

### Background

In the Netherlands protective measures are available for adults who are not able to adequately protect their own, financial or other, interests. There are three measures available: a legal guardianship (covering all aspects of the wards life), conservatorship (a property and financial affairs deputy in the UK) or welfare guardianship (a personal welfare deputy, mostly orientated towards medical care). A judge instates the measure and simultaneously appoints a guardian or conservator. This can be a relative, but can also be a professional. All three measures are, to a greater or lesser extent, restrictive of the right to self-determination of the individual in question. It is for that reason that a judge continues to oversee the execution of the (legal) guardian- or conservatorship.

The judiciary monitors a considerable amount of cases each year. In the 2017 budget estimate of the Ministry of Justice, research was announced into the question whether a levy on this supervision by the judiciary could contribute to keeping the system viable. The contribution would be asked of those to which the protective measures apply. This research should be considered against the backdrop of the following recent developments:

- a. The duties the judiciary is tasked with in her supervision of protective measures have been expanded, for instance by an increase in the required reporting by (legal) guardians and conservators.
- b. A strong increase in the amount of active conservatorships, and thus of measures on which supervision is needed.
- c. A call for improving the quality of judicial supervision in cases of protective measures by the Council for the judiciary itself, and the funds required to make the suggested professional standards happen (estimated by the Council at 11,2 million euro in 2017).

These developments together put an increasing amount of pressure on the financial viability of the judicial supervision on protective measures. In announcing this research, the budget estimate states that the aim is to collect 6 million euro via the levy each year. The levy, alongside other measures, serves a budgetary task setting amounting to 52,5 million euro a year.

### Research questions

The research revolves around the following questions:

1. How could a levy on conservatorship, legal guardianship and guardianship take shape?
2. What are the possible consequences of a levy?
3. To what extent can a levy contribute to the 'viability' of the supervisory system in future, i.e. to the affordability of the system?

Below we summarise our findings for each research question. To guide the research the WODC instated a guidance committee. The members of this committee are listed in the first annex of the full report.

### *Research question 1: How could a levy on conservatorship, legal guardianship and guardianship take shape?*

Firstly, the design of the levy is dependent on its accompanying financial goal, i.e. the

revenue the levy is expected to raise. Is the aim solely to raise the 6 million a year to meet the Ministry's budgetary task setting, or does the aim of the levy include increasing the quality of the judiciary supervision on protective measures (6 million + 11,2 million euro)?

In designing the levy, the second question pertains to whether the contribution is paid annually, as long as the protective measure is active, or whether it is a one-off contribution towards the supervision of the judiciary. We will adhere to a model of an annual contribution, to be paid as long as the protective measure applies.

The simplest way to design the levy would be a model where every person subjected to a protective measure contributes an equal amount. Depending on the chosen financial goal or revenue of the levy, 6 or 17,2 million euro a year, this would result in an annual contribution of 18,75 euro or 53,75 euro per person respectively. This does not include the costs of establishing the levy or the costs of collecting the fees.

The scenarios described above can be refined by differentiation. A first possibility for differentiating the contribution to be paid by those involved, is by the capacity needed from the judiciary in the supervision of the different protective measures. Differentiating the levy along the lines of the different protective measures would mean that welfare guardianship would be levied less heavily than legal guardianship and conservatorship. The tariff paid for conservatorship would be highest, as the monitoring and supervisory tasks tend to be more time consuming for this particular measure due to an increasing number of cases resulting from serious debt. Another option for further cost-

differentiation would be to differentiate according to the intensity of judicial supervision in individual cases. This would create a direct link between the actions required of the judge in an active measure and the contribution paid by the person under the protective measure. The size of the contribution to be made would then not only differ between the protective measures but also between individuals with the same protective measure.

Secondly, differentiating the levy can also be done along the lines of the financial capacity of those under a protective measure. The Council for the judiciary itself has drawn up a scenario where all those with a protective measure due to problematic debt or squandering are exempt of a levy. This is the case in about 25 percent of protective measures. In this scenario, depending on whether the goal is to collect 6 million or 17,2 million, the remainder of people with a protective measure would have to contribute 25 or 71,67 euro a year respectively. Another scenario taking into account the financial capacity of those in need of a protective measure, is to exempt all those who rely on 'exceptional benefits' (*bijzondere bijstand*) from the municipality to finance their protective measure. Research shows that this is the case in 60 percent of conservatorships.<sup>1</sup> In such a model a minority of the total amount of people with a protective measure would be asked to pay a contribution of 46,88 or 134,38 euro, depending on the estimated revenue of the levy. Another conceivable scenario would be to only charge those with a protective measure that have a large income or that have extensive financial means. It is not clear at this time how many people would fall into such a category and, subsequently, unclear how high the levy would be.

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<sup>1</sup> Bureau Bartels' (2015) research analyses how often municipalities finance for the costs of conservatorship, by analysing a random sample of cases. No research is available on the portion of legal guardian- or welfare guardianship cases

where the municipalities finance the costs. In this research we work from the assumption that this portion is the same as for the conservatorship measures.

The two ways of differentiating, along the line of costs or the capacity of those with a protective measure, have opposite outcomes. Cost-oriented differentiation leads to those with least financial means being charged most. The more intense supervision needed in conservatorship cases containing severe debt and squandering would result in a higher tariff in that scenario. The result of exempting those with little to no financial means of the levy and in that, those cases where most judiciary capacity is needed, would be that those who take up least of the judiciary's capacity will be charged most.

The costs of collection (including necessary investments) will most likely be higher in a scenario of cost- or capacity-differentiation than in a scenario where all those with a protective measure are charged the same amount. Additional research would be necessary to correctly assess the collection fees (including investments) in the different scenarios. This question does not fall within the scope of the current research.

Consequences in terms of reduced access to protective measures for those in need of them, would be limited to non-existent in the most simple model, where the levy would amount to 18,75 or 53,75 euro a year, depending on the financial goal of the levy, and where the levy might be paid for by the municipality. In a cost-oriented scenario the levy would differ per case, depending on the level of judicial supervision needed, and thus the level of reduced access to protective measures would too. The more supervisory actions are necessary, the higher the levy will be and thus the higher the barrier will be to access a protective measure. Arguably though, those cases where most instances of judiciary supervision are required, the judiciary supervision has most utility. In the scenario where the levy would only be applicable to those with extensive financial means, all

those exempt from the levy would not experience an increased barrier to seek a protective measure. For those that would be charged in this scenario, however, the levy would be (a lot) higher than in the other scenarios.

### *Research question 2: What are the possible consequences of a levy?*

The consequences of the levy depend on its design and the revenue it is meant to produce. An undifferentiated levy meant to produce 6 million will most likely have limited consequences for those under a protective measure. In that scenario, the financial barrier would be 18,75 euro a year. This amount is not likely to drive people towards similar alternatives (such as a living will or (municipal) budgetary management). In comparison, those with a protective measure currently pay a reward to their (legal) guardian or conservator (between a minimum of 599,30 euro and a maximum of 2.278,80 a year) and pay a registry charge (79 euro) for the hearing where the measure is instated. Those with little to no financial means can claim benefits to cover these costs from the municipality.

Those under a protective measure with little to no financial means, that are currently claiming benefits for the costs of their measure from the municipality, will continue to do so for the additional costs of the levy. This would lead to an increase of the costs of these exceptional benefits for the municipalities of 3,6 million euro a year (for an estimated revenue of the levy of 6 million a year) or of 10,3 million euro a year (for an estimated revenue of 17,2 million a year). Because the municipalities are such a large financial stakeholder with regards to a possible levy on judiciary supervision, the Ministry of Justice will have to consult with the union for municipalities (VNG). Article 2 of the Financial-ratio law (*Financiële verhoudingswet*) dictates that if intended state policy leads to a change in the activities or tasks required of municipalities, the state must provide an indication of the

financial consequences for municipalities and through what mechanisms these financial consequences might be mitigated.

If the aim is also to finance increasing the quality of judicial supervision, the additional costs for municipalities will rise to 10,3 million euro a year. Taking into consideration financial means and exempting those who claim benefits to finance their protective measure, would lower costs for municipalities significantly. Doing so would leave a relatively small group that the levy would be charged to, and in that they would be charged a high tariff. Especially to those with little financial means, but that earn too much to qualify for exceptional benefits, the extra charge would be of far-reaching consequence. At the same time there are no real alternatives for protective measures that include extensive supervision. The most obvious options, a living will or budgetary management, are not sufficiently comprehensive to most of those in need of protection legally or financially. Moreover, the deputy or manager in these measures work unsupervised.

Regarding the judiciary, it is of importance that investments would have to be made in order to introduce the levy. These costs increase with the level of differentiation of the levy. The costs of collection for the national support centre for the judiciary, the LDCR, and for the courts themselves will also be higher and will require a structural investment.

Depending on whether the plan for increasing the quality of judicial supervision will be funded with revenue generated by the levy, the levy could have positive consequences for the supervision of protective measures. If the aim of the levy remains solely to raise 6 million for the budget of the Ministry, the levy does not contribute towards quality judicial supervision.

*Research question 3: To what extent can a levy contribute to the 'viability' of the supervisory system in future, i.e. to the affordability of the system?*

The goal of the levy as formulated by the Ministry of Justice was to contribute 6 million to the budget estimate of the *criminal justice* system.<sup>2</sup> Thus, in this scenario, the revenue of the levy would not be destined towards the supervision of protective measures or the affordability of the supervisory system. Similarly, its goal is not to dampen the growth in active protective measures, or to finance the extra supervisory duties, or the call for improvement of supervision by the judiciary. Because the goal as formulated in this scenario holds no relation to the supervisory system for protective measures, the levy would not contribute to the viability, in terms of affordability and quality, of this system.

Should the goal of the levy be widened to encompass financing the implementation of the professional standards drawn up by the Council for the judiciary (at 11,2 million euro), there would be a relation between the levy and the viability of the system. It should be stressed that in this scenario the effect of the levy on the viability of the system is *potentially* positive, as the Council of the judiciary and subsequently the individual courts are responsible for the allocation of funds internally. Even if the revenue of the levy is put towards the Council for the judiciary for the implementation of the professional standards, it is not guaranteed that the revenues will be put towards the handling of (legal) guardian- and conservatorship cases (entirely) in every court of justice.

Quality is costly. Funding the implementation of professional standards for judicial supervision has a downside, namely the negative effect it would have on the affordability of protective measures at the individual level. For

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<sup>2</sup> Rijksbegroting 2017, VI Veiligheid en Justitie.

those qualifying for benefits in financing their protective measure, access to a protective measure and corresponding supervision would remain unchanged, as the municipality would cover the additional costs. For the remainder of the population, a minority of forty percent of those with a protective measure, the levy can act as a financial barrier. The levy would be even higher for this group if those relying on exceptional benefits are exempted to spare the municipalities covering additional costs.

### *Commission of the research*

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### *Execution*

APE Public Economics b.v.

Stefan van der Veen (APE) | Peter Wilms (APE) | Suzanne Kluft (APE) | Kees Blankman (VU)

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