The Balance of Autonomy and Care in Taiwan’s Adult Guardianship System

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Outline

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The instruments to ensure the rights and interest of elderly people in Taiwan

- The adult guardianship system in the Taiwanese Civil Code
- The designation of guardian or assistant (article 1111-1)
- The performance of the guardian’s duty
- The restrictions on performing the guardian’s duty

- The Voluntary Guardianship Bill (continuing power of attorney)
- 6 articles will amended in the chapter of guardianship in the Taiwanese Civil Code
The adult guardianship system in the Taiwanese Civil Code

- The designation of guardian or assistant (article 1111-1)
  - When electing guardians or assistants, for the best interest of the ward or the person under assistance, the court shall first take the ward’s opinion into consideration

- The performance of the guardian’s duty
  - When enforcing guardianship relating the ward’s life, treatment, and financial management, the guardian shall respect the ward’s intent

- The restrictions on performing the guardian’s duty
  - Important property management from the guardian required the permission from the court
  - The guardian can’t take the ward’s property for investment or acquire the property from his ward
The Voluntary Guardianship Bill

- The Voluntary guardianship is a contract between the person in question and the mandatory in which the mandatory agrees to be the guardian and to make decisions on the matters concerning property management and personal care when the person in question becomes subject to the order of commencement of guardianship.
The instruments to ensure the rights and interest of elderly people in Taiwan

● The Senior Citizens Welfare Act 13, the People with Disabilities Rights Protection Act 81
  ● The elderly and people with disabilities who are in a necessary status of being ordered the commencement of guardianship or assistance, the municipal and county/city competent authorities shall assist the application to the courts

● The Senior Citizens Welfare Act 14, the People with Disabilities Rights Protection Act 83
  ● In order to protect their property, the municipal and city/county governments shall encourage the elderly to put them in trust. The Finance authority shall encourage trust and financial enterprise to provide property trust and commercial reverse mortgage services
The Senior Citizens Welfare Act and the People with Disabilities Rights Protection Act

- Two Problems from Appeal
  - The providence of property trust scheme can be a compulsory measure
    - When the ward’s property is managed by the professional institution, the ward can have the income and the checks and balances can be established between the person taking care of the ward and the professional institution
  - The boundary for governmental intervention
    - The court should not order the ward’s property to be put in trust, because it is encouraged rather than required by the law
    - The governmental intervention in affairs of guardianship should be restricted, to designate the authority or the social welfare care facility rather than the relatives of the ward as guardian should exceptional
Patient’s Right to Self-determination Act

- **Inform Duty from the medical care institution or the physician**
  - The principle is to inform the patient, even though the patient is a person with no or limited capacity to perform juristic act
  - Must to use the appropriate method to inform the patient and his/her interested party

- **An advance decision on medical care**
  - The intention to donate organ
  - The decision on receiving medical care or having a good deathbed
  - The designation of medical surrogate agent
The legal and policy recommendations for achieving the balance of autonomy and care

- The rules on adult guardianship in the Civil Code should be reconciled with other special laws
  - Conflict between the medical surrogate agent’s decisions and the voluntary guardian’s decisions

- The problem of governmental intervention in the adult guardianship system
  - The guardian is the commissioner of the social affairs bureau of city government, but the person who really performs the guardian’s duty is the social worker of the bureau

- The problem of insufficient monitoring
  - Guardian monitor system should be established
  - The instrument to monitor the follow-up of the exercise of guardianship should be improved
  - The rules requiring to obtain the approval of the court for the material matters concerning personal care should be established
Thanks for Your Listening