

Health care proxy and guardianship in Cech Republic, Italy, The Netherlands, and Spain.

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In most nations across Europe, people with dementia can indicate their health care proxy, i.e., a person who is enabled to express a patient's wishes. Most of the time, the role is embodied by family members, who by blood, love or duty to protect one another were considered the most qualified.

As Alzheimer Europe points out, there are differences across the European countries.

In Italy, the "Amministrazione di sostegno" is called the guardian called to assist frail people who cannot carry after their affairs. Such a legal attorney can occur independently of the level of mental capacity; thus, the figure can be deployed even for limited periods. Aside from the operators carrying on public services, or people involved in private care, anyone, e.g., spouse, relatives or even non-family member, deemed capable of looking after the person can be appointed as guardian.

The procedure is relatively straightforward and can be initiated by any person willing to act as a guardian. During the procedure, the territorial health and welfare services are usually made aware of the process and interact with the guardian after the Court's legal decision. The decision is taken after the judge has heard the person in need of assistance.

The guardian must 1) be acquainted with and notify the Court about the circumstances and the needs occurring in the life of the beneficiary; 2) represent at best beneficiary's affairs according to the constraints expressed by the Court in the decree; 3) respect all the acts the person in need of assistance manage for which the judge did not grant power to the guardian. The guardian must report to the Court about the beneficiary's "personal and social life skills" yearly.

Any decisions taken by either the judge or by the guardian must respect the beneficiary's needs and wishes as much as possible.

The duration of guardianship is dependent on the nature of the relationship between the guardian and the beneficiary: in the case of spouse relation, the period has no limit; in the case of other relationships, the guardian cannot represent the beneficiary for longer than 10 years.

In the Czech Republic, choosing a guardian to save beneficiary needs and interests is similar to the one just described. As in Italy, the beneficiary can indicate his guardian. In the case he cannot do it, the Court must individuate a relative, or a person, capable of demonstrating a long-term interest in the beneficiary's well-being and capable of having a plan for the beneficiary's future. Even the municipality where the beneficiary resides can become his guardian. Differently, in Italy, the duty is assigned to lawyer fairly compensate for their effort. Again, differently than Italy, the maximum limit of the assignment is set to 3 years.

The guarding cannot change the beneficiary's residence, but as in Italy, he cannot place the beneficiary in an institution or nursing home unless required by the health condition. Moreover, he cannot interfere with beneficiary autonomy unless to preserve him from severe consequences. As in every EU country, the guardian cannot dispose of the beneficiary's property unless specific exceptions.

In Spain, the legislation prompts the protection of a beneficiary for two reasons: one deals with actual protection, the other entails protecting the person from future states on incapability. Moreover, legislation defines guardianship differently according to the functions he accomplishes on behalf of the beneficiary.

Guardianship is requested once the person is in conditions preventing him from looking after himself. The custody can be prompted by anyone aware of the limiting conditions. The Court sets up guardianship after having heard the closest relatives. According to the following relationship list, preferably the guardian is a spouse, a parent, anyone who the beneficiary has reported in the testament, any beneficiary's descendants. The Court can review the previous order in the light of the beneficiary's benefits. However, the Court can also divide the guardianship according to the different assets featuring the beneficiary's interest.

Guardianship consists of any act that the person cannot do alone. The guardian is obliged to provide food and care and encourage the person to reclaim social life.

At the same time, he must alert the Court about the general beneficiary's situation. He must also compile an inventory of the beneficiary's assets of interest and manage the deposit of all the benefits the beneficiary can dispose of.

Besides, the guardian can dispose of many economic and financial actions, but they are all subjected to Court's approval. Again, the beneficiary could be refunded for any loss or fault the guardianship can provoke.

Guardian can be removed or suspended from its office for reasons decreed by the Court. Anyone can signal the Court about that. In the event of the beneficiary's death, the guardian must prepare a documented relationship about the actions he fulfilled.

Differently from what just described, a curator supports the person when he received a sentence of incapability. He can assist the person just for the task decided by the Court: for those that are out of the list, the curator needs new authorisation.

A court-appointed defender can represent a beneficiary interest in those eventualities where a third office is necessary. Instead, a "de facto guardian" is appointed if the guardianship has not yet called: he can become the guardian if the Court agrees.

In the Netherlands, the three existing types of guardianship followed the criteria of proportionality of the person's capacity and are tailored upon individual circumstances.

Full guardianship occurs when the mental disturbance put an adult in a condition where he cannot address the proper attention towards his interests. The beneficiary himself can request the office, his/her spouse, blood relative or other descendant or ascendant until the fourth degree. It can also be requested by the nursing home where the person resides.

The office ceases as soon as the Court recognises that the causes requiring guardianship have ceased. Besides, the guardian can ask to dismiss the office for valid reasons; a guardian having no blood relation with the beneficiary stops his office after eight years if the Court can find a successor.

The Court determines the duty a guardian should accomplish at the beginning of the office. When guardianship occurs, the beneficiary can no longer enter a legal transaction unless the guardian authorises it. The guardian must involve the beneficiary in shared decision-making processes as much as possible.

Moreover, to protect beneficiary property and avoid especially the elderly from being financially exploited by their families, a protective trust can be set up that can be evoked by anyone, beneficiary included, who aims at limiting the intrusion of the guardian into the beneficiary interests.

Until the protective trust is not made, a temporary administrator can be appointed. The administrator must limit its actions to the beneficiary's financial affairs, as he checks that the beneficiary properties are invested appropriately. As for the guardian, the administrator can be the spouse, partner, or person's parents, children, brothers, or sisters. The Court can appoint as many administrators as they can look after beneficiary interest at best.

On the other hand, a mentor is a less intrusive office than guardianship. The person is called to care for others than mere financial issues.

Differently from the other reported countries, here, the guardian receives fixed and standard payments. On the other hand, administrators and mentor are not expected to be paid unless they are professional administrator.