



## **Reply to questionnaire for the country reports – Malta**

Joseph Cacciottolo, Member, Guardianship Board, Malta

### **1. What legislation is relevant for the protection of adults? (If applicable, differentiation between federal law or the law of individual federal states)**

In the Republic of Malta, legislation is uniform for the whole population and there are no provisions for federal law and state law. Legislation in Malta is in conformity with European Union law.

To date, Malta does not have specific adult protection legislation, however relevant legislation in this area includes;

- Mental Health Act
- Equal Opportunities Act
- Legislation to Halt Elder Abuse (Act No. XXXI of 2014)

### **2. What are the types of formal measures that exist to support people with disabilities in exercising their legal capacity? (Especially private mandates or legal representatives appointed by a court/authority)**

Three formal measures exist:

A. Interdiction and B. Incapacitation: both are the remit of the Law Courts.

C. Guardianship: this is the remit of the national Guardianship Board is appointed by the President of Malta on the advice of a specific parliamentary Committee.

### **3. Who decides on the appointment of a supporter/legal representative and what are the requirements for the respective measures?**

With regard to Interdiction and Incapacitation, the Law Court of Voluntary Jurisdiction decides the matter and appoints a curator. The requirements are; a formal application, to include statement of facts and the listing and hearing of appropriate witnesses (if any).

With regard to Guardianship, the Guardianship Board takes a decision and when deemed appropriate, appoints one or several guardians. The administrative requirements are; application on a prescribed form, which among other things includes provision for a structured medical report and listing of witness.

### **4. Who is involved in the procedure of determining the need for support in legal affairs and in what capacity?**

The application is received and checked by the Registrar of the Guardianship Board and is formally assessed by the Board. Subsequently, a formal hearing of the application is conducted to determine the need for support. The person to be subject to guardianship, person/s making the application, witness/es, the medical practitioner filling in the medical report, a social worker when this is deemed necessary, together with the Guardianship Board are involved in the process of determining whether the person needs support.

## 5. How significant is the legal capacity of the adult concerned and is there a constitutive ascertainment of (lack of/limited) legal capacity?

The portion of Malta legislation that addresses guardianship states that;

*'In determining whether or not a person is in need of a guardian, the Board must consider whether the needs of the person in respect of whom the application is made could be met by other means less restrictive of the person's freedom of will and action.'*

The ascertainment of lack of/limited legal capacity is dependent upon;

1. A comprehensive medical report drawn on a prescribed proforma by a specialist medical practitioner.
2. Assessment by other professionals (where necessary).
3. Hearing of the person to be subject to guardianship.

## 6. What are the responsibilities of a supporter /representative and what are the obligations and principles he/she must comply with?

The functions of guardians are;

- To be responsible to safeguard personal and proprietary well being of the person to whose guardianship they are appointed
- Act instead of the person in matters of personal or proprietary nature
- Do any other thing for, or on behalf of the person to whose guardianship they are appointed.

The obligations of Guardians are to;

- Act in the best interests of the person subject to guardianship.
- Provide support required in exercising legal capacity in so far as this is possible.
- Consult with the person subject to guardianship and take into account and respect the rights, will and preferences of the person, in so far as this is possible.
- Encourage the person to participate as far as possible in the life of the community.
- Encourage and assist the person subject to guardianship to become capable of caring for oneself and one's property and make responsible judgments in matters related to one's person and property.
- Protect from neglect, abuse or exploitation.
- Provide assistive means as required for the fulfillment of the above.

## 7. What role do family members play and what are the requirements imposed on them?

Family members are requested to attend the hearing of the application and to provide the Guardianship Board with the necessary information. Family members can file an application for Guardianship and can be guardians to a relative with impaired mental faculty. The requirements do not differ from those imposed on voluntary guardians or state guardians.

## 8. What role do volunteers play and what are the requirements imposed on them?

Volunteers can be guardians to people with impaired mental faculty. The requirements do not differ from those imposed on guardians who are family members or state guardians.

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## 9. Are there professional supporters/legal representatives and what requirements/ qualifications do they have to satisfy?

There are professional supporters/legal representatives and the portion of Malta legislation that addresses this matter states that;

*'The Minister responsible for Persons with Disability shall nominate a pool of guardians as he may deem fit, consisting of advocates, legal procurators, social workers and other experts to perform the duties of guardians.'*

## 10. Who bears the costs for procedures and the supporter/legal representative?

The Office of the Guardianship Board does not charge any fees for applications.

A guardian is not entitled to receive any fee, remuneration or other reward for acting as such unless the Board otherwise specifies in the Order.

## 11. How are supporters/ legal representatives supervised and what is done to ensure that the rights, the will, and the preferences of the adult concerned are respected? (cf. Art. 12 section 4 UN CRPD)

- Guardianship Orders are reviewed by the Guardianship Board on a yearly basis.
- Guardians who receive monies or other property due to the person subject to guardianship have to keep a separate account and record of such funds or other property.
- Transfer of or imposition of burden upon property belonging to a person subject to guardianship requires prior approval of the Board.
- Guardians are required to submit income and expenditure account in respect of the guardianship;
  - Every year
  - Upon revocation or other termination of guardianship
  - Upon termination of a temporary guardianship order
  - Within 13 weeks from the death of the person subject to guardianship, the guardian is to provide an account of administration of assets to the Board.

## 12. Who decides on deprivation of liberty and involuntary medical measures and what requirements does this decision underlie? Is there a distinction between self-endangerment and endangerment of others?

There are no specific provisions in the law on guardianship regarding deprivation of liberty and involuntary medical measures. The portion of Malta legislation that addresses this matter states that;

*'The means used for the purpose of guardianship shall be proportionate to the aims which they are intended to achieve.'*

*'Freedom of choice and action of the person subject to guardianship shall only be restricted when necessary and only to an extent that is proportionate to the aim pursued.'*

Guardians may request advice of the Board regarding any matter relating to the scope of the guardianship order or the exercise of any of the functions, obligations and duties of the guardian under the Guardianship Order.

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The Board may then;

- Approve/disapprove of any act proposed to be done by guardians
- Give such advice as it considers appropriate
- Make any order/decision as it considers necessary
- Amend or revoke the guardianship order

**13. Additional comments (elements of your country's system that may be of interest and are not covered above)**

As regards requests to the Law Court of Voluntary Jurisdiction to convert Interdiction or Incapacitation into a Guardianship order, the Court may subsequently refer the matter to the Guardianship Board for its determination.

1. If the grounds for the conversion requested are insufficient, the Board would notify the Court of Voluntary Jurisdiction and the interdiction/incapacitation remains in force
2. If grounds for the conversion to be made are deemed sufficient, the Board would issue a Guardianship order and notify the Court of Voluntary Jurisdiction; this would then revoke the interdiction or incapacitation.

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