

# Korean Public Guardianship Services for Persons with Developmental Disabilities toward a Supported Decision-Making Scheme

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Received: 30 March 2018 / Accepted: 30 October 2018 /

Published online: 1 December 2018

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**Abstract** This study discusses the possibilities of Korean public guardianship services being redefined as a supported decision-making system. In Korea, as soon as the new adult guardianship system came into force on July 1, 2013, public guardianship services began to be provided for persons with developmental disabilities; those services are now also being provided for persons with mental illness and persons with dementia. Public guardianship services focus on the protection of personal affairs rather than financial management of persons under guardianship. This paper deals with the structure and operation of the public guardianship system for the rights protection of persons with developmental disabilities. The research revealed tasks that should be included in future public guardianship services, along with several points for improvement of the public

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This work is supported by the Ministry of Education of the Republic of Korea and the National Research Foundation of Korea (NRF-2016S1A3A2924706)

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guardianship system of Korea, as follows. First, the largest part of the service that public guardians will provide should be the protection of personal affairs, but financial management is also often included. Second, to relieve many guardians of complaints and difficulties they have faced in relation to dealing with institutions such as local authorities, banks, and courts, a central supportive organization should be introduced. Third, public guardianship services of Korea should be provided by guardianship corporations rather than individual citizen guardians. On the basis of such improvements, public guardianship services can be utilized as a supported decision-making system in Korea where no other supported decision-making scheme has been provided.

**Keywords** Adult guardianship system · public guardian · supported decision-making system · person with development disabilities · rights protection

## Introduction

### Background

Advocacy for disabled persons with a supported decision-making system has long been an important issue in the arena of the disability movement in Korea. Notably, since 1988 the need for support with everyday life for persons with developmental disabilities, including property management and advocacy of rights, has been frequently suggested. The main impetus for the introduction of the new adult guardianship system, which came into force on July 1, 2013, was the consciousness of groups for parents of children with developmental disabilities that those persons are permanently exposed to the risk of their rights being violated (Kim & Yoon, 2010; Choi, 2012).

The preparation for legislation to reform the civil code and create a new adult guardianship system started in 2004 with liaising between diverse groups like The Research Institute of the Differently Abled Person's Rights, in the private sector, and the Ministry of Justice, in the public sector. Subsequently, the Alliance for Promotion of Adult Guardianship System in the private sector contributed a lot to the enactment of the new adult guardianship system. In 2013, as preliminary implementation work for the new adult guardianship system, the Ministry of Health and Welfare made several applications for "Specific guardianships" to the Family Court of Seoul and other family courts in the name of so-called public guardianship, and the ministry started the Project of Supporting Public Guardianship for Persons with Developmental Disabilities on September 1 of that year (Kim, 2016; Choi & Yoo, 2016).

That being said, the landscape of the disability movement in Korea has changed since Korea ratified the UN Convention on the Rights of Persons with Disabilities (hereinafter CRPD) in 2008. Owing to the UN CRPD Committee recommending the immediate abolition of adult guardianship and the introduction of a supported decision-making system,<sup>1</sup> the awareness of the right to self-determination of persons with decision-making disabilities began to be raised and

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<sup>1</sup> UN Committee on the Rights of Persons with Disabilities, General Comment on Article No 1(2014), CRPD/C/GC/1, n. 28.

the voices against adult guardianship became louder. Instead, the deinstitutionalization and independent living of persons with developmental disabilities, as well as the integration into society of persons with dementia or mental disabilities, became major issues in the disability movement. However, the nature of supported decision-making systems and how they can be implemented is a very important issue, because there has never been any supported decision-making system, and moreover because there have been many substitute decision-making practices without legitimate authority in Korea. In other words, the new adult guardianship system has so far been the only legitimate authority to represent disabled persons with the supervision of family courts. This paper discusses whether the public guardianship service can be utilized as a supported decision-making system,<sup>2</sup> and, if so, how the operation of public guardianship should be changed to establish a process and system that will guarantee the rights of persons with developmental disabilities.

### **Theoretical background and methods**

Public guardianship services refer to the provision of guardianship services for persons with impaired decision-making abilities, based on either legal provisions such as Article 9 of the Act on Guarantee of the Rights of and Support for Persons with Developmental Disabilities (hereinafter referred to as Act on Persons with Developmental Disabilities) or a governmental policy such as an advocacy project for persons with mental illness living in psychiatric institutions for care. Public guardianship services based on legal provisions have so far been provided for persons with developmental disabilities, but are being expanded to elderly persons with dementia based on the Elderly Welfare Act Article 12-3, which came into force on September 20, 2018. As for the former, up to December 2016, the Ministry of Health and Welfare was working on a public guardians training project centered on 17 metropolitan councils nationwide, with a consortium of the Korean Association on Intellectual & Developmental Disabilities, the Research Institute of the Differently Abled Person's Rights in Korea, the Korean Parents Society for the Disabled, and the Autism Society of Korea. The public guardians training project has been operated as training for public guardian candidates and a supplementary education course for guardians and guardian candidates. Since the educational institutions were appointed as guardianship corporations in 2017, the education project will undergo changes in the near future. The basic education course requires four days for a total of 30 hours, as determined by the Ministry of Health and Welfare, and it offers varied options, such as a weekend course or a two-week course, according to the characteristics of each area.

Among public guardianship systems of other countries, the Adult Support Office (Betreuungsbehörde) in Germany and the Office of the Public Guardian in Singapore play important roles for the provision of public guardianship services. Germany established an Adult Support Office in each local government on the basis of the Act on Adult Support Offices, implemented in 1992. At the time of the legislation, the Adult Support Office was intended to be structured as an independent unit within organizations, but in practice it was operated in combination with the existing administrative department of the Social Service

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<sup>2</sup> Anita (Kimberly, 2014) argues that guardianship services can function as a supported decision-making scheme where persons with decision-making disabilities lack the capacity to make decisions.

Bureau (Fröschle, 2013). After that, according to an amendment of the Act on Legal Support for Adults,<sup>3</sup> it has been operated as a public specified administrative office (Fachbehörde) which manages the adult support system, based on the Act on Strengthening the Function of the Adult Support Office (Gesetz zur Stärkung der Funktion der Betreuungsbehörde).

The major role of the German Adult Support Office is to support the Adult Support Court<sup>4</sup> and Adult Support corporations (Betreuungsverein). Its specific tasks are as follows. First, it provides basic education and supplementary education for legal supporter staff concerning their tasks, in accordance with a commission on the law. Second, it provides personal case consultation and continuing education to manage the qualification of legal supporter staff after they are appointed as professional legal supporters. Third, it operates local meetings for several activities combining related parties within each local government. In these meetings, a significant consideration is to advise on implementation of the Act on Legal Support for Adults, to plan for discovering prospective legal supporters, to determine the procedure for the assignment of legal supporter staff to non-profession legal supporters, to formulate support for legally supported persons, and to structure the network between related parties (BGBl, 2013).

In the case of Singapore, the Office of the Public Guardian (OPG) was established and is being operated under the Department of Society and Family, and has been charged with the tasks of registration, management, supervision, and investigation of the actions of legal guardians after their appointment. Singapore has a strong tendency to use the courts for the appointment of legal guardians (Deputy) as the last resort to support persons with impaired decision-making ability. OPG recommends to use Lasting Power of Attorney when possible. The major roles of OPG in Singapore are as follows. First, it maintains and manages the registry of Lasting Power of Attorney. Second, it manages and supervises deputies appointed by the courts. Third, it intervenes in cases of abuse by attorneys and deputies. Finally, it publishes practical manuals which provide guidelines for the implementation of the Mental Capacity Act and investigates violations of the Act (Singapore OPG, 2014). According to their specific roles, the governmental offices can assist guardians, irrespective of their legal title (e.g., supporter, attorney, or deputy), to provide guardianship services as a supported decision-making scheme.

This study is mainly based on a literature review, and we aim to diagnose the current status and problems of the Korean public guardianship system through reviewing the research literature of other countries. It can be hard to compare the systems, in that advanced countries have different polices or settings for the public guardianship system. However, the comparison can suggest many implications to develop public guardianship services in Korea into a supported decision-making scheme.

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<sup>3</sup> The function of legal supporters for adults with decision-making disabilities is similar to adult guardians in other jurisdictions, but Germany changed the title of guardian to legal supporter, with the intention that these people would support, rather than substitute, decision making by persons under legal support (German Civil Code Art. 1897.).

<sup>4</sup> Germany changed the title of competent courts from Guardianship Court (Vormundgericht) to Adult Support Court (Betreuungscourt) in 2009.

## Introduction of the adult guardianship system and provision of public guardianship services

### Current status of the adult guardianship system of Korea

The Korean adult guardianship system, which was introduced in 2013, can be assessed as substituted decision making for persons with impaired decision-making ability whose capability for legal acts is mentally or intellectually limited due to disease, disability, old age, etc. In the first three years after the adult guardianship system was introduced, guardianship services began to become known. Table 1 shows the recent situation concerning the guardianship service for the four years after it began on July 1, 2013.

**Table 1** Present status of the adult guardianship service of Korea<sup>5</sup>

Year	Full Guardian			Limited Guardian			Specific Guardian			Voluntary Guardian		
	Relative	Specialist	Other	Relative	Specialist	Other	Relative	Specialist	Other	Relative	Specialist	Other
2013	434	20	6	59	3	0	8	5	27	0	0	1
2014	1131	45	18	138	7	4	125	22	198	1	0	1
2015	1542	48	23	182	7	3	114	20	224	1	0	2
<b>Total</b>	<b>3107</b>	<b>113</b>	<b>47</b>	<b>379</b>	<b>17</b>	<b>7</b>	<b>247</b>	<b>47</b>	<b>449</b>	<b>2</b>	<b>0</b>	<b>4</b>

As shown above, full guardianship, whose legal status is similar to guardianship for a person judged incompetent, accounts for the overwhelming majority (about 74%), and most full guardians are relatives (about 85%). The reason that the number of full guardians is so high might be ascribed to the traditional perception that persons under guardianship should be excluded from legal acts for their own protection. In addition, the high number of guardians who are relatives can imply that guardianship is a family matter from which society should abstain unless disabled persons have no family or have little care by family. Limited guardianship services provided by family members are not different from full guardianship in that those services remain in effect without taking into consideration the necessity of using guardianship services as long as the person under guardianship is alive. However, as the years go by, the proportion of specialist guardians is increasing. Most guardians of the “Other” category are public-citizen guardians who were recommended as part of the Ministry of Health and Welfare’s Project of Supporting Guardianship for Persons with Developmental Disabilities. Considering that the proportion of this type of guardian is as much as 10%, it seems that the possibility of social protection through guardianship for persons with impaired decision-making ability is gradually growing. In other words, the “Specific” guardianship,<sup>6</sup> which is supposed to minimize the intrusion upon the self-determination of the persons under guardianship and not to violate Article 12 of the UN Convention on the Rights of Persons with Disabilities, well reflects the necessity and purpose of a guardianship service, because there are many more third-party guardians than relative guardians in this category (Je, 2014).

<sup>5</sup> Ministry of Court Administration, Supreme Court. Guardianship events (closed), 2016.

<sup>6</sup> Je, Cheolung. Korean Adult Guardianship and Its Future Tasks: From the Perspective of UN Convention on the Rights of Persons With Disabilities, *Korean Journal of Family Law*, 28: 205-244.

Especially in the case of persons with developmental disabilities, the number of specific guardians, whose service provision is based on the least restrictive intervention and normalization principle, is gradually increasing. This is based on the Project of Supporting Public Guardianship for the Persons with Developmental Disabilities, on the basis of the Act on Persons with Developmental Disabilities. In general, the specific guardianship service ranges from supported decision making in relation to property management and personal affairs, advocacy that minimizes physical, psychological, and financial damage and represents compensation for loss, to support needed for independent living for normalization and social integration in communities (Je, 2017; Park, 2017). However, public specific guardians, who are supported in accordance with the Act on Persons with Developmental Disabilities, support persons with developmental disabilities to live safely enjoying their rights and welfare based on normalization and independent living in communities. Also, the number and type of guardians' tasks may vary with the decision-making capacity and environment of the person being supported.

### **Public guardianship services for persons with developmental disabilities**

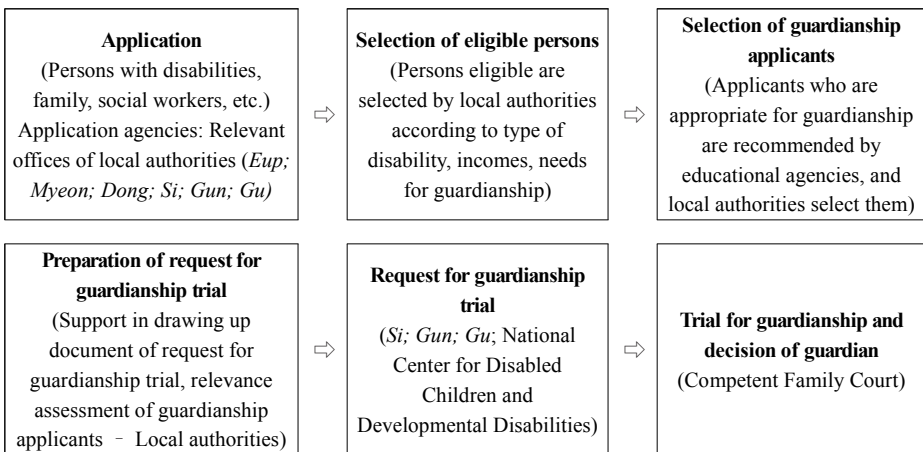
Public guardianship services have so far been provided for persons with developmental disabilities; guardianship services for persons with mental illness recently began to be provided based on a pilot project; and services for the elderly began on 1 September 2018. The background that public guardianship services were provided for persons with developmental disabilities prior to any other type of disability is that persons with developmental disabilities have disproportionately been victims of financial or physical abuse, neglect, or exploitation. So guardians protect them from being exposed to these kinds of situations and also can support their daily life, including financial management, with protection of rights concerning problems that have already happened. With the implementation of the adult guardianship system in 2013, the Ministry of Health and Welfare supported applications for guardianship, launching the Central Support Team of Public Guardianship for Persons with Developmental Disabilities (now transferred to the Central Center for Persons with Developmental Disabilities), in that year. Also from October of the same year, the ministry carried out education for candidates to be public guardians, which trains public guardian candidates from among citizens on a national scale (Seo, Je, & Choi, 2016; Je, 2017).

The Project of Supporting Public Guardianship for the vulnerable group of persons with developmental disabilities uses income as its standard, targeting households with income below 150% of the national average (the second-lowest income bracket) to find eligible recipients for guardianship. Also, in cases where the family members of persons with developmental disabilities living in residential homes cause damage to them or are likely to do so, and where there are no measures to represent the persons with disabilities specifically, they can get support according to requests of heads of facilities.

Public guardians are said to be persons who support the welfare of persons with impaired decision-making ability in matters such as financial management and protection of personal affairs, and where the guardianship service is provided through government funding to serve the public interest. Public guardians are recommended to family courts by local government heads and provide guardianship services after appointment by family courts. The local government

head recommends people who have completed education in an educational institution of public guardianship. After the Family Court appoints a candidate as guardian for a person with developmental disability, he or she serves as a public guardian and receives a small stipend<sup>7</sup> each month from the local government<sup>8</sup> (Je, Choi & Yoo, 2016).

In Korea, public guardianship services for persons with developmental disabilities are provided based on specific guardianship and focused on respecting right of self-determination and supporting independent living in a community of vulnerable persons with developmental disabilities. The public guardianship service is intended to promote the advocate role from the viewpoint of persons with developmental disabilities who are beneficiaries of social security. In this regard, it is one of the social services that fulfill the principles of the Act on Social Security. This type of public guardianship service can be recognized as a legal service. However, it is implemented based on the Act on Social Welfare or the Act on Persons with Developmental Disabilities, which are implemented by the Ministry of Health and Welfare, so it is thought of as a sort of social service.



**Fig. 1** Application process of public guardianship service for persons with developmental disabilities

## Structure of public guardianship services for persons with developmental disabilities

### Discovery of eligible people and support for request

Local authorities<sup>9</sup> should support the drawing up and submitting of documents if there are

<sup>7</sup> From 2016, local government provides 150,000 won per month.

<sup>8</sup> Choi Yun-Young; Lee, Yong-Pyo; Park In-Hwan. A Study on the Education and Training Conditions of Adult Guardian System in Korea. *The Korean Association of Law and Politics*, 14(3): 1449–1480.

<sup>9</sup> Responsibilities of State and Local Governments, Article 4, and Assistance in Use of Adult Guardianship, Article 9, of the Act on Guarantee of Rights of, and Support for, Persons with Developmental Disabilities.

difficulties in applying for guardianship, and should provide consultation about difficulties faced in the process of the guardianship trial. Also, they can provide consultation and support in order that guardian candidates can overcome various challenges after application, such as submitting social reports<sup>10</sup> on persons with developmental disabilities in court proceedings or meeting court requests to a guardian candidate, supervisory guardian candidate, or prospective ward.<sup>11</sup>

As various and complicated documents are required in the application for guardianship, the administrative departments (i.e., local authorities) have to liaise with the courts to meet their requests. On the other hand, local authorities have to refer their tasks of discovering eligible people and applying for guardianship to other agencies, such as welfare facilities for persons with disabilities besides the Centers for Developmental Disabilities and guardianship corporations that have been already organized in communities. According to the current Civil Act, the head of the local government plays a role as a claimant for guardianship applications on behalf of the public interest. And in the practice of guardianship services, the head of the elementary local government (i.e., the head of local authorities) plays the same role (Choi & Kim, 2014).

However, welfare facilities or living facilities for persons with disabilities in communities, because of their closeness to both the community and the persons needing guardianship or assistance, seem to have more possibilities to provide services and discover vulnerable groups of persons with developmental disabilities. This means that local authorities have to keep open various channels to discover vulnerable and eligible people with a need for public guardianship services.

### **Relation of the central government and local governments to public guardianship services**

Each local government can legislate ordinances to provide public guardianship services. The ordinances are legislations of self-government which local governments establish as decisions of local councils concerning the tasks “in a range of legislations” according to Section 1,<sup>12</sup> article 117 of the Constitution and Local Autonomy Act. In the cases where each local government enacts an ordinance to provide public guardianship services, the following advantages can be realized.

First, according to the purpose of the revised Civil Act, which regulates the head of local government as a claimant for adult guardianship applications, the role of local government in the area of guardianship services will be expanded and the coverage will be more comprehensive.

<sup>10</sup> In Germany, social reports are submitted to Adult Support Courts in addition to medical reports. Röh-Ansen, *Sozialdiagnostik in der Betreuungspraxis*, S. 61 f., 2014. In Korean guardianship praxis, they tend to be submitted in order to avoid submitting high-cost medical reports.

<sup>11</sup> Also, the costs for requesting trial are (1) revenue stamp and transmittal fee: 5,000 won of revenue stamp has to be paid. As request for guardianship trial, the notification that there is a request is transmitted to the prospective ward, guardian candidate, supervisory guardian candidate, and other persons concerned, including informing them to participate at trial with the date and contents about trial decision. The transmittal fee is paid in advance, and the Family Court regulated the fee as 32,500 won currently. (2) extra charge: evidence investigation is needed, the applicant must pay the costs.

<sup>12</sup> Article 117 of the Constitution of the Republic of Korea (1) Local governments shall deal with administrative matters pertaining to the welfare of local residents, manage properties, and may enact provisions relating to local autonomy, within the limit of Acts and subordinate statutes.



Second, the adult guardianship system will help the persons requiring protection to effectively exercise their remaining, even if insufficient, physical and/or mental capacity to realize as much independent living in the communities as possible and to receive respect for their dignity on an equal basis with others. Especially regarding economic and social aspects, this seems to contribute to their integration and complete participation not only in vocational work but also in their daily lives.

Third, the paradigm of welfare for persons with disabilities has gone away from the emphasis on physical deformity and rehabilitation of the past, and is changing to a perspective for rights, which is aimed at the “social participation and independent living” of persons with disabilities and providing a service which fulfills their needs. Therefore, the ordinances have to be enacted to function as social welfare policies from the perspective of local government, emphasizing the “social participation and independent living of persons with disabilities” (Choi & Kim, 2014).

However, public guardianship services are closely related to central government, i.e., the Ministry of Justice and the Ministry of Health and Welfare. The Ministry of Health and Welfare is a central department that is responsible for welfare services, and guardianship service users are welfare service users at the same time. Moreover, the central government regards public guardianship services as social services for which it is competent.

### **The case management system and needs survey for vulnerable groups**

Generally, case management is regarded as a social welfare practice model that has been used continuously in welfare for persons with disabilities to deal with problems of neglect and for vulnerable groups who need continuous support. In particular, it is known as a useful approach for persons with developmental and mental disabilities and elderly persons with severe dementia who need long-term care and support.<sup>13</sup> In other words, there are many cases in which adult wards who are classified as a vulnerable group in communities face economic, educational, health-welfare, residential, health, and social-psychological problems, and they need continuous support and management according to not only their different disability degrees but also their changed lifestyles. Therefore, providing a guardianship service for persons with impairments in decision-making and elderly persons with dementia has an advantage in that a case management system can be established around the overall protection of human rights for vulnerable groups in a community (Yang, 2005; Yoon, 2009; Choi, 2017).

In the case of Japan, in 2001 a “guideline of case management for persons with disabilities” at the government level was also announced, and the country has implemented case management for persons with disabilities since 2005 as a state policy as part of a counseling support project for persons with disabilities, as stipulated by the Act on Independent Living Support for Persons with Disabilities. Municipalities of Japan also take charge of case management, irrespective of the type of disability. This case management system of the Welfare Ministry in Japan seems to be a comprehensive support service<sup>14</sup> that connects and coordinates extensive

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<sup>13</sup> The Korea Academy of Case Management (2012).

<sup>14</sup> It means planning of support and providing service, which are needed for discovery of vulnerable groups, determining their needs, and guaranteeing their safety and welfare.

needs and services, reflecting the intentions of the person being supported. And it seems to support persons with disabilities living in a community to effectively use many services that are scattered around the community (Choi & Lee, 2015). On the other hand, local governments should regularly assess the needs of persons requiring protection, such as persons with autism and intellectual disabilities, and reflect these needs in the welfare policies of local governments and related services through the ordinances. Also, protection against abuse of authority by guardians has to be considered with active public relations about the guardianship system. In addition, each center's responsible departments should be unified to minimize the confusion which can occur because of overlapped responsibilities dispersed among the various local government departments.

## **Performance and pitfalls of public guardianship services**

### **Rights protection of persons with developmental disabilities and expansion of the understanding of adult guardianship**

The purpose of the provision of public guardianship services is that persons with developmental disabilities can get help with financial management and protection of personal affairs from appointed guardians and ultimately protect their rights. For this, we can suggest some results so far, as follows.

First, in the cases where a person with a developmental disability had been a victim of a crime, a guardian was appointed to support him or her. In other words, in the cases where persons with developmental disabilities had suffered harm such as sexual assault, compulsory labor, violence, or extortion, by liaising with local governments, disabled groups, and related groups, guardian candidates selected by local authorities figured out the cases and supported the request for trial of specific guardianship. For the result, appointed specific guardians exercised their power and authority of representation, proceed with a criminal or civil suit, and establish residential stability in the community.

Second, the appointment of guardians for persons with developmental disabilities has contributed to preventing potential risks. Persons with developmental disabilities have difficulty in exercising their rights by themselves compared with persons with other types of disabilities. As a result there are many cases where persons with developmental disabilities are dropped into situations where their human rights are not respected. Appointing guardians through the public guardianship project to create social networks around persons with developmental disabilities could prevent abuse of human rights and isolation from community.

Third, guardians of persons with developmental disabilities fulfilled the needs of persons under guardianship in terms of daily life. Persons with developmental disabilities that impair their decision-making ability can face situations in their daily life which require the assistance of a guardian, even though there are no specific possibilities for harm. In fact, there are many instances in which persons with developmental disabilities appear to lack the capacity to handle tasks such as issuing documents, using social services, and managing property by their own efforts, or the relevant organization refuses to allow them to handle their own tasks though they

have the capacity to do so. In these cases, specific guardians support person under guardianship in accomplishing these tasks by the power of representation and right of supporting clerical work.

Fourth, persons with developmental disabilities who need protection could be discovered through the public guardianship service. Local governments, public officers of local authorities, disabled groups, the Korea Disabled People's Development Institute, and the National Center for Disabled Children and Developmental Disabilities discovered demanders for guardianship, and this process led to identifying persons with developmental disabilities who are isolated from the community. In particular, small and medium-sized cities and rural villages, where it is hard to find people who need these services, could expect to see the effects through additional future actions.

Lastly, it provides an opportunity to improve the awareness of necessity for the public adult guardianship services. In Korea, as the declaration of legal incompetency system had existed for a long time, recognition about incompetent or limited-ability persons has become deeply rooted. The growing number of specific guardians has raised the awareness of necessity for public guardianship services (Je, Choi, & Yoo, 2016; Je, 2017).

### **Pitfalls and problems of public guardianship services**

Since September 1, 2013, public guardianship services have been provided to people who fall into an income bracket below 150% of the national average household income, among adults with developmental disabilities. For public guardianship services, we can find pitfalls and problems as follows.

First, at present, the range of eligible people is limited. Not only persons with developmental disabilities, but also persons with mental disabilities, brain injuries, and Alzheimer's disease, as well as other impairments to their decision-making ability, frequently request the guardianship service, so they need to be included in the public guardianship system in addition to persons with mental illness and dementia, to whom public guardianship services have recently been made available based on legal provisions. Unless the service is made available to people with any of these types of impairments, they will not be able to access adult guardianship services.

Second, there is a problem with the income standard. Currently, the income standard of persons with developmental disabilities is regulated as below 150% of the national average household income, but there are many cases where the request for guardianship trial is not available effectively without assistance, even though the person requesting it falls into a higher income bracket. Therefore, measures to support people above the income threshold have to be drawn up, which necessitates finding additional budget or funding and constituting a fair committee for appointment to provide public guardianship services.

Third, the right of claim for public guardianship services is being exercised passively. Under the Civil Act; basic claimants are regulated as a person requiring guardianship, his or her spouse, his or her relatives within 4<sup>th</sup> degree of blood, head of local government, and public prosecutor. It is rather rare that the person with developmental disabilities exercises the right of claim directly, and eventually only the head of local government or a public prosecutor can exercise the right of claim if there are no qualified relatives. However even when the impaired party doesn't satisfy the requirements to receive public guardianship service or even if they have

family, there are many cases where the head of local government and public prosecutor are likely to be passive about exercising it. This seems to be influenced by wariness of the new system, the heavy work burden of public officers, and a sentiment peculiar to Korea about not interfering within family business.

Finally, guardian training and education is biased due to regional limitations, which makes it difficult to appoint appropriate guardians. Outside of Seoul and other large cities, it is difficult to continually train and discover public guardians. In addition, there is a lack of mutual exchange of information and support about the actions and services of public guardians, so it is difficult to provide supplementary education and supervision for guardians (Choi & Kim, 2014).

## Conclusion

Since the new adult guardianship system was implemented in 2013, the focus of guardianship services has changed from financial management to protection of personal affairs, which was formerly regarded as a family matter. This can be evidenced by the fact that public guardianship services began to be provided to persons with mental illness in 2017, and that those services were made available to elderly persons with dementia in September 2018. This is because in the area of personal affairs, providing a guardianship service is closely related to basic human rights such as the dignity, life, body, health, freedom, and privacy of persons under guardianship as humans. The government, which has the obligation to protect the basic human rights of the nation's citizens, must support persons with disabilities to make decisions by themselves in relation to their personal affairs as much as persons without disabilities, as well as prepare a system to support their decision-making from the perspective of the best interests for persons with disabilities and set appropriate conditions for the use of that system. Therefore, the government needs to expand the public guardianship system to include economically vulnerable groups who are not able to use adult guardianship services because of an economic burden, such as the cost for a guardian trial or remuneration for guardians. Especially in the case of persons with intellectual disabilities and autism living in care facilities or without family and friends who are in blind spots in terms of their need being discovered, if they can get guardianship service with the assistance of heads of local governments, it will contribute significantly to the protection of their rights (Choi, 2017; Je, 2017; Park, 2017). Concerning the results of this research, we can suggest several issues, as follows.

First, even though it has been five years since the adult guardianship service started, most citizens and institutions are not aware of the purpose and intent of the guardianship service in the areas where persons with impairments to decision-making live. The central and local governments need to set up a public counseling support system and effectively and continuously promote the system in order that guardians can provide the guardianship service without difficulties in the community. To realize these things, the support system should be constructed to shore up the public guardianship service, and the difficulties or problems that guardians encounter need to be fixed. Especially, the Centers for Developmental Disabilities that are being founded nationally should improve the qualification and specialty of guardians through providing them with supervision with management support and special education.

Second, concerning the service activities of public guardians, related institutions such as

public offices, financial institutions, and courts, including local authorities, are not aware of the status and roles of guardians, therefore various difficulties and problems occur concerning actual guardianship activities.

Third, local governments have to focus their interests on persons with decision-making disabilities, especially those who are low income. They must provide support with paying for the use of the service, establish measures and a common support system to eliminate blind spots, and actively promote and monitor the system along with educating people about it. For this, a project of finding vulnerable groups who need rights protection and demand guardianship service in communities has to be conducted at least annually or biennially.

Accordingly, we suggest political and practical tasks to improve the public guardianship system of Korea, as below.

First, the largest part of the service that public guardians provide is protection of personal affairs, but financial management is also frequently included. This shows that the guardianship service is essential not only for protection of personal affairs but also benefits management of low-income persons who depend on public assistance. In addition, it proves serious consideration needs to be given to providing guardianship service for persons with impaired decision-making abilities who are recipients of public assistance.

Second, many guardians complain of several difficulties in performing their duties because related institutions like public offices, financial institutions, and courts, including local authorities, are not well acquainted with status and roles of guardians. Both types of guardians — professionals and common citizens — commonly experience these difficulties. Most citizens and institutions might be not aware of the purpose and intentions of the guardianship service in the areas where persons with impaired decision-making live, because the recognition of human rights and rights protection for vulnerable groups is still low in Korean society. Given this point, a central supportive organization should be introduced to relieve public guardians of difficulties faced in the process of service provision.

Third, currently guardians contact with persons under guardianship alone, so they are often reported not to be able to access the public support system through counseling or supervision that are needed for providing guardianship services. In particular, legal experts, except social workers, and guardians who are common citizens are often reported to suffer from communicational difficulties, which hinder the protection of personal affairs through guardianship service. In other words, they need to get early counseling materials such as manuals and information about communication methods with their clients, persons under guardianship, and communication support that is appropriate to the characteristics of each client's needs to be provided. Also, it shows that, because the original design of public guardianship services was, in principle, to let a public guardian be responsible for one client, it is becoming difficult for them to accumulate their experiences and manage their service efficiently. For this point, placing guardianship corporations at the center of the provision of public guardianship services could solve the problems of public guardianship service that have arisen from public-citizen guardianship practices as according to Article 3 of the Enforcement Decree and articles 2 and 3 of the Enforcement Rule on Guarantee of Rights of and Support for Persons with Developmental Disabilities. From now on, the various guardianship services should be provided through guardianship corporations that get support from the Center for Developmental Disabilities in a way that allows public citizen-guardians to work in association with guardianship corporations.

On the basis of such improvements, public guardianship services can be developed into a supported decision-making scheme.

## References

- BGBI. (2013). Gesetz zur Stärkung der Funktionen der Betreuungsbehörde.
- Choi, Y.-Y. (2012). A study of the issues on the guardianship system in Korea: With a focus on the social welfare. *Korean Journal of Social Welfare Education*, 17, 97-121.
- Choi, Y.-Y., & Kim, I.-B. (2014). An exploratory analysis to the practical tasks for community welfare according to the enforcement of the adult guardian system. *Journal of Community Welfare*, 49, 53-77.
- Choi, Y.-Y., Lee, Y.-P., & Park, I.-H. (2014). A study on the education and training conditions of adult guardian system in Korea. *Statutory law & Policy*, 14(3), 1449-1480.
- Choi, Y.-Y., & Lee, S.-H. (2015). Seeking counter-plan of community welfare service for protection of severe disabled people's rights and interests. *Journal of Community Welfare*, 53, 425-449.
- Choi, Y.-Y., & Yoo, H.-I. (2016). Study on problems and improvement measurements of a delivery system for guardianship service-A role and implication of the office of the public guardian Singapore. *Journal of Disability Welfare*, 31, 323-343.
- Choi, Y.-Y. (2017). Experience and practice task of operation of corporation guardianship service for a vindication of the rights. *Journal of Disability Welfare*, 31, 323-343.
- Damrau, J., & Zimmermann, W. (2011). *Betreuungsrecht*. 4. Aufl. Kohlhammer
- Fröschle, T. (2013). *Studienbuch Betreuungsrecht*. 3. Aufl. Bundesanzeiger Verlag.
- Je, C. (2014). Korean adult guardianship and its future tasks: From the perspective of the UN convention on the rights of person with disabilities. *Journal of Family Law*, 28, 205-244.
- Je, C., Choi, Y.-Y., & Yoo, H.-I. (2016). Analysis of the workload and performance of public guardians and its implications. *Journal of Comparative Law*, 23(2), 651-686.
- Je, C. (2017). The pursuing direction of the project of the public guardianship services for the persons with developmental disabilities. *Statutory law & Policy*, 9(1), 305-328.
- Jürgens, A. (2010). *Betreuungsrecht*. 4. Aufl., C.H.Beck
- Kim, K.-M., & Yoon, J.-Y. (2010). Development of a scale to measure participation according to the international classification of functioning, disability and health (ICF). *Journal of Rehabilitation Research*, 14(3), 95-119.
- Kim, T.-D. (2016). Comparison legal consideration of an guardianship system and enforcement of the social welfare. *Journal of social welfare Law*, 7(1), 69-90.
- Köller & Engels. (2009). *Rechtliche Betreuung in Deutschland*. Bundesanzeiger Verlag.
- Lee, Y.-K. (2016). Status and challenges of adult guardianship. *Ilkam Law Review*, 33, 245-273.
- Ministry of Court Administration, Supreme Court. (2016). *Guardianship events (closed)*.
- Ministry of Health and Welfare. (2014). *Guide and information for public guardianship service for person with developmental disabilities*.
- Park, I.-H. (2017). The evaluation and future of the Korean adult guardianship system in four years. *Korean Lawyers Association Journal*, 66(2), 5-75.
- Röh-Ansen. (2014) *Sozialdiagnostik in der Betreuungspraxis*. Bundesanzeiger Verlag,
- Seo, J.-K., Je, C.-U., & Choi, Y.-Y. (2016). The issues related to the introduction of a protection and advocacy system for persons with disabilities to Korea. Focused on the background and history of the relevant discussions. *Journal of Disability Welfare*, 32, 141-165.
- Singapore Statutes. (2010). *Mental Capacity Act (177A)*.
- Singapore OPG. (2014). *Code of practice: Mental Capacity Act (chapter 177A)*. Singapore: OPG.
- Smith, A. (2014) (Translated by Jang, Y.). Are guardianship law and practices compatible with human rights instruments? In A. K. Dayton (Ed.), *Comparative perspectives on adult guardianship* (pp. 247-271). Durham, NC: Carolina Academic Press.
- The Korea Academy of Case Management. (2012). *Case Management*.

- Yang, H.-T. (2005). Person with disabilities welfare services new paradigm: Investigation study for the definition of independent living of person with disabilities. *Journal of Rehabilitation Research*, 9(2), 53-86.
- Yoon, J.-Y. (2009). Setting services for independent living center: An application of concept mapping. *Journal of Rehabilitation Research*, 13(1), 41-60.

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