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The Institution of Guardianship for a Disabled Person - Functioning and Proposed Changes

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Abstract— **The institution of guardianship for a disabled person is regulated in Art. 183 of the Family and Guardianship Code. Pursuant to this provision, a guardian is appointed for a disabled person if that person needs help to conduct any matters or matters of a specific type or to settle a particular case. The article will discuss the conditions for the application of this institution, in particular the concept of disability within the meaning of the above provision, which has not been defined by the legislator, but is of key importance in the context of distinguishing the institution of guardianship for a disabled person from the institution of incapacitation, with which guardianship is sometimes confused. The procedure for appointing a guardian, the scope of his powers (regarding which various positions are presented in the doctrine and jurisprudence) and the method of regulating the relationship between the guardian and the disabled person will also be presented. *De lege ferenda* postulates will also be proposed, aimed at clarifying the existing provisions and improving the functioning of guardianship for people with disabilities, so as to increase the practical importance of this very useful, although currently a bit underrated institution**

Keywords— guardianship, guardian, disabled person, disability

I. Introduction

The institution of guardianship for a disabled person is regulated in Art. 183 of the Family and Guardianship Code (Act of February 25, 1964 - Family and Guardianship Code, i.e. Journal of Laws of 2020, item 1359 - hereinafter referred to as KRO). Pursuant to § 1 of this provision, a guardian is appointed for a disabled person if that person needs help to conduct any matters or matters of a specific type or to settle a particular case. On the other hand, § 2 provides that guardianship is revoked at the request of the disabled person for whom it was established. Guardianship for people with disabilities is undoubtedly an important and necessary institution, because due to the aging of the society, it should be expected that the number of people who need this type of assistance will increase due to their old age and related ailments. However, the legal regulation of this institution is quite laconic, as it covers only one article. Therefore, it requires some clarification and a broader view, also in the context of other legal provisions and jurisprudence. It is also worth asking whether the current regulation meets the needs of disabled people.

II. The concept of a disabled person

From the point of view of determining the premises for applying the institution of guardianship under Art. 183 KRO, the most important is to define the concept of a disabled person. It is easy to notice that neither the discussed provision, nor any other provision of the KRO, contains a legal definition of a disability or a disabled person. Thus, the definition of this concept has been left to the doctrine and judicature. There is no doubt that the concept of disability within the meaning of the provision in question covers any serious disability, such as blindness, deafness or muteness, as well as all such conditions of the organism that seriously limit the ability to deal with one's own affairs, such as lack of a limb, partial or complete paralysis , long-term bedridden illness or indolence caused by the decline of strength or old age (Gajda 2021, p. 53).

However, it may be controversial whether the disability that justifies the establishment of guardianship also includes cases of mental illness or mental retardation. These doubts result from the fact that there is another legal institution that serves to take care of people suffering from this type of disorder - of course, we are talking about full or partial incapacitation (Articles 13 and 16 of the Civil Code - Act of 23 April 1964 - Civil Code, Journal of Laws of 2021, items 1509, 2459), the premise of which is a mental illness, mental retardation or other type of mental disorder, in particular drunkenness or drug addiction.

The doctrine indicates that the appointment of a guardian for a disabled person, as a rule, is not justified by mental illness, as this should lead to incapacitation and the appointment of a guardian on the basis of the provisions on incapacitation (Gajda

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J. [in:] Pietrzykowski K. (ed.), Kodeks rodzinny i opiekuńczy. Komentarz, op. cit., art. 183 KRO, Nb 3). A similar view is also presented in the jurisprudence of the Supreme Court - e.g. in the decision of December 8, 2016, file ref. act III CZ 54/16 (Legalis) stated that "the state of mental weakness - in particular caused by age - which does not qualify as a mental illness, mental retardation or other type of mental disorder determining the grounds for incapacitation (Articles 13 and 16 of the Civil Code), constitutes a disability within the meaning of Article 183 of KRO. In such a case, the appropriate measure to protect the procedural interests of a disabled person may be steps taken by the adjudicating court to appoint a guardian referred to in Article 183 of KRO for that person. " It follows that, in the opinion of the Supreme Court, mental illness should result in incapacitation, while the institution of guardianship may possibly apply to states of "mental weakness", not constituting a mental illness.

However, different views should also be noted. For example, according to H. Haak, a disabled person in the meaning used in art. 183 of KRO is also a person whose condition may justify partial or total incapacitation, as such a condition does not prevent the appointment of a guardian pursuant to Art. 183 of KRO, as long as incapacitation has not occurred or at least the appointment of a temporary advisor in the course of legal incapacitation proceedings (Haak 2021)

It seems that in the current legal situation, a precise definition of the catalogue of diseases justifying the appointment of a guardian pursuant to Art. 183 KRO is not possible. It is postulated in the literature that we should take into account the richness and diversity of cases in practice and the stigmatizing nature of incapacitation in the social sense, and thus not every mental illness and not every mental disorder related to e.g. hormone therapy, should lead to incapacitation - therefore mental illness or intellectual retardation, which does not justify total incapacitation, may mean a disability referred to in art. 183 KRO (Matusik 2020) This is a manifestation of the tendency to treat the condition of disability liberally for humanitarian reasons, so that it covers various life circumstances in which a natural person does not feel able to conduct all or some of his / her affairs, although he / she is a person with full legal capacity (Olczak-Dąbrowska 2014, p. 95) However, such an approach to the discussed problem does not remove all practical doubts - an example may be a dispute in the doctrine as to whether the appointment of a guardian pursuant to Art. 183 KRO is acceptable in the case of Alzheimer's or Parkinson's disease - according to some authors it is acceptable, while others object, arguing that the course of the above-mentioned diseases related to the aging of the organism may lead to disturbances of consciousness, loss of cognitive functions and, consequently, the inability to make decisions about oneself , and thus this state should justify full or partial incapacitation (Olczak-Dąbrowska 2014, p. 95).

It turns out that also the case law of common courts has a serious problem with the proper definition of the conditions for the application of Art. 183 STEP. For example, according to D. Olczak-Dąbrowska's analysis of data from court files for 2011-2013, in 43.8% of the examined cases, the cause of disability, for which the appointment of a guardian was requested, were diseases related to aging, in particular Alzheimer's disease, Parkinson's disease, dementia syndrome; in 11.45% of cases, the disability resulted from diseases and mental disorders (schizophrenia, psychoorganic syndrome, organic delusional disorders), and in 20.8% cases from mental retardation (cerebral palsy, Down syndrome) (Olczak-Dąbrowska 2014, p.104) Injuries after accidents, in particular cerebral coma, were cited as causes of disability in 9.37% of examined cases; somatic diseases such as multiple sclerosis, Huntington's chorea, post-stroke conditions accounted for 12.5% of cases in which applications for appointment of a guardian for a disabled person were recognized, while physical disability was reported only in 2.08% of examined cases (Olczak-Dąbrowska 2014, p.104)Interestingly, these requests were mostly accepted by the courts, and the extreme examples provided by the above-mentioned author were the acceptation of requests in a situation where, for example, people for whom a guardian was appointed were in a coma without contact with the environment, were not able to move or to speak (Olczak-Dąbrowska 2014, p. 106). This undoubtedly proves that the institution of guardianship for a disabled person is often incorrectly applied, because in such cases it would be more appropriate to incapacitate.

A solution could be a clarification of Art. 183 KRO by clearly defining what types of disabilities may justify the appointment of a guardian. It is worth recalling here that Art. 57 § 1 of the decree of May 14, 1946 - Guardianship law (Journal of Laws of 1946, No. 20, item 135) stipulated that a probation officer may be established for "handicapped persons, in particular the blind, deaf or dumb". Therefore, the institution of guardianship could be limited to cases of physical disability or the legislator should clearly exclude from the scope of the concept of disability any disability referred to mental diseases or mental retardation.

III. THE SCOPE OF POWERS OF THE GUARDIAN

The issue of distinguishing the institution of guardianship for a disabled person from incapacitation is also related to the problem of the scope of the powers of the guardian. In the decision of the Supreme Court of May 24, 1995, file ref. No. III CRN 22/95 (Legalis) it was stated that "pursuant to Art. 183 § 1 of the KRO, a disabled person may request the appointment of a guardian if he or she needs assistance to conduct any cases or cases of a specific type. The scope of duties and powers of a guardian is determined by the guardianship court. Therefore, it is clear from the content of this provision that the establishment of guardianship in this mode is intended only to assist the disabled person in dealing with matters relating to him / her, and it is not a matter of statutory representation in the sense of appointing a legal representative, but to facilitate the disabled person settling matters due to factual difficulties arising due to the disability. The disabled person still retains full legal capacity and may voluntarily take actions which he / she deems appropriate ".

The guardian of a disabled person is therefore not his / her statutory representative, as is the guardian of the incapacitated

person (Gajda 2021; art. 183 KRO; Bodio 2021, p. 56; Janiszewska 2017, p. 607). The essence of guardianship under Art. 184 KRO is aptly explained by W. Rożdżeński, who points out that "taking into account that a disabled person retains full legal capacity and formal decision-making competence (...), all decisions of this person or statements made by him / her should precede the effectiveness of the guardian - since the guardian is only an assistant and not a substitute, it would be difficult to give the guardian the right to decide differently than a disabled person who maintains legal capacity: the guardian always plays a secondary role to the disabled person, while the incapacitation leads to depriving a person of decision-making competences and transferring them to a third party" (Rożdżeński 2021, p. 154). In connection with the above, there is a view in the doctrine that the guardian is not empowered to perform legal or procedural acts on behalf of a disabled person, but can only do it for actual actions that do not require the submission of declarations of will (Olczak-Dąbrowska 2014 p. 99). H. Haak points out that in cases that require taking actual actions, the assistance may even consist in performing these activities for the disabled, however, it is not possible in the case of legal actions, and in the case of taking legal actions by the disabled, the guardian can only help him / her to put in contact with a competent lawyer or to collect relevant documents necessary to perform a specific legal action (Haak 2021; art. 183 KRO) However, it is also noted that even with the current wording of Art. 183 § 1 of the KRO, the guardianship can grant the guardian the right to represent a disabled person in the decision on the establishment of guardianship, however, the right to representation should be limited to the matters or matters specified in the decision on the appointment of a guardian (Matusik 2020; art. 183 KRO, Sylwestrzak 2014, p. 23-24) .

However, a question arises whether such guardianship corresponds to the real needs of disabled people. If they need help with actual activities, such as personal hygiene, shopping or ongoing repairs, they can ask for it by any person nearby (e.g. a family member, neighbour, friend). After all, a court ruling is unnecessary so that, for example, a relative or a neighbour of a disabled person could bring them shopping, help with household duties or take them to doctors. Disabled people can also ask for help of social care (the Act of 12 March 2004 on social assistance, i.e. Journal of Laws of 2022, items 1, 66) lists, among others services such as meals or care services in the place of residence, in support centers and family care homes). On the other hand, for actual activities such as withdrawing money from a bank account, collecting pensions or correspondence from the post office, disabled persons should grant a power of attorney to another person (e.g. Article 38 of the Act of 23.11.2012 - Postal Law, i.e. Journal of Laws of 2020, items 1041, 2320 provides the institution of a postal power of attorney to collect correspondence on behalf of another person). The real problem for people with disabilities seems to be rather legal and procedural acts, and also - in the case of actual activities such as withdrawing money from a bank account or collecting correspondence, pensions or disability pensions - the need to grant many separate powers of attorney to different institutions (e.g. separately at the post office, separately in several banks, separately in each state office, etc.). From the point of view of people with disabilities, especially those with motor disabilities, a significant facilitation would be the appointment of one plenipotentiary with a wide range of powers, covering both factual, legal and procedural activities, the appointment of which, however, would not affect the disabled person's ability to act in law, as he / she could in each case also act in person or confirm or correct the declarations of his / her representative.

Such an image of the real needs of disabled people also emerges from the research of court files, carried out by D. Olczak-Dąbrowska, who states that in approx. 85% of the examined cases, the application for the appointment of a guardian was justified by the need to settle the so-called official matters, which included proceedings before pension authorities, social welfare institutions, tax offices, local government administration bodies and consent to place a disabled person in a care and treatment institution (Olczak-Dąbrowska 2014 p. 107). However, legal acts were also indicated, both of greater importance (e.g. related to the sale of real estate) and smaller (expenses in minor everyday matters, e.g. purchase of food, clothes, medicines), procedural activities (representation of a disabled person in court proceedings) and actual activities (e.g. collection of pensions, pensions, correspondence from the post office, payment of money from a bank account, help in running a household, assistance in self-service activities, such as personal hygiene, getting dressed) (Olczak-Dąbrowska 2014, p. 107). The courts granted the guardians authorization, for example, to represent the disabled person before the judiciary, authorities and administration, banks, pension authorities or to manage of the disabled person's property and to make decisions regarding treatment and medical procedures (Olczak-Dąbrowska 2014, p. 113). Such an approach, however, does not correspond to the doctrine cited above, according to which the guardian is not entitled to perform legal acts, and such a right may possibly be granted to him / her only in relation to a specific case or cases - for example, the guardian's authorization " to manage the assets of a disabled person " in general seems to be too broad.

Two conclusions follow from the above - firstly, the judicial decisions significantly extend the scope of the guardian's rights, e.g. to perform legal acts or declarations of will regarding treatment, which will be discussed further below; secondly - the guardianship model, in which the scope of the guardian's powers must be specified each time in the content of the court decision and the omission of certain competences results in their lack of competences, does not fully meet the needs of disabled people who would like to have an assistant with a wide range of powers, releasing them from the need to personally deal with a wide range of cases, especially bothersome for people with reduced mobility.

An example of a situation in which the lack of indication of specific competences of a guardian may cause problems is the lack of granting the guardian right to represent the disabled person in civil proceedings. According to Art. 87 § 1 of the Civil Procedure Code (Act of November 17, 1964 - Code of Civil Procedure, i.e. Journal of Laws of 2022, item 1), the

representative in civil proceedings may be an attorney or legal advisor, in matters of intellectual property also a patent attorney, and in cases of restructuring and bankruptcy also a person holding a restructuring advisor license, and also a person managing the property or interests of a party or a person remaining in a permanent commission relationship with the party, if the subject matter of the case falls within the scope of this commission, a participant in the dispute, as well as a spouse, siblings, descendants or ascendants of the parties and persons remaining with the party in relation to adoption. Thus, if the court in the decision on the appointment of a guardian for a disabled person does not authorize the guardian directly to represent the disabled person in a specific case or cases and if the guardian does not belong to the group of relatives mentioned in the above provision, he / she will not be able to represent the party in civil proceedings, unless when he / she concludes a mandate contract with the disabled person, covering the subject matter of the case or an agreement entrusting the guardian with management of the party's property or interests (although if the court grants the guardian a broad scope of powers, it cannot be ruled out that he / she is "a person managing the party's property or interests"). The case is similar when it comes to a postal power of attorney - the doctrine indicates that a guardian who has not received the appropriate authorization in the ruling of the guardianship court or has no power of attorney of a disabled person to receive correspondence cannot pick up the correspondence addressed to this person (Matusik 2020; art. 183 KRO).

In the current model of guardianship, a disabled person cannot count on the appointment of a "universal assistant" who can represent him / her in all matters, but each time he / she must think to what extent he / she needs help the most. This is important because the request of a disabled person, in terms of the list of activities (cases) in which he / she needs help, is binding for the guardianship court (Matusik 2021; art. 183 KRO).

An issue that requires separate consideration is the scope of the guardian's competence in making decisions regarding the broadly understood treatment and medical care of a disabled person. Pursuant to Art. 32 sec. 1, 2 and 3 of the Act of 5.12.1996. on the professions of physician and dentist (Journal of Laws of 2021, items 790, 1559 and 2232), the physician may conduct an examination or provide other health services, subject to exceptions provided for in the Act, upon the consent of the patient. If the patient is a minor or incapable of expressing consent, the consent of his / her legal representative (which the guardian of the disabled person is not) is required, and if the patient does not have a legal representative or it is impossible to contact him / her - the consent of the guardianship court. However, if there is a need to examine the above-mentioned person, the "actual guardian" ("de facto guardian") may also consent to the examination. On the other hand, the performance of a surgical procedure or the use of a treatment or diagnostic method that creates an increased risk for the patient is possible only with the patient's written consent or with the consent of the statutory representative, and if the patient does not have such a representative or it is not possible to contact him / her - with the consent of the guardianship court, except for cases in which the delay caused by the procedure for obtaining consent would pose a threat to the patient's life, serious injury or serious health impairment - then the doctor shall immediately notify the statutory representative, actual guardian or the guardianship court about the activities performed (Article 34 (1), 3 and 7 of the Act on the Professions of Doctor and Dentist). It follows from the above that the so-called "actual guardian" ("de facto guadian") may at most consent to the examination of a person who is incapable to express consent, but is not authorized to consent to surgical procedures or the use of therapeutic or diagnostic methods of increased risk.

However, a question should be asked whether the guardian of a disabled person is the "de facto guardian" within the meaning of the Act on the Professions of Doctor and Dentist. Pursuant to Art. 31 sec. 8 of this Act, whenever the provisions of the Act refer to a "de facto guardian", it should be understood as a "de facto guardian" within the meaning of Art. 3 sec. 1 point 1 of the Act of November 6, 2008. on the rights of the patient and the Patient's Rights Ombudsman (Journal of Laws of 2022, item 64). Within the meaning of the Act on Patients' Rights and the Patient's Rights Ombudsman, a "de facto guardian" is a person who, without statutory obligation, takes permanent care of a patient who, due to age, health or mental state, requires such care. However, the literature indicates that the "de facto guardian" within the meaning of the above Act may be both a person obligated as a courtesy and contractually to permanently care for a patient, but not a guardian acting on the basis of the law and a court decision (Bosek 2020,). Therefore, the view is presented that it is impossible to recognize the authorization of the guardian of a disabled person to make decisions on medical treatment and procedures on behalf of the disabled (Olczak-Dąbrowska 2020, p. 108).

The same is the case when it comes to placing a disabled person in a nursing home. According to Art. 54 sec. 1 and 2 of the Act of March 12, 2004. on social assistance (Journal of Laws of 2021, item 2268), a person requiring permanent care due to age, disease or disability, unable to function independently in everyday life, who cannot be provided with the necessary assistance in the form of care services, may be directed to a social welfare home after obtaining the consent of that person or their statutory representative to be placed in a social welfare home. Therefore, if a guardian is denied the status of a statutory representative, then he / she cannot consent to the placement of a disabled person in a social welfare home - the guardian could only carry out actual activities accompanying the placement in a social welfare home (e.g. transport), unless he / she would be authorized by the guardianship court to represent a disabled person in cases of placement in a social welfare home, and in this respect he / she would obtain the status of a statutory representative (Matusik 2020).

It follows from the above that the institution of the probation officer does not "pass the exam" when it comes to expressing consent to medical procedures on behalf of a disabled person. It is therefore right in the doctrine to introduce the institution of the so-called "health power of attorney", functioning, for

example, in English, French or German law and enabling a person (not necessarily disabled) to appoint (even in person, without a court decision) a trusted person who could, in the event of the patient's inability to communicate with the outside world, make decisions about his or her treatment, taking into account the patient's previously expressed (preferably in writing) will, e.g. as to procedures that he or she does not want to undergo or not to undertake life-saving activities in certain cases (Rożdżeński 2021, p. 149-152). Empowering a "health representative" to act should be conditional, i.e. he would be entitled to act for a disabled person only if he / she is incompetent (i.e. unconscious, has no decision-making capacity) and only as long as this condition persists (Rożdżeński 2021, p. 153). When the patient would be at least slightly alert or physically disabled, the appointed representative should be empowered only to assist: assist the patient in expressing his / her wishes and support actual and facilitate treatment decisions made by the patient, and these messages would require confirmed authenticity. , i.e. evidence that they come from the patient and not from third parties (Rożdżeński 2021, p. 154).

IV. Procedure for appointing a guardian

Pursuant to Art. 183 KRO, a guardian is appointed at the request of a disabled person. However, the literature indicates that if the condition of a disabled person excludes the possibility of submitting an application or giving consent, the court may appoint a probation officer ex officio; in addition, the court may appoint a probation officer ex officio also in the case referred to in Art. 558 § 2 of the Code of Civil Procedure, i.e. in the event that the district court dismisses the application for incapacitation (Gromek 2020). Among the cases examined by D. Olczak-Dąbrowska, only 23.8% were initiated at the request of the disabled, 24.7% ex officio by the guardianship court, and 6.6% at the request of the prosecutor, and 44.7% of the cases were pending as a result of applications filed by persons who are not entitled to be parties in the case of appointing a guardian for a disabled person (e.g. relatives and neighbours of disabled persons who indicated themselves as candidates for guardians, and also directors of care and treatment facilities and hospitals where disabled persons stayed - in these cases, applications of these persons were treated as notifications of the need to initiate proceedings ex officio (Olczak-Dąbrowska 2014, p. 103). This may mean that the disabled persons have no sufficient knowledge on the functioning of the guardianship or their condition (especially mental) was so bad that they were not able to submit an application on their own, and their relatives of friends responded appropriately to the need to help them.

It seems that the court procedure of appointing a guardian may also be a factor discouraging disabled people from taking advantage of this legal institution. Firstly, court proceedings may, in the opinion of these persons, involve inconvenience, e.g. travel to court, and secondly - may suggest associations with incapacitation, i.e. deprivation or limitation of legal capacity, which disabled persons do not want to renounce. Therefore, it would be worth considering modifying the procedure of appointing a probation officer by allowing the possibility of appointing it by a disabled person by means of his / her own declaration of will, preferably drawn up in the form of a notarial deed, in which the person would clearly define the scope of the probation officer 's competences. Since, by appointing a probation officer, a disabled person does not give up any legal capacity, there are no justified reasons for not being able to independently, without the participation of a court, appoint a person who will represent him / her in all or specific cases. Such a solution would facilitate formal issues, and would also give disabled people a greater sense of independency and security (to dismiss the guardian, it would be sufficient for the disabled person to submit a declaration in writing). It is also possible to consider changing the name of the discussed legal institution (from guardianship, which is negatively associated with partial incapacitation, e.g. to "a representative of a disabled person").

It also seems that the scope of application of the institution of guardianship under Art. 183 KRO could be extended by allowing the possibility of appointing a guardian by all interested persons, not only the disabled. After all, there are people who are fully physically and intellectually fit, but due to various circumstances, e.g. absorbing work, caring for a child or another relative, being abroad or in a prison, do not have full ability to manage their interests and would like to take advantage of assistance that can be established through a single declaration of will, and not through the submission of multiple separate powers of attorney in different institutions.

It is also worth mentioning that there are people who are not intellectually disabled, but "awkward in life" - e.g. due to insufficient education or difficulties with reading or writing (dyslexia, dysgraphia) are not familiar with not only complex, but sometimes even simple legal or financial issues or else they are not able to write even a short letter or a power of attorney or fill in official forms, because they do not understand the language used there and feel that these activities are beyond them, but they are ashamed to ask others for help. The same applies to non-disabled people who have difficulties in social contacts, e.g. because of shyness or complexes about appearance. A trusted representative in complex official matters would also be of use to foreigners who do not know the Polish language. The current legal status indicates that the so-called "life awkwardness" does not justify the establishment of a guardian (Rożdżeński 2011, p. 126). Thus, it is emphasized that it is not permissible to appoint a guardian under Art. 183 KRO, for people in a difficult family or financial situation who are not disabled but do not have the skills in handling a given case. Therefore, a person who "according to their own subjective discretion, does not feel capable of doing any or only some of their own affairs" is not disabled in the meaning of law (Matusik 2020). It is also noted that the guardianship under Art. 183 KRO should not replace legal aid provided ex officio in court proceedings (Matusik 2020). In view of the above, the very "awkwardness in life", even if it was a significant burden for the person affected by it, does not justify the appointment of a guardian under Art. 183 STEP. However, it would be advisable to seriously consider changing the legal status and allowing the

possibility of appointing a representative by any person who, for various reasons, does not feel capable of managing his / her own affairs. Such a person would not have to disclose these 202reasons, as every person capable of expressing the will should be able to appoint a helper for himself in activities in which, in his /her opinion, he / she needs this help.

V. Conclusion

The presented considerations lead to the conclusion that the institution of guardianship for a disabled person is undoubtedly needed, but due to the imprecision of legal regulations, it is sometimes inappropriately applied. An example of this may be the appointment of a guardian for people suffering from disorders that would rather justify their incapacitation or granting the guardians rights that they should not have (e.g. to consent to medical procedures or to conduct all affairs of a disabled person). Moreover, the current model of guardianship, which is in fact limited to actual activities and does not ensure representation of disabled persons in all matters in which they need help, does not fully correspond to the real needs of these persons. It would be also worth considering to extend the scope of the discussed institution by allowing the possibility of its establishment for every person, not only the disabled, as well as simplifying the procedure for its establishment by making it possible to submit an appropriate declaration in the form of a notarial deed.

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