



University of Antwerp

Personal Rights and
Property Rights

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The protection of the adult and respect for their autonomy

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Plan

- **Methodology**
- **Setting the scene**

- **Voluntary measures**
- **State-ordered measures**
- **Measures by operation of the law**

Methodology 1/2

- **4 General Reporters**

Masha Antokolskaia, Ursula Basset, Wendy Schrama, Frederik Swennen

- **19 Country Reports**

Methodology 2/2

- **Terminology and definitions**

- **Vulnerable adults**

- Adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests*

- **Adult protection measures**

- All measures and instruments used for the purpose of adult support, legal representation or protection against abuse

Setting the scene 1/4

- **International and regional framework**
 - International framework
 - Regional framework

Setting the scene 2/4

■ Art 12 CRPD

1. (...) PD have the right to recognition everywhere as persons before the law.
2. (...) PD enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall (...) provide access by PD to the support they may require in exercising their legal capacity.
4. (...) all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse (...). (M)asures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review (...). The safeguards shall be proportional (...).
5. (...) States Parties shall take all (...) measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

Setting the scene 3/4

- National legal frameworks
- Paradigm shift ?
 - Content and form
 - Protection → Autonomy
 - Best interests → Own will and preferences
 - State-ordered or by operation of the law → Voluntary
 - But: theory versus practice

Setting the scene 4/4

- **Paradigm shift (continued)?**
 - CRPD: substituted decision-making → supported decision-making
 - Holistic
- **State, family, adult, civil society**
- **Statistics**

Voluntary Measures 1/2

- **Voluntary measures**

Any measure initiated by the adult without external compulsion, by operation of the law or a decision by any competent state authority

- **Continuing power of attorney**

A mandate given with the purpose that it shall remain in force, or enter into force, in the event of the granter's incapacity

Voluntary Measures 2/2

- **Who?**

- CPA
- Support person
- Appointment of a guardian

- **How?**

- Principles to be respected by the attorney
- Advance directives

State-Ordered Measures 1/4

- **State-ordered measures**

Adult protection measures, ordered by a competent state (judicial or administrative) authority, at the request of the adult or others

State-Ordered Measures 2/4

- **Grounds**
- **Measures**
 - Guardianship
 - Legal capacity
- **Procedure**
 - Competent authority
 - Initiative
 - Expertise
 - Participation rights

State-Ordered Measures 3/4

- **Who can be a guardian**
- **Competences of the guardian**
 - General
 - Financial matters
 - Personal matters
 - Strictly personal matters

State-Ordered Measures 4/4

- **Supervision**
 - Ex ante
 - Ongoing
 - Ex post

Measures by Operation of the Law 1/3

- **Ex-lege representation**

An adult protection measure providing legal authority to natural or legal persons to act ex-lege (by operation of law) on behalf of the adult or to support the adult, requiring neither a decision by a competent authority nor a voluntary measure by the adult.

Measures by Operation of the Law 2/3

- **General provisions**
 - General
 - Grounds
 - Procedure
 - Potential representatives
 - Effect
 - Supervision
 - Termination

Measures by Operation of the Law 3/3

- **Medical matters**
- **Married vulnerable adults**

