



## Reply to questionnaire for the country reports – Sweden

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

The main source of law regarding protection of adults is chapters 11-16 and 19-20 in the Children and Parents Code (CPC), SFS (Swedish Code of Statutes) 1949:381. For Private International Law matters the applicable law is Act (1904:26 s. 1) on Certain International Legal Relations Concerning Marriage and Guardianship. There are also sporadic provisions in various administrative laws which concerns adult protection, such as the individual's right to aid and assistance and the social services' responsibility for vulnerable adults.

### 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)

There are two kinds of such measures available in Sweden: **god man** (*good or fair man*; mentor) and **förvaltare** (administrator). Plenary guardianship was abolished in Sweden in 1989.

**Mentorship** is the key measure in case the person concerned is in need of formalized decision-making assistance and the mentor is primarily (ideally) considered as an assistant – the person concerned must consent to the legal acts the mentor performs unless such consent is impossible to obtain due to the person's health condition or in case the act concerns day-to-day household transactions. The measure has no influence on the person's legal capacity *per se*. He/she retains the right to enter into legal acts. In relation to certain legal acts the mentor must obtain permission from the Chief Guardian (e.g. buying/selling real property, buying shares etc.). The person's right to vote and marry is also unaffected by the appointment of a mentor.

The major difference between a mentorship and an **administratorship** is that the person in the latter case is deprived of the right to represent his-/herself insofar the matter at hand is within the administrator's assignment. The appointment of an administrator is a last resort measure – an administrator shall not be appointed if the person's needs can be met with a less intrusive measure, including the appointment of a mentorship. The measure must also be tailored in accordance with the person's needs. The person's consent is not required in order to appoint an administrator and the administrator does not need the person's consent to perform legal acts on her/his behalf, however the administrator need to obtain the Chief Guardian's permission in relation to certain acts, same as in the case of a mentorship. The administrator has exclusive power to represent the person in all matters that are covered by the appointment and the person concerned cannot, without permission from the administrator, enter into legally binding acts albeit she/he as a principle rule maintains the right to dispose of salary in case she/he are employed. An administratorship does not affect the person's right to vote or to marry.

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

#### **Mentorship (godmanskap)**

In Sweden there are two court systems, general courts and administrative courts. A general district court will decide on protective measures for adults. A decision can be appealed to a Court of Appeal and then to the Supreme Court. In order for the Court of Appeal and the Supreme Court to hear the matter the appellant needs to obtain leave to appeal.

The requirements for establishing a mentorship is that i) the person as a consequence of “a disease, a mental disorder, a weakened state of health or a comparable condition” ii) needs help in managing his/her private and/or financial affairs, iii) that those needs cannot be satisfied by a less intrusive measure, e.g. with help from relatives, by appointing a power of attorney or likewise and iv) that the person give her/his consent to the establishment of the measure, unless her/his condition makes obtaining her/his opinion impossible. If the person has suggested someone to be appointed as mentor, the court must decide in accordance with the person’s wishes provided that the proposed mentor is suitable to the specific assignment and willing to accept the appointment.

The court must tailor the mentor’s appointment in accordance with the person’s needs (principle of least intrusive measure). The appointment may include financial matters as well as matters pertaining to legal rights and personal matters such as residence, medical care (not including decisions regarding specific treatments) etc.

The Chief Guardian is responsible for a decision to replace a mentor in an already established mentorship. The Chief Guardian’s decision in such a matter can be appealed to the general district court and (with leave) to a Court of Appeal. In these matters the Court’s of Appeal decision is final.

#### **Administratorship (förvaltarskap)**

Requirements for establishing an administratorship are the same as for a mentorship with the exception that the court must consider the person concerned unable to manage her/his own affairs. In accordance with the principle of minimum intervention an administratorship cannot be established if the person’s needs can be met with an appointment of a mentor or an even less intrusive measure, e.g. with help from relatives, by appointing a power of attorney or likewise. As mentioned above, administratorship is considered a last resort measure. The court does not need the person’s consent to establish the measure but like in a decision regarding mentorship, the court must appoint a suggested administrator in accordance with the person’s wishes provided that the she/he is suitable to the specific assignment and willing to accept the appointment.

The Chief Guardian is responsible for a decision to replace an administrator in an already established administratorship. The Chief Guardian’s decision in such a matter can be appealed to the general district court and (with leave) to a Court of Appeal. In these matters the Court’s of Appeal decision is final.

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

Eligible to apply for a measure is i) the person concerned if she/he has reached the age of 16, ii) a guardian (if the person concerned is a minor; the application is then made in order to make sure that she/he has a legal representative when the age of majority is reached), iii) the person's spouse or cohabitee, iv) the person's nearest relatives, and i) the Chief Guardian. The court may also hear the matter ex officio (of its own accord) if this is deemed necessary (e.g. if the person concerned is a party to a legal proceeding and the court considers that she/he is not fit to represent her-/himself)

The social services have an obligation to advise the Chief Guardian if it is believed that a person is in need of a mentor or an administrator, or if an administrator is no longer necessary.

In the proceedings the court has to obtain a medical certificate from a licensed physician, unless the matter concerns the establishment of a mentorship and provided that the person concerned agrees to the measure (although the court also in these cases usually are provided with a certificate). The physician need not be a specialist.

In a case of establishing an administratorship, the person concerned is entitled to cost-free legal representation.

Mentors and administrators can, but must not, be appointed among the person's relatives or friends. In some cases, a mentor/administrator with no previous relation to the person is considered better suited to monitor her/his interests.

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

An established mentorship does not affect the legal capacity of the person concerned in any respect at all.

The appointment of an administrator results in a restriction of the person's capacity to represent her-/himself in all matters covered by the appointment. The restriction of the person's legal capacity is not a separate order per se but a legal consequence of the court's decision to appoint an administrator. See above under 2. for remaining capacity for a person with an appointed administrator.

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

The Swedish legislation has a best interest-approach, although a mentor, with some important exceptions (see under 2.), need her/his principal's consent to perform a legally binding act on her/his behalf. A mentor/administrator (legal representative - LR) are obligated to safe-guard the principal's financial and/or personal interests to the extent of the appointment and the LR must always act in the principal's best interest.

The LR have an obligation to hear the principal, and her/his spouse or cohabitee, in important matters before making a decision on her/his behalf. However, the fact that the LR does not hear the principal's/spouse's/cohabitee's view on a specific matter before making a decision does not render the decision flawed in and of itself.

The LR must also comply with specific rules concerning a certain decision, such as obtaining the Chief Guardian's permission for some legal actions (see above under 2.)

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

As of yet, family members have no formal role or responsibility in relation to a vulnerable adult, other than the above stated possibility for relatives to apply for a certain measure and the LR:s obligation to hear a spouse/cohabitee prior to a decision in an important matter. Although not a formal role or demand to do so, near relatives have a right to take part of all documents held by the Chief Guardian, concerning their relatives mentor-/administratorship. This right is supposedly based on the notion that relatives, although no formal obligation to do so, have an interest in overseeing the LR:s management of their relative's affairs.

In a near future Sweden will most likely adopt new legislation, regulating enduring powers of attorney and ipso iure competence for relatives to represent a vulnerable adult. A government bill on the matter is expected in autumn 2016.

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

There is no explicit role for volunteers or volunteer organizations in the legislation. However, the appointment as a LR is considered to be an essentially voluntary, non-profit, assignment, hence the possible remuneration is modest.

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

An appointment as a mentor/administrator is a personal assignment and only natural persons may be appointed. Although the legislation is based on the presumption that the assignment is non-profit and voluntary, there are LR:s that takes on numerous assignments, in order to make it a profession.

Despite this, there are professional LR:s employed by a few municipalities and by one private company. It has been suggested that such arrangements are not in accordance with the law.

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

All costs for the procedures is borne by the state, including the costs for the legal counsellor appointed in a case concerning the establishment of an administratorship (see above under 4.)

The LR is entitled to have some, albeit modest, remuneration. The Chief Guardian decides the size of the remuneration due to the severity of the assignment, time spent, expenses etc. An average fee for an ordinary assignment is around 10 000 SEK (appr. 1 000 €). This cost falls upon the principal unless her/his yearly income is below 2,65 times the price base amount for the specific year (2,65 x pbb equals to 117 395 SEK for 2016, appr. 12 500 €) or if she/he has assets over 2 times the price base amount.<sup>1</sup> In case the person's income or assets is below the threshold, the cost will be borne by the municipality.

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<sup>1</sup> The price base amount follows the price trend in Sweden year after year and is set by the government. The amount is used for calculating different kinds of benefits. The sum of the benefit changes automatically when the price base amount is changed.

**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)**

The Chief Guardian oversees mentorships as well as administratorships. It is the authority's responsibility to monitor the actions of the LR and whether the extent of the measure is suitable for the person's actual needs, and the Chief Guardian is required to apply to the court for an adjustment of the measure, or revocation of it, should the needs change.

See above under 3. regarding the courts obligation to respect the person's wishes with regards to whom should be appointed when establishing a measure.

See above under 2. regarding a mentor's obligation to obtain the principal's consent, as well as the exceptions to this rule, in order to perform a legally binding act, and under 6. regarding the LR's obligation to hear the principal (and her/his spouse or cohabitee) in matters of importance before making a decision on behalf of her/him.

**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?**

"In order to be taken into compulsory care, it is required that an accredited physician conducts a special examination and then issues a physician's certificate (a care certificate). After the admission, the chief physician at the psychiatric department must make a decision on compulsory care within 24 hours. If the chief physician considers that the treatment should last for more than four weeks, the chief physician must apply to the administrative court for continuation of compulsory care. Compulsory mental care can, following examination by the administrative court, continue for a maximum of four months calculated from the date on which the commitment decision was reached. Following an application by a senior consultant, the administrative court can grant an extension of the compulsory mental care for a maximum of six months on each occasion."<sup>2</sup>

The Compulsory Mental Care Act (SFS 1991:1128) distinguishes between self-endangerment, which is considered in relation to the assessment of the patient's care need per se (although not explicitly stated in the specific provision that regulates the requirements for the decision), and endangerment of others. The latter can be weighed in in the assessment of the care need if the person concerned poses a threat to the physical or mental health or personal safety of others (i.e. not financial or property damage risks).

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<sup>2</sup> <http://www.forvaltningsrattenistockholm.domstol.se/Funktioner/English/Matters/Compulsory-care/Compulsory-mental-care/>