

Italy

Prof. Maria Donata Panforti

1. **(Framework of MoP)** Italy has signed but not yet ratified the Hague Convention on the International Protection of Adults 2000. A bill to this aim is actually pending in Parliament. The UNO Convention on the Rights of Persons with Disabilities (CRPD) 2006 was signed in 2007 and then ratified by Law No. 18 of March 3, 2009.

The Measures of Protection (MoP) for the vulnerable adults are included in the Italian civil code. Basically, they consist of three legal institutions of increasing effect: support administration (*amministrazione di supporto*) (art. 404-413 c.c.); incapacitation (*inabilitazione*) and interdiction (*interdizione*) (artt. 414-440 c.c.).

Other essential rules are settled by the Law 4 January 2004, n. 6 (on support administration); by the Law 22 June 2016, n. 112 (so called “After us”) establishing measures for the benefit of persons with serious disabilities who are deprived of family support; by the Law 2017, n. 219 concerning decisions in the matter of medical treatments, and in the important Law 2000 n. 328, which gives the framework for public social assistance.

2 **(General Overview of the general private law techniques)** The whole area of Mop has been reformed in Italy by the law 2004/6. Among the three legal institutions, *incapacitation* is nowadays very rarely applied and only to the persons affected by pathological gambling. It brings to the invalidity of legal acts of extraordinary administration of patrimonial nature concluded by the incapacitated person without the assistance of a curator, who must be nominated by the court.

Interdiction, on the contrary, still maintains a noteworthy role. It can be applied if and when the judge is convinced that adults “are habitually in a mental condition that make them unable to look after their interests” and that interdiction is necessary to ensure them adequate protection” (art. 414 c.c). The judge must be sure that the weak person’s interests are better protected through interdiction than through a less invasive instrument like support administration. Petitions for interdiction can be filed by the spouse, persons related by blood within the fourth degree or by affinity within the second degree, by the guardian, or the curator, or the public prosecutor. The procedure is contentious and requires the participation of a lawyer.

However the far most relevant institution is nowadays *support administration* that provides a flexible range of protection to any person who, due to an infirmity or physical or psychological impairment, is no longer, or is only partially, capable of independently perform all or part of the functions of daily life. As a general rule, the judge shall always prefer the less invasive measure, choosing among the three legal institutions than can be applied to the vulnerable person.

There are no special legal requirements for being appointed as support administrator provided the beneficiary’s interest is achieved: spouses, friends, acquaintances are the first choice. If no relative or friends is able to become a support administrator, then the guardianship judge may appoint a third-party from outside the family as for instance a professional (a lawyer or notary, especially when there are complex financial issues to decide), or a friend nominated by the beneficiary, or **other volunteers**. According to the Italian Civil Code, support administration in any case is a voluntary and unpaid appointment. Only in some cases, a “fair compensation” may be awarded by the court.

The application may be filed by the beneficiary, or by other members of the family (spouses, relatives within the fourth degree of kinship, relatives by marriage within the second degree) or others (tutors, public prosecutors, social services). The court will then fix a date for a **hearing date** when the judge will hear the petitioner, the potential beneficiary, and any other person

may appear useful. The judge may also nominate two support administrators, who will share responsibilities and tasks.

Support administration is a flexible measure, so that the judge has to determine in every single case whether the guardian will have the full legal representation of the beneficiary. In other cases, the judge may decide that only some specific legal acts cannot be performed by the beneficiary who in this case maintains the right to perform independently all acts not specifically excluded. Lastly, the court may decide that some acts may be performed only by the beneficiary and the administrator together.

Article 408 of the Italian Civil Code grants each individual, in anticipation of his/her own future physical or psychological incapacity, the right to designate his/her own future guardian. Such a designation must be made in the form of a public act or authenticated private agreement, and thus requires the intervention of a notary public acting in his capacity as a public official.

3. (Major national reforms after the adoption of CPRD) Outside the civil code the Law 2016/112 provides for the assistance, care, and protection of persons with serious disabilities caused by natural aging or medical conditions, who are deprived of family support because they are either missing both parents or their parents are not able to provide adequate support.

The Law requires that national and local governments ensure basic health services and social care to the persons with serious disabilities. To this aim, the law creates a special fund and provides for tax relief for gifts and donations, trusts, insurance policies, and other measures.

4. (Empirical data) A report by the Italian Statistic Institution is expected soon. At present, we only have partial data showing that the number of support administrators is steadily increasing (5,861 in 2004, but 34,870 in 2013). The average age of the beneficiaries is 76 years while 30% of them have between 80 and 90 years. In many cases (42%) the administrators are sons and daughters of the beneficiaries, in other cases (14%) parents are the administrators.

5. (Strength and weaknesses)

Vulnerable adults can of course be of any age above 18. The young and middle age adults are often interested in the issue of the inclusion in workplaces of persons with disabilities. This is guaranteed in Italy by the Law 12 March 1999, n. 69 on compulsory work placement, but this topic is still debated. The Law is on the whole a good one, but one of its weaknesses is that it applies only to companies having at least 15 employees, whereas the vast majority of companies in Italy have fewer than 10.

As for support administration, critical points are many: the choice between an administration selected within the family or appointed among professionals (which choice is in the beneficiary's best interest?); the discretionary power of the judge to listen to the beneficiary's voice as well as the relatives'; the relationship between the family and the administrator and especially the duty, which is not settled by the law, to inform the family of the decisions taken by the administrator him/herself; the uncertain powers of the administrator concerning the decisions on the beneficiary's health, especially after the law 22 December 2017, n. 219 which set up the principle that no medical treatment can be initiated or continued if the interested person has not expressed his/her consent