

# EVALUATION OF TESTAMENTARY CAPACITY IN DECEASED OLDER PERSONS / VJEŠTAČENJE TESTATORSKE SPOSOBNOSTI UMRLIH STARIJIH OSOBA

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## **Introduction/Objectives:**

In 2001, Croatia had 4,437,460 inhabitants and 15.7% were older than 65 years. The same source of information registered 1,455 persons between 95 and 108 years of age. In the database of the Croatian Institute for Health Insurance, 806,070 persons older than 65 years were registered in December 2006. The newest estimate for the Croatian population, from April 2011, is 4,290,612. Life expectancy in Croatia at birth is estimated to be 75.7 years; 78.1 years for the female population and 71.1 years for the male population. Demographic trends observed over the past 5-6 decades show depopulation, and the overall population getting older. An extrapolation of these data to the year 2050 predicts 26.2% of people older than 65 years. The above data place Croatia among the oldest populations among European countries. Croatia has no register of persons with dementia (PWD). If 10% of people above 65 years of age are affected by dementia, the number of PWD would be about 80,000, the majority being patients with Alzheimer's disease (AD). It is assessed that up to 15,000 PWD live in Zagreb, the capital of Croatia.

## **Participants, Materials/Methods:**

In this lecture several vignettes in which testamentary capacity of older persons was evaluated will be presented. Usually these cases were ones or more times already evaluated

before, and in majority of cases there were contradictory (opposite) evaluations among psychiatrists.

## **Results:**

When evaluating the testamentary capacity in deceased older persons psychiatrists, as an expert witness, should be convinced that deceased older person at the time of signing the will or other similar document has had capacity in four specific criteria or elements: 1) understand the nature of the testamentary act; 2) understand and recollect the nature and situation of his or her property; 3) have knowledge of the persons who are the natural objects of his or her bounty and 4) know the manner in which the disposition of the property is to occur.

## **Conclusions:**

Not a single diagnosis a priori is synonymous with incompetency. Even in Mental retardation (MR) or in AD, only the stage of the disease e.g. the severity of symptoms is crucial for obtaining specific capacity and competency. The proof of capacity should be found in medical documentation and/or in observations from health professionals (psychiatrists; neurologists; psychologists; GP's; nurses), so that is the reason why should we give more attention to these data rather than to other (lay) observations.