

Title	Questionnaire on the practical operation of the HCCH 2000 Protection of Adults Convention
Document	Prel. Doc. No 2 of September 2020
Author	PB
Agenda item	TBD
Mandate(s)	C&R No 34 of the 2019 CGAP; C&D No 31 of the 2020 CGAP
Objective	<ul style="list-style-type: none"> – To seek information as to the implementation and practical operation of the 2000 Convention in Contracting Parties; – To identify challenges or questions that have arisen in the practical operation of the 2000 Convention in Contracting Parties; – To seek information as to the implementation of the 2000 Convention in non-Contracting Party Members of the HCCH; – To assist with the preparation of a draft Country Profile under the 2000 Convention in advance of the SC; – To assist with the drawing-up of a draft Practical Handbook on the Operation of the 2000 Convention in advance of the SC; and – To obtain views and comments about other issues for discussion at the upcoming meeting of the SC. <p>Replies to the Questionnaire should be provided no later than 4 December 2020.</p>
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input type="checkbox"/> For Action <input checked="" type="checkbox"/>
Annexes	
Related documents	<ul style="list-style-type: none"> – Prel. Doc. No 1 of July 2019 – Questionnaire to assess the need to convene a possible meeting of the Special Commission in 2022 to review the practical operation of the <i>Convention of 13 January 2000 on the International Protection of Adults</i> – Prel. Doc. 10 of December 2019 – Report on the planning for a first meeting of the Special Commission to review the practical operation of the HCCH 2000 Adults Convention

INTRODUCTION

Objectives of the Questionnaire

This Questionnaire is being circulated in preparation for a possible meeting of the Special Commission (SC) on the practical operation of the *HCCH Convention of 13 January 2000 on the International Protection of Adults*¹ (hereinafter, the “2000 Convention”) to be held in The Hague in May / June 2022 (dates to be confirmed).

A first questionnaire was circulated in July 2019 to assess the need for a possible meeting of the Special Commission to review the practical operation of the 2000 Convention. Responses from 27 Members were collated and formed Prel. Doc. 10 of December 2019² for the attention of the 2020 Council on General Affairs and Policy (CGAP). The Conclusion & Decision³ No 31 from that meeting reads as follows:

“CGAP noted the progress made in organising the first meeting of the SC on the practical operation of the 2000 Protection of Adults Convention, to be held in May / June 2022. CGAP noted the possible topics recommended by HCCH Members in their responses to the questionnaire on this matter and encouraged the PB to focus its preparations on those topics identified as being of high interest, including by developing a Practical Handbook and, resources allowing, a Country Profile.”

This Questionnaire is addressed primarily to Contracting Parties to the 2000 Convention, but certain questions (appearing in **grey highlights**) at the beginning of the Questionnaire and on powers of representation are also addressed to Members of the HCCH that are non-Contracting Parties.

After more than 10 years of operation of the 2000 Convention, the Questionnaire has the following broad objectives:

- a. To seek information as to the implementation and practical operation of the 2000 Convention in Contracting Parties;
- b. To identify challenges or questions that have arisen in the practical operation of the 2000 Convention in Contracting Parties;
- c. To seek information as to the implementation of the 2000 Convention in non-Contracting Party Members of the HCCH;
- d. To assist with the preparation of a draft Country Profile under the 2000 Convention in advance of the SC;
- e. To assist with the drawing-up of a draft Practical Handbook on the Operation of the 2000 Convention in advance of the SC; and
- f. To obtain views and comments about other issues for discussion at the upcoming meeting of the SC.

The Questionnaire is designed to facilitate an efficient exchange of information on these matters prior to the meeting of the SC and also assist with the drawing up of an agenda for the meeting.

¹ The text of the 2000 Convention is available at: < <https://assets.hcch.net/docs/c2b94b6b-c54e-4886-ae9f-c5bbef93b8f3.pdf> >.

² The text of Prel. Doc. No 10 of December 2019 is available at: < <https://assets.hcch.net/docs/d0d3112b-56c1-42d4-b19a-a04beee01dc7.pdf> >.

³ The Conclusions and Decisions of CGAP 2020 are available at: < <https://assets.hcch.net/docs/70458042-f771-4e94-9c56-df3257a1e5ff.pdf> >.

Scope of the Questionnaire

The Questionnaire covers all the provisions of the 2000 Convention with the exception of the final clauses (Arts 53-59). Where relevant, reference is made to the *United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities* (hereinafter the “UNCRPD”) which the 2000 Convention may assist implementing for matters which may have cross-border implications.

In considering the questions that follow, Contracting Parties and non-Contracting Parties may find it useful to refer in particular to the new and revised edition of the Explanatory Report⁴ (ER) on the 2000 Convention drawn up by Professor Paul Lagarde.

Instructions for completion

The Questionnaire is being sent to Central Authorities designated under the 2000 Convention as well as to National and Contact Organs. Central Authorities as well as National and Contact Organs are invited to co-ordinate as appropriate with competent authorities⁵ in their respective States as well as stakeholders in this field (*e.g.*, guardians, curators and analogous institutions, notaries, lawyers, research / academic institutions, long-term care establishments, health care providers, financial institutions). For Contracting Parties to the Convention, Central Authorities are ultimately responsible for submitting the completed Questionnaire to the Permanent Bureau (PB).

In order to allow the PB to extract parts of the Questionnaire for a compilation and analysis of the responses, please use **this Word Version** of the document, and please **do not return a PDF version** of the completed Questionnaire.

We kindly request that replies to the Questionnaire be sent to the PB by e-mail to < secretariat@hcch.net > **no later than 4 December 2020** with the following subject matter captioned in the heading of the e-mail: “[name of State] Response to the 2000 Convention Questionnaire – 2022 Special Commission”. Any questions concerning the Questionnaire may be directed to < secretariat@hcch.net >.

The PB intends, except where expressly asked not to do so, to place all replies to the Questionnaire on the HCCH website (< www.hcch.net >). Please therefore clearly identify any responses which you do not want to be placed on the website.

Thank you for your kind co-operation.

⁴ The text of the Explanatory Report is available at: < <https://assets.hcch.net/docs/1509ab33-c2fe-4532-981c-7aa4dad9ba45.pdf> >.

⁵ The term “competent authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 2000 Convention. Whilst in the majority of States Parties such “authorities” will be courts (*i.e.*, judicial), in some States Parties administrative authorities are responsible for decision making in Convention cases.

**QUESTIONNAIRE ON THE PRACTICAL OPERATION OF
THE HCCH CONVENTION OF 13 JANUARY 2000 ON THE INTERNATIONAL PROTECTION OF ADULTS**

Wherever the responses to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 2000 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ⁶	Czech Republic
<i>For follow-up purposes</i>	
Date the Questionnaire was completed:	28.12.2020
Name of contact person:	Alena Vostalova, Jana Hofmannova
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Please note:

- Non-Contracting Parties to the 2000 Convention are requested to respond to all questions appearing under Part I as well as questions in Part II which numbers appear in **grey highlight**.
- Contracting Parties to the 2000 Convention are requested to complete all questions under Part II.

PART I – QUESTIONS FOR NON-CONTRACTING PARTY MEMBERS OF THE HCCH

1. Is your State considering joining the 2000 Convention?

- Yes
 No, if possible please explain:
[Please insert text here](#)

2. In considering how your State would implement the 2000 Convention, have you encountered any issues of concern?

- No
 Yes, please explain:
[Please insert text here](#)

3. Is your State considering joining the 2000 Convention with a view to implementing its obligations under the UNCRC, e.g., Articles 12 and 16 of the UNCRC?

- Yes
 No, please explain:
[Please insert text here](#)

⁶ The term "State" in this Questionnaire includes a territorial unit, where relevant.

PART II – PRACTICAL OPERATION AND IMPLEMENTATION OF THE 2000 CONVENTION

I – Significant developments in your State

- 1.1. Have there been any significant developments in your State regarding the legislation or procedural rules applicable in cases, including in international situations, of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests? Where possible, please state the reason for the development in the legislation / rules (e.g., in connection with the implementation of the UNCRPD), and, where possible, the results achieved in practice:

No

Yes, please describe:

A new Civil Code (Act no. 89/2012 Sb., hereinafter referred to as "CC") has been adopted in 2012 and is effective from January 2014 along with new procedural rules (Act no. 292/2013 Sb.). The new Civil Code introduced a number of developments concerning the protection of rights of adults with disabilities, who are unable to protect their interests. The new rules have been adopted with respect to the CRPD and to existing ECHR case law. However, at the time of the adoption many rules of the CRPD did not have a clear interpretation. Thus in the following period, there were few minor amendments of the new legislation. The new legislation was followed by new case law and many important court decisions drew attention to the number of systemic guarantees, or emphasized the need to respect them in order to protect these persons without interfering with their autonomy and personal freedom.

Significant changes:

- it is no longer possible to completely deprive a person of his or her legal capacity. It is only possible to limit it. (§ 55 CC);
- no one can be deprived of his or her legal capacity to legal acts in ordinary matters of everyday life (§ 64 CC);
- in contrast to the previous regulation, a number of conditions has to be fulfilled in order to limit person's legal capacity. Among others, it can be only done as an ultima ratio measure and there has to be a threat of serious harm (not just hypothetical) to the person concerned;
- the limitation of legal capacity mustn't automatically lead to other restrictions of human rights. E.g. limitation of legal capacity does not automatically deprive the person of parental responsibility or right to vote; these rights can be limited only on the basis of an individual assessment of the case by the court;
- the limitation of legal capacity is always limited in time and should be of the shortest possible duration. In general, the limit is 3 years, in special cases it could be extended to 5 years - if it is obvious that the person's condition will not improve in time (§ 59 CC);
- legal acts made by the person in the limited area without the consent of his guardian can be declared invalid only if they cause harm to the person (§ 65 CC).

New legal institutes:

- guardian of a person without limited capacity, representation by a household member, assistance in decision-making (described in detail in Section 6 of this questionnaire);
- detention of persons in social services facilities - a special legal mechanism addressing the situation of persons held in social services facilities against their will has been revised (described in detail in Section 3.3 of this questionnaire); The issue is addressed in particular by Act No. 108/2006 Sb., on social services, especially §§ 91 to 91b, the court procedure is regulated in Act No. 292/2013 Sb., on special court proceedings, §§ 84-84b.

- 1.2. Please provide a brief summary of any significant decisions concerning the interpretation and / or application of the 2000 Convention rendered by the competent authorities⁷ in your State, including in the context of the UNCRPD and other relevant instruments:

N/A

- 1.3. Please provide a brief summary of any other significant relevant developments in your State since it became a Contracting Party to the 2000 Convention:

The Ministry of Justice evaluates the application of the new rules concerning people with disabilities who are unable to protect their rights. The findings were presented to the (professional) public. The analytical material is available online: <https://justice.cz/web/msp/opatrovnicka-agenda>, title "Decision on legal capacity".

II – General operation information

- 2.1. Please indicate the number of cases handled by your Central Authority since the 2000 Convention came into force for your State:

28

- 2.2. Please indicate, if possible, the names of the Contracting Parties involved in the cases referred to in question 2.1.:

Austria (2) , France (2), Germany (21), Switzerland (4)

- 2.3. Please indicate the month and year when the 2000 Convention came into force for your State:

1-VIII-2012

- 2.4. Please indicate the number of Full Time Equivalents (FTEs) employed at this moment by your Central Authority dedicated to the operation of the 2000 Convention:

The Central Authority for the Convention is within the EU Civil Law Unit of the International Department for Civil Matters. There are no employees designated only for this Convention, mainly due to the limited human resources at the Ministry of Justice.

III – Scope

- 3.1. Have competent authorities⁸ in your State experienced any challenges, or have questions arisen, in determining the scope of the Convention under **Article 1** (meaning of “adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests”), **Article 2** (meaning of “adult”) or **Article 3** (meaning of “measures”)?

No

Yes, please describe:

⁷ The term “competent authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 2000 Convention. Whilst in the majority of States Parties such “authorities” will be courts (*i.e.*, judicial), in some States Parties administrative authorities are responsible for decision making in Convention cases.

⁸ *Ibid.*

Article 1 (meaning of “adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests”), please specify:

Please insert text here

Article 2 (meaning of “adult”), please specify:

Please insert text here

Article 3 (meaning of “measures”), please specify:

Sometimes it is difficult to recognise which measure is requested by the foreign authority.

As a solution we would suggest to use the forms as it would ease the communication.

Other, please specify:

Please insert text here

3.2. Please indicate whether the following measures are available in your State and describe their fundamental features including the conditions that must be met for an adult to be subject to such measures (tick more than one box if applicable):

Guardianship, please describe:

Guardian can be appointed by court if it is necessary to protect interests of an individual, or if required by a public interest. A court shall in particular appoint a guardian for a person whose legal capacity has been limited by the court, for a person of unknown whereabouts, an unknown person participating in certain legal acts or a person whose health condition is causing him difficulties in administering his assets and liabilities or defending his rights. See §§ 465 et sec. CC.

The duties of a guardian include maintaining contact with the represented person in an appropriate manner and to the extent required, showing genuine interest in the represented person, as well as taking care of his or her health condition, and ensuring the fulfilment of his or her rights and protection of his or her interests. When making a decision on the matters of the represented person, the guardian shall clearly explain to him or her the nature and consequences of the decision. In the performance of his duties, the guardian fulfils the legal declarations of the represented person and respects his or her opinions, even if expressed previously, including his or her beliefs or creed, systematically takes them into account and arranges the matters of the represented person accordingly. If this is not possible, the guardian shall proceed according to the interests of the represented person.

Curatorship, please describe:

This institute exists in the Czech Republic as a "social curator". However, it is an institute most often associated with persons who are affected in some way by criminal proceedings. In general, however, a social worker is always available at municipal authorities. A social worker is a coordinator of care for people at risk of social exclusion, e.g. people in an unfavorable social situation which they cannot manage on their own and need help and support. This may apply in particular to, among others, homeless people, alcohol or other addicts, persons dismissed from school facilities for institutional and protective education. The social worker helps people, among other things, to arrange accommodation, with the equipment of selected social benefits, etc. Regarding the method of cooperation, it should be emphasized that the court or other body does not impose an obligation to cooperate on a person with disabilities, but their relationship works on a voluntary basis.

Analogous institution, please name and describe:

"Special recipient of social benefits" - This institute is to some extent similar to guardianship. However, the competence of this representative is focused only on the management of the income of persons resulting from a specific social benefit, not in general on the legal actions of the represented person. This representative is regulated, inter alia, in Act No. 581/1991 Sb., on the organization and implementation of social security, (§ 10), and Act No. 111/2006 Sb., on assistance in material need, (§ 40), in Act No. 329/2011 Sb., on the provision of benefits to persons with disabilities and on the amendment of related acts, in Act No. 108/2006 Sb., on social services, (§ 20), and in several other acts. It should be noted that in real practice there may be a situation where, by accumulating social benefits, this

representative, although appointed to deal with each individual benefit separately, decides on a person's entire monthly income and may therefore have a significant impact on his or her life.

- 3.3. Please list and describe measures available under the law of your State that are not listed in **Article 3** but that would nevertheless fall under **Article 3** (e.g., “guardian *ad litem*”, “advanced health / medical decisions”, “*Betreuer*” (under German law), “*un placement sous sauvegarde de justice*” (under French law)):

- A) Declaration in anticipation of incapacity - described in detail in Section 6.1.-6.4.9. of this questionnaire.
- B) Assistance in decision-making - described in detail in Section 6.1.-6.4.9. of this questionnaire.
- C) Representation by a household member - described in detail in Section 6.1.-6.9.4. of this questionnaire.
- D) Special recipient of social benefits - described in Section 3.2.

The distinction between medical and social detention should be emphasized. The regulation of the procedure for placement or detention in medical institution is based on the traditional judicial mechanism for the protection of personal liberty in connection with the detention of persons in medical facilities. In the Czech Republic, it has been gradually supplemented over time by additional guarantees for the protection of the rights of persons detained, not only in connection with the case law of the European Court of Human Rights. As a new measure after 2014, a special court procedure has been introduced, which addresses the detention of a person in social services (typically residential). It was a reaction to the decision of ECHR *Stanev v. Bulgaria*. In Czech realities, it is necessary to mention the case of *Červenka v. Czech Republic*.

- 3.4. While the formation, annulment and dissolution of marriage or any similar relationship, as well as legal separation are excluded from the scope of the 2000 Convention in accordance with **Article 4(1)(b)**, please list and describe the possible powers of representation between partners available in your State resulting from the effects of marriage, and similar relationships, that fall under the scope of the 2000 Convention “insofar as they are aimed at the protection of the ailing partner” (see paras 35 and 90 of the ER):

A spouse or a partner has a right to represent the other spouse in usual matters. He or she does not have the right if the spouse or the partner to be represented informs in advance the person with whom his spouse or partner is to or intends to make a juridical act, that he or she does not consent to being represented, or if a court, on the application of a spouse, extinguishes the spouse’s right of representation (§ 696 CC). However, if this is a situation where it is necessary to represent a person who has difficulty in making decisions, we do not have any special provisions in the context of marriage or partnership. The institute of representation by a household member, who may typically be a spouse, partner or cohabitation with a person in the same household for at least 3 years, would probably apply to this situation. However, this representation must be established by court. For more details see § 49 CC.

IV – Jurisdiction

- 4.1. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**habitual residence**” of the adult under **Article 5(1)**?

No

Yes, please specify:

The evaluation is made case by case. This is even more important in case a person is placed in Czech facility by the family and it is not sure if it was done so with or without her/his consent.

- 4.2. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction in the case of a “**change of the habitual residence**” of the adult under **Article 5(2)**?

No

Yes, please specify:

Point 4.1. ibis. In several cases a person travelled from one country to another. As observed the involved states, it was difficult to coordinate the monitoring of the person by the respective state authorities.

- 4.3. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**presence**” of the adult under **Articles 6, 10 and 11**?

No

Yes, please specify:

Please insert text here

- 4.4. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**nationality**” of the adult under **Article 7**?

No

Yes, please specify:

Please insert text here

- 4.5. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to transfer jurisdiction based on the “**interests**” of the adult under **Article 8**?

No

Yes, please specify:

Please insert text here

- 4.6. Have competent authorities in your State experienced any challenges, or have questions arisen, in making a determination whether to exercise jurisdiction based on the “**situation of the property**” of the adult under **Article 9**?

No

Yes, please specify:

Since the article 9 is drafted in such a broad manner, some difficulties were observed in respect to detection of the property (administratively demanding procedures). Moreover, it is not clear how a Czech authority could possibly get knowledge of the measures undertaken by the competent authorities under article 5 -8. In addition, we point out the lack of mutual information duty. Another problem arised concerning the urgent aspect of some procedures. Thus, in case the relevant authorities of the state of habitual residence shall be informed, the latters' are not known to the informing party (art. 10).

- 4.7. Have competent authorities in your State had experience with urgent measures of protection taken under **Article 10**?

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied **Article 10**:
[Please insert text here](#)

4.8. Have competent authorities in your State had experience with temporary and limited measures of protection taken under **Article 11**?

- No
 Yes, please describe in which situations a competent authority in your jurisdiction has applied **Article 11**:
[Please insert text here](#)

4.9. Have competent authorities in your State had experience using the Measures of Protection Concerning an Adult recommended form⁹ for the purpose of **Article 8** and the Information relating to Measures of Protection concerning an Adult recommended form¹⁰ for the purpose of **Articles 7, 10 and 11**?

- No, please explain:
[We do not have any specific feedback from our courts on forms but from the current practice the Czech courts are mainly in a position of the requested party. Nevertheless, we would encourage the use of the forms.](#)
 Yes

4.10. Has your State taken appropriate steps (*e.g.*, guidelines, procedures, protocols) in accordance with **Article 30(a)** to facilitate communications between competent authorities of different Contracting States concerning the coordination of jurisdictions issues arising under **Articles 5-12**?¹¹

- No
 Yes, please describe such guidelines, procedures or protocols and also provide a link or attach them, preferably translated into English or French:
[The Ministry of Justice as a Central Authority provides cooperation on applications of the Convention to the courts.](#)

4.11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter II**?

- No
 Yes, please specify:
[Please insert text here](#)

V – Applicable law – General

⁹ The Measures of Protection Concerning an Adult recommended form is available at: < <https://assets.hcch.net/upload/form35b.pdf> >.

¹⁰ The Information relating to Measures of Protection concerning an Adult recommended form is available at: < <https://assets.hcch.net/upload/form35c.pdf> >.

¹¹ See, *e.g.*, Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges available at: < <https://assets.hcch.net/docs/62d073ca-eda0-494e-af66-2ddd368b7379.pdf> >.

- 5.1. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying or taking into consideration the law of another State with which the situation has a substantial connection in accordance with **Article 13(2)**?

No
 Yes, please specify:
[Please insert text here](#)

- 5.2. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying their own law, in accordance with **Article 14**, to the conditions of implementation of foreign measures, whether these are known or unknown to their own law?

No
 Yes, please specify:
[Please insert text here](#)

- 5.3. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 17**?

No
 Yes, please specify:
[Please insert text here](#)

- 5.4. Please list and describe specific rules of representation of the adult which your State would regard as part of the mandatory law under **Article 20**:

[A precise list of such rules cannot be given. As such rules could be considered in particular rules on conditions for limitation of individual's rights, e.g. prohibition of complete deprivation of legal capacity, impossibility of restricting legal actions in ordinary matters of everyday life, the maximum duration of the limitation of legal capacity, the conditions for limitation of legal capacity and the requirements for the guardian. Furthermore, it could be also rules setting the standards of protection of person's rights in court procedures - requirement of personal visit of the person by the court, the appropriate communication of the court's decision.](#)

- 5.5. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter III**?

No
 Yes, please specify:
[Please insert text here](#)

VI – Applicable law – Powers of representation (including advance directives)

In the following questions (questions 6.1. to 6.49.) references to powers of representation, as described in Article 15 of the 2000 Convention, mean, and are limited to, “powers of representation granted by an adult, either under an agreement or by a unilateral act, to be exercised when such adult is not in a position to protect his or her interest”. Such powers of representation are also known as “mandate in case of incapacity”, “self-determined guardianship”, “voluntary guardianship”, “living will”, “*mandat de protection future*”, “*mandat extrajudiciaire*”, etc.¹² In a great number of States, such powers of representation are private agreements. They may be witnessed, certified, notarised, or not

¹² Such “powers of representation” under Art. 15 of the 2000 Convention are not to be confused with “general powers of attorney” or “ordinary powers of attorney” under civil or commercial law.

be subject to any formal requirements. Several States provide for various forms of powers of representation. Any such powers of representation fall under the scope of the 2000 Convention. The availability of powers of representation under the law of Contracting Parties to the 2000 Convention will facilitate implementation of their treaty obligations. However, the absence of such powers should not stop States from becoming Contracting Parties.

Thus, powers of representation may or may not be *available* under the law of your State. Where they are, they may be available *in one or more forms* (see question 6.19. below). To achieve the desired effect, the use of any of these forms of powers of representation may be *optional or mandatory*. Furthermore, powers of representation may or may not be subject to *formal requirements* (such as being notarised, certified, or witnessed) to achieve validity and operability. In addressing the existence, extent, modification and extinction of such powers of representation for the purpose of Article 15, Section VI of this Questionnaire seeks to accommodate *all* these various possibilities with a view to obtaining a better understanding of powers of representation across HCCH Members. **If the actual position in your State does not fit easily within the alternatives offered, please use “other” at the end of any relevant question to explain the position of your State.** Responses to Section VI will be particularly relevant for drawing up a draft Country Profile and draft Practical Handbook on the operation of the 2000 Convention.

Availability of such powers of representation (as described above in the introduction to Section VI for the purposes of questions 6.1. to 6.49.) under your domestic law and related safeguards

6.1. Does the law of your State provide for such powers of representation?

- Yes
 No, if possible please explain or provide further background:
[Please insert text here](#)

6.2. If yes to question 6.1., the following questions are designed to address the various possibilities outlined in the second paragraph of the Introduction to this Section VI (above) in relation to *formal requirements* that may be applicable in your State and their respective functions (in relation to each question, tick more than one box if applicable):

- [guardian without a limitation in legal capacity \(§ 465, 469 et seq. CC\);](#)
- [declaration in anticipation of incapacity \(38 et seq. CC\);](#)
- [representation by a household member \(§ 49 et seq. CC\);](#)
- [assistance in decision-making \(§ 45 et seq. CC\).](#)

6.2.1. Is it mandatory in your State to have such powers of representation notarised?

- a. Powers of representation cannot be notarised
 b. Yes, it is mandatory
 b.1. Always mandatory
 b.2. Only mandatory for specific purposes, please specify:
[The declaration in anticipation of incapacity has to be notarised if it is not made with two witnesses. Other measures requires a decision of a court.](#)
 c. No, it is not mandatory, but it is an available option
 d. Please tick the relevant functions of this formal requirement
 d.1. To establish the capacity of the grantor at the time of granting the powers of representation
 d.2. To verify that the person signing the powers of representation is the grantor
 d.3. To witness the signature of the powers of representation by the grantor

- d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
- d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
- d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
- d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
- d.8. Other, please specify:
[Please insert text here](#)

6.2.2. Is it mandatory in your State to have such powers of representation certified?

- a. Powers of representation cannot be certified
- b. Yes, it is mandatory
 - b.1. Always mandatory
 - b.2. Only mandatory for specific purposes, please specify:
[Please insert text here](#)
- c. No, it is not mandatory, but it is an available option
- d. Please tick the relevant functions of this formal requirement
 - d.1. To establish the capacity of the grantor at the time of granting the powers of representation
 - d.2. To verify that the person signing / who signed the powers of representation is / was the grantor
 - d.3. To witness the signature of the powers of representation by the grantor
 - d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
 - d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
 - d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
 - d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
 - d.8. Other, please specify:
[Please insert text here](#)

6.2.3. Is it mandatory in your State to have such powers of representation witnessed?

- a. Powers of representation cannot be witnessed
 - b. Yes, it is mandatory
 - b.1. Always mandatory
 - b.2. Only mandatory for specific purposes, please specify:
[The declaration in anticipation of incapacity has to be witnessed by two people, if it is not notarised. The witnesses must sign the person's declaration and be able to confirm the declarant's ability to act and to confirm the content of the declaration itself. Other measures requires a decision of a court.](#)
- [Witnesses also have a special role in the case of legal acts of persons with certain types of disabilities. The law stipulates \(§ 40 CC\) that if a declaration is made by a blind person or a person who cannot read or write, the declaration must be read aloud by a witness who did not write the declaration. A blind person, or a person who cannot read or write, will confirm to witnesses that the document contains his true will. If the declaration is made by a person with a sensory disability who is unable to read or write, the contents of the document must be interpreted in the manner of communication chosen by him or her or by a witness who did not wrote the declaration; all witnesses must have a command of the manner of communication in which the contents of the document are interpreted. Whoever makes the](#)

declaration shall confirm before the witnesses in the chosen manner of communication that the document contains his true will.

- c. No, it is not mandatory, but it is an available option
- d. Please tick the relevant functions of this formal requirement
- d.1. To establish the capacity of the grantor at the time of granting the powers of representation
 - d.2. To verify that the person signing the powers of representation is the grantor
 - d.3. To witness the signature of the powers of representation by the grantor
 - d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
 - d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
 - d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
 - d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
 - d.8. Other, please specify:
[Please insert text here](#)

6.2.4. Is it mandatory in your State to have such powers of representation subject to another formal requirement?

Please specify the name of the formal requirement:

- a. Powers of representation are not subject to another formal requirement
- b. Yes, it is mandatory
 - b.1. Always mandatory
 - b.2. Only mandatory for specific purposes, please specify:
[Please insert text here](#)
- c. No, it is not mandatory, but it is an available option
- d. Please tick the relevant functions of this formal requirement
 - d.1. To establish the capacity of the grantor at the time of granting the powers of representation
 - d.2. To verify that the person signing the powers of representation is the grantor
 - d.3. To witness the signature of the powers of representation by the grantor
 - d.4. To verify that the powers of representation are in conformity with the law (including the conditions to be met by the designated representative)
 - d.5. To verify that the powers of representation are understood by the grantor (Art. 12(4) UNCRPD)
 - d.6. To verify that the powers of representation correspond to the wishes of the grantor (Art. 12(4) UNCRPD)
 - d.7. To confirm the absence of undue influence (Art. 12(4) UNCRPD)
 - d.8. Other, please specify:
[Please insert text here](#)

6.3. If yes to question 6.1., are such powers of representation in the form of a private agreement without any formal requirements (e.g., notarised, certified or witnessed) available under the law of your State?

- No, please explain:
[Please insert text here](#)
- Yes

6.4. Have issues arisen in your State with regard to the existence of such powers of representation governed by the law of another State?

- No
 Yes, please explain:
[Please insert text here](#)

6.5. If no to question 6.1., does the law of your State prohibit such powers of representation, or contain provisions rendering them ineffective?

- No
 Yes, please explain:
[Please insert text here](#)

6.6. If no to question 6.1., does your State intend to legislate in the near future to provide for such powers of representation?

- No, please explain:
[Please insert text here](#)
 Yes

6.7. If yes to question 6.6., please indicate which form of powers of representation your State is likely to provide for (tick more than one box if applicable):

- a. **notarised** powers of representation
 b. **certified** powers of representation
 c. **witnessed** powers of representation
 d. **private agreements** without any formal requirements
 e. Other form, please specify:
[Please insert text here](#)

Designation of a representative under such powers of representation

6.8. Are there conditions / limitations (*e.g.*, to provide safeguards with regard to conflicts of interests) as to who can be designated as a representative under such powers of representation governed by the law of your State (*e.g.*, limitation to natural persons, or a further limitation to persons with specified relationships to the grantor)?

- No
 Yes, please explain:
 A) [Guardian without a limitation in legal capacity](#)

[The law stipulates that the guardian is to be selected according to the specified order \(§ 471 CC\). In first place, the court should appoint as a guardian a person proposed by the person who is to be represented. If it is impossible, the court will usually appoint a relative or another person close to the person who is to be represented, who will prove a long-term and serious interest in the person who is to be represented and the ability to have such interest in the future. If this is not possible, the court shall, in choosing the guardian, appoint another person who meets the conditions for becoming a guardian or - if there is no such person - a public guardian. As a public guardian shall be appointed the municipality where the person resides or a legal entity established by this municipality to perform this tasks.](#)

Furthermore, the law stipulates also impedimenta - the guardian must not be a person unable to act legally and there must be no conflict of interest. To prevent a conflict of interest the law forbids the guardianship to operators of the facility where the person who is to be represented resides or who provides him or her services or a person dependent on such a facility (§ 63 CC).

B) Declaration in anticipation of incapacity

No detailed criteria are prescribed by law. If the declaration designates a person who is to be a the guardian, same rules as stated above apply. If the circumstances evidently change in such a substantial way that, under such circumstances, the declarant would not have made the declaration or would have made a declaration with different contents, a court shall amend or cancel the declaration if the declarant were otherwise under a threat of serious harm. Before making any decision, the court shall make the necessary effort to obtain the opinion of the individual whose declaration is subject to the court's decision, also using the way of communication of the individual's choosing.

C) Representation by a household member

Only a person close to the represented person, who is stipulated by law, can be a representative. Specifically, a descendant, an ancestor, sibling, spouse or partner, or a person who lived in the common household with the represented person for at least three years before the representation was established (§ 49 CC). In general, it can be concluded that there must be no conflict of interest between the representative and the represented person.

D) Assistance in decision-making

No detailed criteria are prescribed by law. In addition to natural persons, legal persons have also become such assistants in Czech practice. However, there must be no conflict of interest, as the law stipulates (§ 47 CC) that the assistant must not endanger the interests of the person by unduly influencing, or unjustly enrich himself or herself at the expense of the person. Violation of this rule could result in termination of this relationship by a court.

6.9. Does your response to question 6.8. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
 Yes, please explain:
 Please insert text here

6.10. Have issues arisen in your State with regard to the capacity of the person designated as a representative under such powers or representation governed by the law of another State?

- No
 Yes, please explain:
 Representation by a household member - Unfortunately, a number of problems has been registered. There is no uniform interpretation of the institute as to what powers this representative should have, which greatly complicates the situation. This involves a number of important areas (including the issue of concluding contracts for social services, property management and financial management, the right to claim social benefits for the represented person, etc.). Amendments of this legislation are beeing prepared. The powers of this representative are now also being clarified in other public law regulations, in particular administrative law, concerning social benefits.

Supervision / control mechanisms of such powers of representation

6.11. Are such powers of representation governed by the law of your State subject to some supervision / control mechanisms / reporting (e.g., a person or authority designated (on a mandatory or voluntary basis) under such powers or by operation of law to which the person designated as the representative is to report to)?

No, please explain:

[Please insert text here](#)

Yes, please explain:

A) Guardian without a limitation in legal capacity - Like guardianship with a limitation in legal capacity, it is subject to a judicial supervision. The guardian must report regularly on his activities and in other cases stipulated by law. The court may, if necessary, impose selected measures on the guardian. Furthermore, the guardian is subject to the supervision of the guardianship council, which may be established on a voluntary basis. If guardianship is performed as public, e.g. typically by a municipality, then it is also subject to the control of the regional authority and further to the control of the Public Defender of Rights.

B) Declaration in anticipation of incapacity - If a guardian is appointed on the basis of that declaration, ad A) applies.

C) Representation by a household member - There is no regular supervision. In case of suspicion about the proper performance of the function, court proceedings may be initiated.

D) Assistance in decision-making - There is no regular supervision. In case of suspicion about the proper performance of the function, court proceedings may be initiated. However, a control mechanism can be agreed in the contract.

6.12. Does your response to question 6.11. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

No

Yes, please explain:

[Please insert text here](#)

6.13. Have issues arisen in your State with regard to the control mechanism to which such powers of representation governed by the law of another State are subject to?

No

Yes, please explain:

[Please insert text here](#)

Extent of such powers of representation

6.14. Are such powers of representation (and wishes expressed therein) governed by the law of your State legally binding on the designated representative?

Yes

No, please explain:

A) Guardian without a limitation in legal capacity - His powers are determined by the court on the basis of a proposal of the represented person.

B) Declaration in anticipation of incapacity - In the case of a guardian, ad A) applies. The powers of other agents are fully at the discretion of the represented person. An exception is a fundamental change of circumstances, when the court may change or cancel the declaration if a person would be in danger of serious harm (§ 43 CC).

C) Representation by a household member - Powers are set only by law and cannot be changed in any way.

D) Assistance in decision-making - The powers are essentially fully dependent on the will of the parties. However, the assistant cannot represent the person, except in cases stipulated by law (challenge validity of legal acts, defense of interests in detention proceedings).

- 6.15. Are there any limitations under the law of your State on such powers of representation that can be conferred upon a designated representative *e.g.*, are certain acts or categories of acts excluded such as disposal of specified categories of assets, gifts, personal and family matters, medical related decisions (generally, or particular categories such as those involving hospitalisation), etc.?

No

Yes, please explain:

The limitations are stated by law for all the cases. In the case of assistance in decision-making, the powers can be specified in the contract - also in a negative way. The same applies in the case of a guardian appointed according to the declaration in anticipation of incapacity.

The limitations for guardianship are stated in § 483 CC, also in § 480 CC (in the case of guardianship council). For certain type of legal acts that are of a serious nature, the guardian needs a court's approval (buying/selling immovables, long-term contracts, etc.).

- 6.16. Are there particular powers and duties automatically given to such representatives (*e.g.*, powers and duties in relation to the tax affairs of the grantor)?

No

Yes, please explain:

A number of legal regulations generally presuppose the existence of these institutes and provide for the representatives to act on behalf of the person, in accordance with his or her will, or even without it, if this is assumed (when the representation was approved court). *E.g.* representatives can directly claim for social benefits, can challenge validity of legal acts, can take over an identity card, etc.

- 6.17. Are certain powers subject to a judicial or administrative decision in order for them to be either conferred or exercised?

No

Yes, please specify the powers subject to such decision:

For certain type of legal acts that are of a serious nature, the guardian needs a court's approval (buying/selling immovables, long-term contracts, etc.). The limitations for guardianship are stated in § 483 CC, also in § 480 CC (in case of guardianship council).

- 6.18. Are there particular matters which, in accordance with the law of your State, a designated representative cannot be authorised to do or decide on behalf of the grantor?

No

Yes, in which case please specify the excluded powers:

None of the representatives has the power to decide on matters that are not legal acts of the person (*e.g.* with whom and how to spend free time). They also cannot act in matters that have personal nature (enter into a marriage, write a will etc.).

- 6.19. Which of the following forms of document are available in your State to confer powers of representation (tick more than one if applicable)?

- a. A document simply conferring on the designated representative all powers that can by law be conferred.
- b. A document containing "tick-box" lists of powers.
- c. A document setting out, in the grantor's choice of words, all the powers that the grantor wishes to confer.
- d. Separate documents for (a) health and welfare powers and (b) property and financial powers.
- e. Separate listing in the same document of (a) health and welfare powers and (b) property and financial powers.
- f. Other possibilities or combinations (please explain):
[Such documents are not available.](#)

6.20. Can advance health directives be included in powers of representation governed by the law of your State?

- Yes
- No, please explain:
[Please insert text here](#)

6.21. Can advance medical directives be included in powers of representation governed by the law of your State?

- Yes
- No, please explain:
[Please insert text here](#)

6.22. Are such advance health / medical directives governed by the law of your State binding on medical professionals?

- Yes
- No, please explain:
[Please insert text here](#)

6.23. Do your responses to questions 6.14.-6.22. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
[Decision-making on health as a planning document for the future is regulated explicitly by Act No. 372/2011 Sb., on health services, § 36 - previously expressed wishes. If it is to be binding, also for medical professionals, the designation of a person and his powers would have to meet the conditions of both laws regulating these institutes. These representatives also have co-decision powers in certain circumstances on health and other related issues.](#)

6.24. Have issues arisen in your State with regard to the scope of such powers of representation governed by the law of another State?

- No
- Yes, please explain:
[Please insert text here](#)

Registration / filing of such powers of representation

6.25. Please indicate whether your State provides for the registration of such powers of representation and / or their filing with a competent authority:

- Yes, registration with a public registry
- Yes, registration with a private registry (*e.g.*, national associations of notaries)
- Yes, filing with a competent authority
- No, please explain:
Only in the case of declaration in anticipation of incapacity there is a non-public register of the Notary Chamber.

6.26. Can / must such powers of representation governed by the law of your State be registered or filed with a competent authority before they come into effect?

- Yes, it is an option, please explain the effect of the registration and / or filing:
In the case of declaration in anticipation of incapacity the deed will be registered by the Notary Chamber if the declaration has been notarised which is not obligatory.
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
Please insert text here

6.27. Can such powers of representation governed by the law of **your** State be registered or filed with a competent authority after they come into effect?

- Yes, it is an option, please explain the effect of the registration and / or filing:
Please insert text here
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
In the case of declaration in anticipation of incapacity the deed will be registered by the Notary Chamber if the declaration has been notarised.

6.28. Can such powers of representation governed by the law of **another** State be registered or filed with a competent authority after they come into effect?

- Yes, it is an option, please explain the effect of the registration and / or filing:
Please insert text here
- Yes, it is an obligation, please explain the effect of the registration and / or filing:
Please insert text here
- No, please explain:
Please insert text here

6.29. Do your responses to questions 6.25. and 6.28. differ whether such powers of representation are subject to a formal requirement (*e.g.*, notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
Only the declaration in anticipation of incapacity that has been notarised can be registered.

Coming into effect of such powers of representation

6.30. Can such powers of representation governed by the law of your State come into effect at a moment determined by the grantor (*e.g.*, when certain conditions are met)?

- No, please explain:
 A) Guardian without a limitation in legal capacity, representation by a household member, assistance in decision-making - a person with a disability submits a proposal for its appointment or approval, however, the conditions for a decision on a guardian, or the approval of the representation by a household member must be assessed by the court.
 B) Declaration in anticipation of incapacity - The guardian designated by this declaration must be also appointed by court.
- Yes, please explain:
 Please insert text here

6.31. In the absence of an explicit coming into effect provision by the grantor, can such powers of representation governed by the law of your State come into effect on the sole decision of the person(s) to whom they are conferred?

- No, please any safeguards:
 See Section 6.30 above.
- Yes, please explain:
 Please insert text here

6.32. In the absence of an explicit coming into effect provision by the grantor, can such powers of representation governed by the law of your State come into effect upon the decision of a competent authority?

- No, please any safeguards:
 See Section 6.30 above.
- Yes, please explain:
 Please insert text here

6.33. Please explain how the coming into effect of such powers of representation governed by the law of your State affect the legal capacity of the grantor:

The law does not stipulate any link between the coming into effect of the powers of representations and, for example, the initiation of proceedings on the limitation of legal capacity. However, if the court has already ruled on a assistant, a representative from a household or a guardian without limitation of legal capacity, it is understood that the court has declared that the person has a *de facto* reduced ability to decide on his or her affairs and defend his or her rights. However, these decisions do not restrict a person in any area of his or her life.

6.34. Do your responses to questions 6.30.-6.33. differ whether such powers of representation are subject to a formal requirement (*e.g.*, notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
 See the respective Sections.

6.35. Have issues arisen in your State with regard to the coming into effect of such powers of representation governed by the law of another State?

- No
 Yes, please explain:
[Please insert text here](#)

6.36. Please share other information (*e.g.*, concerns, good practices) with regard to the coming into effect of such powers of representation governed by the law of your State (*e.g.*, the explicit provision (permitted by law) in the powers of representation that they come into effect immediately upon signature):

[Please insert text here](#)

Confirmation of such powers of representation

6.37. Can a competent authority in your State confirm powers of representation?

- No
 Yes, please indicate which authority can confirm and explain the effect of confirming or not confirming such powers of representation
[See Sections above. All the representatives have to be confirmed by court to exercise their powers.](#)

6.38. If yes to question 6.37., can confirmation take place whether such powers of representation are governed by the law of your State or the law of another State?

- No, please explain:
[Please insert text here](#)
 Yes, please indicate which authority can confirm and explain the effect of confirming or not confirming such powers of representation:
[Please insert text here](#)

6.39. If yes to question 6.37., can confirmation take place whether the powers of representation have come into effect or not?

- Yes
 No, please explain:
[Please insert text here](#)

6.40. Do your responses to questions 6.37.-6.39. differ whether such powers of representation are subject to a formal requirement (*e.g.*, notarised, certified, witnessed) or not subject to any formal requirements?

- No
 Yes, please explain:
[Please insert text here](#)

Modifications of such powers of representation

6.41. Is it possible for the grantor or a competent authority to modify powers of representation governed by the law of your State after they have come into effect?

- No
- Yes, please explain who can modify such powers of representation, for what purpose, in what form, and any related safeguards:

Yes, in the case of declaration in anticipation of incapacity the law stipulates (§ 43 CC) that if the circumstances evidently change in such a substantial way that, under such circumstances, the declarant would not have made the declaration or would have made a declaration with different contents, a court shall amend or cancel the declaration if the declarant were otherwise under a threat of serious harm. Before making any decision, the court shall make the necessary effort to obtain the opinion of the individual whose declaration is subject to the court's decision, also using the way of communication of the individual's choosing.

In the case of guardianship without limitation of legal capacity, the setting of the guardian's powers can be changed subsequently. Also in the case of an assistant in decision-making, the approved contract can be changed subsequently. The powers of the representative from the household members are stipulated by law and cannot be changed.

- 6.42. Does your response to question 6.41. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
- Yes, please explain:
Please insert text here

- 6.43. Have issues arisen in your State with regard to the modification of such powers of representation governed by the law of another State?

- No
- Yes, please explain:
Please insert text here

Extinction of such powers of representation

- 6.44. Please explain the conditions for the extinction of powers of representation governed by the law of your State:

A) Guardians - A court's decision is needed. If the person represented is limited in legal capacity, the representation will extinct together with the limitation.

B) Assistance in decision-making - A court's decision is needed. On the application of the person receiving assistance or the assisting person, a court shall rescind the contract; the court shall also rescind the contract, even of its own motion, if the assisting person commits a substantial breach of his duties.

C) Representation by a household member - Representation will extinct if waived by the representative, or if the person represented refuses to be further represented by the representative; the ability to make a wish is sufficient to express the refusal. Representation will also extinct if a court appoints a guardian of the person represented. If a contract for assistance in decision-making is concluded, representation is extinguished on the effective date of the contract to the extent in which the person represented is capable of making legal acts.

- 6.45. Does your response to question 6.44. differ whether such powers of representation are subject to a formal requirement (e.g., notarised, certified, witnessed) or not subject to any formal requirements?

- No
 Yes, please explain:
[Please insert text here](#)

6.46. Have issues arisen in your State with regard to the extinction of such powers of representation governed by the law of another State?

- No
 Yes, please explain:
[Please insert text here](#)

Other information concerning such powers of representation

6.47. Please list and describe *ex lege* powers of representation resulting from a unilateral act or an agreement that arise by reference to a relationship or other status in connection with the adult (including but not limited to those arising from a contract of marriage, and similar relationships):

[A spouse or a partner has a right to represent the other spouse in usual matters. He or she does not have the right if the spouse or the partner to be represented informs in advance the person with whom his spouse or partner is to or intends to make a legal act, that he or she does not consent to being represented, or if a court, on the application of a spouse, extinguishes the spouse's right of representation \(§ 696 CC\).](#)

[Representation by a household member \(§ 49 et seq. CC\). The conditions are: a\) mental disorder that prevents an adult who has no other representative to make legal acts, b\) court's approval. The representant can be a descendant, an ancestor, sibling, spouse or partner, or a person who had lived with the person represented in a common household before the creation of representation for at least three years.](#)

6.48. Please provide any additional information with regard to such powers of representation (as described above in the introduction to Section VI) governed by the law of your State:

[Please insert text here](#)

6.49. Please provide any additional information with regard to issues that may have arisen in your State with regard to such powers of representation (as described above in the introduction to Section VI) governed by the law of another State:

[Please insert text here](#)

VII – Recognition and enforcement

7.1. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 22** from the perspective of the requested State?

- No
 Yes, please specify:
[Please insert text here](#)

7.2. Have judicial or administrative procedures, guidelines or protocols been adopted in your State to facilitate the application of **Article 23**?

- No

- Yes, please describe and also provide a link or attach a copy, preferably translated into English or French:
[Please insert text here](#)

7.3. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying **Article 23** (e.g., in terms of procedure, formalities, time frames, etc.)?

- No
 Yes, please specify:
[Please insert text here](#)

7.4. Are you aware of any challenges, or have questions arisen, in applying **Article 25** in your State?

- No
 Yes, please specify:
[The requesting authority demanded to appoint new guardian by the Czech court despite the fact that the guardian has been already appointed in the requesting state. The Czech court considered that this request is not in accordance with the article 22 of the Convention.](#)

7.5. Please describe the “simple and rapid procedure” (see **Art. 25(2)**) in place in your State for declaring enforceable or registering for the purpose of enforcement measures of protection taken in another State Party and enforceable there, in particular:

- a) Which authority declares enforceable or registers a measure of protection taken in another State Party?

[We do not have any relevant data from the Czech courts. Nevertheless, we have information that the procedure is mainly informal bearing in mind the rapidity of the procedure.](#)

- b) What time frames are applied to ensure that the procedure is rapid?

[Please insert text here](#)

- c) Is legal representation required?

- No
 Yes, please describe:
[Please insert text here](#)

7.6. Are you aware of any challenges, or have questions arisen, in applying **Article 27** in your State?

- No
 Yes, please specify:
[Please insert text here](#)

7.7. Under **Article 27**, are **measures concerning the person** of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests subject to *exequatur* in accordance with the law of your State?

- No
 Yes, please list and describe such measures:

7.8. Please indicate how often measures referred to in question 7.7. are subject to *exequatur* under the law of your State in accordance with **Article 27**:

- Never
- Rarely
- Sometimes
- Very often
- Always

7.9. Under **Article 27**, are **measures concerning the property** of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests subject to *exequatur* in accordance with the law of your State?

- No
- Yes, please list and describe such measures:
[Please insert text here](#)

7.10. Please indicate how often measures referred to in question 7.9. are subject to *exequatur* under the law of your State in accordance with **Article 27**:

- Never
- Rarely
- Sometimes
- Very often
- Always

7.11. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other articles in **Chapter IV**?

- No
- Yes, please specify:
[Please insert text here](#)

VIII – Co-operation

8.1. With the understanding that services provided by Central Authorities under the 2000 Convention may vary, does your Central Authority provide assistance, either directly or through other authorities in your State, to an **individual habitually resident in your State** who made a request for assistance in connection with a matter falling under the scope of the Convention in a requested State? If so, please indicate the nature of the assistance provided.

- a. None
- b. Assistance in obtaining information on the operation of the 2000 Convention
- c. Assistance in obtaining information on the relevant laws and procedures and services available in the requested State
- d. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide
- e. Transmission of a request to the Central Authority or to the competent authorities in the requested State
- f. Assistance in discovering the whereabouts of an adult
- g. Assistance in initiating judicial or administrative proceedings
- h. Assistance in providing or facilitating the provision of legal aid and advice

- i. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State
- j. Ensuring separate legal representation for the adult in any proceedings
- k. Ensuring support for exercise of capacity in terms of Article 12(3) of the UNCPRD
- l. Referral to other governmental and / or non-governmental organisations for assistance
- m. Provision of regular updates on the progress of the application
- n. Other, please specify:
[Please insert text here](#)

8.2. With the understanding that services provided by Central Authorities under the 2000 Convention may vary, does your Central Authority provide assistance, either directly or through other authorities in your State, to authorities from a requesting State on behalf of an **individual residing abroad** who made a request for assistance in connection with a matter falling under the scope of the Convention? If so, please indicate the nature of the assistance provided.

- a. None
- b. Assistance in providing information on the operation of the 2000 Convention
- c. Assistance in providing information on the relevant laws and procedures and services available in your State
- d. Establishment of contact with the competent authorities in your State to find out the kind of assistance such authorities could provide
- e. Transmission of a request to the competent authorities in your State
- f. Assistance in discovering the whereabouts of an adult in your State
- g. Assistance in initiating judicial or administrative proceedings in your State
- h. Assistance in providing or facilitating the provision of legal aid and advice in your State
- i. Assistance in obtaining private legal counsel or mediation services, where needed in your State
- j. Ensuring separate legal representation for the adult in any proceedings
- k. Ensuring support for exercise of capacity in terms of Article 12(3) of the UNCPRD
- l. Referral to other governmental and / or non-governmental organisations in your State for assistance
- m. Provision of regular updates on the progress of the application
- n. Other, please specify:
[Please insert text here](#)

8.3. Are you aware of any challenges, or have questions arisen, in applying **Article 29** in your State (*e.g.*, in relation to the timeliness of responses to requests)?

- No
- Yes, please specify:
[Please insert text here](#)

8.4. With a view to facilitate the task of Central Authorities under **Article 29(2)**, please describe the type of information that would be useful to include in a Country Profile published on the HCCH website (*e.g.*, information with respect to the availability of certain measures under internal law (*e.g.*, in relation to **Art. 3(e)**), or the procedures applied under, *e.g.*, **Article 22, 23, 25, 30, 31 or 33**, or information on Central Authority services provided (see questions 8.1. and 8.2. above):

[We don't have any specific information in mind. Generally, we are supporting to have information in a Country Profile. We find them very useful for practice.](#)

- 8.5. How does your Central Authority (either directly or through public authorities or other bodies) take appropriate steps under **Article 31** to facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the adult in situations to which the 2000 Convention applies? Please explain:

Please insert text here

- 8.6. Have authorities in your State experienced any challenges, or have questions arisen, in providing or obtaining information under **Article 32(1) or 34**?

- No
 Yes, please describe:
 Please insert text here

- 8.7. Have authorities in your State experienced placements in accordance with **Article 33** either as a requesting or a requested State?

- No
 Yes

- 8.8. Have authorities in your State experienced any challenges, or have questions arisen, in applying **Article 33** (e.g., has your State been requested to accept an adult under a certain type of placement or institutional care that is not available under your internal law, or was insufficient information provided to you as the requested State)?

- No
 Yes, please describe:
 Please insert text here

- 8.9. Please list and describe the procedures and conditions for the placement of an adult in your State in accordance with **Article 33**:

Conditions for the placement:

1) Health care facilities – According to Health Services Act (Act no. 372/2011 Sb., § 38) a person may be hospitalized without his or her consent if he or she poses an immediate and serious threat to himself/herself or to others and shows signs of or suffers from a mental disorder or is under the influence of an addictive substance, unless the threat can be averted otherwise. The other reasons are: order of the court in criminal proceedings (protective treatment or medical examination), ordered isolation, quarantine or treatment in accordance with the Public Health Protection Act and cases where the health condition requires urgent care and does not allow him or her to give the consent.

According to § 104 CC a person may be placed or kept in a health care facility without his or her consent only on grounds provided by a statute and provided that no milder and less restrictive measure can be taken to provide for the necessary care of the person.

2) Social services facilities – According to Social Services Act (Act no. 108/2006 Sb., § 91a) a person may be placed in a social services facility without his or her consent if (a) a failure to provide immediate assistance in dealing with an adverse social situation would endanger his or her life or health as a result of a loss of ability due to an unfavorable health condition caused by a mental disorder, or would endanger others; and (b) the necessary support and assistance cannot be provided by more lenient and less restrictive measures.

Procedures for the placement:

1) A placement of a person to a health care facility has to be notified by the health care provider to a court within 24 hours; the same shall also apply if the person is detained in such a facility. The court has to decide within 7 days. See § 105 par. 2 CC.

The procedure itself is regulated by Act no. 292/2013 Sb., §§ 66-83. The procedure has two phases. In the first phase, the court decides without standard hearing within 7 days of receipt. The court conducts a simplified hearing, which usually takes place in the health care facility. The court shall provide the

evidence necessary to assess whether the placement meets the statutory conditions; to this end, it shall, in particular, hear the placed person, the physician and other persons whom the placed person requests to be heard.

In the decision the court shall determine whether the statutory conditions for the placement have been met and, if so, whether these still exist. If the court concludes that they have not been met or no longer exist, it shall order the release of the person from the facility and the person is released immediately after the delivery of the decision. If the court concludes that the statutory conditions have been met and still exist, the proceedings will continue to the second phase.

In the second phase, the health condition of the person will be examined by an expert appointed by the court. The court conducts a hearing to which it will invite the placed person, unless, according to the opinion of the attending physician or a written expert opinion, his presence at the hearing may seriously damage his health condition, his representative, guardian or health care facility. During the hearing, he or she will hear the placed person, an expert, depending on the circumstances, the attending physician of the placed person, his or her guardian and, if necessary, provide other appropriate evidence. The court has to decide within 3 months. The court's judgement is effective for 1 year maximum; after this period the conditions have to be examined again and the court has to decide again. The placed person, his or her representative, guardian, and persons close to him or her may, before the expiry of the period until which the placement is admissible, apply for a new examination and a decision if there is a reasonable presumption that further detention in a health care facility is not justified. The court has to decide within 2 months.

2) If the person expresses a serious disagreement with the placement in the social services facility, the social service provider has to notify his or her disagreement to a court within 24 hours. This notification to the court can be made by anyone who has a suspicion of inadmissibility of detaining a person in a social services facility. See § 91b of Act no. 108/2006 Sb., on social services.

The procedure itself is regulated by Act no. 292/2013 Sb., §§ 84-84b. The court is obliged to hear the case and decide within 45 days from the day of the commencement of the proceedings. If the court concludes that the statutory conditions are not met, it shall decide on the inadmissibility of further detention. The court shall gather the evidence necessary for the assessment of the admissibility of further detention. In particular, it shall hear the placed person, the attending physician, the staff member in the social services facility and other persons whom the placed person requests to hear and social workers.

- 8.10. As a requested State, please describe the information you would expect to receive from a requesting State with regard to the placement of an adult in your State in accordance with **Article 33**:

We do not have any feedback from the Czech courts.

- 8.11. Does your State impose charges, as provided under **Article 36(1)**, for the provision of services under **Chapter V** (Co-operation)?

- No
 Yes, for the following types of services (e.g., translation, legal assistance):
 Please insert text here

- 8.12. As a requesting State, have authorities in your State experienced any challenges, or have questions arisen, with regard to charges provided under **Article 36(1)**?

- No
 Yes, please explain:
 Please insert text here

- 8.13. Are you aware of any challenges, or have questions arisen, in applying any other provisions under **Chapter V** in your State?

- No
 Yes, please describe:

Please insert text here

- 8.14. Have judges in your State used direct judicial communications in cases falling under the 2000 Convention (where applicable, please consult your Member of the International Hague Network of Judges¹³)?

- No
 Yes, please specify in relation to which specific matters (*e.g.*, transfer of jurisdiction (**Art. 8**), placement of a child (**Art. 33**)):
 Please insert text here

IX – General provisions

- 9.1. Has your State experienced any challenges, or have questions arisen, in relation to requests under **Article 38** for the delivery of a certificate indicating the capacity in which a person entrusted with protection of the adult’s person or property is entitled to act and the powers conferred upon him or her?

- No
 Yes, please describe:
 Please insert text here

- 9.2. Which authority(ies) designated by your State in accordance with **Article 38(3)** is competent to draw up the **Article 38(1)** certificate? Please specify:

There is no such an authority

- 9.3. If possible, please indicate the number of certificates that have been delivered by authorities in your State since the 2000 Convention came into force for your State:

See 9.2. above

- 9.4. Has your State experienced any challenges, or have questions arisen, in relation to the implementation and / or operation of **Articles 39 and 40**?

- No
 Yes, please describe:
 Please insert text here

- 9.5. Which authority(ies) has your State designated in accordance with **Article 42** to which requests under **Article 8** are to be addressed? Please specify:

A district court of the concerned person’s place of residence.

- 9.6. Which authority(ies) has your State designated in accordance with **Article 42** to which requests under **Article 33** are to be addressed? Please specify:

The authority (ies) according to Article 42 has not been designated. However, the Central Authority and, if appropriate, the competent district courts, might be addressed.

¹³ The List of Members of the International Hague Network of Judges is available at: <https://assets.hcch.net/docs/665b2d56-6236-4125-9352-c22bb65bc375.pdf>.

- 9.7. Please list international instruments to which your State is a Party in accordance with **Article 49** which contain provisions on matters governed by the 2000 Convention:

Separate list will be provided

- 9.8. Have competent authorities in your State experienced any challenges, or have questions arisen, in applying the other Articles in **Chapter VI**?

No

Yes, please specify:

We experienced violation of Article 51 from the Convention States - missing or uncomplete translations.

X – Miscellaneous

- 10.1. Is there any other comment that your State wishes to make relating to the practical operation of the 2000 Convention? If so, please specify:

The Convention as such is a very useful instrument on the relevant field. However, we observe two most important challenges. Firstly, we would welcome a broader Convention bases. Secondly, we would welcome to raise awareness with the professionals (mainly judges) and the wider public.

- 10.2. Are there any particular issues that your State would like the Special Commission meeting to discuss in relation to the 2000 Convention? Please specify and list in order of priority:

Deepening of the Central Authorities cooperation.

- 10.3. Is your State of the view that having joined the 2000 Convention will assist with the implementation of its obligations under the UNCRPD *e.g.*, Articles 12 and 16 of the UNCRPD?

Yes

No, please explain:

Please insert text here