



GUARDIANSHIP RISKS: HOW TO PREVENT ABUSE

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United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ)

Side Event 2025

Organised by the NGO Committee on Ageing Vienna

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1. About the NGO Committee on Ageing at the United Nations Vienna

was constituted in 1981 as a Substantive Committee, being part of the Conference of NGOs in Consultative Relationship with the United Nations (CoNGO). The members of the Committee are international Non-Governmental Organisations (iNGOs) interested in multifaceted issues related to ageing and older persons. The Committee collaborates with similar NGO committees at the UN in New York and Geneva.

Topics discussed by the Committee in monthly meetings at the UN in the ‘Decade of Healthy Ageing’ (2020-2030) include Human Rights issues, inter-generational perspectives, the impact of digitalization, lifelong learning, as well as cultural aspects of ageing. In order to bring these topics into the open, the NGO Committee on Ageing holds regular side events at the annual sessions of the UN “Commission on Narcotic Drugs (CND)” and the UN “Commission on Crime Prevention and Criminal Justice (CCPCJ)“. A special topical conference is organized to celebrate the UN’s “International Day of Older Persons (IDOP)” on October 1st every year.

If you are interested in further information concerning the Committee, please consult our website:

www.ngoageingvie.org

2. The Programme of the Side Event

- **OPENING REMARKS - Dirk Jarré**, Chair of the NGO Committee on Ageing, UN Vienna, President of the European Federation of Older Persons (EURAG)
- « **The new Austrian Adult Protection Law: Safeguarding Rights or Risks of Misuse?** » **Renate Winter**, Austrian judge to the Special Court for Sierra Leone and expert on family law (Austria)
- « **Guardianship Challenges: Protecting the Older persons with mental Incapacitation from Exploitation and Neglect** » **Stella Kammiti**- Advocate- legal Advisor- Nicosia (Cyprus)
- « **Right to Decide in the Medical Ill: moving beyond Guardianship and Surrogate Decision-making** - **Fiammetta Cosci**- Associated Professor Clinical Psychology University Florence (Italy)
- **A short comment on « Missing financial monitoring » Gabriele Strasky-Pölzl** – legal guardian and member of the NGO Committee on Ageing Vienna
- **Closing by Rita Assogna** – 1st Vice-Chair of the NGO Committee on Ageing, UN Vienna, Representative of International Federation of Business and Professional Women (IFBPW)

3. Abstract for the Programme of the Side Event

Guardianship for older persons is a legal mechanism designed to protect individuals who are unable to manage their personal or financial affairs. It ensures that vulnerable older persons receive the necessary support and protection, particularly in managing finances and healthcare decisions. However, even the best guardianship system is not without risks. In many cases, legislative provisions fail to adequately safeguard older persons' basic rights. Unethical practices by courts, medical doctors, and guardians can lead to

misrepresentation of older persons, causing them to lose control over their assets, personal decisions, and autonomy.

This event focuses on how to protect older persons from the risks and potential abuses associated with guardianship systems and exploring strategies how to prevent abuse.

4. Introduction by Rita Assogna, Vice Chair of the NGO Committee on Ageing, UN Vienna

On March 23, 2025, the NGO Committee on Ageing, UN Vienna, successfully convened a well-attended side event during the annual session of the Commission on Crime Prevention and Criminal Justice (CCPCJ). The event, titled *"Guardianship Risks: How to Prevent Abuse"*, featured a panel of distinguished international scientists and experts. It attracted a highly interested audience, fostering an enriching and forward-looking discussion.

The NGO Committee on Ageing, UN Vienna, was pleased to host international speakers who reported on the latest developments in guardianship law. They discussed the challenge of protecting individuals with mental disabilities from potential abuse and also the difficulties of enabling people with dementia - whose numbers are significantly increasing - to make their own decisions, at least in part. Testimony was also given on the direct experience of a guardian to help identify the real risks faced when people who cannot make decisions for themselves are placed under a guardian's care.

Renate Winter, a former international judge at the Special Court of Sierra Leone and the Supreme Court of Kosovo, discussed how persons with mental health problems or other similar impairments, who can lose their legal capacity if they are unable to manage their own affairs or special matters without endangering themselves. These individuals need support and representation. This kind of help and representation, guardianship, is regulated by law, but nevertheless there were and still are complaints about inadequacies leading to misuse and to unjustified restrictions of the personal freedom. This made it necessary to make

significant changes to the laws. The New Austrian Adult Protection Law was introduced in 2018. How this works and if there are still possibilities for misuse was part of the presentation.

Stella Kammitisi, a lawyer and member of the Cyprus Bar Association, provided the following elaborations: “Caring for an elderly loved one with mental incapacitation is a profound responsibility that requires compassion, patience, and a thorough understanding of their specific needs, particularly in terms of financial support and protection from exploitation. However, in many jurisdictions, existing laws fail to provide sufficient safeguards or involve legal procedures for guardian appointment that are complex, costly, and time-consuming. These challenges are even more pronounced in regions where women have limited or no legal rights. Furthermore, an appointed guardian may not always prioritize the best interests of the incapacitated individual, resulting in delays in accessing essential medical care and financial resources. This legal gap can leave vulnerable individuals without adequate support for extended periods. Additionally, the appointed representative may not align with the incapacitated person’s own preferences or trusted choices if they had the capacity to decide. Implementing more effective legal mechanisms would create a reliable framework that ensures timely and efficient protection against abuse, financial exploitation, and neglect.”

Fiammetta Cosci is an award-winning Associate Professor of Clinical Psychology at the University of Florence, Italy, among others. The focus of her speech was people with dementia. Persons with dementia often prefer to participate in decisions about their health, health care, and their overall life but may be prevented from doing so because healthcare decision-making law facilitates use of advance directives or surrogate decision makers. However, federal and state disability law provide alternative decision-making models that do not prevent people with mild to moderate dementia from making their own decisions at the time the decision needs to be made. This is a matter related to the promotion of autonomy and wellbeing of people with dementia, and cognitive impairment in general. Persons with dementia should be accommodated and supported so they can make their own healthcare and life decisions according to their sources. In addition, family caregivers should be acknowledged and supported in their pivotal roles of care. In brief, according to the biopsychosocial approach, dementia needs to be framed also in terms of disability and

human rights. Through the lens of disability and human rights, we reflect upon the complexity of dementia and move from the individual to the psychosocial sphere.

Gabriele Strasky-Pölzl, is a legal guardian in Austria. As an expert she talked from the field. In her reflections she shares key lessons from over a decade of experience.

Her top three takeaways are:

1. Holistic Care: Guardianship extends beyond financial stewardship to prioritize the individual's health and happiness, not just their wealth.
 2. Vigilant Oversight: Constant vigilance is needed to prevent subtle fraud and neglect, such as the person being unfairly charged for others' expenses or denied simple pleasures.
 3. Transparent Reporting: She advocates for mandatory reporting that includes both health and "fun-related" expenses. This provides a true picture of how funds are used to enhance the individual's quality of life.
- Strasky-Pölzl emphasizes that open dialogue is crucial for reforming guardianship best practices and legislation.

5. “Austrian Adult Protection Law Safeguarding Rights or Risks of Misuse?”

RENATE WINTER is a judge on the international stage and advisor to governments (Austria)

*(The following article is based on an intervention at a CCPCI side event, organized by IFBPW in the name of the NGO Committee on Ageing Vienna, May 23, 2025. The Information paper (English) of the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice “The new Adult Protection Law” was used to explain the content of this law).

Introduction

The Austrian Adult Protection law, which entered into force on July 1, 2018, promises to modernise the country's guardianship system for adults with diminished decision-making capacity. (This analysis explores the extent to which the law can fulfil its promise.)

A law is as good as the people using it and that is challenging for guardians, both coming from a family background (a family can be a blessing or a threat) or a guardian association (where professionals might be more interested in their own financial outcome than in the one of their clients). Very rich people affected by guardianship run the risk that their wealth invites guardians to misuse; at the other hand, very poor people risk that guardians are not being active in defending their rights or even looking after them. Human rights in practice are not a priority nowadays!

The new law nevertheless works in this direction, centring on autonomy and self-determination as well as guidance to decision making instead on making decisions for the individuals concerned.

During the entire legislative process provisions were revised, involving representatives from all groups concerned such as the Austrian Ombudsman Board, courts, lawyers, notaries, organisations working with people with disabilities etc. It was a working process accompanied by a pilot project called “Support for Self-determination “. It was important for the project to work with guardian associations especially to find alternatives to guardianship in a pre-appointment clearing process. The results were documented in a research paper by the Austrian Institute for the Sociology of Law and Criminology.

The old law was certainly not a bad one but over the years quite some problems have shown up. So was guardianship meant originally as a measure of last resort, a fact that was often not respected, as guardianship was used quickly for mostly not so nice reasons (getting rid of problems or difficult persons, getting access to wealth etc). On top of it, the use of appointments for specific reasons only (management of property, health issues, signing of a contract) was second to the appointment to look after all of a ward’s affairs.

Other possible existing alternatives such as enduring power of attorney or power of representation by family members were rather underused.

The problems with which the system had to deal specifically was the huge increase of guardians to be appointed for incapacitated persons at the one hand and the fact that there have been (and still are) not enough suitable guardians, especially in urban areas, where relatives are not existing or are not willing to act for their disabled family members. Furthermore, the alternatives mentioned above are mostly not known and seem not so attractive to the users.

As Austria has ratified the “UN Convention on the Rights of Persons with Disabilities” already in 2008, something had to happen to better support these people.

1. The key principles of the new law

The main aim of this law is to maintain the autonomy of a prospective ward as long as possible and to assist them in decision making themselves. The main characteristics are:

- Transparency and a wider range of representation models to choose from: solutions tailored to the individual needs. There is a choice of four pillars with different levels for every situation. It is important that whatever type is chosen, it must be recorded in a central register.
- Representation schemes apply only to the extent necessary and for as long as necessary. The possibility to object grants the examination of the necessity of the chosen scheme as well as its temporary limitation.
- Self-determination even after representation is in place. The legal capacity will not be restricted in general and a statutory duty to establish the individual’s wishes and preferences will ensure that they are valued.
- Limited power of courts. For the first three pillars the court can only be involved in cases of particularly sensitive matters, such as a permanent change of residence, problems regarding medical treatment or asset management.
- A focus on the individual, not on the impairment. Medical criteria will furthermore not be assessed to decide on the decision-making capacity. A clearing process by an adult protection association, giving a full picture of the circumstances of a ward will be used.
- Modern terminology. According to international terminology, a guardian will be referred to as “relevant persons representative”, a mental disability will be cited as an impairment to a persons decision-making capacity. The term “disabled person” will no longer be used.

2. The four pillars of representation

The four pillars are following a hierarchical order to ensure greater self-determination by the person concerned. The powers differ according to the evaluated grade of assistance necessary:

First pillar: Enduring power of attorney. A chosen lawyer represents the client according to the stipulated issues for an indefinite duration. The law doesn't limit the scope of the powers but this power of attorney can only take effect, if the donor (the ward) is no longer capable to make his/her own decisions and if the document has been entered in the Central Austrian Representation Register. The Court is not involved, unless there are differences between attorney and client concerning medical treatment

Second pillar: Elective representation. The person concerned chose his/her representative (friend, family) and decides about the amount of representation for indefinite duration. The person can do so even if he/she has no longer full legal capacity, but still understands the consequences of appointing the representative in question. The document has to enter as well in the Central Austrian Representation Register and is supervised by the courts.

Third pillar: Statutory representation. The person concerned is chosen among family members and has more powers for representation. The representation is supervised by the courts for a duration of 3 years. The person concerned can object. Again, the document must be entered in the above mentioned Central Austrian Representation Register.

Fourth pillar: Court appointed representative. The Court decides about person and scope of representation and the legal capacity is retained. The representation ends when the specific matter is regulated or after 3 years. This scheme, as mentioned already, is meant to be a last resort measure.

3. Further aspects to be mentioned

a. Legal capacity and requirement for approval: There is no more an automatic loss of legal capacity. Only in pillar 4, when there is imminent danger for the person involved, the court will order a "requirement for approval", which means that certain legal acts done by the person involved will not take effect without the approval of the representative.

b. Personal and family matters: In matters of medical treatment or a change of home or similar important ones, a representative can intervene only if the person concerned is not capable to make a decision, because to grant the autonomy of these persons is primordial. Personal decisions such as a will, a marriage, an

advanced healthcare directive, adoption of a child, acknowledging paternity e.g. can be made only by the person directly concerned.

c. Expansion of the adult protection associations and mandatory clearing: These associations will have some extended power such as to assist in setting up the enduring powers of attorneys and provision of representatives. The “clearing process”, done by local associations (with better knowledge of individual circumstances) will be mandatory. The court refer the cases to the association, the association has to establish necessary information for the court to decide about the necessity of a representation.

d. Representation by legal professionals (lawyers, notaries): Such legal professionals can represent 15 persons at a maximum. As court appointed representatives, they can represent only 5 persons, if there are legal matters to be attended. If they wish to have more appointments they have to register in the “list of specifically qualified lawyers and notaries”.

e. Responsibility for care-medical treatment: A representative of a ward with a mental illness is not required to take full responsibility for social care or assistance but has at the other hand to seek medical and social care. Concerning medical treatment, it is essential that only a person involved can give consent as long as he or she is capable of making a decision. A so called “circle of support” (family members or trusted persons) will be called to assist in decision making, so that the person can decide for him/herself. If this is not working any more, treatment can be given only with the consent of the representative, unless there is immediate danger. But in all cases the person must be informed about the proposed treatment and its consequences and asked for their opinion by the acting physician. If patient and representative disagree, the court has to decide.

f. Procedural requirements: on top of the procedural requirements of the old law, now the “clearing process” has been developed and is mandatory as said above. Close family members of the individual will be involved in proceedings concerning the appointment of a representative.

As a conclusion it can be stated that the new law provides extensively assistance to persons with mental problems to stick to their autonomy and their self-reliability as long as ever possible. Tailor made choices are provided, they just have to be used. Guaranties against misuse of any law cannot be established, also not for

this one, which deals with really disadvantaged individuals, where one would think that humanity alone would protect them which is not always the case.

6. “Protecting the Older Persons with Mental Incapacitation from Exploitation and Neglect“

STELLA KAMMITSI is a qualified lawyer and member of the Cyprus Bar Association, board member of various companies and associations and lecturer at universities (Cyprus)

Introduction

The presentation examines the complex and evolving issues surrounding guardianship for older individuals experiencing mental incapacity. It highlights how outdated legal structures, risks of abuse, and entrenched social stigmas contribute to a system that often leaves vulnerable adults exposed and unprotected. Central to the presentation is the call for legislative reform that prioritizes the dignity and rights of individuals who are often unable to advocate for themselves. The presentation underscores that protecting the mentally incapacitated is not just a legal duty but a fundamental human rights issue.

Legal Frameworks and Delays

A primary concern raised is the inadequacy of existing legal frameworks, particularly the delays involved in guardianship proceedings. Legal processes can be excessively slow, leaving incapacitated individuals without access to necessary medical care or financial support during a critical period. These delays not only reduce the quality of life for the individuals involved but can also result in irreversible harm.

Furthermore, guardians appointed by courts are not always those chosen or trusted by the incapacitated person. This undermines personal autonomy and can place individuals in the care of someone who may not act in their best interests. In many jurisdictions, laws governing guardianship remain outdated, failing to align with contemporary understandings of mental health, autonomy, and human rights. These structural deficiencies exacerbate the vulnerability of those who rely on legal protection the most.

Defining Mental Incapacity

Another central issue is the lack of a consistent and thoughtful definition of "mental incapacity" across legal systems. Many jurisdictions rely on broad or simplistic definitions, often treating a psychiatric diagnosis as a definitive indicator of incapacity. This blanket approach ignores the reality that mental capacity can vary over time and across different decision-making contexts.

As a result, individuals may be unjustly deemed incapable of managing their affairs, even when they can still make informed decisions in certain areas of their lives. Such misclassification strips them of their autonomy and rights, sometimes permanently. A more nuanced and contextual understanding of mental capacity is essential to avoid unnecessary and harmful guardianship orders.

Problematic Guardian Appointments

The presentation also draws attention to the troubling trend of guardians acting against the interests of those they are appointed to protect. These cases may stem from incompetence, selfish motives, or even deliberate exploitation. A major contributing factor is the lack of transparency and rigorous checks in the guardian appointment process, which leaves room for manipulation and abuse.

It is pointed to incidents where family members or caregivers collude with medical professionals to produce fraudulent diagnoses of incapacity. These forged evaluations are then used to obtain legal control over the individual's finances, health care, and life decisions. This type of manipulation transforms guardianship from a protective measure into a tool of exploitation—one that is legally sanctioned and difficult to reverse.

A High-Profile Example: Britney Spears

The presentation references the widely publicized conservatorship of pop star Britney Spears as a striking example of guardianship misuse. Spears was placed under a conservatorship in 2008 due to allegations of mental instability. Over the next 13 years, she was subjected to a series of alleged abuses, including forced medical treatments, control over her reproductive choices, financial exploitation, restrictions on her legal rights, and invasive privacy violations.

Her case sparked international outrage and prompted a global reassessment of how guardianship laws can be misused. It illustrated how easily legal systems can be turned into mechanisms of control, even in highly

visible and resourced contexts—raising even deeper concerns about the treatment of less public or affluent individuals facing similar conditions.

Exploitation and Inadequate Oversight

Even in cases where guardianship begins with good intentions, the absence of effective oversight can lead to serious abuse or neglect. Once a guardian is appointed, many legal systems lack mandatory review processes or transparent reporting requirements to ensure continued accountability.

This deficiency creates a significant risk that well-meaning arrangements could devolve into harmful ones without detection. Removing an abusive or negligent guardian is often legally complex and financially burdensome, making it nearly impossible for incapacitated individuals— or their allies—to challenge wrongful guardianship. This legal vacuum leaves many people trapped in harmful situations with little recourse.

Cultural and Social Stigmas

Cultural perceptions of mental illness and aging add another layer of difficulty. In many societies, these topics are steeped in shame and stigma, viewed as signs of weakness or familial failure. Such beliefs often lead individuals or their families to deny symptoms, avoid seeking medical or legal help, and isolate themselves socially.

This silence, driven by fear of social rejection or loss of independence, creates fertile ground for exploitation. In jurisdictions where stigma is particularly entrenched, protective legislation is often lacking, leaving affected individuals exposed to abuse with little public or legal support. The presentation stresses that meaningful protection cannot be achieved without addressing the broader cultural attitudes that reinforce denial and inaction.

Evaluating the Effectiveness of Incapacity Laws

While many countries have enacted mental incapacity legislation, the presentation questions their real-world impact. Often, these laws are procedural rather than protective in nature. They may outline how to declare someone incapacitated but fail to ensure that such declarations are fair, justified, or accompanied by appropriate safeguards.

Some legal systems still rely on outdated statutes or vague language that does not reflect current understanding of cognitive decline or mental health. Instead of empowering individuals, these laws can entrench systemic control and dependency.

Enduring Powers of Attorney (EPAs): Promise and Pitfalls

EPAs are often proposed as a preferable alternative to guardianship, offering individuals the ability to choose a trusted person to manage their affairs if they become incapacitated. In theory, EPAs promote autonomy and prevent exploitation by establishing consent in advance.

However, the presentation warns that EPAs are not without risks. They can be misused, particularly if signed under coercion or without proper legal guidance. Moreover, their effectiveness depends heavily on legal recognition and enforcement, which vary widely across jurisdictions. Without uniform legislation and strong procedural safeguards, EPAs alone cannot guarantee protection.

Conclusion: The Need for Legislative Reform

The core message of the presentation is clear: guardianship laws must be reformed to truly serve the people they are meant to protect. Legal systems need to:

- Recognize the complexity and diversity of mental incapacity
- Provide accessible, timely, and fair guardianship processes
- Ensure ongoing monitoring and accountability of guardians
- Penalize fraudulent diagnoses and protect against collusion
- Destigmatize mental illness and aging through public policy and education
- Offer alternative legal tools like EPAs with adequate safeguards

Above all, any reform must prioritize the autonomy, dignity, and human rights of the individual.

Guardianship, when necessary, should be a last resort—and always a protective, not oppressive, mechanism.

The presentation concludes with a powerful reminder that protecting vulnerable individuals is not only a legal responsibility but a social and moral imperative.

7. “Right to Decide in the Medical Ill: moving beyond Guardianship and Surrogate Decision making”

FIAMMETTA COSCI MD, MSc, PhD is Associate Professor of Clinical Psychology at the University of Florence at the Department of Health Sciences

Dementia is an umbrella term for multiple conditions that lead to progressive cognitive decline and impaired activities of daily living. Dementia has different subtypes which include: Alzheimer’s disease (AD), the most common accounting for 60-70% of all dementia cases. It is characterized by amyloid plaques and neurofibrillary tangles in the brain, resulting in brain cell death; vascular dementia, caused by reduced blood supply to the brain often as a result of a stroke; Lewy body dementia, is named for the build-up of abnormal proteins in the brain called Lewy bodies; frontotemporal dementia, which specifically affects the frontal and temporal lobes of the brain resulting in changes in behaviour, and a deterioration in language and social skills, more common in people < 65 yrs of age; mixed dementia, characterized by the presence of more than one type of dementia.

Risk factors for dementia are: older age; sex (even though it is debated since AD has prevalence in females 1.9 times higher than that in males, while the prevalence of vascular dementia showed to be 1.8 times greater in males than in females); lower education; cardiovascular diseases (e.g., type 2 diabetes, hypertension, obesity, dyslipidemia, smoking, coronary artery disease); chronic kidney disease; brain injury/tumor (especially in the youngest); major depression and high alcohol consumption (<https://www.longwoods.com/publications/world-health-population>).

Healthy/Mediterranean diet, high leisure-time or physical activity, high cognitive activity, a restorative sleep, social engagement, and low psychological distress are protective factors (Rosenau C, Köhler S, Soons LM, Anstey KJ, Brayne C, Brodaty H, Engedal K, Farina FR, Ganguli M, Livingston G, Lyketsos CG,

Mangialasche F, Middleton LE, Rikkert MGMO, Peters R, Sachdev PS, Scarmeas N, Salbaek G, van Boxtel MPJ, Deckers K. Umbrella review and Delphi study on modifiable factors for dementia risk reduction. *Alzheimers Dement.* 2024 Mar;20(3):2223-2239. doi: 10.1002/alz.13577).

In 2012, the World Health Organization estimated that the number of people living with dementia worldwide was approximately 35.6 million; they projected a doubling of this number by 2030 and tripling by 2050 (<https://www.longwoods.com/publications/world-health-population>). An estimated 6.9 million Americans aged 65 and older are living with Alzheimer's dementia today. This number could grow to 13.8 million by 2060, barring the development of medical breakthroughs to prevent or cure AD. Global age-standardized incidence rates increased from 0.17/100,000 in age 30 to 34 years, to 5.14/100,000 in age 60 to 64 years, giving a global total age-standardized incidence rate of 11 per 100,000 in age 30 to 64. This corresponds to 370,000 new cases of dementia in younger individuals annually worldwide (Hendriks S, Peetoom K, Bakker C, van der Flier WM, Papma JM, Koopmans R, Verhey FRJ, de Vugt M, Köhler S; Young-Onset Dementia Epidemiology Study Group; Withall A, Parlevliet JL, Uysal-Bozkir Ö, Gibson RC, Neita SM, Nielsen TR, Salem LC, Nyberg J, Lopes MA, Dominguez JC, De Guzman MF, Egeberg A, Radford K, Broe T, Subramaniam M, Abdin E, Bruni AC, Di Lorenzo R, Smith K, Flicker L, Mol MO, Basta M, Yu D, Masika G, Petersen MS, Ruano L. Global Prevalence of Young-Onset Dementia: A Systematic Review and Meta-analysis. *JAMA Neurol.* 2021 Sep 1;78(9):1080-1090. doi: 10.1001/jamaneurol.2021.2161).

Unfortunately, available drugs primarily offersymptomatic relief and often accompanied by undesirable side effects (2024 Alzheimer's disease facts and figures. *Alzheimers Dement.* 2024 May;20(5):3708-3821. doi: 10.1002/alz.13809). However, recent approvals of aducanumab (1) and lecanemab (2) by the Food and Drug Administration present the potential in disease-modifying effects. Nevertheless, the long-term efficacy and safety of these drugs need further validation. Thus, we are still in the condition to give relief to these patients (Zhang J, Zhang Y, Wang J, Xia Y, Zhang J, Chen L. Recent advances in Alzheimer's disease: Mechanisms, clinical trials and new drug development strategies. *Signal Transduct Target Ther.* 2024 Aug 23;9(1):211. doi: 10.1038/s41392-024-01911-3).

Unlike other incapacitating illnesses where there may be a clearer distinction in the transition from capacity to incapacity, dementia is unique in that there may be a more drawn-out greying of decision-making capacity over time; indeed, median survival after a diagnosis of dementia may be up to 12 years. Issues with perception, judgement and memory loss can inhibit overtime the ability of patients with dementia to manage routine tasks and personal care daily, to interpret their environment, to recognize when help is needed and to access formal health and social care in a timely fashion. When neurocognitive changes are combined with age-related declines in vision, hearing and mobility, and/or the lack of an informal caregiver, dementia becomes a “game changer”.

Impaired functional capacity, above all in decision-making, gives rise to ethical and legal questions that may have legal consequences. One of these situations is the possibility of guardianship proceeding for dementia patients, depriving them of legal capacity in taking decisions and managing their own assets.

According to the legislation, guardianship proceedings, that is the declaration of incapacity, are a judicial measure by means of which an authority deprives an individual who is of age higher than 18 yrs of the right to manage own affairs and engage in the activities of civil life. The declaration of incapacity involves the appointment of a guardian who administers the individual’s life and the affairs(s) he is unable to manage autonomously. The guardian is responsible for carrying out all those civil acts that embody the conservatee’s rights.

However, capacity is a state that is as difficult to define as it is to assess. A working definition of capacity might be what is minimally necessary for an individual to be able to maintain personal decision-making ability. Capacity, legally defined, is the ability to acquire rights and take on duties. However, the concept of legal capacity differs from the medical concept of capacity, which defines a set of skills required such as memory, judgment and decision-making, to manage affairs and carry out daily tasks. In addition, mental capacity is not universal and the absence of capacity in each situation may not imply its existence in other situations since it may change (Delineau VMEB, Schultz RR. Dementia and legal determination of capacity. *Arq Neuropsiquiatr*. 2017 Jun;75(6):349-353. doi: 10.1590/0004-282X20170061).

In this framework, it should be considered that people with dementia often prefer to participate in decisions about their health care but may be prevented from doing so because healthcare decision-making law

facilitates use of advance directives or surrogate decision makers. Federal and state disability law provide alternative decision-making models that do not prevent people with mild to moderate dementia from making their own healthcare decisions at the time the decision needs to be made. However, available data suggests that people with dementia, even those in more advanced stages, are generally able to reliably communicate their values and preferences and want to participate in the decision-making process, even if a surrogate is ultimately in the role of primary decision-maker.

There are several available standards to guide surrogate decision-making that can be applied in a hierarchical fashion. For some decisions, a person's known wishes are available through either a previous informal discussion with a surrogate or codified formally in an instructional advance directive. If there are no known previously stated wishes, then a substituted judgment can be made based on a person's previously held values and preferences. If these values and preferences are unknown, then the best interests approach can be used (Wilkins JM. Reconsidering Gold Standards for Surrogate Decision Making for People with Dementia. *Psychiatr Clin North Am.* 2021 Dec;44(4):641-647. doi: 10.1016/j.psc.2021.08.002).

The idea of "person-centred" care goes further than simply providing better care to patients with dementia as passive care recipients. It also implies that patients living with dementia, to the extent possible, should be active participants in decisions around their own care. At a personal level, even when they progress to a point where they cannot manage routine tasks independently (e.g., finances, cooking, travelling, self-care) most can still express preferences around where and how they live and how care is provided.

In brief, people with dementia can be accommodated and supported so they can make their own healthcare and life decisions according to their sources. The ability to exercise choice contributes to their autonomy and quality of life.

For these reasons, dementia needs to be framed also in terms of disability and human rights. Through the lens of disability and human rights, we have to reflect upon the complexity of dementia and move from the individual to the psychosocial sphere.

8. “Reflecting on My Journey as a Legal Guardian: Key Lessons from being a Legal Guardian in Austria “

GABRIELE STRASKY-PÖLZL has experience as a legal guardian and has a financial professional background.

I recently had the opportunity to share my experiences as a legal guardian at a UN side event. Over 11 years supporting my father, and through my ongoing work, I learned how vital financial stewardship is to guardianship. My background as an accountant and controller has helped me navigate the complex realities—challenges I believe need to be discussed more openly.

Here are my top three takeaways for anyone in the field or considering a guardianship role:

Guardianship Is About More Than Finances: While courts monitor assets and income, it’s equally crucial to prioritize the health and happiness of those we care for—not just their wealth.

Everyday Oversight Is Critical: Fraud and neglect often go unnoticed. Something as simple as an older person being made to pay for others’ expenses, or being denied enjoyable experiences, can slip through the cracks.

Transparent Reporting Matters: I advocate for mandatory reporting that covers both health-related and fun-related expenses, offering a clearer picture of how funds truly benefit those under guardianship.

This dialogue is so important as we rethink best practices and legislative frameworks for guardianship.

Thank you for letting me share my journey—let’s keep the conversation going!

9. Conclusions on Guardianship Risks

The speakers unanimously argue against simplistic assessments of incapacity.

The central aim of the Austrian Adult Protection Law of 2018, is to provide individuals with diminished decision-making capacity the necessary assistance to make their own choices for as long as possible.

The Austrian law operationalizes these principles through a graduated system of four representation pillars, ranging from **enduring powers of attorney**- which will allow your attorney to consent to or refuse medical treatments on your behalf if you have lost capacity to **court-appointed representatives**. Mandatory "clearing" processes, a central register, and a focus on the individual's will and preferences are designed to provide tailored support while preserving legal capacity.

A person may be unable to manage complex finances but can still clearly express its preferences about daily life and medical care.

Despite legislative advances, significant risks (exploitation, neglect, and misuse of guardianship arrangements, whether by family members, professional guardians, or through fraudulent medical acting) remain.

Effective protection requires strong safeguards, including clearing processes, transparency through central registries, ongoing court supervision, and clear mechanisms for reviewing and monitoring guardianships. The case of Britney Spears serves as a stark warning of how systems can fail even in high-profile cases.

Dementia is not merely a medical problem but a disability and a human condition.

The "person-centered care" is essential, because individuals with dementia must be active participants in their care decisions for as long as they are able to do so. This respects their dignity and contributes significantly to their quality of life.

While the law provides the tools for a more humane and rights-based approach, continuous vigilance, professional training, and public awareness are required to safeguard these rights and prevent the new system from becoming a modernised form of control. Its success depends on implementation, awareness, and cultural change.

Important is to combat the stigma associated with mental incapacity and ageing, ensuring that every individual can live with the maximum possible dignity, autonomy, and respect for their human rights.

10. Short Biographies and Abstracts of the Speakers

Renate Winter



Justice Renate Winter began her judicial career in 1981 in Vienna as judge of the Vienna Youth Court. She was international judge, vice president and president of the Special Court of Sierra Leone, and international judge at the Supreme Court in Kosovo. She was president of the International Association of Youth and Family Court Judges and Magistrates. She is working with international organisations, the Council of Europe, UN-bodies and the EU and provides advice to Governments, in particular concerning juvenile justice and child protection, women's issues, child soldiers, organized crime and integration of asylum seekers and refugees. She assists them with drafting laws, monitoring and evaluating their justice system. She has longstanding experience with EU projects on judicial reform and justice institutions in numerous countries. 2013 she became a member of the UN Child's Rights Committee, and was vice-president and president of the Committee. She continues to advise governments as well as IGO's and NGO's.

Stella Kammitsi



She is a qualified lawyer and a member of the Cyprus Bar Association. She is the founder and principal of her own law firm based in Cyprus. She earned her LLB (Honours) from the University of Leicester in the

UK followed by an LLM in International Banking Law from Boston University in the USA. Throughout her career, she has served on the boards of numerous companies and organizations. Her roles have included Chairwoman of the Housing Finance Corporation (appointed by the Council of Ministers), President of the Cyprus Women's Lobby, and Chairperson of the Standing Committee for Legislation of BPW International and Chairwoman of STEP Cyprus. She currently serves as Vice President of BPW Cyprus and one of the Chairpersons of STEP Europe. In 2025, she was appointed as one of BPW International's United Nations Representatives in Vienna.

Fiammetta Cosci



She (MD, MSc, PhD) is Associate Professor in Clinical Psychology at the University of Florence, Guest Associate Professor at the Department of Psychiatry & Neuropsychology, Maastricht University, the Netherlands, Editor in Chief of the Journal of Psychosomatic Research. She received the EPA Research Prize, the Global Research Award for Nicotine Dependence, the Y-Mind Center for prevention of mental disorders award, the Alison Creed Award. She published more than 120 papers in WOS international journals. She deposited the copyright of the The Diagnostic clinical Interview for Drug Withdrawal 1 - New Symptoms of SSRI and SNRI.

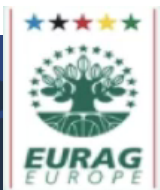
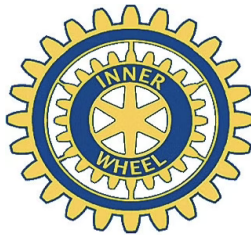
Gabriele Strasky-Pölzl



She was the legal guardian for her father for eleven years. Her profession as accountant and controller helped her steer financial hardships and challenges of her father's situation. Currently she is a legal guardian and

again specializes in helping her client with financial challenges to improve her wellbeing.

11. Organisations which supported the conference



Conference
of NGOs
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Relationship
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Conférence des
ONG ayant des
Relations
Consultative
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