

Conclusions of the summary report on jurisprudence related to guardianship lawsuits

A jurisprudence analysis has aimed at examining the practical application of substantive and procedural rules in relation to guardianship lawsuits. The jurisprudence-analyzing working group was made up of judges from district courts, regional courts, and the Curia of Hungary who presided over guardianship lawsuits; besides, university lecturers, researchers, forensic psychiatric experts, and lawyers who regularly represented clients in guardianship lawsuits helped the group's wide-ranging and diverse analysis.

The group's work primarily focused on the comprehensive analysis of case-law; on the basis of a detailed set of criteria, they scrutinized the documents of 416 cases that were closed with a final judgement at national courts between July 2018 and 31 December 2019. Furthermore, several group members prepared expert material to facilitate the jurisprudence analysis.

By examining every available document, the group analyzed the following matters in detail:

- the party launching the proceedings: the role of the guardian authorities, cohabiting spouse, legal representative, and the prosecutor; the procedural rules of a class action;
- the content of an action of claim and a counterclaim: the requirement to indicate the content of case categories, the importance of specification;
- measures taken before and after the commencement of proceedings: the ordering of sequestration and the appointment of a temporary guardian;
- the representation of the defendant: the role and procedural activity of the attorney ad litem;
- pre-trial phase: the joint and personalized summoning and informing of the parties;
- with regard to evidence-taking, the provability of criteria enshrined in substantive law, and the separation of the competence of experts and the court's duties were issues that were exhaustively examined,
- the content of court decisions, the operative part of judgements, and the accurate drafting of the reasoning adjusted to individual requirements,
- measures to be taken after a court decision became final and key issues concerning the registration of a person under guardianship.

The jurisprudence-analyzing working group also formulated recommendations on the modification of legal regulations; therefore, among other things, it proposed that, if a child reaches the adult age during a lawsuit, other persons who are entitled to bring an action should be allowed to join the proceedings aimed at placing the child over the age of seventeen under guardianship. In addition, the group strongly recommended the harmonization of provisions concerning the launch of proceedings by the guardianship authorities, the drafting of detailed rules on the guardian's powers in guardianship proceedings, and the need for legislation that would require the guardian authorities to automatically provide the court with the name and contact details of the guardian.

As regards the changes to judicial practice, the group stated that the judiciary should develop a system for providing information with the involvement of professionals who have a sound knowledge of how to communicate with people with disabilities, information that is coherent, easily understandable, and is adjusted to the mental state of those concerned; a recommendation should be drawn up with regard to a draft order for the appointment of a psychiatric expert and with regard to a method of conducting personal interviews with the person concerned, with the help of doctors, special education experts, and professional expert helpers.

In its recommendation to the participants of the proceedings, it stressed the need to avoid formalism strictly and consistently, and to treat the party affected by guardianship in a supportive manner. In addition, four judges who were members of the working group developed methodological guidelines based on available good practices, which could be an effective tool to assist the courts in their future work.

The Civil Chamber of the Curia discussed the jurisprudence-analyzing working group's summary opinion at its meeting on 18 May 2023 and unanimously agreed with its findings.