

Parental planning for the future care of vulnerable adults Persons law, family(property)law and social law aspects

Abstract

This dissertation focuses on vulnerable adults and their parents. Whereas other children lead their lives independently as they grow older and reach adulthood, vulnerable adults need support from others. Often, it is the parents who fulfil the role of actual caregiver or who act as supervisor or care manager, which means that the parents are greatly involved in the well-being of their adult son or daughter. It may therefore not come as a surprise that parents often **worry about the future**. This is especially the case with regard to the time when the ageing parents will no longer be able to take care of their vulnerable child themselves or they die prior to their child. Sometimes the worry and despair is so great that parents express the wish that their child would die before them.

This dissertation examines which possibilities exist within current Belgian law for these parents **to shape a plan for the future care** of their vulnerable child. The aim of this plan is to guarantee lifelong care for the vulnerable adult **in a legally enforceable manner**, lasting after the death of the parents. In this dissertation the concept of 'vulnerable adult' is broadly interpreted: vulnerable adults can for example be persons with a physical, motoric, mental or sensory handicap, persons with a long-term illness or psychological health problems, persons with a drug, gambling or other addiction or persons who are physically or socially vulnerable. The research is carried out by crossing the boundaries of different legal areas, focusing on persons law, family (property) law and social law aspects of care planning.

The dissertation is built around **five possible objectives** that the parent can aim for with his plan for the future care: 1° protect the vulnerable adult against himself; 2° facilitate the participation of the vulnerable adult in legal transactions; 3° protect the vulnerable adult against creditors; 4° provide the vulnerable adult with assets, income, services, housing or benefits in kind; 5° strengthen the social network of the vulnerable adult. The fourth objective also pays special attention to care planning aimed at obtaining or maintaining the social protection provided by the state.

Care planning comes to the fore in this dissertation as a **delicate balancing act in which different boundaries constantly interact** with each other. The legislator, science of law, legal practice and legal users are invited to reflect on this interplay of boundaries:

- the boundary between the objective and subjective need for care of vulnerable adults (whereby in social law one can argue for the abolition of categorical legal rules for vulnerable adults and in family property law one can argue for the introduction of categorical legal rules);
- the boundary between 'careship' and 'thirst for care' (whereby 'careship' can be put forward as a new concept to denote the legal anchoring, facilitation and caring relationships that can replace the 'thirst for care' or the parent's desperate attempt to carve in stone a care plan for the adult child to be carried out for the further life of the care child in a rigid manner);
- the boundary between family protection and social protection (whereby one may call for more in-depth examination of the interaction between the two);
- the boundary between the family context and the legal context (whereby the practical effectiveness of some strategies discussed in this dissertation may be questioned when applied in a purely family context).

Finally, this dissertation also pays considerable attention to identifying **future lines of both broad and punctual research**.

Veerle Vanderhulst (Duffel, 3th of December 1975), Master of Laws in Law and Master of Laws in Notarial Law.