



4. Weltkongress Betreuungsrecht
4th World Congress on Adult Guardianship
14.–17.09.2016



Reply to questionnaire for the country reports – Taiwan

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Questionnaire

1. **What legislation is relevant for the protection of adults? (If applicable, differentiation between federal law or the law of individual federal states)**
2. **What are the types of formal measures that exist to support people with disabilities in exercising their legal capacity? (Especially private mandates or legal representatives appointed by a court/authority)**
3. **Who decides on the appointment of a supporter/legal representative and what are the requirements for the respective measures?**
4. **Who is involved in the procedure of determining the need for support in legal affairs and in what capacity?**
5. **How significant is the legal capacity of the adult concerned and is there a constitutive ascertainment of (lack of/limited) legal capacity?**
6. **What are the responsibilities of a supporter /representative and what are the obligations and principles he/she must comply with?**

In Taiwan, there are five statutes that provide support for vulnerable person’s decision-making. The answers to Question 1 to 6 are demonstrated in the following <Table 1>.

<Table 1: Support for decision-making in Taiwan>

Affairs	General affairs	Informed consent	DNR (Do not resuscitate)	Involuntary hospitalization etc.
1 Legislation	Adult Guardianship in Civil Code	Medical Care Act	Hospice Palliative Care Act	Mental Health Act

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2 Meas ure	<p>There are two types of support: guardianship and assistance.</p> <p>(1) Guardianship: with respect to any person who is not able to make a declaration of intention or comprehend the effect of his/her intention due to mental disability, the court (family court) may order the commencement of guardianship and appoint the guardian(s).</p> <p>(2) Assistance: a person having “insufficient capacity” to make decisions can be declared under assistance and the assistant is appointed by the court.</p>	<p>Medical institutions must obtain the patient’s consent before commencing with any procedure. If the patient lacks the capacity to consent to surgery or invasive examination, his or her legal representative, spouse, kin, or interested party is able to make consent instead.</p>	<p>Any adult may write a letter of intent to choose to receive hospice palliative care or life-sustaining treatment (LST) or appoint a medical agent do make the choice while being diagnosed to be a terminal illness patient.</p>	<p>(1) Involuntary Commitment (Compulsory Hospitalization and Compulsory Community Treatment)</p> <p>The target is severe patient with the potential or act of hurting oneself or others and been diagnosed by a psychiatrist that it is necessary for the patient to be hospitalized.</p> <p>(2) Involuntary Psychiatric surgical operations and electroconvulsive therapy (special treatment)</p> <p>In the case of severe patient, the protector gives consent instead of the patient.</p>
3 Suppo rter	<p>(1) Because the guardian or assistant is appointed by the court, it is a legal representative. The protected person has no rights to designate the guardian or assistant in advance.</p> <p>(2) The court may select one or more guardians or assistants among the spouse, any relatives within the fourth degree of kinship, relatives with whom the protected person has resided in</p>	<p>(1) The supporters are stipulated by the Act and cannot be appointed by the patient in advance.</p> <p>(2) As mentioned above, the legal agent, spouse, kin, or any interested party may be the supporter.</p>	<p>There are both private contractual agent and statutory legal representative to decide for the terminal illness patient whether to refuse CPR or LST (life-sustaining treatment).</p> <p>(1) Self-designated agent (power of attorney): Any adult person having legal capacity may</p>	<p>Protector (in the case of special treatment)</p> <p>The protector is chosen by mutual election among the patient’s guardian, spouse, parents, and family members.</p>

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	<p>a recent year, the public agency, the social welfare institution or other proper persons.</p> <p>(3) When electing guardians or assistants, for the best interest of the ward, the court shall first take the ward's opinion and every other things into consideration.</p> <p>(4) There are passive qualifications for a guardian. Minors, absent persons, persons who are under guardianship or assistantship, or persons who declare bankrupt, cannot be designated as a guardian or assistant.</p>		<p>designate a medical surrogate agent in advance.</p> <p>(2) Statutory legal representative: If a terminal illness patient, who has become unconscious or failed to express clearly his/her will, has not signed the letter of intent, his/her closed relative may replace by signing a consent. For those who do not have closed relatives, a medical advice for the best interest of the terminal illness patient would be issued instead after the examination of the hospice palliative care team. The consent or the medical advice shall not contradict the expressed desire of the terminal illness patient before being unconscious or unable to express his/her will.</p> <p>The closed relative in the preceding paragraph includes the following:</p> <p>(i) Spouse.</p>	
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			<p>(ii) Adult children and grandchildren.</p> <p>(iii) Parents.</p> <p>(iv) Siblings.</p> <p>(v) Grandparents.</p> <p>(vi) Great grandparents, great grandchildren or third-degree collateral relative by blood.</p> <p>(vii) first-degree direct relation by marriage.</p> <p>The consent of the closed relative may be done by one person. If there is no unanimity among several closest relatives, a priority list in accordance with the above listing shall be set up. If a consent of one with lower priority is against the will of one with higher priority, the one with higher priority shall show his/her will in written before the non-application, termination or withdrawal of CPR or LST.</p>	
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<p>4 Proce dure</p>	<p>(1) The protected person The person to be protected is recognized to own full legal capacity to proceed in cases concerning commencement of guardianship/assistance, no matter how his/her mental state is. If necessary, the court may appoint a guardian ad litem to assist the proceeding.</p> <p>(2) Reporter (social worker) In order to evaluate the best interests of the protected person, the court can public authority or social welfare organization to conduct an interview or investigation for providing a report and advice to the court. The court considers the report before making a ruling.</p> <p>(3) Other relevant persons The court should allow relevant persons (such as family members and medical practitioners) to state opinions.</p> <p>(4) Expert witness (psychiatrist) The court should interview the protected person in the presence of the expert witness (psychiatrist). Before ordering commencement of guardianship or assistance, the court should inquire of the expert witness about the mental</p>	<p>(1) Whether the patient has the capacity to consent is decided on a case-by-case basis by medical practitioners.</p> <p>(2) There is no priority among aforementioned supporters. For example, if the spouse refuses to give consent to the surgery unreasonably, the medical institute can ask for the daughter's consent instead.</p>	<p>(1) To write a letter of intent The letter of intent shall at least include the following matters, and be signed by the decision maker:</p> <p>(i) Name, ID number and domicile or residence of the decision maker.</p> <p>(ii) The will of the decision maker on HPC or LST choice and the specific content</p> <p>(iii) Date when the letter of intent is written.</p> <p>(2) Be diagnosed to be terminal illness patient by two qualified specialist physicians.</p>	<p>(1) Involuntary commitment If hospitalization is necessary but the patient refuses, in order to start compulsory hospitalization, the Act demands an emergency placement no more than five days, during which two psychiatrists must complete evaluation (compulsory evaluation) within two days. The decision will also be reviewed by the Mental Health Review Committee. Compulsory hospitalization lasts for up to 60 days.</p> <p>Likewise, Compulsory Community Treatment of severe patient requires the Committee's permission, too.</p> <p>(2) Involuntary psychiatric surgical operations</p> <p>(i) The hospital must design a protocol which is then proposed to, collaboratively reviewed and approved by relevant medical science and technology workers,</p>
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	and intellectual condition of the protected person.			legal experts, and social workers. (ii) Protector's consent. (3) Involuntary electroconvulsive therapy (i) Under patients' emergency conditions and with one specialist physician's recognition of necessity (ii) Protector's consent.
5 Influence on legal capacity	(1) Guardianship: a person under guardianship becomes legally incompetent, which means the deprivation of capacity in all areas of decision-making including right to vote. (2) Assistance: a person under assistance still has the legal capacity to perform juristic acts. Only if he/she intends to perform the significant deals such as purchasing or selling real property, making gifts and participating in lawsuits, he/she must obtain the consent of the assistant.	The supporter shall consent to surgery or examination instead of the patient. It is a one-time substitute decision-making.	The supporter shall consent to DNR or non-applying LST. It is a one-time substitute decision-making.	Once a person is diagnosed to be a "severe patient," his/her right to refuse hospitalization, community treatment, psychiatric surgical operations and electroconvulsive therapy will be deprived. Instead, a group of people (psychiatrists, the Committee, the protector) makes the decision for the severe patient jointly.
6 Responsibility and obligations of the	(1) Guardianship (i) The guardian is the legal representative of the ward within the scope of his/her power, which is interpreted as comprehensive, including legal acts concerning property and personal health-care, with only the exception of	N/A	N/A	The responsibility or obligations of the supporter(s) is not clear. However, in the case of involuntary commitment, the severe patient or the protector is entitled to petition the court for overruling the decision on

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<p>supp orter</p>	<p>acts of status such as marriage, divorce, adoption, etc.</p> <p>(ii) When performing the duties relating to the ward's life, medical treatment and property management, the guardian shall respect the ward's intent and take the ward's physical and mental condition into consideration.</p> <p>(iii) The guardian is allowed to claim for compensation, the amount of which is determined by the court based on the labor involved and the assets of the ward. Since a guardian could claim for compensation, he/she shall exercise with the care of a good administrator. If the guardian has intentionally or negligently caused damage to the ward when performing his/her duties, the guardian shall compensate the ward.</p> <p>(2) Assistance</p> <p>(i) The assistant has the right to consent to the significant financial affairs. Without the consent, the protected person's behavior is not valid.</p> <p>(ii) and (iii) are similar to (1)guardianship.</p>			<p>emergency placement or compulsory hospitalization.</p>
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7. What role do family members play and what are the requirements imposed on them?

(1) The responsibility to offer economic support

Although Public Assistance Act provides basic living standard for poor people in Taiwan, the Act sets two eligibility criteria: one is that the assessed amount of income should be less than the minimum level set by the state; and the other is that there should be no family members who are legally responsible, and are capable or otherwise able to, support the applicant. In Taiwan's Civil Code, the obligators of the family support are very wide ranged, including (1) lineal relatives by blood; (2) lineal relatives by marriage living in the same household; (3) siblings; (4) the head and the members of a house, and of course, (5) the spouse. Fortunately, the Public Assistance Act does not adopt the unrealistic ideas of Civil Code. Instead, it only considers the support capability of Spouse and First-degree lineal blood relatives, that is, the applicant's parents and the children. Nevertheless, there is no doubt that family members do have civil responsibility to offer (economic) support mutually in Taiwan.

(2) Default supporters

If we take adult guardianship for example, it is reported that more than 90% of guardians/assistants in Taiwan are family members. Other parties such as legal professionals, public agencies, and social welfare organizations have limited participation in adult guardianship. In addition to financial affairs, family members are also statutory and prior substitute decision makers (supporters) in many health-care affairs such as (general) informed consent, DNR (Do Not Resuscitate) orders for terminal patients, psychiatric surgery and electroconvulsive therapy for "severe patients," and sterilization for persons under guardianship and assistance.

(3) Providing opinions to the court and monitoring the supporter

Before appointing the guardian, the judge usually investigates the vulnerable person's family members' opinions first. Also after the guardianship/ assistance commences, the family members may supervise the guardian's decision-making and offer information about the preferences or intents of the protected person.

(4) The problems

However, family members do not always play a positive role. Through analyzing court cases, it is found that sometimes family members conspired with the guardian to consume the protected person's assets, or on the contrary, in order to inherit more on the protected person's death, they may prevent the guardian from using the protected person's assets even when such disposition might be necessary to receive better care.

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8. What role do volunteers play and what are the requirements imposed on them?

9. Are there professional supporters/legal representatives and what requirements/ qualifications do they have to satisfy?

Unfortunately, there are seldom volunteers or professionals participate in support decision-making in Taiwan.

10. Who bears the costs for procedures and the supporter/legal representative?

(1) The costs for procedures

Where the court finds matters provided in the preceding paragraph meritorious, the proceedings fees shall be borne by the person subject to guardianship. Otherwise, the proceedings fees shall be borne by the applicant who initiated the proceedings.

(2) The cost for supporter

The guardian/assistant is allowed to claim for compensation, which is determined by the court based on the labor involved and the assets of the protected person. Basically the protected person bears the costs.

11. How are supporters/legal representatives supervised and what is done to ensure that the rights, the will, and the preferences of the adult concerned are respected? (cf. Art. 12 section 4 UN CRPD)

(1) In the case of adult guardianship

(i) The court may, at any time, demand that the guardian/assistant submit a report on the affairs of guardianship or an inventory of the estate, and may investigate the affairs of guardianship or the situation of the property of the protected person.

(ii) As for property management, the Civil Code requires the guardian to act in the ward's best interest and acquire permission from the court when "purchasing or disposing of real property for the ward, renting out the ward's residence, or terminating the lease of the ward's residence.

(2) In the case of palliative care

If a terminal illness patient, who has become unconscious or failed to express clearly his/her will, has not signed the letter of intent for the choice of HPC or LST, his/her closed relative may replace by signing a consent. For those who do not have closed relatives, a medical advice for the best interest of the terminal illness patient would be issued instead after the examination of the hospice palliative care team. The consent or the medical advice shall not contradict the expressed desire of the terminal illness patient before being unconscious or unable to express his/her will.

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12. Who decides on deprivation of liberty and involuntary medical measures and what requirements does this decision underlie? Is there a distinction between self-endangerment and endangerment of others?

As shown in Table 1.

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