



Utilization of Voluntary Representation

Proposal for the revision to the voluntary
guardianship system in Japan

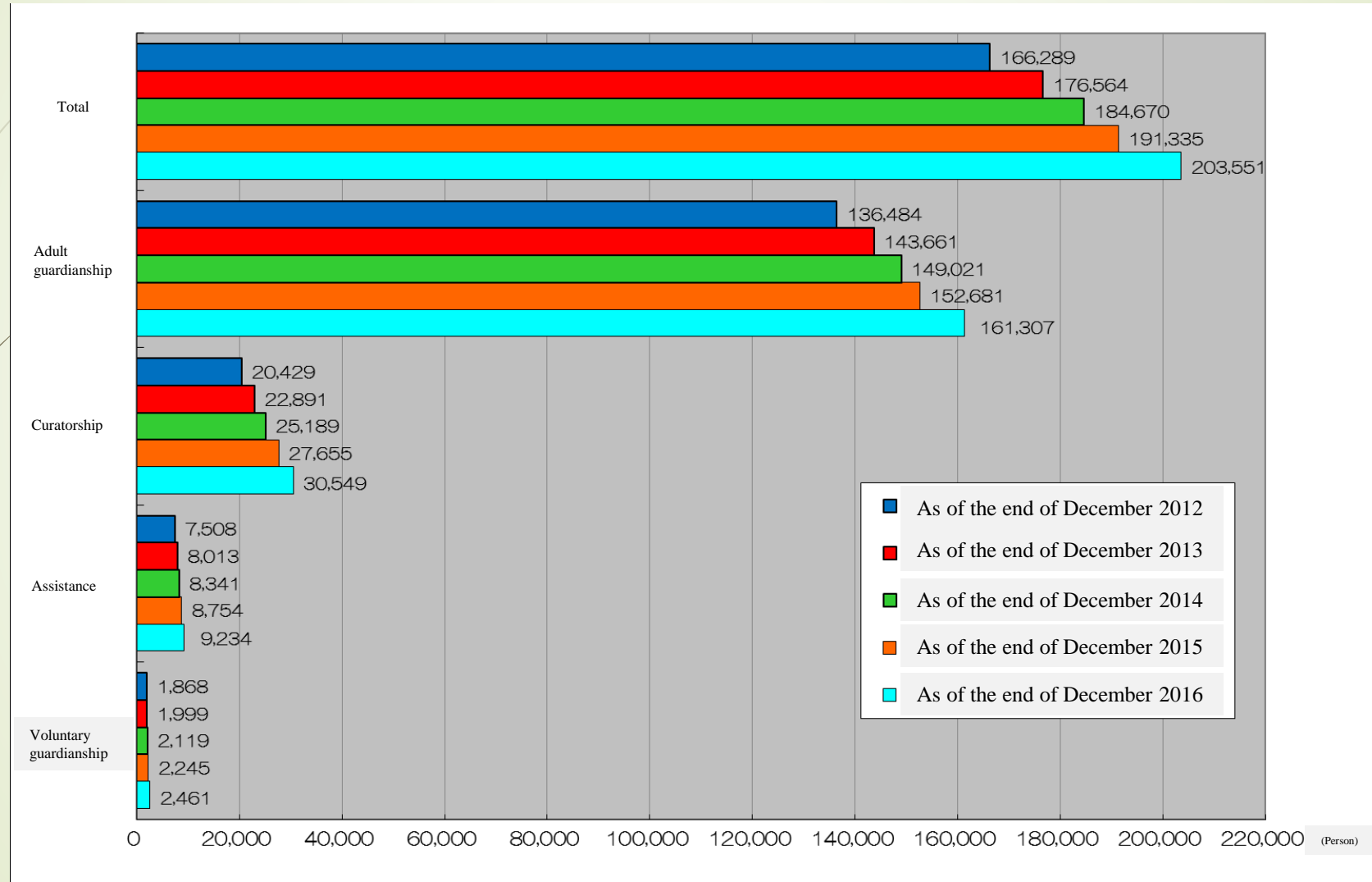
Takashi Oka

I. Current situation and issues of the voluntary guardianship system

Utilization status of the voluntary guardianship system (Supreme court)

- ▶ Number of people who use the adult guardianship system (Information 11: Sources will be mentioned later)
 - ▶ Number of people who use the adult guardianship system (i.e. adult guardianship, curatorship, assistance, voluntary guardianship) as of the end of December 2016: Total 203,551
 - ▶ Number of people who use adult guardianship: 161,307
 - ▶ Number of people who use curatorship: 30,549
 - ▶ Number of people who use assistance: 9,234
 - ▶ Number of people who use voluntary guardianship: 2,461

Information 11 (Supreme court)



(Note) “A user of the adult guardianship system means an adult ward, person under curatorship or person under assistance who has a ruling for commencement of guardianship, curatorship or assistance and actually receives support such as adult guardianship or a person who has a ruling of the appointment of a voluntary guardian supervisor and actually has an effective voluntary guardianship contract.”

Source

Supreme Court General Secretariat, Family Bureau “Overview of the Adult Guardianship Related Affairs” (January to December 2016. 2017)

Problems with the voluntary guardianship system

(1) Requirements for applying the voluntary guardianship system
= When a person lacks the ability to grasp the actual situations and express his/her opinions → Many people may realize the need to apply the guardianship only after they have lost the capacity (a gap between law and citizen's awareness).

(2) Indirect supervision of voluntary guardians by a family court
A voluntary guardian supervisor will directly supervise a voluntary guardian. The ward needs to pay the supervisor even if the supervisor has not been chosen by him/her.

(3) A voluntary guardian and a statutory guardian cannot co-exist.

Sometimes, while a voluntary guardian is active, a statutory guardian is needed due to limited authority of the voluntary guardian. → In this case, the whole contract with the voluntary guardian automatically ends.

(4) Issues with transitional-type voluntary guardianship contracts

Conclusion of a stewardship contract (delegation contract) for observation

→ Even if the requirements for applying voluntary guardianship are fulfilled, voluntary guardians do not hope voluntary guardianship contracts come into effect and the prior delegation contract is sustained.

→ Asset management without a supervisor continues. (Abuse the authority of the guardian.)

II. New Adult Representation Law in Austria

A new law was established in 2017. It will come into effect on July 1, 2018.

(1) Change of the name: From “care-taker” to “adult representative”

(2) Organization of 4 types

(a) “Statutory adult representative” and “Adult representative chosen by the court” which are not based on an agreement

(b) “Prior consideration representative” and “Voluntary adult representative” which are based on an agreement → Focus on “voluntary adult representative”

Introduction of the concept of “decision making capacity”

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What is “decision making capacity?”

It is the capacity to understand the meaning and effect of legal actions that should be taken and take the actions accordingly.

E.g. Decision making capacity for a patient who needs treatment for his/her lung. →It is the capacity for the patient to understand matters such as what the lung is, which part will be treated, and how the results would vary with or without the treatment.

In Japanese laws, it is similar to the “intent capacity.”

III. Possibility of Using Voluntary Representation in Japan



Implications from the new law in Austria (law making theory)

1. Level of intent capacity at the time of granting authority

To be able to understand the contents and meanings of the authority, even if he/she cannot act alone (without support from others).

←First of all, this is required.

2. Method of granting authority and putting it into effect

(1) In principle, a representative authority agreement is concluded in a notary deed.

A notary public needs to confirm the person's intent capacity concerning the content of the authority.

→ After the confirmation, the notary public will register on a guardian registry.

(2) In case of giving an authority that slightly exceeds the range of support that is necessary for a daily life

An organization such as the Adult Guardian Center will check the intent capacity of the person. It will also check the competence and authorization contents of a representative.

→ To issue a Certificate to Grant the Authority of Representation

Collaboration from a local financial institution is essential. (In many cases, the important assets of the person are money in his/her bank account, and it becomes necessary to transfer money from and into it.)

(3) An agreement for granting authority should be issued immediately.

It is important to let the person conclude an agreement with as much support as possible, instead of the representative to take acts of representative.

Acts of representative should be limited to the cases where the person cannot take an action due to physical disorder or a direct action due to drastic deterioration of his/her intent capacity despite the needs of concluding an agreement.

3. Contents of the granted authority

Concerning asset management, for items that are not included in normal asset management (e.g. transfer of real estate), an adult representative shall obtain the permission of a court. (Refer to the Japan Civil Code Article 859-3)

Physical custody or medical acts are not covered in this report.

4. Supervision of representatives by the court

As a measure to prevent a representative from abusing the authorities, he/she must submit asset status reports and activity reports.

→ Instead of a family court, the reports should be submitted to an Adult Guardian Center.

An Adult Guardian Center needs to have adequate manpower and stable financial resources to implement these activities.

(Reference) Adult Guardian Center

(1) Implementation and operation bodies of the Center include the Councils of Social Welfare, general incorporated associations, non-profit organizations, etc.

(2) Financial resources: Support and commission from local governments

Source

http://www.chibakenshakyō.com/19_kouken/kenkyu-iinkai2jih22/5/1-4.pdf#search=%27%E5%8D%83%E8%91%89%E7%9C%8C%E7%A4%BE%E4%BC%9A%E7%A6%8F%E7%A5%89%E5%8D%94%E8%AD%B0%E4%BC%9A+%E5%85%A8%E5%9B%BD%E3%81%A7%E7%8F%BE%E5%9C%A8%E9%81%8B%E5%96%B6%E3%81%97%E3%81%A6%E3%81%84%E3%82%8B%E5%BE%8C%E8%A6%8B%E3%82%BB%E3%83%B3%E3%82%BF%E3%83%BC%E7%AD%89%27

IV. Conclusion

In the end, the statutory guardianship system is necessary. (3 types are not needed. Only the guardianship category is needed.)

(1) In which case?

When a person does not have adequate intent capacity to grant the authority of representation or is unable to find an appropriate representative even if the person has intent capacity.

(2) Selection of a guardian should be under the authority of the family court and be upon petition of the person.

(3) The action capacity of the person shall not be limited.

However, if it is necessary for the person to avoid serious and significant risks, the scope of the guardian's acts shall require an agreement from the guardian. = Reservation of consent (Within this scope, the ward's action capacity shall be limited.)

(4) Let the ward act with a support from the guardian as much as possible.

(5) Determine the term of the guardian (renewal upon review is acceptable). After the completion of paperwork, the guardianship will end.

Thank you for your attention.