

RESTRICTION OF LEGAL CAPACITY IN THE SLOVAK LAW AND RELATED COURT PRACTICE

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Abstract. In the first part of the article, the author makes an excursion into history and gives the reader information about the legal capacity of persons in Slovak legal history. This part includes information about feudal law, the first related codification of 1877, the Czechoslovak Civil Code of 1950, and the Czechoslovak Civil Code of 1964. Further on, the author presents the up-to-date effective regulation encompassed in the Slovak Civil Code and in the procedural act, i.e., the Act on Non-Contentious Civil Procedure. At the center of attention is the abolishment of deprivation of legal capacity, introduced in 2016. The author reasons that this abolition was a response to the case-law of the European Court of Human Rights and to the UN Convention on the Rights of Persons with Disabilities. Inevitable for this article, were the practice and experiences of The Office of the Commissioner for Persons with Disabilities. From the practical point of view, the most important is the last part of the article, where the author lists some examples of good and bad practices of the Slovak Courts concerning legal capacity. The author deems it necessary to pay attention to this important topic. The improvement of the legal position of adults with disabilities definitely contributes to legal certainty and the rule of law in modern societies. *Last but not least, it reflects the degree of social forwardness.*

Keywords: legal capacity; deprivation of legal capacity; restriction of legal capacity; restoration of full legal capacity; mental disorder

INTRODUCTION

According to J. Potrzeszcz, it is necessary to distinguish between legal security (the value worthy of protection) and legal certainty (the instrumental value). Legal certainty constitutes “one of the most important means of the implementation of legal security as the goal and sense of the existence of positive law.” The author states that legal security is the state achieved by positive law, in which the goods of life and human interests are protected as closely as possible in an entire and effective way. She agrees with J. Wróblewski, who stated that: “Legal security means certainty considered from the point of view of the protection of rights of the individual” [Potrzeszcz 2016, 146].

The changes in Slovak law in 2016, which led to the abolition of the deprivation of legal capacity definitely are in accordance with the principle of legal security. Also, I. Majstorović and I. Šimović agree that the improvement of the legal position of adults with disabilities contributes to legal certainty and the rule of law [Majstorović and Šimović 2018, 65].

In this article, I will emphasise that to deprive a person of legal capacity is no longer possible under Slovak law. Furthermore, I will present the related court practice with regard to the power of the judiciary, as some courts try to enhance the position of people with mental disorders they deal with more and some less.

Under the Slovak Civil Code (Act no. 40 of 1964 Coll.), the full capacity of an individual to acquire rights and assume duties through legal acts (i.e., to conclude a marriage, enter into a contract, etc.) shall arise at the moment of majority. The majority shall be acquired by achieving the age of eighteen years. Before this age, the majority can be acquired only by entering into a marriage. Mental sanity is a prerequisite to full legal capacity.

Deprivation (full restriction) of legal capacity has no longer been possible in Slovakia since 2016, which is a true milestone from a historical point of view.

From the 11th until the 20th century, the Slovaks lived in the multicultural Hungarian Kingdom. There, only a minority of the population had full legal capacity. The factors that influenced the extent of legal capacity were: sex, age, health, wastefulness, honor, religion, citizenship, occupation, social class, and marital status. It means that only a man older than 24 years old, physically and mentally healthy, economically aware, honorable,¹ of Catholic denomination, Hungarian citizenship, with a reputable occupation,² member of nobility or bourgeois, and preferably married enjoyed full legal capacity [Mosný and Laclavíková 2010, 48-54]. Lack of any of these attributes meant restricted legal capacity.

In the 19th century, Act no. XX of 1877 on Guardianship and Curatorship abolished the feudal limitations and only conserved limitations such as age, mental health, and sex [Idem 2014, 93-95]. Article 28 limited the legal capacity of people deranged, feeble-minded, and deaf-mute unable to use sign language.³ The Act did not use the terms limitation and deprivation of legal capacity. Under Article 8, the court could prolong the minority and keep the minor under the father's or guardian's power due to the lack of

¹ One could lose honor if he was an executioner, a criminal, an out-of-wedlock child, etc.

² Of a reputable occupation were clergymen, merchants, clerks.

³ For example, in the effective Czech Civil Code, there is still a clause reminding us that problems in communication cannot lead to restriction of legal capacity (Act no. 89 of 2012 Coll., Article 57(2)).

physical or mental health, which led to the inability to take care of oneself, or due to wastefulness, or desolate life. Under Article 28 (letters a-c), the court could place people deranged, deaf-mute unable to use sign language, feeble-minded, or squanderers under curatorship. Under Article 33, a person under curatorship could not assume duties and disclaim rights without the curator's consent. However, the protected person could acquire rights or disclaim responsibility based on a voluntary act with no exchange for value.

After the establishment of Czechoslovakia in 1918, the law of Austro-Hungarian origin remained in effect. Hence, the changes in the regulation of legal capacity were scarce. Among some 20th century improvements, it is necessary to emphasize that the Constitution of 1920 stipulated gender equality;⁴ in 1919, the age of majority got lowered to 21 years of age;⁵ and the quality of healthcare and knowledge on mental health significantly improved. The Czechoslovak legal terminology recognized both deprivation and restriction of legal capacity as in the Czech countries the Imperial Act no. 207 of 1916 on Deprivation of Legal Capacity remained in effect. Under this Act, alcoholism and wastefulness could be reasons for restricting legal capacity. Insanity and feeble-mindedness connected to a wasteful lifestyle could be reasons for depriving legal capacity. In Slovakia remained effective the Hungarian Act of 1877 that conserved the prolongation of minority and curatorship. That implies that the regulation of the legal capacity of persons in Czechoslovakia was of a dual character – different in Slovakia and different in the Czech countries.

After the Munich Agreement and following territorial demands, the First Czechoslovak Republic disintegrated. The first Slovak Republic was established in 1939. The Czech countries, i.e., the partially annexed territory of Nazi Germany, formed the so-called Protectorate of Bohemia and Moravia. The regulation of legal capacity was heavily impacted by the racial laws, revoked only in 1945.

The Czechoslovak Civil Code of 1950 (Act no. 141 of 1950 Coll.) abolished legal dualism, i.e., the same law applied in all of Czechoslovakia. According to Articles 13-16, it was possible to partially or fully restrict the legal capacity. A court could decide about restricting the legal capacity of a fullage individual who suffered from permanent mental illness or immoderately consumed alcoholic beverages, narcotics, or poisons and therefore was not capable of a decent life. Depriving the minor older than six years of age of legal capacity was possible due to permanent mental illness and incapacity to lead an independent life. The terminology used in the Civil Code was of Latin origin, based upon the term *sui iuris*, which literally means “of

⁴ However, many legal regulations in Slovakia still had feudal traits.

⁵ It was changed to 18 years of age in 1949.

one's own right." It proves that the Civil Code of 1950 was a "middle-way code" [Laclavíková and Švecová 2019, 115]. The mid-20th-century experts defined mental illness as "various mental states that caused suffering to the patient, the relatives, or all of them. They could be of different types and grades" [Knobloch and Knoblochová 1957, 13-14]. The most common mental illnesses that led to the deprivation of legal capacity were schizophrenia, progressive paralysis, feeble-mindedness, psychopathy, and alcoholism [ibid., 30]. There was no wastefulness among the reasons listed in the Civil Code of 1950. The lawmakers reasoned that in the bourgeois society, such a reason existed only to protect the property of an individual and relatives. They said that only a negligible number of squanderers lived in the new, advanced society approaching communism.⁶

The Socialist Civil Code (Act no. 40 of 1964 Coll., Article 10)⁷ did not use the *sui iuris* terminology as the Explanatory Report artificially denoted it as disrespectful to shift from "bourgeois" law. According to the new code, the Court could restrict the legal capacity of a citizen who suffered from permanent mental illness or immoderately consumed alcoholic beverages, narcotics, or poisons and therefore was able to do only certain legal acts. The Court could deprive the citizen of legal capacity due to permanent mental illness who, therefore, was unable of any legal acts. Compared to the Civil Code of 1950, the lawmakers used the term "citizen" instead of "the minor older than six years" (deprivation) and "a full age individual" (restriction). According to the new regulation, in each case, the extent of restriction of legal capacity had to be clearly specified. This rule retroactively applied to cases decided between 1950 and 1964, too. The main aim was to end up with mechanical and inappropriate parable to the legal capacity of 15 years old persons as it had been under the previous legal regulation from 1950. According to the jurisprudence, there was no general rule about the immoderateness of consumption of addictive substances. In each case, it was necessary to assess the after-effects of the consumption. Immoderateness was linked to disability to perform legal acts. Furthermore, this disability had to be of some duration [Luby and Knapp 1974, 233]. This explanation substituted the formerly used legal term habitual immoderate consumption of addictive substances.

The actual and effective version of the Slovak Civil Code (Act no. 40 of 1964 Coll.) regulates the interference in a legal capacity in Article 10: "(1) If

⁶ The Explanatory Report is available at: https://www.psp.cz/eknih/1948ns/tisky/t0509_10.htm [accessed: 16.03.2022].

⁷ According to the Explanatory Report: "The Civil Code of 1950 got outdated. It regulated dead social relations, nonexistent in the 1960s society. It was inapplicable in the socialist society, and hence, hindered its development."

an individual is completely unable to perform legal acts due to a permanent mental illness, the court shall deprive him or her of the capacity to legal acts. (2) If an individual is able to perform only certain legal acts due to a permanent mental illness or to immoderate consumption of alcoholic beverages, narcotics, or poisons, the court shall restrict his or her capacity to legal acts and shall specify the extent of such restriction in the decision. (3) The court shall change or cancel the deprivation or restriction of the capacity to legal acts if reasons leading thereto changed or fell out.”

If we compare Article 10 to its 1964 version, we see a terminological change. The term natural person (individual) replaced the term citizen [Lacavíková and Švecová 2019, 132].

However, the Civil Code did not comply with the recodification of civil procedural law from 2016. Article 231 of Act no. 161 of 2015 Coll. on Non-Contentious Civil Procedure cites that the court can restrict the legal capacity, alternate or cancel the restriction. “After the Act on Non-Contentious Civil Procedure came into effect, it has no longer been possible to deprive an individual of legal capacity, despite the unamended version of Article 10 of the Civil Code.”⁸

In this sense, the recodification of civil procedural law means a historical milestone and progress in protecting human integrity and dignity as it has abolished deprivation of legal capacity *pro-futuro*. The negative thing is that persons deprived of their legal capacity before 2016 experienced no change, i.e., the courts did not open their cases. We speak about 16 816 persons, which might be why Article 10 of the Civil Code remained unamended.⁹ Naturally, persons with deprived legal capacity, their close persons, persons with a legal interest in the case, healthcare providers, and social care providers can ask the court for a change through their legal action.

The reason why the lawmakers decided to abolish deprivation of legal capacity was that it violated human rights. They reflected on the rulings of the European Court of Human Rights and the UN Convention on the Rights of Persons with Disabilities.

In March 2008, the European Court of Human Rights made a decision in the case of *Shtukaturov v. Russia*.¹⁰ The applicant has suffered from a mental disorder since 2002. In 2003 he obtained the status of a disabled person. In 2004 the applicant’s mother lodged an application, seeking to deprive

⁸ The Košice Regional Court ruling, file no.: 8CoP/15/2019.

⁹ The survey of the Office of the Commissioner for Persons with Disabilities [Dobrovodský 2018b].

¹⁰ European Court of Human Rights: Persons with disabilities and the European Convention on Human Rights. 12.09.2018. https://www.echr.coe.int/Documents/FS_Disabled_ENG.pdf [accessed: 30.03.2022].

the applicant of legal capacity. She was appointed the applicant's guardian and requested his admission to the hospital in 2005. The applicant claimed that he had been confined to the hospital against his will and deprived of legal capacity without his knowledge. The applicant requested the hospital administration to allow him to see his lawyer in private, but the Director refused. The Court unanimously held that there was a violation of Article 8 of the European Convention on Human Rights (right to respect for private and family life) on account of the applicant's full incapacitation. The Court referred to the principles formulated by Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe; Principle 3: "The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in the complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, to make a will, to consent or to refuse to consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so."¹¹

In February 2012, the European Court of Human Rights made a decision in the case of *X and Y v. Croatia*: "Divesting someone of legal capacity entails serious consequences. The person concerned is not able to take any legal action and is, thus, deprived of his or her independence in all legal spheres. Such persons depend on others to make decisions concerning various aspects of their private life. These include, for example, where to live or how to dispose of their assets and all income. Numerous rights of such persons are extinguished or restricted. For example, such person is not able to make a will, cannot be employed, and cannot marry or form any other relationship creating consequences for their legal status, etc."¹²

The European Court of Human Rights made a related decision concerning a Slovak citizen in 2009. It was the case of *Berková v. Slovakia*. The applicant complained that the proceedings concerning the motion for restoration of full legal capacity to her were unfair. The court failed to hear her in person and decided that she was not allowed to make a fresh request for

¹¹ Council of Europe Committee of Ministers: Recommendation No. R (99) 4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults. 1999. [https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec\(99\)4E.pdf](https://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec(99)4E.pdf) [accessed: 30.03.2022].

¹² European Court of Human Rights: *Case of X and Y v. Croatia*. [online]. Strasbourg: ECHR, 2012. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-107303%22%5D%7D> [accessed: 30.03.2022].

full legal capacity to be restored to her for three years from the date of the judgment. The Court unanimously held that this lengthy period constituted a violation of Article 8 of the Convention.¹³

The UN Convention on the Rights of Persons with Disabilities does not expressly forbid or condemn deprivation of legal capacity. However, Article 12 requires equal recognition before the law. Paragraph 4: “States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will, and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent, and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.”¹⁴

The Czech Constitutional Court criticised depriving the person of legal capacity: “Deprivation of legal capacity is problematic from the constitutional point of view. It is a relic of the old regime. It is not allowed under Austrian or German law, and the French Code Civil does not recognise it either.”¹⁵

Before the recodification of the Slovak civil procedural law in 2016, the Slovak Constitutional Court recommended seeking inspiration in Article 55 of the Czech Civil Code, which only recognizes restriction of legal capacity. Furthermore, the Court commented upon the frequent error of the courts, i.e., the mechanical admissibility of expert evidence in a judicial review without further scrutiny.¹⁶

Neither the Slovak public had high confidentiality in deprivation of legal capacity. One can see it in media, which shortly after the recodification of the Slovak civil procedural law published articles with headlines such as “It will not be possible to abuse mental illness anymore” [Pagáč 2015, 16].

¹³ European Court of Human Rights: *Case of Berková v. Slovakia* [online]. Strasbourg: ECHR, 2009. <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22berkova%22%2C%22itemid%22:%5B%22001-91802%22%5D%7D> [accessed: 30.03.2022].

¹⁴ The Convention on the Rights of Persons with Disabilities [online]. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html#Fulltext> [accessed: 30.03.2022].

¹⁵ Constitutional Court of the Czech Republic: I.ÚS 557/09 from 18 August 2009. [online]. Par. 23. <http://kraken.slv.cz/1.US557/09> [accessed: 01.04.2022].

¹⁶ Constitutional Court of the Slovak Republic: I. ÚS 313/2012-52 from 28. November 2012. [online]. Par. 35-36. http://www.zpmpvsr.sk/dokumenty/I_US_313_2012.pdf [accessed: 01.04.2022].

If we speak about the power of the judiciary in this context, the extent to which different judges respect the individual's rights in cases of capacity limitation varies. The Office of the Commissioner for Persons with Disabilities (hereinafter: "The Office") calls attention to both the examples of good practice and bad practice.

The Office was established together with The Office of the Children's Commissioner under Act no. 176 of 2015 Coll. It came into effect on 1 September 2015 following Article 33(2) of The Convention on the Rights of Persons with Disabilities (National Implementation and Monitoring).¹⁷ The Office became operational on 1 March 2016. It is based in Bratislava, and its head is Zuzana Stavrovská, Doctor of Law.

Under Article 8, The Office is an independent body that works separately from other bodies competent to protect human rights according to law. Anybody can apply to The Office if the rights of persons with disabilities have been breached or endangered. Individuals with limited legal capacity or individuals deprived of legal capacity are entitled to address The Office directly or indirectly without previous approval or notice of their legal representative.

The Act regulates the competence of The Office in Articles 9-11. According to the Report on the Activities of the Commissioner for Persons with Disabilities for 2020: "The central issue in the assessment of complaints in civil relations remains the handling of complaints concerning interference with legal capacity."

Below, we provide some examples of bad practices, as pointed out by The Office.

"At the daughter's request, the Poprad District Court limited the legal capacity of her mother. However, the court did it to the extent that she was, de facto, deprived of her legal capacity. She filed a motion to restore legal capacity, but the court did not hear her and rejected the motion. The Office, therefore, requested to intervene in the appeal proceedings."¹⁸ The Office notes that: "Some courts continue to rule on legal capacity following their

¹⁷ "States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights." The full text of the Convention is available at <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> [accessed: 05.04.2022].

¹⁸ File number: KZP/0425/2021/03R. In the Office of the Commissioner for Persons with Disabilities: Agenda – Court Procedures. <https://www.komisarprezdravotnepostihnutych.sk/Agenda/Sudne-konania> [accessed: 05.04.2022].

standard procedures, although the Act on Non-Contentious Civil Procedure has been in force more than five years. E.g., the decision-making practice of the courts in restricting legal capacity is still disproportionately extensive. Often, the legal capacity is fully limited, except for disposing of some 25 euros per week, which the Commissioner considers to be in absolute violation of Article 12 of the Convention on the Rights of Persons with Disabilities and Article 231 of the Act on Non-Contentious Civil Procedure. In addition, judgments limit even acts of non-legal character, such as the right to decide who may visit a person of limited legal capacity or where that person will live. The court does not hear the person, does not inquire about the current state of health, does not send a deputy to meet the person in the facility where the person lives. And this process is not triggered by the COVID-19 pandemic.¹⁹ Such procedure is contrary to Article 243 of the Act on Non-Contentious Civil Procedure (necessity to hear the person and see the person during the proceedings).

Another negative trait of the court practice is the persistence of “uncritical acceptance of expert opinions.” The 2020 Report witnesses that “the experts often consider the medical records only and talk to the disabled person only for a few minutes. Furthermore, the experts tend to assess the health state of the disabled person in the presence of the person seeking the limitation of legal capacity.”

Similarly, it is perceived negatively “if the guardian is entrusted with such a power as if the person was of deprived legal capacity.” Furthermore, “not all courts require guardians to report about how the protected persons are doing and under what conditions they live.”

The Office notes that the courts are accustomed to “appointing a family member who has filed a motion as a procedural guardian.” It is, of course, not appropriate. The Office considered it equally inappropriate if a social services facility became a guardian. Due to the conflict of interests, this is no longer possible thanks to the fresh amendment to Act no. 448/2008 Coll. on Social Services. According to Article 8(12): “The social service provider or an employee of the social service provider cannot become the guardian of the social service recipient in the facility where it provides the social service to the social service recipient. The restriction under the first sentence shall not apply if the statutory body or the employee of the social service provider is a close person of the recipient of the social service.”

According to The Office, historical paternalism persists. This paternalist approach means “a cautious, protective decision-making by the courts

¹⁹ The Report on the Activities of the Commissioner for Persons with Disabilities for 2020 is available at <https://www.komisarprezdravotnepostihnutych.sk/getmedia/a3779384-2843-4455-8332-2117097d07c2/Sprava-o-cinnosti-za-rok-2020.aspx> [accessed: 05.04.2022].

concerning a person who has applied for restitution of the legal capacity and in whom the courts have no confidence.”

There are also problems with the entry of The Office into the legal proceedings; “The Košice II District Court announced that it would not take into account the petition of The Office. The Court said that to take the petition into account, The Office had to submit the consent of the person whose rights were to be protected. At the same time, the Court noted that the person in question could not consent due to the mental state and that the procedural guardian protected the rights and interests of the person sufficiently.” Such reasoning contradicts the Paris Principles (The UN General Assembly resolution 48/134 from 20 December 1993 on Principles Relating to the Status of National Institutions) and the UN Convention on the Rights of Persons with Disabilities. The Office emphasizes that its entry into the legal proceedings should happen based on written notification, not only after the delivery of the court order.

Some examples of good practices are:

The decision of the Regional Court of Košice from 25 May 2020, no.7Co/15/2020: The Regional Court upheld the decision of the Košice II District Court, which rejected the petitioner’s motion for an urgent measure ordering limitation of the legal capacity of his son. “The restriction of legal capacity is a dangerous interference with the personal and property autonomy of the individual concerned, with personal freedom and thus a significant interference with fundamental human rights. These constitutional rights include the capacity to rights (Article 14 of the Constitution of the Slovak Republic), the right to integrity and privacy (Article 16, Paragraph 1 of the Constitution of the Slovak Republic), and the right to be free from unjustified interference in private and family life (Article 19, Paragraph 2 of the Constitution of the Slovak Republic). These rights correspond to Article 8 of the European Convention on Human Rights (the right to private and family life) and Article 12 of the Convention on the Rights of Persons with Disabilities (the equality before the law). The petitioner expressed concern about his son’s refusal of treatment and hospitalization. However, the Court of Appeal stated that the Court of the First Instance correctly referred to the possibility to admit a person into a healthcare facility under Articles 252-271 of the Act on Non-Contentious Civil Procedure, which make the concern irrelevant. It is possible to restrict legal capacity only after exhausting all the less repressive measures or impossibility to apply other measures.” The courts appropriately protected “the weaker party” in this case.

The decision of the Regional Court of Nitra from 30 October 2020, no. 5CoP / 34/2020: The Court of First Instance received a motion from the Center for Legal Aid to limit the legal capacity of F.D., who was repeatedly and abusively seeking free legal aid at the Center. “F.D. persistently burdened

the employees in the Center, advocates, courts, and other institutions with numerous motions. On a long-term basis, he kept addressing them with long, unreasonable, hand-written documents with defamatory expressions. The Center asked to limit the legal capacity of F. D., so he would no longer be able to file motions, claims, complaints, and other submissions to courts, state bodies, public administration bodies, and self-government bodies.” The Court of First Instance terminated the legal proceedings. The Court of Appeal emphasized that when deciding on a limitation of legal capacity, the court must be careful not to restrict it to a greater extent than is strictly necessary. The court stated that the restriction of legal capacity is a protective measure for those who do not have the opportunity to control their actions or assess the consequences. Such a measure should protect and not harm or endanger the citizen’s interests. Although the precondition for limited legal capacity is a permanent mental disorder, the mental disorder itself does not automatically constitute a reason for the limitation of legal capacity, nor a reason to maintain the limited legal capacity in the legal capacity restoration proceedings. It is necessary to examine whether this disease affects the social life, family life, health, and property interests of the person suffering from mental disease. The Court of Appeal stated that restricting the right of access to bodies and courts only because of an abusive approach should always be considered illegal and contrary to the principles of democracy and the rule of law. The Court of Appeal thus upheld the decision of the Court of First Instance.

The decision of the Regional Court of Nitra from 6 June 2019, no. 9CoP / 53/2018: “A ground for limiting legal capacity is objectively valid if it precludes performing specific legal acts. The reason alone is not sufficient to limit the legal capacity of a person. The precondition is to prove that the reason excludes the ability of a person to perform specific legal acts. It is impossible to answer this question solely according to an expert opinion without further evidence and proper evaluation in a mutual context. The court, therefore, can not only rely on the expert opinions (including the related interrogation of the expert, necessary under Article 244 of the Act on Non-Contentious Civil Procedure) but must evaluate them in connection with other pieces of evidence. Primarily, the court must interrogate the person suffering from mental illness and consider their social and legal interactions, family- and property circumstances. Individual approach is inevitable. Only a comprehensive assessment makes it possible to conclude whether the conditions for limiting the legal capacity are sufficient.”

The decision of the Constitutional Court of the Slovak Republic from 22 March 2018, no. IV. ÚS 220 / 2018-10: The District Court of Ružomberok rejected to deprive or limit the legal capacity in the case where it reasoned that “the dependence on virtual internet social relations is only a mental

disorder of long-term, but not permanent character, and, therefore, can not be a ground for limitation of legal capacity.” The Regional Court upheld the decision of the Court of the First Instance: “The mere reason that the behavior is bizarre, improper, immoral, or criminal does not justify the Court to interfere with one of the most fundamental rights of individuals, i.e., their legal capacity. This right enjoys protection under The Charter of Fundamental Rights of the European Union.”

The Supreme Court upheld the decision of the Court of Appeal.

The Constitutional Court adjudicated that: “There was no proof of even the minimum legal requirement, i.e., permanent mental illness. On 15 January 2015, the District Court ruled that the person did not suffer from mental illness but suffered from immaterial addiction to virtual social relations and mixed disturbance of emotions and conduct. In the opinion of the Constitutional Court, the conclusion of the general courts to reject the complainant’s motion to limit or deprive the person concerned of legal capacity was constitutionally acceptable and sustainable.”

Of course, these are just a few examples from which it is clear that the situation is much better than in the recent past, despite the persistent negatives mentioned above. Believing in an ongoing sensitive approach of the courts to legal capacity issues, we conclude with a “happy ending story” from the Report on the Activities of the Commissioner for Persons with Disabilities for 2020. “During one of the monitoring visits to social services facilities, a client from the visited facility requested a discussion with an employee of The Office. He stated that he was deprived of legal capacity for many years. He confessed that such a decision was meaningful as he suffered from alcoholism and had debts. During the discussion, he showed interest in leaving the facility and living an independent life. Since 2018, The Office has been helping the client with debt relief in the form of personal bankruptcy and restoration of legal capacity. In 2020, the district court issued a judgment restoring the client’s legal capacity. At the same time, the Court appointed a social services facility as a guardian for supervising purposes related to health care. The client applied for his dream job as a chief shepherd. He got the job and accommodation and, as he said, he found a new meaning in his life.”

To appoint a guardian under Article 29 of the Civil Code is undoubtedly a better option than limiting legal capacity if it is sufficient to protect a person with a mental disorder. The regulation of adult guardianship will be regulated in a more detailed and progressive manner in the new version of the Civil Code. As the General State Advisor in Civil Law and Commercial Law matters at the Ministry of Justice, R. Dobrovodský, Doctor of Law says: “It is necessary to provide a legal possibility for adults under guardianship to express their will in a declaration addressed to the court. Such a declaration

would contain information on a preferred guardian (an individual or a legal person – e.g., an association that protects the rights of persons with disabilities), the wished scope of the guardian's powers, and the desired place where the adult under guardianship wishes to live, etc. Unless contrary to the best interests of these adults (e.g., an inevitable hospitalization of a person in a medical facility), the declarations would be binding.”²⁰

CONCLUSIONS

To conclude, mental disorders are the major overlooked challenge to global population health. According to statistics from the Slovak National Center for Health Information, more than 61,000 patients were diagnosed with mental disorders for the first time in psychiatric clinics in 2020. In the same year, 364 464 people with a diagnosed mental disorder underwent an examination in psychiatric clinics. In 2020, 36 862 were hospitalized in psychiatric wards of medical facilities due to mental disorders.²¹ For a more comprehensive picture, as of June 30, 2020, according to the Statistical Office of the Slovak Republic, the population of the Slovak Republic was 5 460 136 inhabitants. To demonstrate the pre-pandemic period, I provide data from 2014 and 2015, when the number of new patients with a diagnosed mental disorder increased by 136.7 per 10 000 people, representing more than 74 000 patients [Dobrovodský 2018b]. The national statistics from 2012 to 2018 evidence the rising number of restrictions of legal capacity, too [Dobrovodský and Hamran 2021]. The current issues and lifestyle have affected daily life in unprecedented ways, including global mental health. Hence, it is more than desirable to pay sufficient attention to this issue and to reflect on it with the idea that it affects each of us more than our hasty consciences allow us to think.

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²⁰ See also: Dobrovodský 2021a, 4-11; Idem 2021b, 1452-455; Idem 2019, 28-30; Idem 2018a, 17-19.

²¹ See <https://www.nczisk.sk/Aktuality/Pages/Psychiacka-starostlivosť-v-Slovenskej-republike-v-roku-2020.aspx> [accessed: 10.04.2022].

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