

Abstract

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The main topic of this thesis is the Swedish guardianship legislation. In the thesis the historical development of the Swedish legislation about guardians of incapable or vulnerable adults is described. The basic ideological standpoints underlying the Swedish guardianship legislation has continually been revised throughout the reformation of the legislation during the twentieth century. Unlike the situation when the Guardianship Act was implemented in the year 1924, the autonomy and integrity of the concerned adults is now a prime consideration when a certain measure is considered. However, this ideological reformation has mainly affected the part of the legislation that concerns the establishment of a certain measure. The rules concerning the guardian's performance of the assignment are still largely untouched. Thus, there is a discrepancy in contemporary Swedish guardianship law between these two parts of the legislation.

The thesis claims that the main principle for the establishment procedure is the principle of minimum necessary intervention. A measure should not be implemented unless the concerned adult suffers from a medical condition that affects the person's capacity to make decisions. Furthermore, a measure should not be implemented if the adult's need of assistance can be fulfilled with a lesser intruding arrangement such as a power of attorney. The principle of minimum necessary intervention can not be considered as an underlying principle in relation to the rules concerning the guardian's performance of the assignment. The guardian has an extensive authority to administrate the incapable or vulnerable adult's financial affairs autonomously. Furthermore, the guardian has no obligation to enable the adult to engage into legally effective transactions. Although the legislation obligates the guardian to keep informed about the adult's wishes and feelings, this rule only applies in matters of significant importance. The interest of active participation in decision-making is nevertheless an acknowledged interest. In a recommendation from the Council of Europe this interest is put forward as a part of the principle of maximum preservation of capacity. Hence it claims in this thesis that there is a need of yet another reformation of the Swedish guardianship legislation.

The thesis also points out that the traditional systematization of guardianship issues as a part of private law can be questioned. The different reformations of the guardianship legislation is mainly connected to the development of the social security system in Sweden and the arguments that has been stated in justification for the need of reformation is linked to social law rather than private law.

Furthermore, the thesis investigates the effect of a reduction of the principal's decision-making capacity in relation to an agent's authority to act on a power of attorney. It is claimed that Swedish contract law does not give a clear answer to the question, but that strong reasons suggest that such a reduction ought not to lead to a revocation of the agent's authority.

Keywords: Guardianship, incapable adults, vulnerable adults, contract law, power of attorney, advance directives, decision-making, active participation.

Torbjörn Odlöw, Juridiska institutionen, Handelshögskolan, Göteborgs universitet. Box 650, SE-405 30 GÖTEBORG. www.law.gu.se

Torbjörn Odlöw