Reply to questionnaire for the country reports – Norway

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1. The legislation most relevant for the protection of adults is *Lov om vergemål (Vergemålsloven (vml.))* [The Guardianship Act] 26 March 2010 no. 9 with later amendments, passed by *Stortinget* [The Parliament]. Pursuant to provisions in this act, there are also administrative regulations given in *Forskrift til vergemålsloven (Vergemålsforskriften (vmf.))* [The Guardianship regulations] 15 February 2013 no. 201 with later amendments. Furthermore, there are provisions at the same level as parliamentary legislation in chapter III in the Nordic Convention between Norway, Denmark, Finland, Iceland and Sweden containing private international Provisions regarding Marriage, Adoption and Guardianship 6 February 1931 with later amendments regarding guardianship for citizens of Nordic countries domiciled in another Nordic country.

On 3 June 2013 Norway ratified the UN Convention on the rights of persons with disabilities of 13 December 2006. Norway has as a starting point a dualistic relation between national and international law, meaning that they are considered as two separate systems. International law is not considered a part of domestic law until it is implemented. It is nevertheless a principle that domestic laws are to be interpreted in accordance with Norway's obligations under international law. This is indeed relevant for *Lov om forbud mot diskriminering på grunn av nedsatt funksjonsevne (diskriminerings- og tilgjengelighetsloven*) [Act regarding prohibition against discrimination due to disability (discrimination and accessibility Act)] 21 June 2013 no. 61.

2. The formal measures according to The Guardianship Act are guardianship (§ 21) and lasting power of attorney (§ 80), which both can cover economic or personal matters, with some explicitly stated exceptions, and closely related persons' right to represent, which only covers economic matters (§ 94).

3. Guardians are appointed by *Fylkesmannen* (the County Governor) (vml. §§ 6, 20 and 55). However, if the person to be placed under guardianship is also to be deprived of his or her legal capacity, the decision must be made by the district court (vml. § 68). Lasting power of attorney is appointed by the donor, while he or she still has the mental capacity to do so (vml. § 79). Closely related person's right to represent follows directly of *The Guardianship Act*, but is not enforceable insofar that the circumstances are covered by a lasting power of attorney (vml. § 94).

Guardianship can be decided if the person due to mental mental illness, including dementia, mental disability, drug and alcohol abuse, severe gambling addiction or severely reduced health no longer is capable to take care of his or her own interests, and there is a need for the person to be placed under guardianship. The person shall give his or her written consent, unless he or she does not have the mental capacity to understand what consenting implies. Consent is not a requirement if the decision also covers deprivation of the legal capacity (vml. § 20). However, the legal capacity regarding economic matters can only be deprived if it is necessary to prevent the person from exposing his or her property or other economic interests for the risk of considerable reduction, or he

or she is being exploited economically in an unduly way. The legal capacity regarding personal matters can be deprived in certain areas if there is a considerable risk that the person will act in a way that to a large extent will be able to harm his or her interests (vml. § 22).

For a lasting power of attorney to enter into force, the requirements are that the donor is suffering from mental illness, including dementia, or severely reduced health, and because of this no longer is capable to take care of his or her own interests within the areas covered by the power of attorney (§§ 83 and 78). There are also formal requirements: A power of attorney must be written and signed by the donor with two witnesses who were accepted by the donor and simultaneously present and who knew that the document was a lasting power of attorney, and signed by them in the presence of the donor and upon his or her request. The witnesses must be 18 years of age and have the capacity to understand the significance of the signing (§ 81).

Closely related person's statutory right to represent enters into force if the person due to mental illness, including dementia, or severely reduced health, no longer is capable of taking care of his or her own economic interests (§ 94).

4. The County Governor or the district court decides regarding guardianships and hence whether the conditions in *the Guardianship Act* are met or not. Reasons must be stated for an application for guardianship, and in this respect the applicant is involved in the procedure. Guardianship can be initiated by the County Governor office of its own motion or applied for by the person him- or herself, the person's spouse or cohabitant, parents, closest heir(s) of the body or siblings; the guardian if the person is already under guardianship (e.g. the application is about an amendment); or a doctor in charge of treatment or a health inspector at a healthcare institution where the person is hospitalised or stays (vml. § 56). Furthermore, if a need for guardianship is presumed, the institution where the person is hospitalised has a duty to report to the County Governor. For people outside of institutions, the persons in charge of the local government's social service and health and care service respectively have an equal duty to report (vml. § 57). A medical doctor or another expert will issue a statement regarding to what extent the person is incapable of taking care of his or her own interest due to the actual condition, and regarding if the person understands what consent to guardianship implies. Furthermore, health personnel and employees in the social service may give necessary and relevant information (vml. § 59).

For lasting powers of attorney the attorney decides when it enters into force, i.e. when the requirements are met (vml. § 83). However, the attorney may ask the County Governor for a formal confirmation of the entering into force of the power of attorney, which implies that the County Governor must consider whether or not the requirements are met. The attorney must thus present a medical certificate from a doctor (vml. § 84).

The closest related person decides whether or not the requirements are met regarding his or her statutory right to represent. The closest related is the person's spouse or cohabitant, child, grandchild or parent (in that order) (vml § 94).

5. The legal capacity is very significant; there is no deprivation of the legal capacity connected to the entering into force of powers of attorney or closely related persons right to represent. The legal capacity can only be deprived if the person is placed under guardianship, but it is not a necessary consequence. A deprivation of legal capacity must be ascertained in the constitutive form of a district court sentence (vml. § 73).

6. The main task for a guardian appointed by the County Governor (vml. § 25) or the district court (§§ 25 and 68) is to take care of the interests of the person under guardianship, within the limits of the mandate (vml. § 31). Within these limits the guardian performs acts of legal consequences and disposes over means on behalf of the person (vml. § 32). If possible, the guardian is obliged to listen to the opinion of the person before making decisions of greater significance, and act in accordance with the person's will, unless the legal capacity is deprived or the person is incapable of understanding the consequences (vml. § 33). There are also provisions regarding i.a. registration of property and debt, administration of property, covering of expenses and allocation of income and possible business operation.

7. When guardianship is applied for, the person's spouse or cohabitant and children of at least 18 years of age must be informed by the County Governor (vml. §§ 60 and 71). In lack of such close family members, the parent must be informed. Close relatives may apply for a guardianship, see above under 4 (vml. § 56). Close relatives mentioned above under 5 and siblings of the person may be appointed as guardians without presenting a police certificate of good conduct. A spouse or a cohabitant may be appointed as guardian if this is considered unproblematic, but should be avoided if the person has separate children who opposes, and separate children should be avoided as guardians if the person's spouse or cohabitant opposes (vml. § 28). If a close relative is appointed, he or she will only be compensated for expenses if special reasons justify it (vml. § 30). On the other hand, if the spouse or cohabitant is the guardian, there are certain reliefs in the obligations compared to other guardians regarding i.a. approval from and supervision by the County Governor (vml. § 44). When a guardian other than the spouse or cohabitant of the person is about to perform dispositions of great significance, the spouse or cohabitant have a right to voice his or her opinion (vml. § 33).

A donor's spouse or cohabitant, or in lack of a spouse or cohabitant, other close relatives, are to be informed when a power of attorney enters into force (vml. § 83).

Certain family members, i.e. spouse or cohabitant, children, grandchildren and parents, have a statutory right to represent and can in that role perform certain economic dispositions, e.g. concerning the person's dwelling and daily subsistence and to pay taxes and obligations pursuant to loans (vml. § 94).

8. Volunteers may be appointed as guardians. The requirements are that the volunteer is suitable for the actual assignment and agrees to the appointment. The volunteer him- or herself must not be under guardianship. A police certificate of good conduct must be presented (vml. § 28).

9. There are also professional or permanent guardians. The formal requirements are the same as for volunteers (vml. § 26). However, the assessment of suitability might differ, and a higher level of basic competence will normally be requested than for ordinary guardians. Albeit not necessary with formal legal education, several lawyers are permanent guardians.

10. As a starting point, the person under guardianship pays for compensation for the guardian and reimburses expenses. If a close related is guardian, he or she will normally not be entitled to compensation, see above under 7. The County Governor pays for compensation in cases of low income and property of little value (vml. § 30).

11. Guardians are under the supervision of the County Governor, i.e. that the guardians perform their assignments in accordance with the law and regulations and mandates. As a part of the supervision the County Governor shall give guidance and aid and through this continuously watch how the guardians conduct their assignments. Furthermore, the County Governor shall control the guardian's account, as well as the annual report that permanent guardians are supposed to present (vml. § 6, vmf § 2). The Central Authority on Guardianship supervises in turn the County Governor regarding the tasks according to the Guardianship Act. There is also a right to submit complaints against the decisions of the County Governor to the Central Authority on Guardianship (vml. § 7, vmf § 5).

12. According to *Lov om etablering og gjennomføring av psykisk helesvern (psykisk helsevernloven)* [Act relating to the provision and implementation of mental health care (the Mental Health Care Act)] 2 July 1999 no. 62 with later amendments, compulsory mental health care may not be applied unless a physician has personally examined the person concerned in order to ascertain whether the legal conditions for such care are satisfied. If there is a need for a medical examination but the person concerned avoids it, the chief municipal medical officer may on his or her own initiative or at the request of another public authority (i.e. the social service, the police or the prison authority responsible, cf. § 1-3), or of the next-of-kin of the person concerned decide that such medical examination shall be carried out (§ 3-1).

On the basis of information from the medical examination and compulsory observation, if any (cf. § 3-2), the responsible mental health professional (who shall be a physician with relevant specialist approval or clinical psychologist with relevant practice and supplementary education as laid down in regulations, cf. § 1-4), will assess whether the following conditions for compulsory mental health care are satisfied: 1.) Voluntary mental health care has been tried, to no avail, or it is obviously pointless to try this. 2.) The patient has been examined by two physicians, one of whom shall be independent of the responsible institution. 3.) The patient is suffering from a serious mental disorder and application of compulsory mental health care is necessary to prevent the person concerned from either a.) having the prospects of his or her health being restored or significantly improved considerably reduced, or it is highly probable that the condition of the person concerned will significantly deteriorate in the very near future, or b.) constituting an obvious and serious risk to his or her own life and health or those of others on account of his or her mental disorder. 4.) The institution is professionally and materially capable of offering the patient satisfactory treatment and

care and is approved in accordance with § 3-5. 5.) The patient has been given the opportunity to state his or her opinion, cf. § 3-9. 6.) Even though the conditions of the Act are otherwise satisfied, compulsory mental health care may only be applied when, after an overall assessment, this clearly appears to be the best solution for the person concerned, unless he or she constitutes an obvious and serious risk to the life or health of others. When making the assessment, special emphasis shall be placed on how great a strain the compulsory intervention will entail for the person concerned. The responsible mental health professional will make a decision on the basis of the available information and his or her personal examination of the patient. The decision of the responsible mental health professional and the basis for it shall immediately be recorded (§ 3-3).

Thus, both self-endangerment and endangerment of others are relevant.

It is also the responsible mental health professional who decides on involuntary medical measures (§ 4-4).

13. A report containing a proposal of supplementary provisions in the Guardianship Act regarding private international law based on the provisions in the Hague Convention of 13 January 2000 on the International Protection of Adults, and an assessment of whether or not this convention should be signed and ratified by Norway, has been presented by retired Supreme Court Judge Karin M. Bruzelius at the request of the Ministry of Justice and Public Security (26 February 2015). The report has been on a formal hearing with request for comments. The ball is currently in the hands of the Ministry.