

Seoul Declaration

Full Title: “Korean part of the Yokohama Declaration as amended by the 5th World Congress in Seoul 2018”

We, Korean participants at the 5th World Congress on Adult Guardianship held in Seoul, Korea from October 23 to October 25, 2018 hereby

- acknowledge that UN human rights norms, especially UN Convention on the Rights of Persons with Disabilities shall also be immediately applied, without any restriction, to the persons with cognitive impairments,
- support Yokohama Declaration amended in Berlin, Germany in 2016, in the belief that it is based on the principles of UN Convention on the Rights of Persons with Disabilities
- pledge to make efforts to speed up the introduction and establishment of the supported decision-making system in Republic of Korea, and
- declare as follows:

<Current Tasks Regarding Supported Decision Making System>

- (1) We hereby reaffirm that any adults who lack the capacity to make decisions should enjoy the rights to self-determination in every domain of their lives without any discrimination, which is indispensable for realizing the dignity of human beings. In order to ensure the full enjoyment of the rights to self-determination even at the moment of incapacity to make decisions, legal schemes of future planning for incapacity, especially the lasting power of attorney, advanced medical directives, trust services for elderly and persons with disabilities should be immediately introduced for all adults as well as those persons with impaired decision-making ability.
- (2) Government should endeavor to legislate to abolish any discriminative disqualification

provisions which deprive or restrict the exercise of any right, social activities by reason of the commencement of full guardianship or psychosocial disabilities.

- (3) Supported decision-making system should be introduced to all persons with impaired decision-making ability, irrespective of whether they afford to use it or whether family members care for them. Regardless of whether they are named representatives, guardians, advocates or whatsoever, decision-making supporters of persons with cognitive impairments should exert their efforts to support them to make their own decisions rather than substitute their decision-makings even at the moment when persons with cognitive impairments are incapacitated.
- (4) Relevant legal and social systems should be re-organized, including an education for citizens in order to create a social environment where decision-making supporters of persons with cognitive impairments, regardless of whether they are named representatives, guardians, advocates or whatsoever, can discharge their duties in effective manners.

<Current Tasks Regarding Adult Guardianship System>

Whereas we highly appreciate the efforts that family courts, public guardians subsidized by Ministry of Health and Welfare and professional guardians in Korea have respectively developed their practices in the light of decision-making supports for more than 5 years after the enforcement of the new adult guardianship, we nevertheless urge comprehensive overhaul of the current guardianship system and related legal systems for the adult guardianship system to be in accordance with a supported decision making system. The Following points should be taken into consideration at the time of reforming current adult guardianship system:

- (1) In consideration of any possibility that the power and authority of legal representation granted to guardians may violate the right to self-determination of persons under guardianship, the guardianship should be commenced as a last resort, to the extent of necessity and in least restrictive ways so that the power and authority of guardians shall not violate the right of persons under guardianship to self-determination. Further, even when

the guardianship is commenced, responsibilities should be imposed on guardians to figure out the will and preferences of persons under guardianship and to legally validate such will and preferences unless the will and preferences of persons under guardianship pose significant danger to himself/herself or are the result of any undue influence. In that case, guardian's intervention should be justified for the well-being of persons under guardianship.

- (2) Current public guardianship services which have been provided only to persons with developmental disabilities, psychosocial disabilities or dementia who hardly afford guardianship services on their own, should also be provided to any adults in need, in significant personal troubles or in crisis, regardless of what kind of disabilities or diseases they suffer.
- (3) An independent support organization for guardianship system, whose role is supposed to be the support for guardians and improvement of social environment in which guardians smoothly carry out their supported decision-making duties, should be established. The support organization for guardianship system shall:
 - a) be made up of both experts on dementia, developmental disabilities, psychosocial disabilities and any other disabilities that may affect decision-making abilities, and lawyers who have expertise on supported decision-making system;
 - b) take full charge of commencement, support and supervision of public guardianship services and the management of guardians' qualification; and
 - c) be entitled to get independent legal standing before courts in all matters related to guardianship cases on its own initiative.
- (4) Korean government should encourage guardians to voluntarily and creatively support decision-making processes in practical level, support private sectors activities for the purpose thereof, and ensure that those private sectors can participate in the establishment of national policies on guardianship system.

We urge Korean government to launch a task force body at the pan-governmental level including Ministry of Justice and Ministry of Health and Welfare for legislation of our recommendations.