

Denmark

Prof. Ingrid Lund-Andersen

1. In 2009, Denmark ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol. Denmark is not a contracting party to the Hague Convention on the International Protection of Adults. The Nordic Family Law Convention 1931 contains private law provisions on guardianship in chapter III.

The newest Danish Guardianship Act is from 2007 (Act no. 1015 of 20th August 2007). The new Act on Continuing Power of Attorney entered into force on 1 September 2017 (Act no. 618 of 8 June 2016).

2. Guardianship can be established for persons of the age of 18 or above. There are three situations in which the Family Law House can appoint a **permanent guardian** for an adult (termed “ward”):

- a. If a person is unable to look after his or her own affairs for reasons of mental illness, senility or retarded mental development of any other form of enfeebled health and if there is a need for it;
- b. if a person is unable to take care of his or her own financial affairs due to illness or seriously enfeebled health, and he or she applies for it;
- c. if a person requests it, and there is a need for help to administer his or her capital and assets or other financial affairs, and the person himself or herself is inexperienced or suffers from bad health, a guardian can be appointed to act together with the applicant (joint guardianship)

3. **Guardianship:** An adult who is put under guardianship, does not necessarily lose his or her legal capacity, but in some cases the legal capacity can be taken away.

Decisions made by the guardian must be adjusted to the needs of the person for whom the guardian is appointed and may not go further than strictly necessary. The guardian must see to it that any capital which the ward may possess is preserved and also gives a reasonable interest. Furthermore, the guardian must see to it that any income is used for the benefit of the ward. If a guardian neglects the duties, he or she is liable to pay compensation to the ward for any damages caused deliberately or by negligence. If the guardian abuses his or her position, then the guardianship will be annulled.

Where a ward has entered into a contract on his or her own without being able of doing so because of lack of legal capacity, the other party to the contract may rescind the contract, unless the guardian approves the contract.

In 1995, a new provision was introduced according to which guardianship can be **limited** in certain economic affairs, e.g. to certain assets, just as it can be limited to certain personal matters excluding economic matters.

Temporary guardianships can be appointed in different situations: if there is a conflict between the ward and the permanent guardian, e.g. if the guardian must enter into a contract with the ward, a special guardian must be appointed to look after the interests of the ward; if the permanent guardian is away for a period; if an adult who is otherwise functioning normally is temporarily prevented from looking after his or her affairs. The scope of the temporary guardianship is always limited to special tasks and the appointment is for a temporary period only.

Any kind of guardianship can be annulled, if the circumstances of the person has changed. The Department of Civil Affairs performs the chief supervision of guardianship and it is the

appeals body for the decisions of the public administrations in cases on appointment of a guardian, compensation for a guardian, and consumption of funds belonging to the person under guardianship.

Ex lege representation: It follows from the Act of Spouses' Economic Relations (Act no. 548 of 30 May 2017) that if a spouse during the continuance of cohabitation is prevented from discharging his or her duties due to absence or illness, the other spouse shall have the right to do and execute all such acts as cannot be postponed without inconvenience. This includes to dispose of and pledge or mortgage property. However, real property may in no case be disposed of or mortgaged without the consent of the relevant government office. If another person is authorized to make the disposition, a spouse does not have the right

Continuing Power of Attorney: This scheme is a simple alternative to ordinary power of attorney and guardianship and it allows citizens to designate one or more future representatives to handle financial and / or personal matters, when the citizen no longer has the ability to do so at any future date as a result of illness, impaired mental function or the like. The designation is done directly in a register via a digital self-service solution. Thereafter, the designation has to be signed in the presence of a notary. This ensures that the person is not under pressure or forced from others. The Family Law House puts the power of attorney into effect, and the Family Law House carries out an overall supervision of the relationship. If the Family Law House, through an inquiry or otherwise, becomes aware of matters that may be assumed to be in conflict with the interests of the mandator, the Family Law House may initiate an inspection case. If necessary, the Family Law House can put the power of attorney out of effect and appoint a guardian instead.

The Liability and Compensation Torts Act (consolidation Act no. 1070 of 24 August 2018): Any person who has lacked the ability to act rationally due to mental disease, retarded mental development, temporary mental disturbance or the like will be liable for actions causing damage or injury under the same rules as persons of sound mind. Such liability may, however, be reduced or even completely extinguished if it is found to be just, having regard to the person's state of mind, the nature of the action or any other circumstances. This includes in particular the ability of the person having caused the damage or injury to carry the loss compared with the ability of the person who has suffered the injury or whose property has been damaged and the prospects of having the loss covered by others.

Living wills and treatment wills: Until 1. January 2019 living wills were regulated in the Danish Health Act. A living will is a legal document that specifies the type of medical care that an individual does or does not want in the event he or she is unable to communicate his or her wishes. Caretakers have to respect the decisions of the individual. Living wills come into effect as soon as caretakers are unable to get in contact with the person, who made the will, but only if the living will is registered in the living will register. To create a living will, a person must be 18 years of age and cannot be under guardianship regarding personal matters. From 1 January 2019, a valid living will still be in force, but the scheme has been replaced by an opportunity to establish a treatment will that will have a greater impact on the final phase of life, including that treatment can be deselected. In contrast to a living will, the treatment will is legally binding. The registration is done digitally.

4. On January 1, 2019, the possibility of **partial withdrawal of a person's legal capacity** has been introduced as something new. This means that the person retains the right to vote in

parliamentary elections. In 2014, Denmark was criticized by the UN Disability Committee for depriving people under guardianship of their voting rights.

In addition, a requirement has been introduced that **tort compensation** - irrespective of the amount of money - awarded to a person under guardianship must be placed in a special department and thus cannot be managed by the guardian. The rule is to prevent abuse by a guardian.

5. The population of Denmark is 5.8 million.

Persons under guardianship with his or her legal capacity taken away: The number was in 2018: around 1.900.

Continuing powers of attorney: The number of new designations has risen dramatically since this scheme was introduced in 2017. The number was in 2017: 2.436 and in 2018: 18.702.