



The Protection of the Rights of Vulnerable Adults in Norway

-with some remarks regarding the other Scandinavian countries

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1. Introduction



Definition

- «In civil matters, vulnerable adults are persons older than 18 years who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests as defined under Article 1 of the [2000 Hague Convention on the international protection of adults](#) (the 2000 Adults Convention). The vulnerability of the people concerned may result from various factors, including mental or physical impairments affecting the ability to make decisions or to assess the implications (e.g. the financial implications) of those decisions.”

[Protection of vulnerable adults | European e-Justice Portal](#)



Main features of the legal framework in Norway



Ratified UNCRPD in 2013



UNCRPD was incorporated in the Human Rights Act in 2025.

The convention takes precedence over conflicting provisions of ordinary legislation, c.f. Human Rights Act § 3, c.f. § 2.



The presentation

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2. Legal Capacity

Key features

Every adult enjoys full legal capacity, unless that capacity has been restricted by a judicial or administrative decision

A distinction must be drawn between formal legal capacity and effective ability to exercise that capacity

A change from substituted to supported decision-making

Voluntary guardianship

Guardianship Act s. 20

- "Where necessary, a guardianship may be established for a person over the age of 18 who, due to mental disorder, including dementia, intellectual disability, substance abuse, severe gambling addiction, or severely impaired health, is incapable of managing his or her own affairs and protecting his or her interests."
- Requires written consent from the person, including the scope of the guardianship and who is appointed guardian.
- "If the person is unable to form, maintain or communicate their wishes, the best interpretation of the person's will and preferences shall form basis for assessing whether he or she wants a guardianship arrangement, as well as for determining the scope of the guardianship and who is to serve as guardian."
- "A guardianship may not be established if, based on an overall assessment, it is concluded that this would be contrary to the person's wishes."

<https://www.vergemal.no/english>

Contents and scope of the guardianship, s. 21

- “To the extent that the person retains legal capacity, cf. section 22, he or she may personally undertake legal acts and dispose of his or her assets. He or she may also revoke a disposition made by the guardian, provided that no third party has acquired rights on the basis of that disposition.”
- “may encompass both financial and personal matters”
- “A decision establishing guardianship shall expressly determine the scope of the guardianship, including whether it is to be limited in subject matter or duration.”

Contents and scope of the guardianship, s. 21

- “The guardianship shall not be made more extensive than is necessary.”

The protection of the rights and interests of the person under guardianship

Guardianship act s. 33

“The guardian shall, to the extent possible, consult the person under guardianship before making decisions or undertaking dispositions of major significance, and also whenever this otherwise appears appropriate.

If the person has not been deprived of legal capacity, the guardian shall provide support for the person's exercise of legal capacity in accordance with the person's wishes. If the person is unable to form, maintain, or communicate his or her wishes, the best interpretation of the person's will and preferences shall be applied when assessing what he or she wants. In making that interpretation, regard shall, where relevant, be had inter alia to what the person expresses, the person's values, beliefs, previously expressed wishes and views, the person's understanding, and the way in which persons who have had sustained and ongoing contact with the person interpret the person's will and preferences. The guardian may not undertake the act if, on an overall assessment, it must be concluded that the act is contrary to the person's wishes. The County Governor (Statsforvalteren), or the guardian with the County Governor's consent, may obtain a medical certificate in order to clarify whether the person is capable of understanding the implications of the act.

If the person under guardianship has been deprived of legal capacity, the guardian shall give weight to that person's views. The spouse or cohabiting partner shall be given an opportunity to express an opinion. If the person under guardianship disagrees with the guardian's decision, he or she may refer the matter to the County Governor.”

The protection of the rights and interests of the person under guardianship

- Several rules protects the rights of the person who is under legal guardianship:
 - consent from the County Governor for some types of dispositions
 - rules regarding conflict of interest
 - The County Governor supervises guardians

Guardianship involving deprivation of legal capacity

Guardianship Act s. 22

“A person who is in a condition referred to in section 20, first paragraph, may be deprived of his or her legal capacity in accordance with the rules set out in the second and third paragraphs.

A person may be deprived of legal capacity in financial matters if this is necessary to prevent his or her assets or other financial interests from being exposed to a risk of substantial diminution, or to prevent him or her from being improperly exploited financially. The deprivation of legal capacity may be limited to specific assets or specific legal transactions.

A person may be deprived of legal capacity in personal matters within specified areas if there is a significant risk that he or she will act in a manner that is likely to cause substantial harm to his or her interests.”

Less than 1 percent of all guardianships involve deprivation of legal capacity

Persons deprived of legal capacity can as a main rule do the following:

- ...enter into an employment contract without the guardian's consent (§ 10)
- ...dispose of funds that he or she has earned through his or her own work or business activity, or that the guardian or others have placed at his or her own disposal, as well as the ordinary income or returns (§ 12).
- If he or she maintains his or her own household, the person may undertake dispositions that are customary in the management of a household or in the upbringing of his or her own children, except for entering into a tenancy agreement for residential accommodation. The person is nevertheless not bound by the agreement if the other party understood, or ought to have understood, that the agreement was not necessary. (§ 13)

Guardianship Act s. 23

Deprivation of legal capacity requires a court order

C.f. Guardianship Act ss. 68-76

- Composition of the court: 1 judge, 2 lay judges, one or both of whom may be expert lay judges (s. 70).
- Proceedings follow general rules of civil procedure in the Dispute Act for indispositive cases, but with some special rules:
 - The court shall ensure that the cases is sufficiently elucidated (s. 71).
 - The court is entitled to assistance from the police (s. 71)
 - “Healthcare professionals, employees of the health and care services, the social services, and employees of the child protection services may provide necessary and relevant information to a court appointed expert and may give witness testimony notwithstanding any duty of confidentiality”
 - All costs covered by the state (s. 76)
 - The person has a right to legal counsel, and the court shall appoint counsel on its own motion where the respondent is incapable of understanding the subject matter of the case. (s. 76).
- If more than a year has passed since the judgment, the party under legal guardianship may bring a case requesting the guardianship to be revoked. (s. 76)

Norway compared to other Scandinavian countries (Kjærheim Fredwall 2024)

A more explicit protection of autonomy.

Explicitly stated in the Guardianship Act that guardianship is a support measure.

Specific statutory regulation on how to ensure that decisions and support is based on the person's rights, will and preferences. – No longer «in the best interest of...»

Effective legal safeguards.

The rights to reasonable accommodation is expressly provided for in the Act.

Deprivation of legal capacity is practiced most extensively in Sweden, to a lesser degree in Denmark and least extensively in Norway

3. Lasting power of attorney



Overview

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- Rules in Guardianship Act 2010 (in force 2013)
 - The Norwegian rules resemble Swedish and Danish rules.
 - Danish scheme has greater degree of public oversight

«Section 78. Definition

A future power of attorney is a power of attorney granted to one or more persons to represent the grantor after the grantor, owing to mental disorder, including dementia, or seriously impaired health, is **no longer capable of safeguarding his or her own interests** in the matters covered by the power of attorney.»





«A future power of attorney may be established by a person who has reached the age of 18 and is capable of understanding the meaning and implications of the power of attorney.»

(s. 79)

Key features

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- The principal chooses his/her appointed attorney (s. 79)
 - The principal decides the content of the power of attorney (s. 79)
 - May encompass financial and personal matters
 - Conflict of interest rules (s. 86)
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- Attorney allowed to give substantial gifts on behalf of the principal
 - No public supervision of appointed attorney
 - Power of attorney does not authorize the attorney-in-fact to initiate legal proceedings or to appear in court on behalf of the principal, c.f. Dispute Act s. 2-2
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4. Protection of the rights of vulnerable adults in contact with public administration



Accessibility and user-friendly communication

“Public authorities must communicate in clear and accurate/correct language that is tailored to their audience.”

Language Act s. 9

“A public administrative body shall be accessible and facilitate communication in a manner that enables any person to communicate with the body in a secure, efficient, and user-friendly way.”

Public Administration Act s. 10 (1)

A duty to provide guidance to parties and members of the public



Public Administration Act 1967 s. 11; Public Administration Act 2025 ss. 14-16



Guidance must be «adapted to the importance of the matter, the needs of the individual concerned, and the capacity of the administrative body.» (s. 14)



«When processing a matter, the administrative body shall, on its own initiative consider the parties' need for guidance». (s. 14)



Norway's Parliamentary Ombud for the Scrutiny of the Public Administration emphasizes that public authorities must adapt their guidance to the needs of the parties, even when dealing with heavy caseloads



5. Protection of the rights of vulnerable adults in legal proceedings

Procedural capacity

Dispute Act s. 2-2:

“(1) Procedural capacity is the capacity to act on behalf of oneself in a lawsuit, including the capacity to bring and defend an action.

(2) (...)

(3) (...) Persons who have been adjudged legally incapable pursuant to Section 22 of the Guardianship Act, shall only have procedural capacity if the case concerns assets, transactions or circumstances outside the area in which such persons can be adjudged legally incapable, unless otherwise provided by special statute.

(4) A person who, due to his/her mental state of health, is unable to safeguard his/her own interests during the case, does not have procedural capacity. If the person does not have a guardian, the court shall ensure that a guardian is appointed.

(5) The case may be rejected if it is beyond doubt that it cannot serve any sensible purpose and is brought by a person who abuses the court system by repeatedly bringing such cases.”

Party representative: Dispute Act s. 2-3 and 2-4.



Oral pleadings

Dispute Act s. 12-1(2):

»Parties who are not represented by counsel may submit the writ of summons, reply, notice of appeal, application for reinstatement and application for reopening of a default judgment orally by appearing in court in person. (...)The court shall put the procedural action into a pleading. If appearing in court in person is not practicable or would be unreasonably onerous or expensive, the court may permit the oral communication to take place by distance examination. (...)»



The court's duty to provide guidance

Dispute Act s. 11-5

“(1) The court shall give the parties such guidance on procedural rules and routines and other formalities as is necessary to enable them to safeguard their interests in the case. The court shall seek to prevent errors and shall provide such guidance as is necessary to enable errors to be rectified. Section 16-5 shall apply to the right to rectify errors.

(2) The court shall, in accordance with subsections (3) to (7), provide guidance that contributes to a correct ruling in the case based on the facts and the applicable rules.

(3) The court shall endeavour to clarify disputed issues and ensure that the parties' prayers for relief and their positions regarding factual and legal issues are clarified.

(4) The court may encourage a party to take a position on factual and legal issues that appear to be important to the case.

(5) The court may encourage a party to present evidence.

(6) During the proceedings, the court shall show particular consideration to the need for guidance of parties not represented by counsel.

(7) The court shall provide its guidance in a manner that is not liable to impair confidence in its impartiality. The court shall not advise the parties on the position they should take on disputed issues in the case or on procedural actions they should take.”

6. Legislation with the purpose of safeguarding the autonomy of vulnerable adults in the social- and healthcare sector





The patient's or service user's right to participation

Patient and User Rights Act s. 3-1:

“A patient or service user has the right to participate in the provision of health and care services. This includes, among other things, the right to participate in choosing among available and professionally appropriate service options, as well as methods of examination and treatment. The manner in which participation takes place shall be adapted to the individual's ability to provide and receive information. (...)”

To the greatest extent possible, the services provided shall be designed in cooperation with the patient or service user. Significant weight shall be given to the views of the patient or service user when designing services provided under sections 3-2, first paragraph, no. 6, 3-6, and 3-8 of the Health and Care Services Act.”

Decision-making capacity on health care related issues

Patient and User Rights Act s. 4-3:

“Decision-making capacity may be lost where it is **more likely than not** that the patient is **unable to understand** what the decision in question concerns and the consequences of that decision.

(...)Taking into account the patient's age, mental condition, maturity, and experience, health personnel shall, **as far as possible, facilitate the patient's ability to make decisions** regarding health care independently, cf. section 3-5.”



The assessment criterion is the patient's actual decision-making ability, not diagnoses.



The assessment must be made in relation to the decision in question.



The criterion is whether the patient is capable of understanding the nature of the decision in question and its consequences.

Thank you
for your
attention!

