earlier advance directive that are not affected by the provisions of a further advance directive shall remain in effect. If a court places a person of legal age under guardianship restricting legal capacity after an advance directive has been written, the court may revoke the advance directive under the rules that prevail concerning persons of restricted legal capacity making legal declarations pending guardianship authority approval.

(4) The provisions that prevail for revoking or amending advance directives during the writing of such must be applied appropriately. A revoked advance directive shall become invalid upon being struck from the records, and an advance directive that has already come into force shall become repealed.

Supported decision-making

Article 2:18. [The notion of supported decision-making]

(1) By means of its ruling specified in the separate law or in the course of a guardianship procedure, the court may decide upon the appointment of a support person or persons (referred to jointly henceforth as support person) for persons of legal age possessing their legal capacity who require assistance when making their legal statements with respect to specific groups of affairs because of their mental capacity, mental condition or pathological addiction.

(2) A support person may not be appointed in groups of affairs in which the restriction of the legal capacity of a person of legal age becomes necessary.

(3) The court may appoint a person of legal age who is in a relationship of trust – on the basis of the agreement under paragraph (4) – with the supported person, and who is not subject to the grounds of disqualification established in paragraph (5).

(4) The court shall decide upon the appointment of the support person, moreover the groups of affairs in which the supported person receives support on the basis of an agreement between the support person and the supported person as provided for in a public document, a private document countersigned by an attorney or the affected person's joint declaration evidencing the existence of the relationship of trust made in person in front of the guardianship authority or the court during the procedure for placement under guardianship. In case the court decides to appoint several support persons, it may only appoint one support person for any given single group of affairs, unless the supported person agrees otherwise with his or her support persons.

(5) Anyone for whom the following applies may not be appointed as a support person:

- a) a person to whom the supported person objects, moreover a person whose appointment would involve the violation of the supported person's interests even without such objection,
- b) a person who is a supported person in his or her own right,
- c) a person who is under guardianship restricting legal capacity, or
- d) a person who is subject to a final verdict proscribing participation in public affairs.

(6) Supported persons and supporters shall be registered by the authority entitled to keep authentic records as specified in the separate law.

2:19. [Conduct of the support person and the supported person]

(1) The appointment of a support person shall not result in the restriction of the supported person's legal capacity.

(2) A support person shall be entitled to be present when the supported person is making a legal statement, and to facilitate the making of the supported person's legal statement with his/her advice, and provision of information necessary for the supported person. The support person shall attach his/her signature to a legal declaration to confirm that s/he was present at the making of such a legal statement, and he or she provided assistance the supported person.

(3) Support provided under the provisions of paragraph (2) shall extend to providing assistance necessary for the supported person to enforce his/her right of impugnation as specified in law, as well as to making any legal statements associated with this.

(4) In case the supported person applies to have the support person's appointment revoked, the court shall promptly inform the authority entitled to keep authentic records about such proceedings having been commenced, for the purpose of entry in the records.

Article 2:20. [Termination of the legal relationship between the support person and the supported person]

(1) The court shall revoke the support person's appointment if

- a) the support person or the supported person applies for this,
- b) the support person fails to perform his/her duties derived from the agreement established between him/her and the supported person, and/or engages in conduct with which he/she gravely infringes upon the supported person's interests, or
- c) grounds for disqualification that would have constituted an obstacle to the appointment of the support person subsequently transpire.

(2) The court shall pass a ruling about revoking the support person's appointment based on paragraph (1) clauses a) to b) after personally hearing the support person and the supporting person.

- (3) The legal relationship applicable to supported decision-making shall terminate:
- a) upon the death of the supported person,
 - b) upon the expiry of the deadline provided for in the court ruling in case of appointment for a definite period, or
 - c) if the supported person does not have any other support person, upon the death of the support person or the revocation of his/her appointment under paragraph (1).

The conduct of a professional support person

Article 2:21. [The conduct of a professional support person]

(1) Where it is not possible to appoint a support person under the provisions of Article 2:18 (3), and where the protection of the support person does not necessitate restricting his/her legal capacity, the court may pass a resolution about the appointment of a professional support person – in case the affected person of legal age agrees – as part of proceedings specified in a separate law or that of its resolution passed in the course of the guardianship procedure.

(2) The provisions of Article 2:19. (1) to (3) shall prevail with respect to the conduct of the professional support person. In the absence of any provision elsewhere in law, the rules applicable to professional guardians in relation to appointment, the oversight of his/her activities, and in relation to revocation shall be applied to the professional support person .

Guardianship restricting legal capacity

Article 2:22. [Guardianship restricting legal capacity]

(1) Persons of legal age shall be restricted of legal capacity if a court has placed such a person under guardianship with this effect, concerning specified groups of affairs.

(2) Persons with restricted legal capacity shall have legal capacity in all groups of affairs – with the exception of voting – with respect to which the court has not restricted their legal capacity.

(3) The court shall order guardianship restricting legal capacity for persons of legal age who are unable to act independently or with assistance, make a decision about their various personal or financial affairs on account of their mental capacity, mental condition or pathological addiction, or as an effect of other circumstances which result in impeding social participation and failure to restrict legal capacity would harm such a person.

(4) Legal capacity may be restricted if no other provision which does not limit legal capacity would result in protecting the affected person from harm according to the court's opinion. A ruling that aims to limit legal capacity must be based on a complex expert's opinion, one that thus includes medical, rehabilitation, pedagogical, and psychological examinations if necessary.

(5) The manner or limitation of a person's communication, may not in itself be grounds for restricting legal capacity.

Article 2:23. [General statutes applicable to legal statements by persons of restricted legal capacity]

(1) The legal statement of a person of restricted legal capacity under guardianship are – except when the law provides otherwise – valid with respect to affair groups specified in a court ruling if the person made such statements with the advance consent or subsequent approval or his/her guardian. Where there is a dispute between the person under guardianship and his/her guardian – including if according to the guardian where the failure of the person under guardian to make a statement would cause him or her harm -- the guardianship authority shall decide after hearing the person under guardianship in person on

the basis of the principle of accessible communication. The decision of the guardianship authority shall override that of the person under guardianship or the guardian's legal statement and/or approval necessary for the legal statement to be valid.

(2) If the protection of the interests or prevention of harm of a person under guardianship necessitates immediate action, the guardian may act instead of and on behalf of the person under guardianship, and make legal statements, provided that the guardian promptly notifies the guardianship authority about this. The guardianship authority shall review the guardian's conduct within fifteen days calculated from the time of receiving such notification at the latest, after hearing the person under guardianship in person, and on the basis of the principle of accessible communication. The guardianship authority may not approve a guardian's conduct if the nature of the measure did not warrant immediate intervention, moreover if the guardianship authority rules in favour of the person under guardianship in the case of disputes under paragraph (1). If the guardianship authority does not approve the guardian's conduct, it shall also resolve to invalidate the guardian's legal statement.

Article 2:24. [The independent conduct of the guardian of a person with restricted legal capacity]

In a procedure conducted on the basis of separate law, the court may authorise the guardian to act instead and on behalf of the person under guardianship, to make legal statements independently with respect to groups of affairs or various affairs within groups of affairs subject to restriction

- a) upon the joint request of the guardian and the person under guardianship, concerning the recurring affairs of the person under guardianship and/or those that demand making legal statements regularly, or
- b) upon the joint request of the guardian and the guardianship authority, if an opinion based on complex expert's examination has confirmed that in connection with the given affair or group of affairs the guardian is not able to communicate with the person under guardianship that would be necessary for the guardian to decide on advance consent or subsequent approval in relation to a legal statement of the person under guardianship even with the assistance of a specialist knowledgeable in the field of communication with people with disabilities, and the protection of the person under guardianship cannot be ensured in a procedure under Art. 2:23. (1) to (2).

Article 2:25. [Cases of making legal statements by persons with restricted legal capacity]

Persons with restricted legal capacity is entitled to, even for group of affairs subject to restriction, and without the participation of their guardian:

- a) make legal statements of a personal nature for which they are authorised by legal regulation,
- b) conclude contracts of lesser importance that are in the scope of satisfying conventional needs of everyday life,
- c) dispose of the portion of income they acquire through employment, legal relationships of employment nature, social security, social and unemployment benefits that the court specifies, and may undertake commitments up to the extent of this portion of their income,
- d) entitled to enforce their rights against their guardian before organs of public administration or courts, to file lawsuits, moreover
- e) conclude contracts through which they obtain only advantages.

Article 2:26. [Legal statements subject to approval]

(1) The approval of the guardianship authority shall be required – if the court has restricted a person’s legal capacity concerning the disposal of their assets – for the validity of statements made by persons under guardianship and their guardian, if the legal statements concerns:

- a) the alimony of a person under guardianship,
- b) rights or obligations that, by virtue of inheritance, are conferred upon a minor,
- c) the person under guardianship undertaking any responsibility for external commitment without appropriate consideration ,
- d) the assets of the person under guardianship that are managed by the guardian,
- e) any other assets of the person under guardianship, whose value exceeds the amount specified in the resolution ordering a guardian,
- f) the transfer or charging of the real estate of a person under guardianship.

(2) A person under guardianship may request the approval of the guardianship authority for a) establishing, maintaining the independent household of his/her descendant or for providing support by charging his/her assets in order to achieve any other important goal, as long as the such support and/or its extent does not jeopardize his/her lawful interests and/or livelihood,

b) for a legal statement that contains his/her giving a gift, waiving rights without receiving any consideration, or donating for public purposes – other than under the provisions of clause a) – assuming that such a legal transaction does not jeopardize his/her lawful interests and/or livelihood.

(3) The consent of the guardianship authority shall not be required to validate a legal statements decided upon through a resolution by a court or public notary.

(4) The approval of the organisation or body as specified in the separate law shall be necessary for the validity of legal statements associated with groups of affairs in the area of various medical conditions and civil status as specified in the law.

Article 2:27. [Sequestration (freezing assets) and the appointment of a sequestrator]

(1) If legal action for the placement of a person under guardianship to limit legal capacity is warranted, and the protection of the assets of the affected person demands urgent action, the guardianship authority shall order sequestration, and concurrently appoint a sequestrator. A resolution for sequestration cannot be appealed.

(2) The provisions of the Chapter of the Judicial Execution Act that pertains to the implementation of precautionary measures shall prevail as appropriate concerning sequestration and the actions of sequestrators.

(3) The guardianship authority must file for legal action for placement in guardianship within eight days following the order of sequestration; the court on the other hand must review the sequestration ex officio within thirty days after the filing of said petition, and pass a substantive ruling concerning it.

Article 2:28. [Appointment of a temporary guardian]

(1) In exceptional cases gravely infringing the life, bodily integrity, financial circumstances that demand immediate action, the guardianship authority shall appoint a temporary guardian for persons of legal age who are unable to act independently or with assistance to make a decision in their various personal or financial affairs on account of their mental capacity, mental condition or pathological addiction or as an effect of other circumstances which

impede social participation, and where protecting them from being harmed is not possible via any other manner—primarily by means of sequestration.

(2) In its ruling appointing a temporary guardian, the guardianship authority shall indicate the affair, as well as affairs in which the temporary guardian may proceed. The rules applicable to guardians must be applied to temporary guardians concerning the affairs for which they were appointed.

(3) The guardianship authority must apply for placement under guardianship within eight days following the appointment of a temporary guardian; the court however must review the appointment of a temporary guardian *ex officio* within thirty days from the filing of such an application, and pass a substantive ruling concerning it.

(4) A temporary guardian may act in the manner indicated in Article 2:35.

Article 2:29. [Relative nullity]

The relative nullity of legal statements by persons of restricted legal capacity]

(1) Nullity on the basis of restricted legal capacity can only be invoked in the interest of the person whose legal capacity is restricted.

(2) Any person who misleads another party regarding his/her legal capacity shall be held liable for such conduct, and may also be obliged to perform the contract based on such liability.

Article 2:30. [Persons of restricted legal capacity becoming persons of legal capacity]

If a person of restricted legal capacity becomes a person of legal capacity, he or she shall decide the validity of any of his/her pending legal statements.

Statutes applicable to the appointment of a guardian, the rights and obligations of the guardian, moreover the termination of guardianship

Article 2:31 - [Provisions applicable to placement under guardianship]

(1) Placement under guardianship may be requested by

- a) the cohabitant spouse, next of kin, the brother or sister of a person of legal age,
- b) the guardianship authority, and
- c) the office of public prosecutor.

(2) Upon becoming aware of the necessity for placement under guardianship, the guardianship authority must promptly initiate a guardianship procedure, if a close relative as specified in paragraph (1)) fails to do so within sixty days after the guardianship authority receives the guardianship request.

(3) In the course of the guardianship procedure, the court shall provide information as to the legal institution of supported decision-making, as well as the terms and conditions for the possibility to apply it, to those participating in the procedure, in a manner that complies with the rules of unobstructed communication as necessary.

Article 2:32. [Appointment of a guardian]

In its ruling that orders placement under guardianship, the court shall order a guardian for the person with restricted legal capacity, upon the proposal of the person initiating the procedure or the guardianship authority.

Article 2:33. [Condition applicable to bearing the office of guardian]

(1) Persons of legal capacity and legal age who accept the office of guardian, concerning whom no grounds for disqualification as specified in law exist, and are suitable for carrying out the office of guardian in terms of who they are and their circumstances may be guardians.

(2) A person cannot be appointed as a guardian:

- a) if the person placed in guardianship objects against him or her,
- b) if the person under guardianship has specified him/her as a person who may not be appointed as guardians,
- c) if he or she is under guardianship,
- d) if he or she is a supported person,
- e) if he or she is subject to a non-appealable verdict proscribing participation in public affairs,
- f) if he or she is disqualified by the legal regulation on guardianship authorities, as well as on the child protection and guardianship procedure.

(3) The person indicated by the person placed under guardianship in an advance directive made prior to his/her legal capacity being restricted or in the course of guardianship procedure must be appointed as a guardian, and if this is not possible, then primarily the cohabitant spouse of the person under guardianship. In a case where no such person exists or where the appointment of the spouse would threaten the interests of the person under guardianship, the court shall appoint an individual as guardian who appears to be suitable for carrying out guardianship taking all circumstances into consideration.

(4) When appointing a guardian, parents or individuals named by parents if they die in a public document or will must be given priority among individuals suitable for being appointed, and if such are not forthcoming, then those relatives who are also capable of providing personal care if necessary.

(5) In case a guardian cannot be appointed on the basis of the provisions of paragraphs (1) to (4), a professional guardian must be appointed for the person under guardianship. Only individuals with clean criminal records who satisfy the qualification related stipulations specified in law may be professional guardians. Associations or foundations that care for people with disabilities, pathological addictions or psychiatric patients may also be appointed as a professional guardian. If the court appoints a legal entity as guardian upon the guardianship authority's proposal, the legal entity shall be obliged to name the person of legal age who will be personally responsible for performing the tasks of a guardian.

(6) A professional guardian may engage in guardian's tasks for no more than twenty persons of legal age under guardianship concurrently.

Article 2:34. [The appointment of multiple and substitute guardians]

(1) More than one guardian may be appointed for a person under guardianship. Multiple guardians may be appointed in particular if

- a) both parents or two close relatives of the person placed in guardianship accept guardianship jointly and with identical powers or
- b) the management of the assets of person under guardianship and/or other affairs warrants this.

(2) The court may upon the joint request of the guardians specify the exact sharing of the scope of their tasks in the cases specified in paragraph (1).

(3) The court may also appoint a substitute guardian as necessary in addition to an absent or otherwise impeded guardian. Substitute guardians may only proceed in affairs requiring immediate action.

Article 2:35. [The activity and obligations of the guardian]

(1) Concerning a group of affairs specified by the court, guardians shall manage the personal assets of the person placed under guardianship and be his/her lawful representatives if the court will have restricted the legal capacity of the person under guardianship in its ruling about his/her assets.

(2) In warranted cases – and if they undertake to do so – guardians shall also provide care for the person under guardianship.

(3) Upon making decisions that affect the person under guardianship, guardians shall be obliged to hear the person under guardianship – adapting to the mode of communication and intellectual capacity of the person under guardianship – and take the opinion of the person under guardianship into account to the greatest possible degree. If it is impossible to determine the opinion of the person under guardianship, the guardian shall proceed in accordance with the previously-expressed instructions of the person under guardianship. Where previously-expressed wishes are impossible to determine, the guardian shall be obliged to proceed on the basis of the set of values of the person under guardianship, in a manner that best serves his or her interests.

(4) If the guardian violates his/her obligations under paragraph (3), this may imply his/her being relieved under the provisions of Art. 2:39.(3)(c).

Article 2:36. [Oversight for the activity of the guardian]

(1) The activities of guardians shall be supervised by the guardianship authority.

(2) The guardian shall provide a report of his activities and of the conditions of the person under guardianship to the guardianship authority any time upon the guardianship authority calling upon them to do so, otherwise on an annual basis, together with the annual accounts.

(3) Guardians shall be obliged – if the person under guardianship is subject to guardianship restricting disposal of assets – to hand over money, securities, and other valuables of the person under guardianship if such assets do not under legal regulations need to be retained for ongoing expenses. The consent of the guardianship authority shall be deemed necessary for disposing assets handed over to the guardianship authority.

(4) Persons under guardianship shall be entitled to have access, through the guardianship authority and the guardian, to the guardian's activities, as well as to the documentation kept on the assets of the person under guardianship, and to make duplicates of such.

Article 2:37. [Accountability with respect to the guardian's management of assets]

(1) Guardians shall be obliged to file statements of accounts on the management of assets to the guardianship authority on an annual basis at the minimum. If the guardian is a close relative of the person under guardianship, the guardianship authority may grant him/her exemption from the obligation of ordinary accounting or allow simplified statement of accounts.

(2) With the exception of professional guardians, an annual statement of accounts is not required if the person under guardianship has no assets, and if the monthly amount of his/her income from employment, pension or other benefits does not exceed the amount specified in the legal regulation.

(3) The guardianship authority may oblige a guardian to produce incidental statements of accounts upon the request of the person under guardianship or his/her proxy.

(4) The guardianship authority shall send the statement of accounts to the person under guardianship or his/her proxy.

Article 2:38. [Revision of the appointment of a guardian]

(1) The court, in its ruling that orders the restriction of legal capacity, the maintaining or amendment thereof, must provide instructions about the date – within five years calculated as of the ruling entering into force – by which the statutory review of guardianship has to be initiated.

(2) The review procedure must be initiated by the guardianship authority. An application by the guardianship authority may seek termination, maintenance or the amendment of the placement under guardianship.

(3) The court shall decide about the termination, maintenance or amendment – under paragraph (2) – of placing under guardianship on the basis of a request by

- a) the person under guardianship,
- b) the cohabitant spouse, next of kin, the brother or sister of the person under guardianship,
- a) the guardian,
- d) the guardianship authority or
- e) the office of the public prosecutor.

(4) It shall be possible to file for legal action aiming to terminate, maintain or amend placement under guardianship prior to the date of the statutory review.

Article 2:39. [Termination of guardianship]

(1) Guardianship shall be terminated if the person under guardianship dies.

(2) The office of guardian shall expire if the guardian dies or the court relieves the guardian from office.

(3) The court may relieve the guardian if

- a) the guardian requests to be relieved,
- b) grounds for disqualification that would also have constituted an obstacle to the appointment of the guardian subsequently transpire,
- c) the guardian fails to perform his/her obligations or perpetrates actions and/or engages in conduct which gravely violate or jeopardise the interests of the person under guardianship.

(4) The guardianship authority may also relieve a guardian in exceptional cases if – taking all circumstances into consideration including the opinion of the person under guardianship – the appointment of a different person as guardian is warranted in the interest of the person under guardianship.

The lack of discretionary ability

Article 2:40. [Nullity on account of the lack of discretionary ability]

(1) The legal statement of a person who, upon making the legal statement is in a state in which his/her discretionary ability necessary for managing his/her affairs is temporarily missing shall be null and void.

(2) The legal statement – barring the last will – of a person under paragraph (1) cannot be considered null and void if its substance and circumstances make it possible to infer that the making of the legal statement would have been otherwise warranted.