

# Reform of legal capacity law in Austria

- **Impact on families**
- **In special regard to medical issues**
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## Capacity Law - Impact on Families (1)

- Parents often remain the most important persons of trust and support for the whole life-time of people with intellectual disabilities
- Especially for people with complex support needs

## Capacity Law - Impact on Families (2)

- If parents are not or no longer available, often siblings take over their role and take care for their brother or sister

## Capacity Law - Impact on Families (3)

- Not always they act as legal representatives for all issues
- Their rights are often limited to the necessary minimum
- Or they are even no representative at all, as there are no legal issues to manage

## Capacity Law - Impact on Families (4)

- Also for persons with mild learning disabilities families are important assistants and partners
- They are often not legal guardians
- but they give advice and assistance to contribute to a self-determined life

## Capacity Law - Impact on Families (5)

- Families are permanently struggling for contributing to a balance
  - of help, protection and care on the one side and
  - of self-determination, development and individual self-fulfilment on the other side

## Capacity Law - Roles for Families (1)

- **Statutory representative**
- Not only for parents, but also for siblings, grand-parents, nephews and nieces
- More than one family member can be representatives at the same time, but for DIFFERENT issues
- Issues are broadly defined, but limited to real, concrete issues
- Ends after three years at latest

## Capacity Law - Roles for Families (2)

- **Statutory representative**
- In spite of the right of the legal representative to decide and act on behalf of the person with disability, they are always to be assumed as legally capable in each new situation
- They still can complete legal actions of daily life, if they do not exceed their usual dimensions and when they are completely paid off



## Capacity Law - Roles for Families (3)

- **Elective representative**
- Person with disability elects one person of trust as legal representative, e.g. a family member
- They agree upon a very individual set of issues and concrete actions that the person with disability wants to be represented
- Also different kinds of co-decision can be agreed
- Has no limited duration, ends only by disclaimer
- Requires a minimum of understanding of that kind of representation

## Capacity Law – Medical Issues (1)

- The doctor has to assume that each and every patient has the potential capacity to understand the reasons for and the consequences of a specific diagnosis, treatment or intervention

## Capacity Law – Medical Issues (2)

- In order to reach understanding and informed consent of the patient with intellectual disability –
- The doctor has to try to explain the medical circumstances as understandable as possible
- He is not obliged to be successful, but he has to do his best to reach a success
- He is legally obliged to document what he has tried

## Capacity Law – Medical Issues (3)

- If he could not reach an understanding and informed consent –
- The doctor is obliged to make use of supporting persons available, often family members
- The family members should help as mediators or translators, but NOT as representatives!
- The doctor should also make use of communication aids like pictures, symbols, computers

## Capacity Law – Medical Issues (4)

- If there is still no basis for an informed consent, then a representative can give a consent (if there is one for medical issues in place)
- A representative can NEVER overrule a denial from the person with intellectual disability!
- If there is contradiction between the person with disability and the representative, the court has to decide

## Capacity Law – Medical Issues (5)

- If there is real danger for the health or the life of the patient, and an urgent decision is required, the doctor can decide by himself

**THANK YOU!**

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