

Austria's Adult Legal Representation

Austria has always been considered one of the most prominent systems for social security and vulnerable individuals protection.

The topic I'm talking about is the law on adult legal representation in Austria which has changed in 2018. Before 2018 there was a traditional guardianship system.

A guardianship is the delegated decision-making responsibility, for a person, no longer able to look after her- or his affairs. On the basis of even modest statistic data we gathered, it became clear that this law in many cases didn't properly cover the rights of persons with disabilities. It has been criticized for entitling too many guardianships (30.000 of 60.000) (Federal Ministry of Justice, online) to act for all affairs of an individual with disabilities. Also, in many cases the ward had hardly contact with her/his representative (cf. Harrer-Schütt, Lebenshilfe OÖ, 2019).

Over time, a number of serious problems came up:

Guardianship for persons with disabilities was originally intended to be used only as the last legal resort. But in daily life, guardians were often appointed not for a specific matter only, (e.g. to sign a contract) but to look after all of the ward's affairs.

The result was that many disabled individuals had no longer the possibility to act by themselves.

To protect the rights of persons with disabilities, Austria passed a new law called "**Adult Protection Law**". This new approach places at the centre the demand: "NOTHING ABOUT US WITHOUT US". "*The new law is centered on autonomy, self-determination and decision-making guidance of those concerned.*" (Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, p. 1, online)

Protection in everyday matters can be illustrated by the following principle which is since 1 July 2018 in force: For all persons who do not have decision-making capabilities but who are of age of majority, the transaction in daily affairs is valid if they don't exceed the usual living conditions of the affected persons.

To clearly understand the difference between the old "*system of guardianship*" and the new "*adult protection law*" some basic principles have to be considered. The aim of the new law is to recognize and maintain the autonomy of every individual for as long as possible and to support these persons in the management of their affairs rather than making decisions over their heads. (Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, p. 4, online)

Important aspects are:

- The first principle is that first comes support and then representation;
- The second principle is self-determination even though the person has an appointed representative;
- Representation is only permitted, if the person concerned want it for her- or himself;
- The **former guardian** is now referred to as the “**relevant person’s representative**”;
- **A representation for “all matters”** of a person with disabilities is no longer possible;
- All forms of representation have to be registered in the “Austrian Centralized List of Representation”;
- The registration is a pre-condition of the effectiveness of the representation at public agencies;
- In Austria, the registration can be notified by a lawyer or notary or at the “Adult Protection Organization” (Erwachsenenschutzverein/VertretungsNetz);
- In case of a judicial representation of a person, a clearing of the justification is mandatory prior to the court appointment. Annual life situation reports are required by the court (cf. Harrer-Schütt, Lebenshilfe OÖ, 2019).

These aspects are integrated in four types of representation of persons with disabilities, each with different levels of power to ensure – as mentioned above - greater self-determination, autonomy and decision-making guidance for the persons concerned (cf. Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, p. 5-6, online).

1) Precautionary/enduring power of attorney (Vorsorgevollmacht)

The scope of action is a matter of agreement between the giver and the taker of the lasting power of attorney – unlimited validity

2) Elected representation of persons – newly introduced form of representation (gewählte Erwachsenenvertretung)

When decision-making ability is reduced but the person can understand the main features what representation for her/him means, then a representative (a friend, a family member or other person) can be chosen.

The court will carry out regular checks – unlimited validity.

- 3) Statutory representation of persons – replaces a previous power of representation of next of kin (gesetzliche Erwachsenenvertretung)

Is the form of representation by a close relative. An extended group of family members e.g. siblings, nephews, nieces can take over the legal representation of the person.

The person concerned has the right to object.

Authorization has been extended but the court will carry out regular checks.

This form of representation must be renewed after three years at the latest.

- 4) Court appoints representation of the person – replaces the previous representation by guardianship (gerichtliche Erwachsenenvertretung).

The scope of application is specific - no representation for all matters.

The judicial form of representation ends no later than three years after the appointment.

A renewal is possible. (Harrer-Schütt, Lebenshilfe OÖ, 2019; Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, p. 7, online)

“For the first three pillars, the court will in future only be involved if there are particularly sensitive decisions to be made, (...) e.g. permanent change of residence or disagreements between the individual concerned and her / his representative regarding medical treatment.” (Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice, p. 5, online)

To come to the conclusion, the idea “Leave no person behind” find its realization – in my opinion at least – in the understanding that the guardians are now no longer the governing persons but have now a supportive role and are named “relevant person’s representatives”.

This is a huge step towards the full recognition of the rights of persons with disabilities, in particular their fundamental rights of self-determination.

Bibliography:

Harrer-Schütt, Michaela, Lebenshilfe OÖ: Von der Sachwalterschaft zum Erwachsenenschutz, April 2019. These documents were made available to me with the consent of the management of the Lebenshilfe Oberösterreich.

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