

Procedure to limit legal capacity, Abstract

This paper on the topic of procedures to limit legal capacity is chiefly about the prerequisites, purpose, nature and progress of such procedures and also the form of the rulings issued during these procedures. It maps not only the legal regulations for directing such a procedure in accordance with Act No. 293/2013 Sb., on special judicial procedures, but also its practical impact, current court practice and particularly findings from court practice. This work emphasises and minutely discusses selected issues regarding the procedure to limit legal capacity, i.e. the moment of submission of expert opinions, the need to appoint a guardian ad litem during each procedure, the content, scope and definition of decisions in these matters. This paper also interconnects substantive legal and procedural law, because the inseparability of substantive and procedural law is highly evident in procedures to limit legal capacity, whereas the purpose pursued in Act No. 89/2012 Sb. Civil Code is fulfilled by means of judicial procedures. This paper also briefly compares the regulations concerning the institute of legal capacity in the past and contemporary interpretation of the term. The basis of this paper is a complex treatise of judicial procedures in matters of legal capacity.

The goal and ambition of this paper is mainly to offer a realistic perspective of limitation of legal capacity as an institute used in the most extreme cases to protect a mentally ill person, while respecting his dignity and uniqueness. It also offers the opinion of the author, who assesses the institute of limitation of legal capacity as functional and successful, but emphasises that a highly professional and responsible judicial apparatus and very precise execution of rulings are necessary to fulfil the purpose of the specific institute.

This paper is divided into four parts, each of which focuses on a slightly different issue and is connected to the previous section. The first part provides a basis for orientation in the specific matter and provides definition of the institute of legal capacity, the second part offers an outline of the basis of the issue of mentally ill persons in the practice of the courts and justifies why a procedure to limit legal capacity is necessary. The third part is about the actual progress of the procedure before a court of law of the first instance, with emphasis on practical examples, and the fourth part can serve as a guide to issuing rulings in matters of legal capacity with well-formulated statements.

Key words:

legal capacity

restriction of legal capacity

non-adversary proceedings