

People with Disabilities, Self-Determination and Very Personal Acts

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The evolution of medical, social and economic sciences and, more generally, the way of thinking has profoundly changed the relationship between Society and people with disabilities: these persons, from the recipients of social protection and care, have become an active part of Society. Therefore, this publication analyzes the basis and limits of the powers of persons with disabilities in the context of ethical, political, religious and legal values.

Keywords: protection, incapacitated, fundamental rights, evolution of law, very personal acts, choices about health treatments.

Neįgalūs žmonės, savarankiškas apsisprendimas ir išimtinai asmeninio pobūdžio veiksmai

Medicinos, socialinių ir ekonominių mokslų raida, apskritai pati mąstysena iš esmės pakeitė visuomenės ir žmonių, turinčių negalią, santykius. Socialinės paramos išlaikomi asmenys tapo aktyvia visuomenės dalimi. Atsižvelgiant į tai, šioje publikacijoje etinių, politinių, religinių ir teisinių vertybių kontekste analizuojama problematika, susijusi su neįgalųjų teisių įgyvendinimo pagrindais ir ribomis.

Pagrindiniai žodžiai: apsauga, neveiknumas, pagrindinės teisės, teisės raida, išimtinai asmeninio pobūdžio veiksmai, sveikatos priežiūros paslaugų pasirinkimas.

Introduction

As it is known, the ONU Convention on the Rights of Persons with disabilities¹ enforces “respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons” (Article 3). This Convention was implemented by the European Union, which approved it with a 2010 Council decision².

¹ ONU Convention on the Rights of Persons with disabilities. Signed in New York on 13.12.2006. Available: <<https://www.un.org/>> [viewed 16.10.2019].

² Council decision 2010/48/EC of 26 November. *OJ L* 2010. 27 January, No. 23/35, p. 35–36 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). Available: <[http://data.europa.eu/eli/dec/2010/48\(1\)/oj](http://data.europa.eu/eli/dec/2010/48(1)/oj)> [viewed 16.10.2019].

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For its part, the Charter of Fundamental Rights of the European Union³ establishes, among other things, that “Human dignity is inviolable” (Article 1); that “The Union recognizes and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community” (Article 26); and that “Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices” (Article 35).

The Italian Constitution recognizes the inviolable rights of man, both as an individual and in social formations (Article 2); it protects human dignity, guaranteeing the right to freedom (Article 13), the right to health and the right to refuse any medical treatment (Article 32).

The perception of disabilities and, therefore, the relationship between weak persons and protective institutions changed in the Italian Law too: the “*amministrazione di sostegno*” (also known as “*a.d.s.*”) was introduced in Italy by Law no. 6/2004⁴, due to protect “with the least possible limitation of the ability to act, people who are wholly or partly lacking autonomy in the performance of the functions of daily life, through temporary or permanent support interventions”. The legislation incorporates some solutions of the “*Sauvegarde de Justice*”, which represents one of the institutions for the protection of incapacitated subjects within the ambit of the French legal system. However, the influence of the Austrian “*Sachwalterschaft*” and the German “*Betreuung*” was really important.

The “*amministrazione di sostegno*” (which we can translate as “support administration”) represents a more modern and adequate measure compared to the traditional forms of incapacity already governed by the Italian civil code, i.e. “*interdizione*” and “*inabilitazione*”. In fact with the *a.d.s.* there is a more flexible model of protection of the person that is more respectful of his dignity. Aiming for the full realization of the human person in conditions of psychic or physical weakness, the leading purpose of the discipline of the *a.d.s.* is to promote the right of the person to express his will, if possible.

In the past, the law established the complete deprivation of the capacity for self-determination for people with mental disabilities; now, in the opposite sense, it provides for specific limitations on the capacity to implement legal acts. In fact, in the previous discipline, the weak person recipient of protection measures was precluded from fulfilling all or almost all the acts entrusted to the guardian. With the *a.d.s.* the beneficiary remains capable for all acts not prohibited by the judge.

1. Support administration (“a.d.s.”) and other institutions for the care of the weak person

The *a.d.s.* can be applied to people with mental illness, to people suffering from epileptic syndrome⁵, down syndrome⁶ and to severely depressed people⁷ – i.e. the elderly, drug addicts – as well as to per-

³ Charter of Fundamental Rights of the European Union. Signed in Nice on 07.12.2000. *OJC*, 26.10.2012, No. 326, p. 391–407 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). Available: <http://data.europa.eu/eli/treaty/char_2012/oj> [viewed 16.10.2019].

⁴ Law 09.01.2004, No. 6. *Italian OJ* 2004, 19 January, No. 14. Available: <<https://www.gazzettaufficiale.it>> [viewed 16.10.2019].

⁵ DELLE MONACHE, S. Prime note sulla figura dell’amministrazione di sostegno: profili di diritto sostanziale. *Nuova giurisprudenza civile commentata*, 2004, II, p. 35.

⁶ Judgment of Corte di Cassazione no. 22332 of 26 October 2011. *Giustizia civile*, 2011, I, p. 2807; judgment of Tribunale Varese of 6 October 2009. *Giurisprudenza italiana*, 2010, IV, p. 846; judgment of Tribunale Busto Arsizio of 12 October 2011. Available: <<dejure.it>> [viewed 16.10.2019].

⁷ Judgment of Tribunale Bologna-Imola of 2 January 2006. Available: <<www.personaedanno.it>> [viewed 16.10.2019].

sons only affected by physical incapacity if they are unable to provide for acts in their own interest⁸. We have an administration of a “representative” type, which does not deprive the beneficiary of the capacity to perform a specific act which also the guardian has the power to do; besides that, there is also an “assistance” or “incapacitating” type of administration⁹ in which only the guardian – under the control of the Court – can perform the act on behalf of the weak person whom is instead non allowed to perform it autonomously.

“*Interdizione*” and “*inabilitazione*” are still in force but just as residual protection systems and must be ordered by the Court not depending on the severity of the disease but on the basis of the concrete needs of protection of the beneficiary¹⁰. Basically, “*interdizione*” must be ordered only if the incapable requires a more radical exclusion from the legal acts or also to exclude the performance of some important acts that cannot be properly supervised by *a.d.s.* For example, “*interdizione*” can be ordered to safeguard the integrity of the personal assets which due to their importance cannot be administrated by the person with disabilities; moreover, it can be ordered if it is necessary to exclude fundamental freedoms such as marriage¹¹.

In force of Article 411 c.c., the judge can extend the effects of rules intended for “*interdizione*” and “*inabilitazione*” to the beneficiary of *a.d.s.*: among these, there are the prohibition of making a will¹², to make a donation¹³ or to acknowledge a child¹⁴. According to some judges, also the prohibition of marriage¹⁵ or of “*Unione civile*”¹⁶ (between persons of the same sex) can be “extended” to the beneficiary of *a.d.s.* In these cases, where fundamental rights are somehow “restricted”, the technical assistance of a lawyer is necessary for the beneficiary¹⁷. The right to sexuality can never be limited¹⁸.

However, in the writer’s opinion, only with “*interdizione*” it’s possible to limit the right to marry. In fact the law declares the marriage (Article 119 c.c.) and the “*Unione civile*” (Article 1, co. 5, Law no. 76/2016) invalidity only with regard to the person declared “*interdetto*”, without references to the *a.d.s.* So the power given to the judge by Article 411 c.c. (to extend the effects provided for by the law for “*interdetto*”) does not allow the extension of the prohibition of marriage, contrary to what was held by the judges¹⁹. The restriction of matrimonial freedom is exceptional. It should be remembered that the Charter of Fundamental Rights of the European Union recognizes the right to marry and the

⁸ Judgment of Corte di Cassazione no. 13917 of 2 August 2012, Available: <dejure.it> [viewed 16.10.2019]; judgment of Corte di Cassazione no. 25366 of 29 November 2006, *ibid.*

⁹ CENDON, P. Amministrazione di sostegno. a) Profili generali. In *Enciclopedia del diritto*, Annali, VII, Milano: Giuffrè, 2014, p. 28.

¹⁰ Judgment of Corte di Cassazione no. 22332 of 26 October 2011. Available: <dejure.it> [viewed 16.10.2019]; judgment of Corte di Cassazione no. 9628 of 22 April 2009, *ibid.*

¹¹ See below.

¹² Judgment of Tribunale Varese of 19 October 2011. Available: <www.personaedanno.it> [viewed 16.10.2019].

¹³ BUGETTI, M. N. Art. 411. In *Commentario al codice civile*. Directed by Gabrielli G. Ed. by Balestra L., Delle persone, Artt. 343–455. Padova: Utet, 2009, p. 327.

¹⁴ BOCCHINI, F.; QUADRI, E. *Diritto privato*. Torino: Giappichelli, 2016, p. 276.

¹⁵ Judgment of Corte di Cassazione no. 11536 of 11 May 2017. Available: <dejure.it> [viewed 16.10.2019]; judgment of Tribunale Trieste of 28 September 2007. *Giurisprudenza italiana*, 2007, p. 2739.

¹⁶ Introduced by Law 20.05.2016, No. 76. Italian OJ 2016, 21 May, No.118. Available: <https://www.gazzettaufficiale.it> [viewed 16.10.2019].

¹⁷ Judgment of Corte di Cassazione no. 19233 of 11 July 2008. Available: <dejure.it> [viewed 16.10.2019]; judgment of Corte di Cassazione no. 25366 of 29 November 2006, *ibid.*; judgment of Corte Costituzionale no. 128 of 19 April 2007, *ibid.*

¹⁸ Judgment of Tribunale Varese of 11 November 2011. Available: <www.personaedanno.it> [viewed 16.10.2019].

¹⁹ Introduced by Law 20.05.2016, No. 76. Italian OJ 2016, 21 May, No.118. Available: <https://www.gazzettaufficiale.it> [viewed 16.10.2019].

right to found a family (Article 9). So only a Court formed by three judges²⁰ can forbid the marriage²¹. Instead, every decision on *a.d.s.* is pronounced by only one judge.

2. Protection of incapacitated persons, very personal acts and fundamental rights

As it is known, the personality of the individual is evidently achieved also through the performance of negotiation or economic activity. There are then delicate regulatory areas, some of them recently emerged, such as choices regarding health treatments and other fundamental rights. So, since the beneficiary is not excluded from the legal activity, the *a.d.s.* discipline must be coordinated with the norms concerning the family, contracts, companies, trade, inheritance and donations.

The beneficiary suffers the limitation of his own capacity only with regard to those specific acts assessed by the judge as potentially prejudicial (for example contracts for great value goods).

In the Italian legal system, the guardian can only continue – but not start – the exercise of commercial enterprise on behalf of the “*interdetto*”, and this both as an individual company and as a partnership. On the other hand the beneficiary of *a.d.s.* can directly start and perform business activities and participate in partnerships or capital companies if there are no specific restrictions ordered by the judge²². Sometimes, the beneficiary can be helped by the guardian²³.

The balance between the opposing needs of autonomy and protection of the person becomes very complex with particular regard to the so called “very personal” rights and juridical acts; in the Italian Law these acts traditionally do not admit the participation of a legal or voluntary representative.

In the absence of prohibitions imposed by the judge, the beneficiary of *a.d.s.* remains fully capable of making wills and donations²⁴. According to some authoritative opinions, the freedom to make a will only exceptionally can be limited, to respect the “human feeling”²⁵. Moreover, the will is an act without prejudice to its author. The heirs, for their part, are protected by specific legal actions. They can contest the will if the author was *non compos mentis* when he made the act.

These considerations, together with some rules contained in the civil code (Articles 602, co. 1, 603, co. 2, c.c.), further confirm the inadmissibility of any replacement of the guardian in drawing up the testament. In fact that is called, by Italian law, “*olografo*” (“holograph”): it must be written only by the “hand” of testator and every participation of other person as well as the use of computer or mechanical systems cause the invalidity of the will (Article 602, co. 1, c.c.). The Article 603, co 2., c.c. – which discipline another type of will, made by a public official (a notary) – also prohibits the participation of a *nuncius*, who normally only reports the will of the testator.

²⁰ In fact, the judgment of *interdizione* is given by a Court formed by three judges.

²¹ ANELLI, F. *Il nuovo sistema delle misure di protezione delle persone prive di autonomia*. Jus, 2005, p. 220 ss. V. anche DI MARTINO, G. L’amministrazione di sostegno. Inquadramento, disciplina ed effetti. In: *Capacità e incapacità*. Ed. by Rossi F. Napoli: Esi, 2018, p. 142 ss. e p. 177 ss.

²² BONILINI, G. Art. 411. In *Codice civile commentato*. Directed by Schlesinger A. e Busnelli F.D. Milano: Giuffrè, 2008, p. 458 s.; VENCHIARUTTI, A. Capacità all’esercizio di impresa [dir. comm.]. Available: <www.treccani.it/enciclopedia> [viewed 16.10.2019]. For jurisprudence, see judgment of Tribunale Novara of 5 December 2012. Available: <www.personaedanno.it> [viewed 16.10.2019].

²³ AULETTA, G. Capacità all’esercizio dell’impresa commerciale. In *Enciclopedia del diritto*, VI. Milano: Giuffrè, 1960, p. 79.

²⁴ Judgment of Corte Costituzionale no. 114 of 10 May 2019. Available: <dejure.it> [viewed 16.10.2019].

²⁵ BONILINI, G., 2018, p. 433 s.

However, with a singular (and illegitimate) decision²⁶, a judge has appointed a special curator of weak person (affected by amyotrophic lateral sclerosis) to transfuse, in a holograph will, the last wishes of the beneficiary, expressed through an ocular pointing communicator. This is an illegitimate decision, even because it allowed the participation of another person in the drafting of a holograph will. The provisions of the law (on holographic will) are clearly violated and the decision of the judge of *a.d.s.* cannot make valid a will contrary to the same law²⁷.

The legitimacy of the intervention of the legal guardian in the fulfillment of donations is also very doubtful. In one case, a judge has authorized the guardian to proceed, in the name and on behalf of the beneficiary, to the donation of a house, after verifying the intent of the beneficiary and the absence of damage for him²⁸. In another case, the guardian has been authorized by the judge to donate to the daughters of the weak person, in the name and on behalf of the same incapacitated, the co-ownership of a real estate property²⁹. This appears patently illegitimate: the civil code excludes the possibility of making donation for those who haven't full capacity to dispose of their assets. It must be remembered that the Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms³⁰ establishes that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

The hazards of these kinds of acts are evident if we consider, for example, the case of a request proposed by a support administrator who was also the brother of a weak person: he asked that the person with disability was authorized by judge to draft a will, with the same brother as beneficiary. In this case, the Court rejected the request; according to judge, the person who was supposed to make the will was *non compos mentis* and neither was ascertainable his volition³¹.

The beneficiary can freely marry, unless there are limitations³².

According to some judicial decisions, the spouse beneficiary of "*interdizione*" may request the separation³³ or dissolution³⁴ of the marriage through the legal guardian and with the authorization of the tutelary judge; this possibility is admitted due to protect the incapacitated spouse from violations of marriage obligations committed by the partner.

It is not excluded that the same principle could be also extended to the "*a.d.s.*"; nevertheless, in the writer opinion, such personal decisions should be expressed only by the beneficiary, if able to assume them, with the exclusion of any intervention by the legal guardian.

In these cases, the best way to safeguard the interests of the weak person could be the proposition, by the legal representative, of a request for compensation or the proposition of the so-called *exceptio doli*, which allows the rejection of the claims based on the abuse of the right; in some circumstances,

²⁶ Judgment of Tribunale Varese of 12 March 2012. *Famiglia e diritto*, 2012, p. 492.

²⁷ BARBA, V. *Testamento olografo scritto di mano dal curatore del beneficiario di amministrazione di sostegno*. *Famiglia, persone, successioni*, 2012, p. 446.

²⁸ Judgment of Tribunale La Spezia of 2 October 2010. *Nuova giur. civ. comm.*, 2011, I, p. 77.

²⁹ Judgment of Tribunale Caltagirone of 10 July 2008. *Il diritto di famiglia e delle persone*, 2009, p. 673, with note by GAZZONI, F. I giudici, *legibus soluti*, autorizzano il tutore a compiere atti *contra legem*: è ora la volta della donazione. *Il diritto di famiglia e delle persone*, 2009.

³⁰ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Signed in Paris on 20.03.1952. Available: <<https://www.echr.coe.int>> [viewed 16.10.2019].

³¹ Judgment of Tribunale Roma of 30 May 2012. *Nuova giurisprudenza civile commentata*, 2012, I, p. 1005.

³² Judgment of Corte di Cassazione no. 11536 of 11 May 2017. Available: <dejure.it> [viewed 16.10.2019].

³³ Judgment of Cassazione no. 14669 of 06 June 2018 Available: <dejure.it> [viewed 16.10.2019]; judgment of Tribunale Padova of 15 September 2006, *ibid*.

³⁴ Judgment of Corte di Cassazione no. 9582 of 21 July 2000. *Giustizia civile*, 2000, I, p. 3145.

that appears to be more appropriate than acting with the request of separation or divorce. In the same way, only the part of the “*Unione civile*” can ask for its dissolution, according to the Article 1, co. 24, of Law no. 40/2016, with no possibility for the support administrator to perform that very personal act.

The Law no. 6/2004 does not contain specific provisions regarding non-pecuniary acts but only provides that the choice of the guardian must be made with exclusive regard to the care and interests of the beneficiary; the same Law requires the guardian to consider needs and aspiration of the beneficiary.

Many judges, however, had recognized to the legal guardian the power-duty to express consent to any medical treatment for the beneficiary: otherwise, the recipients of the measures of protection could not exercise very personal rights³⁵. This conclusion is certainly correct and complies with the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine³⁶. The Article 6, co. 3, establishes that “where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law”.

In a very well-known case in Italy, a person was in a permanent neurovegetative state and could not express any consent on artificial feeding therapies: however, the guardian requested authorization, in the name and on behalf of the beneficiary, to refuse such therapies. The Supreme Court³⁷, as it is known, has affirmed that the very personal right to health, by its nature, does not allow the guardian to dispose of it on the behalf of the individual in a state of total and permanent unconsciousness. So, it is necessary to reconstruct the presumed will of the unconscious patient, taking into account the desires he expressed before the loss of conscience, or inferring that will from his personality, his lifestyle, his inclinations, his reference values and his ethical, religious, cultural and philosophical convictions.

Recently, the Italian legislator introduced rules to protect the freedom of choice of medical care³⁸. According to the Article 3 of Law no. 219/2017³⁹, if a guardian has been appointed, the consent to treatment is expressed or refused by the same guardian, taking into account the will of the beneficiary in relation to his ability to understand. If there are no choices previously declared by the beneficiary when he was of sound mind, in case of disagreement between the legal guardian and the doctor about proposed care, the decision is left to the judge⁴⁰.

³⁵ Judgment of Corte di Cassazione no. 14158 of 7 June 2017. Available: <dejure.it> [viewed 16.10.2019]; judgment of Tribunale Perugia of 20 June 2013. *Repertorio del Foro italiano*, 2014, voce Interdizione, inabilitazione e amministrazione di sostegno, no. 34; judgment of Tribunale Reggio Emilia of 24 July 2012. *Foro italiano*, 2013, I, c. 2919; judgment of Tribunale Varese of 25 August 2010. *Giurisprudenza italiana*, 2011, p. 1805; judgment of Tribunale Firenze of 22 December 2010. *Giurisprudenza di merito*, 2013, p. 2375; judgment of Tribunale Modena of 14 May 2009, *ibid.*, 2009, p. 1837; judgment of Tribunale Prato of 8 April 2009. *Giurisprudenza di merito*, 2010, p. 102; judgment of Tribunale Roma of 19 March 2004. *Rivista del Notariato*, 2004, p. 249.

³⁶ Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine. Signed in Oviedo on 04.04.1997. Available: <https://www.coe.int/it/> [viewed 16.10.2019].

³⁷ Judgment of Corte di Cassazione no. 21748 of 16 October 2007. *Foro it.*, 2007, I, c. 3025. See also judgment of Consiglio di Stato no. 4460 of 2 September 2014. Available: <https://www.giustizia-amministrativa.it/> [viewed 16.10.2019]; judgment of Consiglio di Stato no. 3058 of 21 June 2017, *ibid.*

³⁸ Law 22.12.2017, No. 219. Italian OJ 2018, 16 January, No. 12. Available: <https://www.gazzettaufficiale.it/> [viewed 16.10.2019].

³⁹ About this law, see ZATTI, P. Spunti per una lettura della legge sul consenso informato e Dat. *Nuova giurisprudenza civile commentata*, civ., 2018, p. 247. MAFFEIS, D. Prometeo incatenato: la redazione non informata, o informata per modo di dire, e l'attenuata vincolatività delle Dat (disposizioni anticipate di trattamento). *Responsabilità civile e previdenza*, 2018, p. 1436.

⁴⁰ See also below.

However, the Constitutional Court has ruled out that power of representation for health choices always involves power to refuse the medical treatment necessary for the maintenance of life⁴¹. The judge must specifically evaluate the clinical conditions of the protected person and the power to refuse treatment must be specifically attributed to the guardian.

It must be emphasized that life-saving treatment can never be rejected – not even by the judge – if the beneficiary has not expressed, when he was of sound mind, the refusal of the same care, according to the provisions of Article 1, co. 4 and 5, and of Article 4 of Law no. 219/2017. The Article 1, co. 4 of the same Law establishes that the consent or the refusal to the therapies must be expressed in written form or through video recordings or, for the person with disabilities, through devices that allow them to communicate. According to the Article 4, in view of a possible future incapacity to self-determine and after an adequate information any adult person who is of sound mind may express authenticated private writings or public deeds in relation to (future) health treatments, including its refusal. The right to refuse medical treatment is very personal⁴² and can only be exercised by its owner, in the forms prescribed by law. The representative can only report the will of others but cannot form it, neither directly or indirectly by its reconstruction.

For these reasons, it is clearly wrong the very recent pronouncement⁴³ of a judge who “omitted” to take any decision about the support administrator (possible) authorization to order the suspension of a therapy; according to the judge, the support administrator is fully entitled to refuse and to propose treatments once he himself had ascertained the will of the administered person in reference to the health treatment in question (and this also presumptively, in the light of the declarations made in presence of the same administrator).

Conclusions

The freedom of the person is at the same time the purpose and the limit of his/her dignity protection.

The individual subjected to *a.d.s.* can directly perform very personal acts, even those with patrimonial content, if in a position to decide with full lucidity; otherwise, those acts can never be executed by the guardian, even if he only integrate the will of the beneficiary. In this context, the beneficiary of the protection is the only person who can the refuse medical therapies which are necessary for the survival (with the exception of so-called “therapeutic obstinacy”); this decision cannot be left to the guardian.

The same principle can apply to other fundamental choices, such as separation and dissolution of the marriage.

Self-determination is essential; that said, “substitution” in personal choices should be considered as exceptional and seen as a “*extrema ratio*”.

Opposing solutions do not grant autonomy but on the contrary endanger – maybe erase – fundamental rights of weak persons.

⁴¹ Judgment of Corte Costituzionale no. 144 of 13 June 2019. Available: <dejure.it> [viewed 16.10.2019].

⁴² Judgment of Corte di Cassazione no. 12998 of 15 May 2019. Available: <dejure.it> [viewed 16.10.2019].

⁴³ Judgment of Tribunale Roma of 23 September 2019. Available: <<http://www.quotidianogiuridico.it>> [viewed 16.10.2019].

Bibliography

Legislative acts

1. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms. Signed in Paris, on 20.03.1952. Available: <<https://www.echr.coe.int> [viewed 16.10.2019]>.
2. ONU Convention on the Rights of Persons with disabilities. Signed in New York on 13.12.2006. Available: <<https://www.un.org/>> [viewed 16.10.2019].
3. Charter of Fundamental Rights of the European Union. Signed in Nice on 07.12.2000. *OJ C*, 26.10.2012, No. 326, p. 391–407 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). Available: <http://data.europa.eu/eli/treaty/char_2012/oj> [viewed 16.10.2019].
4. Council decision 2010/48/EC of 26 November. *OJ L* 2010. 27 January, No. 23/35, p. 35–36 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV). Available: <[http://data.europa.eu/eli/dec/2010/48\(1\)/oj](http://data.europa.eu/eli/dec/2010/48(1)/oj)> [viewed 16.10.2019].
5. Law 09.01.2004, No. 6. *Italian OJ* 2004, 19 January, No 14. Available: <<https://www.gazzettaufficiale.it>> [viewed 16.10.2019].
6. Law 20.05.2016, No. 76. *Italian OJ* 2016, 21 May, No.118. Available: <<https://www.gazzettaufficiale.it>> [viewed 16.10.2019].
7. Law 22.12.2017, No. 219. *Italian OJ* 2018, 16 January, No. 12. Available: <<https://www.gazzettaufficiale.it>> [viewed 16.10.2019].

Literature

8. ANELLI, F. *Il nuovo sistema delle misure di protezione delle persone prive di autonomia*. Jus, 2005.
9. AULETTA, G. Capacità all'esercizio dell'impresa commerciale. In *Enciclopedia del diritto*, VI. Milano: Giuffrè, 1960.
10. BARBA, V. *Testamento olografo scritto di mano dal curatore del beneficiario di amministrazione di sostegno*. Famiglia, persone, successioni, 2012.
11. BOCCHINI, F.; QUADRI, E. *Diritto privato*. Torino: Giappichelli, 2016.
12. BONILINI, G. Art. 411. In *Codice civile commentato*. Directed by Schlesinger A. e Busnelli F.D. Milano: Giuffrè, 2008.
13. BUGETTI, M. N. Art. 411. In *Commentario al codice civile*. Directed by Gabrielli G. Ed. by Balestra L., Delle persone, Artt. 343–455. Padova: Utet, 2009.
14. CENDON, P. Amministrazione di sostegno. a) Profili generali. In *Enciclopedia del diritto*, Annali, VII, Milano: Giuffrè, 2014.
15. DELLE MONACHE, S. Prime note sulla figura dell'amministrazione di sostegno: profili di diritto sostanziale. *Nuova giurisprudenza civile commentata*, 2004, II.
16. DI MARTINO, G. L'amministrazione di sostegno. Inquadramento, disciplina ed effetti. In: *Capacità e incapacità*. Ed. by Rossi F. Napoli: Esi, 2018.
17. GAZZONI, F. I giudici, *legibus soluti*, autorizzano il tutore a compiere atti *contra legem*: è ora la volta della donazione. *Il diritto di famiglia e delle persone*, 2009.
18. MAFFEIS, D. Prometeo incatenato: la redazione non informata, o informata per modo di dire, e l'attenuata vincolatività delle Dat (disposizioni anticipate di trattamento). *Responsabilità civile e previdenza*, 2018.
19. VENCHIARUTTI, A. Capacità all'esercizio di impresa [dir. comm.]. Available: <www.treccani.it/enciclopedia/> [viewed 16.10.2019].
20. ZATTI, P. Spunti per una lettura della legge sul consenso informato e Dat. *Nuova giurisprudenza civile commentata*, civ., 2018.

Legal practice

21. Judgment of Corte Costituzionale no. 128 of 19 April 2007. Available: <dejure.it> [viewed 16.10.2019].
22. Judgment of Corte Costituzionale no. 114 of 10 May 2019. Available: <dejure.it> [viewed 16.10.2019].

23. Judgment of Corte Costituzionale no. 144 of 13 June 2019. Available: <dejure.it> [viewed 16.10.2019].
24. Judgment of Corte di Cassazione no. 9582 of 21 July 2000. *Giustizia civile*, 2000, I, p. 3145.
25. Judgment of Corte di Cassazione no. 25366 of 29 November 2006. Available: <dejure.it> [viewed 16.10.2019].
26. Judgment of Corte di Cassazione no. 21748 of 16 October 2007. *Foro it.*, 2007, I, c. 3025.
27. Judgment of Corte di Cassazione no. 19233 of 11 July 2008. Available: <dejure.it> [viewed 16.10.2019].
28. Judgment of Corte di Cassazione no. 9628 of 22 April 2009. Available: <dejure.it> [viewed 16.10.2019].
29. Judgment of Corte di Cassazione no. 22332 of 26 October 2011. *Giustizia civile*, 2011, I, p. 2807.
30. Judgment of Corte di Cassazione no. 13917 of 2 August 2012. Available: <dejure.it> [viewed 16.10.2019].
31. Judgment of Corte di Cassazione no. 11536 of 11 May 2017. Available: <dejure.it> [viewed 16.10.2019].
32. Judgment of Corte di Cassazione no. 14158 of 7 June 2017. Available: <dejure.it> [viewed 16.10.2019].
33. Judgment of Corte di Cassazione no. 12460 of 21 May 2018. *Foro italiano*, 2019, I, c. 272.
34. Judgment of Cassazione no. 14669 of 6 June 2018 Available: <dejure.it> [viewed 16.10.2019].
35. Judgment of Corte di Cassazione no. 12998 of 15 May 2019. Available: <dejure.it> [viewed 16.10.2019].
36. Judgment of Consiglio di Stato no. 4460 of 2 September 2014. Available: <https://www.giustizia-amministrativa.it> [viewed 16.10.2019].
37. Judgment of Consiglio di Stato no. 3058 of 21 June 2017. Available: <https://www.giustizia-amministrativa.it> [viewed 16.10.2019].
38. Judgment of Tribunale Roma of 19 March 2004. *Rivista del Notariato*, 2004, p. 249.
39. Judgment of Tribunale Bologna-Imola of 2 January 2006. Available: <www.personaedanno.it> [viewed 16.10.2019].
40. Judgment of Tribunale Padova of 15 September 2006 Available: <dejure.it> [viewed 16.10.2019].
41. Judgment of Tribunale Trieste of 28 September 2007. *Giurisprudenza italiana*, 2007, p. 2739.
42. Judgment of Tribunale Caltagirone of 10 July 2008. *Il diritto di famiglia e delle persone*, 2009, p. 673.
43. Judgment of Tribunale Prato of 8 April 2009. *Giurisprudenza di merito*, 2010, p. 102.
44. Judgment of Tribunale Modena of 14 May 2009. *Giurisprudenza di merito*, 2009, p. 1837.
45. Judgment of Tribunale Varese of 6 October 2009. *Giurisprudenza italiana*, 2010, IV, p. 846.
46. Judgment of Tribunale Varese of 25 August 2010. *Giurisprudenza italiana*, 2011, p. 1805.
47. Judgment of Tribunale La Spezia of 2 October 2010. *Nuova giur. civ. comm.*, 2011, I, p. 77.
48. Judgment of Tribunale Firenze of 22 December 2010. *Giurisprudenza di merito*, 2013, p. 2375.
49. Judgment of Tribunale Busto Arsizio of 12 October 2011. Available: <dejure.it> [viewed 16.10.2019].
50. Judgment of Tribunale Varese of 19 October 2011. Available: <www.personaedanno.it> [viewed 16.10.2019].
51. Judgment of Tribunale Varese of 11 November 2011. Available: <www.personaedanno.it> [viewed 16.10.2019].
52. Judgment of Tribunale Varese of 12 March 2012. *Famiglia e diritto*, 2012, p. 492.
53. Judgment of Tribunale Roma of 30 May 2012. *Nuova giur. civ. comm.*, 2012, I, p. 1005.
54. Judgment of Tribunale Reggio Emilia of 24 July 2012. *Foro italiano*, 2013, I, c. 2919.
55. Judgment of Tribunale Novara of 5 December 2012. Available: <www.personaedanno.it> [viewed 16.10.2019].
56. Judgment of Tribunale Perugia of 20 June 2013. *Repertorio del Foro italiano*, 2014, voce Interdizione, inabilitazione e amministrazione di sostegno, no. 34.
57. Judgment of Tribunale di Roma of 23 September 2019. Available: <http://www.quotidianogiuridico.it> [viewed 16.10.2019].

People with Disabilities, Self-Determination and Very Personal Acts

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S u m m a r y

The evolution of medical, social and economic sciences and, more generally, the way of thinking has profoundly changed the relationship between Society and people with disabilities: these persons, from recipients of social protection and care, have become an active part of Society. Their full and effective participation is assured on an equal basis with others. Consequently, to promote their full integration, international and European laws have recognized the right to their

self-determination. As a result, a new balance must be found between the aspirations to decide of the weak person and the support provided for by the law. Therefore, this publication analyzes the basis and limits of the powers of persons with disabilities in the context of ethical, political, religious and legal values.

Neįgalūs žmonės, savarankiškas apsisprendimas ir išimtinai asmeninio pobūdžio veiksmai

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S a n t r a u k a

Medicinos, socialinių ir ekonominių mokslų raida, apskritai pati mąstysena iš esmės pakeitė visuomenės ir neįgalių žmonių santykius. Socialinės paramos išlaikomi asmenys tapo aktyvia visuomenės dalimi, jų visiškai ir veiksmingas dalyvavimas visuomenėje užtikrinamas lygiais pagrindais su kitais asmenimis. Siekiant skatinti visapusišką neįgaliųjų integraciją, tarptautiniai ir Europos teisės aktai pripažino žmonių, turinčių negalią, teisę į savarankišką apsisprendimą. Tai lėmė poreikį rasti neįgaliesiems teikiamos įstatymu garantuojamos socialinės paramos ir siekio savarankiškai apsispręsti pusiausvyrą. Atsižvelgiant į tai, šioje publikacijoje etinių, politinių, religinių ir teisinių vertybių kontekste analizuojama problematika, susijusi su neįgaliųjų teisių įgyvendinimo pagrindais ir ribomis.