

New measures of legal protection for persons with disability: assistance.

Introduction: about the legal capacity and protection of the persons with disability.

Traditionally, the figures of protection with disability in most of the legislations of our area have been inspired in the Roman Law. This presupposed, for those persons who didn't have recognised enough capacity, the necessity of being represented normally by the "*pater familiae*", or head of the family, the person responsible of taking decisions in the name of the person affected.

This form of representation is the one that has been used in our civil law and in our area.

Our system presupposes the capacity of every person. Under this presumption, our juridical ordinance places the declarations of incapacity (now, modifications of the capacity) in the juridical sphere. In other words, there will be a judge who determines if the person needs protection in the assumption of decisions and the degree of this protection.

The system of protection of persons with disability who do not have enough capacity in the assumption of decisions, presupposes to confirm that the disability is incapacitating and it is in that situation in which the person must have someone, a physical or a juridical person, that takes decisions for her. This is what we call the assumption of decisions by substitution.

But our civil ordinance presents some tones:

* On one hand, the modification of the capacity establishes the appointment of a guardian for those the persons who do not have enough capacity. This guardian will have to take decisions on their behalf of his pupils. In this case, this will be done by the procedure of substitution.

* On the other hand, in the case of those persons to whom the judge estimates with capacity of comprehension with help, the modification will be relative and it will be referred to a curator. In these cases the person will keep partially his/her capacity in the areas the judge considers appropriate. In order to give validity to the decisions taken by the person, in those areas that any support is needed, these decisions will be shared between the person and the curator.

Our civil law obliges the judges to adequate the sentences of modification of the capacity to the real necessities of the person, or what has been denominated a "made-to-measure suit". This practice allows to offer the necessary supports adapted to the real individual necessities. It is understood in some way, a good use of the adequation to the protection about the practices to the requirements of the *International Convention of the Rights of the persons with Disabilities* of United Nations (UN)

Article 12 of this Convention reaffirms that the persons with disability have the right to recognition of their juridical personality in equal conditions as the rest of the people and in all the aspects of their lives. Therefore, some necessary measures must be adopted to provide the required supports they need to the exercise of their juridical capacity, with the adequate and effective safeguards that prevent abuses and guarantee their rights, wills, and preferences. The main difficulty to this respect has been that, since the approval of the convention in the year of 2006, those countries where this regulation has been ratifying ion have interpreted article 12 in different ways, a fact that makes difficult its application. For this reason, on April, 11th 2014, the Committee about the rights of the persons with Disability passed the general Observation n° 1 2014 on article 12: Same recognition as a person before the law.¹

¹ Committee of rights of Persons with Disability. 11th Period of sessions. March 31st April 2014. General Observation° 1 (2014). Article 12: Same acknowledgement as person before the law.

In the document, article 12 is interpreted to clear those doubts that may arise in its application by the Estates, stating clearly that the new paradigm, according to the above mentioned article is based on the supports that the persons must receive in their decision making. This document is going to oblige the different countries that have ratified the convention to adopt the necessary measures in order to adapt their legislations or, at least, take a position on the issue. We must also take into account recommendation n° 99 (4) of the Committee of Ministers of the European Council, of February, 23rd 199, related to the principles of the juridical protection of the incapacity of adult persons , based on principles such as minimum intervention, subsidiarity, proportionality of measures, respect, and promotion of autonomy.

2. Appearance of assistance as figure of legal protection in Catalonia

The Law 25/2010, of July, 29th, of book 2nd of Civil Code of Catalonia maintains the institutions of the existent traditional protection (guardianship, curatorship, legal defence, etc., and regulates new ones, such as the figure of the assistance, with the objective of giving answer to the diversity of situations in which the persons with disability may find themselves.

The law tries to strengthen the personal autonomy of the persons, adapting the juridical answer and avoiding, as much as possible, unnecessary and/or disproportioned proceedings of the modification of capacity for the real needs of some persons. We must not forget that these processes submit these persons and their families to, sometimes, long and painful procedures, due to their nature and complexity.

This law is framed in the principles of the *International Convention about the Rights of Disability* of United Nations (2006), it defences and promotes a model of legal protection that respects at the highest level the autonomy of the person and determines the supports that that person will need, depending on his / her necessities. Somehow or other, we must take into account that there will always be situations in which it will be impossible to know the will of the person or in which someone will have to decide on his/her behalf in order to protect the person adequately.

The figure of the assistance has different antecedents in Compared Law, as the German normative model of assistance. Until 1991, in Germany there was the incapacitation of the person (*Entmündigung*) followed by the appointment of the guardian, with similar faculties as those of the guardianship of infancy. In the year 1990, a model that emphasises the need of protecting the person without changing his/her civil state was established.

This law annulled the causes of incapacitating, abolished the procedure of incapacitating and the distinction between degrees of incapacitation. The guardianship and the curatorship of adult people were replaced by a single regime, called assistance (*Betreuung*) that foresees that the person may need protection to manage his /her own affairs, always at her/his own request.

Another model of protection comes from French Law. This contemplates a rule of protection for persons who cannot manage their own affairs, but in conditions based strictly on the alteration of mental or body faculties, medically proved, that prevent the expression of the person's will. The judicial authority is in charge of determining the best protection for the person, including the guardianship and the curatorship.

Therefore, we have references of countries where the measures of legal protection keep being based on the legal incapacitating, with the exercise of guardianship or curatorship, others where the assistance coexists with the above mentioned measures, and other countries where these figures have been substituted.

3. Presentation of the project of collaboration

The appearance of the assistance makes necessary to start to plan strategies of diffusion and application of this new measure of legal protection of the persons with disability in Catalonia. It is necessary that the persons with disability, their families, and the professionals or services that orientate them in their vital decisions, know this alternative that preserves the juridical capacity of the person. But we need to have real experiences of application of the assistance in order to confirm their adequation and viability as measure of protection.

For this reason, *som-fundació Catalana Tutelar Aspanias* and *Fundació Catalana Síndrome de Down (FCSD)* designed together a joint project that would help to experiment it with persons with learning disabilities. Some previous collaborations favoured this project with objectives such as:

- Spread the highest information about assistance.
- Analyse the most favourable conditions to the application of this measure.
- Design a protocol to its transaction and application.
- Develop a methodology of work.
- Experiment the suitability of those cases susceptible of take benefit of the figure of the assistance.
- Analyse the results of its real application.

We must say that it was in year 2002 when this project started and consolidated, from the beginning, the option of independent life for many persons with learning disability as an alternative to the family cohabitation and its institutionalisation in residential services. This was due to the creation of services of personal support in their homes or in the community, ruled by means of new social benefits called “Programme of support to autonomy at the own home” of the Department of Social welfare and Family of *Generalist de Catalonia*, with a total of 1200 that take benefit of it now.

Previously, The FCSD started, in the year 2000, for the first time in Spain, the first of these services that have proved the viability of an option of autonomous life or the capacity of self-government of these persons, with the suitable supports, independently of their personal, social or legal situation.

The experience in the monitoring and support to the vital projects of these persons confirms that by adding up the formal supports of the services to those natural supports that the person (family, neighbours, friends, etc.) may have, they attend most of the personal needs that imply an autonomous life. But the true fostering of the personal autonomy also presents, often, technical and ethical dilemmas, especially, in the case of persons without natural significant referents that concentrate their requests of orientations in personal and patrimonial decisions to the service of support. Frequently, these situations may favour an excessive intervention by the professionals, creating unjustified relationships of dependency and overpassing the borders of neutrality of the supports received.

Some practical examples have been given due to requests such as asking for orientation, in the elaboration of will acts, donations, advice in financial operations of buying and selling operations, or the management of the own patrimony, application of the delegation of the current or future medical decisions.

In many cases, these requests worked with enough autonomous personal functioning, with capacity of asking for help and without signs of vulnerability that could justify objectively the need of applying for a measure of a conventional legal protection.

The appearance of the assistance supposed an alternative that offers new supports, perfectly compatible with the totally legitimate existent, given their nature and legal recognition. It is in this context where the idea of initiating this project of collaboration starts.

4. Collaboration entities

Som-Fundació Catalan Tutelar Aspanias (SOM-FECTA) is an entity created in 1987, referent and pioneer among the entities, at an autonomic and state level, registered in the Register of Foundations of *Generalitat de Catalunya* with number 327 and currently it has 504 guardianships.

The mission of this entity is to guarantee that the persons with learning disabilities or development have the necessary help and supports in order to develop their personal project of their lives. Their values are the following:

- **Commitment and social responsibility:** with the persons under guardianship and with the society in general in order to identify and make visible the development of the social rights and demand public and social responsibility. The criteria on which are based in order to achieve are: personalisation, accompanying, integrity, justice, and humanism.
- **Transparency:** with the general administration of the accounts and the patrimony of the entity as well as of the persons under guardianship, with rigour and the general countable principles supervised by the pertinent organs (Protectorate, Administration, Court, Public Prosecutor, etc.). The criteria on which this transparency is based are the following: efficacy, efficiency, professionalism, austerity, and innovation.
- **Independence:** In order to guarantee the control of the quality of life of the persons under guardianship, the entity does not provide residential, labour, or educational services, because, doing so, there might be a loss of objectiveness when trying to defend their rights and interests. The criteria on which this independence is based are the following: objectiveness, subsidiarity, and non-discrimination.
- **Confidence:** With the family and the tutors of the persons with learning disabilities, as well as confidence with the social entities and public administrations, and at the same time a close treatment, empathy, personalisation and recognition of the basic values of our activity and objectives.

Definition of assistance

The very regulation of assistance establishes that the person over eighteen that needs it, in order to take care of himself/herself or their goods, due to a disability no incapacitating of his / her physical or pshyquic faculties, will be able to apply to the judicial authority for the appointment of an assistant (Chapter VI, Book, 2nd, CCC, article 226-1 of Civil Code)

The assistance is conceived as a measure of protection at disposal of the persons to whom, according to their psychophysical conditions, the incapacitation and guardianship are not possible, or advisable. The law emphasises the natural capacity of the persons and the respect to their autonomy in the personal and familiar sphere.

The assistance is present in a procedure of voluntary Jurisdiction, in which the judge determines the sphere: personal and/or patrimonial. The judicial authority must respect the will of the person that must be attended in regards to the appointment or exclusion of any person to develop the function of assistance (Chapter VI article 226-2)

6. Finality of the assistance

The assistance has the finality of providing help, offering supports (accompanying, advice, orientation, assessment...) and guarantee that the person can have access to the information of the affairs that concern him/her in an adequate way, with the purpose of achieve the care of himself/ herself or their property and thus prevent from risks coming from third persons.

Considered as a system of supports, it is controlled by the very person since the beginning, it acts according to the person's requests, and in no case substitutes his /her own will.

7. Profile of the candidates of the pilot project

Given the previous experiences and with the objective of facilitate at the highest level the experimental application of this new figure of protection, some personal characteristics of inclusion in the test project of the possible candidates were defined.

These characteristics obey to two determinant circumstances of the beginning of the pilot project:

- The personal characteristics of the users of the service of support to the independent life that determined situations of origin with previous detected needs and requests.
- The need of guarantee the comprehension and acceptance of assistance by the same person.

This way, some criteria of inclusion of the possible candidates were established:

- To have a light learning disability or limited intelligence that enables the comprehension of the project.
- Low incidence of mental disorder in the volitive capacities of the person.
- Awareness of the own limitations and of the need of support in order to guarantee the explicit demand of help.
- Explicit attitude of collaboration with those referent agents of the person and with the team of the project.
- Residence in Catalonia in order to get benefit of the legal and social resources of the territory, due to the fact that outside Catalonia the measure is not in practice, since it is part of the civil autonomic law.
- Full legal age as a requirement to the full juridical capacity of decision.

These variables did not suit to a single profile of an applicant, but they have to be assessed in the individual circumstances of each case. But, somehow, these variables had to guarantee the required competences to participate and increase the legal process that supposes to transact a demand of assistance.

One of the objectives of the analysis of the results of this pilot project would be to revise *a posteriori* these profiles in order to study their confirmation, enlargement, and introduce the necessary modifications.

8. Spheres and functions of the assistance

In the resolution of the appointment of assistance, the judicial authority determines the supports and interests of which the assistant must take care in the personal and/or patrimonial spheres, according with what it is agreed in the initial demand and established by law:

8.1 *Personal sphere:* the assistant must watch over the welfare of the person assisted, fully respecting the will and the personal opinions. The assistant must receive the information and give consent, if the person assisted cannot decide by himself/herself about the fulfilment of the actions, medical treatments, and in the case that he /she has not drawn up a document of anticipated wills.

Beyond what the law establishes, we understand that in the personal sphere the assistant, if the person requests so, can offer a monitoring more global to detect, orientate, and support, not only in the physical well-being, but in other areas such as the emotional well-being, personal development, interpersonal relationships, social inclusion, rights and self-determination and can intervene in the incidences that may arise within these areas and that put in risk of personal well-being of the person assisted, carrying out a preventive action. This monitoring will have to respect always the will of the own person.

Mainly, the supports in the personal sphere will make reference to the taking of decisions to the achievement the personal well-being, the taking of decisions and the conferring of informed consent to any intervention, or medical treatment, with especial attention to psychiatric, psychological, or pharmacological treatments; taking of decisions related to the labour activity, to the domestic sphere with especial incidence in the maintenance personal hygiene, feeding, and that they can keep the right to universal suffrage.

8.2 *Patrimonial sphere:* The assistant must intervene, together with the person assisted, in the judicial acts related with the functions of assistance. At the request of the person assisted, the judicial authority can also the person might carry out without the intervention of the assistant, if this was necessary, would be revocable.

One defined what the law says, we understand that the assistant, if the person assisted require so, can offer information, supports, and intervene with him / her in all the acts that the person assisted requires.

Some examples: actions referred to the salary and patrimony, acquisition of goods, rent of a house, disposition of real estate and furniture, contact of loans or compromises of deferred payments, mortgages, taxes on the real estate of patrimony, contracts of banking or financial operations, whether they will suppose temporary or quantitative reaching policy, the execution of dispositions to decide about the patrimony, without detriment to have at his disposal some money to his/her personal expenses for the value determined by the assistant, informing always of this decision to the banking entity where the person has his/her money.

We understand that both if there is an intervention in the personal sphere as in the patrimonial, it is essential to establish a link and a relationship with the person based on the mutual respect and confidence.

9. Transaction of the assistance

To access to this measure of legal protection, it is necessary to formulate and present a demand of appointment of the assistant to the corresponding Judge of the district of the person who applies for it.

We have to say that in those cases derived and / or attended within the pilot project, the demand is formulated by the very person accompanied by the legal services of the guardianship entity.

Once the demand is presented, the judge dates the future assisted person, and the Public prosecutor and the forensic doctor will confirm together that the person presents a non incapacitating disability.

10. Protocol of the application of the pilot project

10.1 Welcome stage:

The applicants can access to the project through three different ways:

- By an own demand of the person and/or the family: the guardianship entity receives a first direct demand of information and plans all the necessary interviews of each stage.
- By derivation from a service or professional derivers: The deriving agent, (in this case, Service of support to independent life "*I am going home*" of FCSD) formulates a hypothesis of demand to the guardianship entity, sends the required documentation, and plan a first meeting together to assess the derivation. The guardianship entity opens an individual file of assistance (EIA).
- By demand to the guardianship entity by the Jurisdiction.

10.2 Assessment stage:

- Transfer of the required documentation of the deriving service to the guardianship entity (Photocopy of DNI, recognition of the disability, assessment of the dependency, medical and psychological reports, etc.).
- First meeting of derivation between the guardianship entity and the deriving service in order to assess and/ or confirm the derivation of the case.
- First interview of presentation of the person interested accompanied by the deriving agent to receive information from the guardianship entity and from the assistance. In this interview it is the time to collect information of the person interested and sound out a hypothetical initial demand.
- Visit to the person's home with the objective of knowing and assessing the person's environment and clarify some information provided by the assistant. This allows to confirm his/her comprehension and to attend doubts about the process.
- Interviews between the person interested and the guardianship entity so that he/she can formulate, with all the information given and without any external influence, his/her own inquiries and, thus, confirm his/her demand of assistance. This stage concludes with the drafting of a proposal of assistance that will detail the person's wills and will allow to derive the case to the legal services of the guardianship entity.
- Interview of devolution and derivation to the legal services to confirm the demand formulated in the proposal of assistance carried out by the guardianship entity and derive the case to the juridical area of the guardianship entity that will initiate the whole transaction.

10.3 Transaction stage

The juridical services of the guardianship entity draft out, together with the applicant, the demand of assistance that they will present before the judicial organ and that is accompanied by the required documentation for the transaction, that accredits the disability of the person and a medical or psychological certificate that accredits his cognitive and willing capacities, as well as this is a non incapacitating disability.

The transaction of the demand includes all the actions that the juridical services of the guardianship entity will have to manage with the person interested until they achieve the approval of the judge. The FCSD carries out a monitoring of the process with the user and coordinates with the guardianship entity in order to guarantee that the applicant disposes and understands all the information of the process.

10.4 Appointment

The final judicial resolution confirms the assistance spheres and the appointment of the assistance in accordance with the demand presented and in accordance with the law. The appointment must be registered in the Civil Register in order to be effective.

10.5 Stage of the application of the assistance

Once the transaction and the appointment of the assistance are finished, the application of the assistance as measure of support and legal protection is initiated.

1. Interview of the initiation of the assistance with the person interested, now already assisted, to inform him/her of the appointment, elaboration of the pact of assistance according to the judicial resolution and then the planning of the initiation of the assistance.
2. Interviews of monitoring that are considered necessities to coordinate those requests, incidences and necessities that may arise.
3. Annual updating of the Plan of Assistance with all main the agents decided by the person assisted.
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11. Methodology of the assistance

We start from an absolute voluntariness and awareness of the specific difficulties, detailed in the demand, by the very person assisted, as a base of a relationship of confidence that allow the assistant to give advice, inform and orientate, without any individual interest about the decisions and conveniences of the person assisted.

The assistant meets the future assisted when necessary, following the orientations of the protocol, in order to reach agreements and make the compilation of the required information.

The premise consists in detecting requests, necessities, and difficulties at personal and/or patrimonial level that cause the demand of the person. With the information of the interviews and with the information provided (social and medical reports, etc.) there will be an assessment of the suitability and adequation of the assistant to the applicant.

The empathy with each personal situation and the active listening allow to know which expectations of the presupposed user are in order to frame those relevant aspects of his life, and adapt the help of the assistance. Starting from the initial acceptance, the specific objectives of each sphere (personal and patrimonial) are defined altogether.

The assistance requires a close and continuous relationship by means of periodical visits or telephone calls that will allow to do the monitoring of the evolution of the objectives previously planned. It is important that the person assisted understands that this is a figure that advise and accompanies punctually in the predicted situations or before a particular request.

Before situations of anguish, emotional stress or disappointment, the assistant will try the emotional support that make reduce the negative perception or the conflict, emphasising the personal competences and the advantages of the relationship of help that allow to find the necessary solutions.

The working plan must abide by the judicial sentence, although, as the assistance goes on, new strategies will be adapting to the necessities that may arise.

It is essential to keep an atmosphere of absolute confidence that brings to the relationship a referential frame of the assistance and favours the interchange of opinions, wishes and thoughts.

The finality of the assistance will be to implement the abilities, attitudes, personal resources and behaviour of the person assisted in order to endow him/her with new tools that improve his/her autonomy and his adaptation to the environment, that allow him to act in the preceded conditions to his working plan.

Sincerity and transparency are essential to bring forward the highest reliable information that allow to give and search the proposals that improve the quality of life of people.

Other tasks of the assistant include accompanying the user in managements, transactions, visits, meetings, appointments, etc., whenever is necessary. Another task is the observation and detection of the difficulties that hinder the well-being and development of the person.

This is the way the assistant will work:

- To try to achieve a relationship of confidence and transparency.
- To strength the personal autonomy.
- To improve the individual functioning and the adaptation to the environment.
- To complement the personal competences, without replacing them. “We do not give them the fish, but we try to teach them how to fish as far as we can”.
- To preserve the self-determination of the person.
- To keep an active listening.
- To provide a social accompanying.
- To prevent incidences that put in risk the well-being and personal security.

12. Principles and values of the pilot project of assistance

We understand by principles those universal laws, unchangeable and valid to the whole world that inspire the personal and social good behaviour. We point out four principles in the assistance that give benefit to the person:

- Principle of social inclusion, such as the process that orientates to offer to the person assisted all the personal opportunities and resources so that he/she can develop himself/herself and participate fully in all the areas of the community life.
- Principle of self-management, in his project, in the elaboration of a working plan or assistance in order to influence in his process of awareness and in the design of his objectives.
- Principle of co-responsibility, as commitment to cooperate in the construction of a plan of assistance, detection of necessities and will of improvement.
- Principle of respect to dignity, as essential condition of assistance, which is offered in an uninterested and beneficial way.

We attend values such as the good, discovered and chosen in free way, that is searched and carried out by the persons and that must be recognised by the rest of the people. At the same time, the assistance will answer, among others, to the following values:

- The value of the human development, to exercise a role that favours the consecution of personal objectives, the improvement of personal growing up, the conditions of life, with balance between the rights and responsibilities of the person.
- The value of equity, which implies a fair treatment to all the persons, starting from the recognition, justice, and the elimination of any discriminatory attitude and/or action.
- The value of equity, in relation with the elimination of obstacles and prejudices.
- The value of tolerance, which implies respecting, listening, and accepting ideas, opinions, beliefs, and practices of the others.
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13. Rights and obligations of the parts

The regulation of the assistance establishes clearly rights and obligations to the parts that are going to participate in the application of this measure of protection and a relationship of help.

13.1 Rights and duties of the person assisted:

- Right to receive voluntarily assistance.
- Right to receive information related to aspects that affect him/her.
- Right to present suggestions and/or claims about assistance in order to value them.
- Right to intimacy and the no diffusion of personal data that are in the files, to maintain privacy by means of the professional secret of all the professional data.
- Right to enjoy a continuous personalised attention.
- Right to be treated without discrimination, with the due respect and consideration of his/her dignity, with his/her particular cultural, religious or philosophical convictions and right to have his/her personal and familiar situation considered.
- Obligation of facilitating the perception of the assistance and accomplish the agreements established.
- Obligation of assisting to the dates.
- Obligation of communicating the important changes.
- Obligation of keeping a collaborative attitude.
- Obligation of informing about important, decisive, and outstanding dates-
- Obligation of showing respect, and sincerity.

13.2 Rights and duties of the assistant

- Right to communicate to the pertinent organs any situation of risk
- Right to express an argumentative objective assessment before situations brought up by the person assisted.
- Right to orientate the decisions of the person assisted in order to prevent risks or dangers.
- Right to abolish acts which might be susceptible of being annulled, according with the law.
- Obligation of working to improve the quality of the decisions taken by the person assisted.

- Obligation of guaranteeing the good functioning and order of the matters that may have been declared in the request.
- Obligation of respecting his/her decisions.
- Obligation of advising, informing, and give the adequate resources for each personal situation consulted.

14. Revocability of the acts of the person assisted

The law establishes in article 226-3 that the juridical acts that the person assisted might carry out without the intervention of the assistant, if this intervention were necessary, are revocable at the request of the assistant or the person assisted. They are as well revocable at the request of the guardian, if the guardianship is already constituted, and the request of the heirs of the person assisted, in the term of four years after the guardianship, or after the death, respectively.

15. Modification of the assistance (Article 226-4)

At the request of the interested part, including the person assisted, the judicial authority must resolve the reduction or extension of the range of functions of the assistant if it were necessary given the circumstances.

If the assistant hears of circumstances that allow the extinction of the assistance or the modification of his range of functions, he must report to the judicial authority.

16. Extinction of the assistance (Article 226-5)

The assistance can be extinguished due to these causes:

- a. Death, declaration of death or absence of the person assisted.
- b. Disappearance of the circumstances that motivated it.
- c. Modification of the capacity of the person assisted.

Supposing that in point b. the judicial authority, at the request of the person interested, must declare the fact that could lead to the extinction of the assistance that would leave without effect the appointment of the assistance.

17. Juridical Regime (Article 22-6)

While the rules of this code are compatible with the function of the assistance, they will be applied to the assistant in matters of aptitude, excuse and removal of guardianship, and also those rules related to accountability if the assistant would have attributive functions of the ordinary administration of the patrimony of the person assisted.

18. Registered Publicity (Article 226-7)

The assistance, while it is not registered in the Civil Register, it is not opposable to third persons,

The taking over of the assistant must be registered in the Civil Register of the home of the person assisted through a communication of the court resolution.

19. Assessment of the applicants for the pilot project

There were three selected proposals of possible applicants, based on the criteria of access to the pilot project, together with the assessment of different causes claimed by the proposals.

Case A: It is the case of a 50-year-old person with a diagnostic of borderline intelligence and epilepsy and degree of disability of 36 % that has lived on his own for years, although he was derived to the service of independent life some years later. He works in an especial centre as official gardener for the Municipality of his town. Due to some bad records of social-familiar conflicts, he does not keep any significant relationship with his relatives, consequently, the need of support was concentrated in referent services (labour and independent life). The plan of personal attention (PAP) elaborated by the service of support to independent life included, among others, supports related with the management of his own health (medical monitoring, psychological attention), the management of his material properties (salary, and saving bank accounts), and the taking of personal vital decisions. With the objective of increasing the available supports and guaranteeing the maximum neutrality of these, we considered that the assistance could suppose a new help independent of the assistant services and legally legitimated.

In the process of derivation the applicant confirmed requests referred to:

- Orientation and help to make his own will and a document of anticipated wills.
- Help to make the annual declaration of *IRPF* and the monitoring of the bank accounts.
- Give informed consent and demonstrations of last will, in the case of doing himself, according to the verbal instructions, if he had not given a document of anticipated wills.
- Orientation in personal moments of anguish in his relationship with other people.

Case B: It is the case of a fifty-three-year old person, with a disorder of adaptation and affectivity, with a degree of disability of 40%. She works as a replacer in a shopping centre and she has shared a flat with a friend for 9 years, when her parents died; she hasn't got any relationship with any relative of her.

Her plan of personal attention (PAP) includes supports related with the search of job and its monitoring, the management of social help, the management of her house and a close monitoring at a personal and psychological level.

In this case, the situation of abandonment, the material precariousness, and a high emotional fragility induced to a relationship of dependency with the service of reference. For these reasons, we estimated that the assistance could suppose a new complementary help that would increase the supports available.

In the process of derivation of the person, the applicant formulated some requests related to:

- Help in the relationships with the public administrations.
- In the signature of job contracts and its execution, looking after her rights and being the assistant the interlocutor in the relationships with the company or entity to which she provides her personal services.
- Help in the search of social services to which she may have right to request.

Case C: The last selected case is that of a 29-year-old person, with a diagnostic of learning disability, hydrocephaly and problems of physical health, with a degree of disability of 65 %. Some years ago, when his mother – with whom he keeps occasional contacts - moved to another county, he went to live on his own.

Derived by the social services, his plan of personal attention (PAP), elaborated and initiated five years ago by the service of independent life, included supports related with financial management of some accumulated debts, social benefits, search of house, job training, job, and an intense monitoring of due to different problems of physical and mental health.

In this case, the application of assistance was detailed with reference to:

- Help in the transaction of the acceptance of the supposed family inheritance.
- Help in the payment and mortgage of the outstanding debts.
- Help in the transaction of the social benefits to which he would have the right to request.

20. Transaction of the requests of the applicants

Once the requests of assistance of the three selected cases through the juridical services have been confirmed and formulated, the applicants were dated by the pertinent Court. Differently to the processes of legal incapacitating, in this case the Judge and the forensic doctor only attended to a single declaration of the person interested and the information given in the documentation.

Essentially, in the declarations there was much insistence in asking about the reasons why the person applied for the assistance, confirming that there would not be clues of external influence in the personal request, and confirming as well the identity of the future assistants proposed and the awareness of the consequences of the juridical act in progress.

The average duration of the transaction of the requests ranged between 6 and 9 months. During this period, the team of the pilot project kept a continuous monitoring that allowed to keep them informed of the whole process, to start to develop the details of the future supports of assistance and going on building a relationship of confidence that allowed to initiate the provision of assistance in an adequate way, at due time.

21. Results of the resolutions and appointments

Out of the requests presented, two cases had a favourable judicial sentence to the appointment of the assistants, and one was rejected.

In the favourable cases, the sentence determines the functions of the assistance in the patrimonial sphere, referred to the administration of property, due to the reasons exposed in the corresponding requests (declaration of IRPF, actions before the public administrations, application of social help and benefits), with the exception of the request of orientation to prepare the ordinance of the will, attended the very personal character of this act of last will, since this action does not require a court ruling. Of these functions relative to the patrimony, the assistant must be brought to account annually before the court.

In the personal sphere, the sentences determined functions referred to the guarantee of the personal well-being stating from the requests that the person assisted might formulate to his/her assistant, together with other more explicit such as giving informed consent in the case of not having a document of anticipated wills.

In both cases, the individual pact of assistance was confirmed and this has allowed the planning of provision of the supports provided in the functions of assistance. Likewise, the application of the assistance was coordinated with the assistance services of reference in order to guarantee the complementarity and suitability of the supports provided thanks to the network carried out.

In one case, the request was rejected due to the lack of confirmation of the wills of the applicant as a determinant factor of the whole process if the application, assessment, acceptance or extinction of the assistance. The limitations of the cognitive and volitive capacities that turned up in some declarations and contradictions of the applicant during the hearing, make the judge to reject the convenience of the assistance as a measure of protection.

22. Some conclusions

The results of this pilot project evidence the viability of this measure of legal protection as alternative to the processes of legal incapacitation.

Likewise, it is absolutely necessary to experiment this figure in the highest number of cases in order to have enough data that allow to validate the possibilities and limits of this measure.

At the end of 2014, in Catalonia there were 18 registered cases of persons that were welcomed to the assistance by guardianship entities, but it remains unknown the number of cases that have requested and appointed physical persons as assistants.

Since assistance is a figure that coexists with the guardianship and the preguardianship, with different assumptions and regulations, we must explore those characteristics and/or circumstances that allows to orientate each of these measures of protection. The extension of these resources of support demands the development of criteria in order to be able to orientate and support decisions in this way.

It is necessary to expand the assistance with an information that allows to the persons interested and their referents to estimate the convenience of resorting to this or other measures of protection. Meanwhile, the existing measures, such guardianship and preguardianship, which imply modification of the capacity of the persons will be prevailing. This might be necessary in some cases, but we must manage the individualisation and adequation of the measures to the real necessities and wills of each person.

The same diffusion must be managed with the judicial organs and with colleges of barristers in order to make known the incidence of its application in our territory, so that it gets consolidated as a true option to the legal incapacitation.

The increasing application of the assistance will allow to initiate the analysis of the regulation of the formulae of legal protection of the persons with disabilities in our country. Last, but no least is the revision of the way the assistant apply these measures of protection, whether they are physical or juridical persons, by means of procedures and protocols that orientate the exercise of good practices, the promotion of the personal autonomy and the defence of their rights.

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