

## **Plans of the German Government to Reform the Law of Guardianship for Minors: A presentation of the present and the future law in Germany**

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**Abstract** For years the praxis has asked for a new law of guardianship, because many things in the current law (which is 117 years old) do not cover the needs of today. Although no one wants to abandon the German system of having single persons, private organizations and public institutions being guardians, it is disputed until today if there is a ranking between them and if it should be possible to give several guarding/ educating persons to one child and if yes who should bear responsibility. Besides a new law should express clearly the rights of the children and the responsibilities of the guardians.

**Keywords:** • guardianship • sole guardian • guardianship by association • official • by appointment • by operation of law • Jugendamt • foster parents • homes •

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## 1 Introduction<sup>1</sup>

The current law of guardianship in Germany came into force on January 1, 1900. Until now it has never been reformed as a whole. The most modifications resulted from other legislative reforms which influenced the statute without really changing its substance. Some changes occurred in 1969, 1998 and 2011. Changes to the law in 1969 and 1998 abolished guardianship or curatorship for illegitimate children; while the changes in 2011 set forth three rules of conduct for the guardian (see below under no. 5). Changes were necessary, but not sufficient to mould a modern and helpful law.

## 2 Staatliche Rechtsfürsorge: legal care

In unofficial legal language in Germany we talk about “Staatliche Rechtsfürsorge” which could be translated as “national legal care”. “Legal care” does not mean physical and mental care, but the care concerning legal questions of a person. Legal care has various aspects. It usually distinguishes between the legal care of the person and the legal care of a person’s property. Another distinction is the care for minors and the one for majors. The characteristics of the law may be found in the BGB<sup>2</sup> (Bürgerliches Gesetzbuch, Civil Code of Germany) especially in Book 4, which deals with the family law.

## 3 Staatliche Rechtsfürsorge für Minderjährige: legal care for minors

The legal care for minors can be referred to as:

- elterliche Sorge (parental custody) (§§ 1626-1698b BGB),
- Vormundschaft (guardianship) §§ 1773-1895 BGB),
- Pflegschaft (curatorship) (§§ 1909-1921 BGB) or
- Beistandschaft (advisership) (§§ 1712-1717 BGB).

The last three entries support or replace parental custody. They generally differ in the degree of interference in the parental custody.

They have existed since the BGB came into force on January 1, 1900. They had not always had the same contents and the same structure. Perhaps the biggest change was pioneered in 1924, when the national legislator imposed on every local government as counties and municipalities to establish a so called *Jugendamt* (Youth Office). Since 1924 these *Jugendämter* had - as *Vormund* (guardian) - to take the legal care of illegitimate children. In 1969 this guardianship was turned into *Pflegschaft* (curatorship) (see later). Additionally the *Jugendamt* could become *Vormund* or *Pfleger* in the cases where nobody else was found to do that job. Normally the *Vormund* is appointed by the Court (bestellte Amtsvormundschaft, appointed guardianship), § 1791b BGB, § 55 SGB VIII. In special cases, the *Jugendamt* even becomes the legal carer automatically (gesetzliche Amtsvormundschaft, guardianship by operation of law), § 1791c BGB, § 55 SGB VIII.<sup>3</sup>

The legal care is called *Pflegschaft* (curatorship) (§ 1915 BGB), when it is only partial, i.e. not covering the whole parental care, such as for medical decisions or decisions with regard to schooling.<sup>4</sup>

It is only a *Beistandschaft* (advisership) (§§ 1712 ff. BGB), when it helps a single parent to get maintenance for the child from the other parent or to help the mother to determine who legally is the father of the child. In such situations the adviser is normally no legal representative (§§ 1712 ff., 1716 BGB).<sup>5</sup> Only when the help has to be extended to litigation, the *Jugendamt* becomes the legal representative of the child and therefore is the petitioner for the child instead of the parent.

Finally there is another legal care which is not to be found in the BGB, but in the FamFG<sup>6</sup> (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit, Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). As a rule, in family matters concerning children there has to be a *Verfahrensbeistand* (guardian *ad litem* for minors). The word *Beistand* is correct. It says that this person does not have a part of the parental custody, meaning he is not legal representative. The Code stresses this in § 158 VI 4 FamFG.<sup>7</sup>

#### 4 Staatliche Rechtsfürsorge für Volljährige: legal care for majors

The legal care for majors replaces the old *Entmündigung* (deprivation of legal capacity). It is now called *Rechtliche Betreuung* (legal care, §§ 1896–1908i BGB). The change came in 1992. Different from the parental care, in essence, there is nothing taken away from the major. He remains capable of contracting as long as he understands what he is legally doing. Nevertheless, there is a second person who may represent him (§ 1902 BGB). The situation is similar to one where someone (Vollmachtgeber) grants a power of attorney (Vollmacht) to another person (Vollmachtnehmer). The difference is, that the *Betreuer* is appointed by the court, the power of attorney is given by a grantor of a power (Vollmachtgeber). Only if there remains a real danger for the person who has a legal caregiver that he may harm himself, part or finally all of his capacity may be restricted (as far as necessary: principle of necessity) in a way that the *Betreuer* (care-giver) has to proof what the *Betreute* (caretaker) wants to do. Both have to cooperate. The *Betreuer* has to consent. This is called *Einwilligungsvorbehalt* (reservation of consent) (§ 1903 BGB) and is comparable to the situation for minor persons (§§ 106 ff. BGB), who are of limited capacity to contract and therefore need the consent of their legal representative.

#### 5 Elterliche Sorge und Staatliche Rechtsfürsorge: parental custody and legal care

Technically the statutory law of parental custody, of curatorship and of legal custodianship refers to the law of guardianship. The law of duty of care for property is mostly found in the law of guardianship. The focus of that law has been on the property, not on the person. As within the personal relationship between husband and wife or parent and child, the government sought to keep state intervention to a minimum.

In the last two decades, opinion has shifted to the notion that persons should be brought more in the foreground and in particular that the well-being of children and old or handicapped people should get more attention from society. Furthermore, there are many children who have little or no material wealth, but there are elderly people who may be wealthy and do need support, when they are not able to manage their material affairs.

Therefore in 2011 the government began amending the statute in matters that previously may have been perceived as unimportant, but in fact have major implications (see Katzenstein, 2013):

- an *Amtsvormund* is not allowed to have more than fifty *Vormundschaften*;
- every *Vormund* has to be in personal contact with the child;
- in principle, he has to meet the child once a month in the child's environment.

On August 18, 2016 the Ministry of Justice and Consumer's Protection (BMJV) published a "Partial draft for the Discussion (Diskussionsteilwurf) of the Reform of the Law of the Guardianship" and described what it thought to be the problems and the solutions:

- the current law is out of date (it stresses the property and neglects the person).
- it has been changed very often and is now confusing;
- the care for property should play the key role in the legal custodianship (for majors), not in the guardianship (for minors); and
- the new rules should stress the care of the person.

## 6 Requirements for the Guardianship and Persons Who Can be Guardian

§§ 1773 to 1798 BGB (requirements for the guardianship) will be changed.

The first chapter (appointed guardianship), sub-chapter 1: general provisions, §§ 1773-1778 BGB-E) will deal with the question who needs a guardian and who can be the guardian for a minor. A minor person will get a guardian *ex officio* (§ 1773 BGB-E): when he is not under the parental custody of his parents, when his parents are not allowed to represent him in matters which concern his person *and* his assets or when his civil status may not be settled.

There is no substantial change compared to the current provision.

Under the current law there are three types of guardians:

- Natural persons acting either as honorary, e.g. relatives or friends or any other helpful citizens, or as professional persons. No special education or subject of study is required, but in the practice most are lawyers, social workers, pedagogues, psychologists or sociologists.
- Vereine (associations) acting by members or employees.
- The Jugendämter acting by employees.

Children and young people need personal contact with reliable adults. The statistics show that the largest group of guardians is to be found in the *Jugendamt*. In 2008, the year where we had the last numbers which really can be compared (after that the numbers were, by accident, not correctly raised by the *Statistische Bundesamt - Federal Statistical Office*), there were 13.6 million minors – out of 82 million inhabitants. Among them there were 69,483 minors under guardianship or curatorship of the *Jugendamt* and 47,411 minors under guardianship or curatorship of associations or single persons. Therefore we had in 2008: *Jugendamt*, 59.5 %; the others 40.5% [not 80 % - as the draft says, EB page 15; compare the numbers cited in Oberloskamp, 2017: 14–16] from the Federal Statistical Office]. The people working in the *Jugendamt* are competent. However, they are public servants who have a closing time, free week-ends and vacations. Small children may not understand that a guardian is not always available for him. Accordingly, the *Jugendamt* will be inevitable to cope with difficult cases (§ 1775 I Nr. 4 BGB-E), but it should be replaced as often as possible in normal cases. The *Jugendamt* should concentrate on the task to find the right guardian for a child in need and to support the guardian in doing his job (§ 53 SGB VIII). In sum the *Jugendamt* could not play the same role as today. The explanatory statement of the draft (EB) states (page 24): “We cannot renounce the *Amtsvormünder* who are highly qualified in many places.”

*Vereine* also have an important role in being a guardian. Historically they are older than the *Jugendämter*. They existed before the First World War. There were associations from different parts of the society: workersgroups (*Arbeiterwohlfahrt*, *Arbeiter-Samariter-Bund*), religious groups (*Diakonie*, *Jewish Social Welfare Association*, *Caritas*, *Kolping*) and independent groups (*Rotes Kreuz*). They were active in many fields. But if they had a special governmental recognition (proof of professional quality), they worked as well in the field of guardianship. Similar to the situation of the *Jugendamt*, the *Verein* as a whole was the guardian and was liable, though single persons did the job in detail. Under the new law, only the employee of the association (not the member) will be appointed as guardian. This would of course be under the condition that the association agrees (§ 1775 I Nr.3 BGB-E).

As single carer, there will be as well the honorary as the professional guardian. There will not be a change by the new law (§ 1775 I Nr.1 BGB-E).

As an innovation, there will be an interim guardian (§ 1775 II BGB-E). Experience has shown that it is often not possible to find the right person for a child within a short time. Nevertheless the child needs a legal representative. According to the future law, only the *Jugendamt* and *Vereine* which agree can do this job. It will only be possible for a period of three months (§ 1775 II BGB-E).

As is the case with the current law, the future statute will provide that one child gets one guardian. A new provision in the proposed future statute is that husband and wife and two *eingetragene Lebenspartner* according to LPartG<sup>8</sup> (*Lebenspartnerschaftsgesetz*, life partners, registered same sex partners) may be guardians together, which is new.

It will be new as well that two persons can get joint responsibility (like parents normally), if the guardian is an honorary one and if he is not able to act properly in the total field of

guardianship. One of the best known examples is that a child inherits houses and the guardian has no experience with real estate. In such situation, a second person can be appointed as complementing curator, responsible for a single matter or a special type of matter (§ 1777 BGB-E). This proposed new rule would not resolve the current problem for unaccompanied minor refugees, where the dominating jurisdiction says that the *Jugendamt* which by operation of law will be the guardian has to know how to represent the refugee in questions of asylum. Therefore a curator cannot be appointed additionally.

Another area of split responsibility may occur when a child lives in a foster family. Under the current law the foster parents are normally either guardian or without any functions as a guardian or a curator, because this is not explicitly regulated. According to the draft, the guardian or the foster person (foster parents or single foster persons) can make a request for giving the foster person certain responsibilities. The court will agree, if there is a special attachment between foster person and child, if the guardian or the foster person agrees, and if it is in the best interest of the child (§ 1778 I BGB-E). Such an arrangement is conceivable if the foster parents would in general be good guardians, but have problems regulating the right of access of the legal parents with their child.

## 7 Selection of the Guardian

The second sub-chapter of the new regime (§§ 1779–1786 BGB-E) deals with the selection of the guardian.

The family court must appoint the guardian (§ 1779 BGB-E). Before it does so, the judge has to select the guardian.<sup>9</sup> In the first place the judge is bound to the last will of the parents, who, in case they have the parental custody at the time of the death, might name a single person or a legal couple or exclude these ones (§ 1783 BGB-E). In the current law, they cannot exclude anybody. The ones who are named can nevertheless be ignored, if any legal impediment (§ 1784 I BGB-E) does exist. Such legal impediments include, for example, the following situations: where such appointment would be against the best interest of the minor; the minor who is older than fourteen years opposes the appointment; the named person is barred by legal or factual reasons to assume the guardianship; and where the named person does not agree to the appointment within four weeks following the request of the court.

In addition, there would be the “normal impediments” which are in existence for every person (§ 1785 I BGB-E). An example is where a major person who is incompetent to contract or simply a minor one (§ 1785 I BGB-E).

If there is no last will, the judge has to select the person who is the most suitable for caring for person and assets of the minor (§ 1779 I BGB-E). Aspects concerning the child which have to be respected are (§ 1779 II BGB-E): the will of the minor, his family ties, his personal attachments, his religious affiliation, his cultural background, the real or the presumable will of the parents, and the life circumstances of the minor.

A single person may be selected as guardian, but must be qualified under several aspects (§ 1780 I BGB-E): knowledge and life experience, personal characteristics, personal conditions (e. g. living in a stable marriage, having grown stable children) and sound financial standing (e.g. no bankruptcy) and ability and readiness to cooperate with the other persons who participate in the education of the minor.

A natural person, who is eligible and ready and wants to work on honorary basis, has to be taken first (§ 1780 III BGB-E) (principle of subsidiary). Above all, the best interest of the child takes precedence in such decisions (§ 1780 I BGB-E). A natural person who is working on a professional basis (single or employee of an association) has to inform the judge about the number and the volume of guardianships and curatorships he already has. The *Jugendamt* must inform the court which employee will have to be responsible (§ 1781 BGB-E).

If there is a necessity for an interim guardianship, the court may appoint the *Jugendamt* or an association which agrees to assume the role. This period may up to three months (§ 1782 BGB-E). The court must then appoint a permanent guardian, and the interim guardianship ends (§ 1782 BGB-E).

As already mentioned above, the parents who die before the child is born can influence the selection of the guardian by a last will. But this is only possible when the child is not yet born, and where the parents would have parental custody if the child were already born (§ 1783 I BGB-E). If there are contradicting dispositions by the parents, the one which was given by the parent who died last is the valid one (§ 1783 II BGB-E).

A major person who is not capable of contracting cannot be appointed guardian (§ 1785 BGB-E). Additionally, the following characteristics should prevent the judge from appointing a person: minority, legal care for all matters or reservation of consent (§ 1903 BGB), testamentary exclusion of the parents, being in a depending condition or another close relation to the facility in which the child lives (§ 1785 BGB-E) (e.g. possible guardian being director of the home where the child lives).

If the family court elects a person as guardian, that person is obliged to take the guardianship, if the guardianship can be expected of him according to his familiar, professional and other aspects. He may only be appointed after having consented (§ 1786 BGB-E).

The second chapter deals with the guardianship by operation of law, §§ 1787-1788 BGB-E.

§ 1787 BGB-E is the current section § 1791c I BGB. Upon the birth of a child whose parents are not married to each other and who needs a guardian, the *Jugendamt* becomes the *ex officio* guardian, if the child has its habitual residence in Germany; this does not apply if a guardian is already appointed, even before the birth of the child. If paternity under § 1592 no. 1 or 2 has been cancelled by contestation and if the child needs a guardian, the *Jugendamt* becomes the guardian at the time at which the decision becomes

final and absolute. As new heading of the article the draft suggests: “Guardianship *ex officio* in the case of suspension of parental custody”. Actually this type of suspension is dealt with in § 1673 BGB in the chapter on parental custody. The situation which is regulated is the following: a minor mother gives birth to a child. Who is the legal representative?

If the mother is married (which can only be the case, if the husband is major, § 1303 II-IV BGB), there is no need of a guardian, because the father will have the parental custody (the child is born within the marriage, so it is legally his, whether it is biologically his or not – see § 1592 no.1 BGB; as legal father he has parental custody, §1626a I BGB). If the parents are not married to each other, the father can get the parental custody by recognizing his paternity (§ 1592 no.2 BGB) plus the declaration of the common intention to take on parental custody jointly which means that the parents give the so-called declarations of parental custody (§ 1626a I no.1 BGB). This is even possible when the mother or the father or both parents are minors, and the legal representative consents (§ 1626c II BGB). If the father is also a minor, his custody is suspended as well as the one of the mother (1673 II 2 Hs.2 BGB). That means that the child needs a guardian. This will be the *Jugendamt* (§ 1791c I 1 BGB or § 1787 BGB-E in the new law).

The second situation of *ex officio* guardianship is a new aspect of law that came into existence on May 1, 2014, die vertrauliche Geburt (the confidential birth). The new § 25 I SchKG<sup>10</sup> (Schwangerschaftskonfliktgesetz; Law for Avoiding and Handling Conflicts with Pregnancies) states: “A ... pregnant woman, who does not want to abandon her identity, has to be informed that a confidential birth is possible. Confidential birth is a birth with which the pregnant woman does not reveal her identity [...]”. While the information center has to provide proof about the real parentage of the child, the mother uses a pseudonym. The adviser who knows the true identity of the mother is bound by professional confidentiality not to release this information. Later the child may learn about his origin, § 10 IV PStG<sup>11</sup> (Personenstandsgesetz, Law on Personal Status). The parental custody of the mother is suspended as long as she does not give up her anonymity. In such a circumstance the child gets a guardian which is the *Jugendamt* (§ 1788 BGB-E).

There is a third situation where a child gets an *ex officio* guardian. When parents want to give up their child for adoption and agree to a certain adoption, their parental custody is suspended and the *Jugendamt* becomes the guardian until the adoption comes into effect (§ 1751 I 2 BGB). But because this article should be together with the other articles concerning the law of adoption, it should remain there.

The next chapter in the draft deals with the conduct of the guardianship, whereas the first part contains general rules (§§ 1793-1795 BGB-E).

The current law (§§ 1773 ff. BGB) states little about the questions of the duties of the guardian and the rights of the child. What we find, is a general referral to the rules concerning the relationship between parents and children (§§ 1626 ff. BGB). With regards to the parents German law says very little, because the nature of the relationship between

parents and children is found in the constitution. The *Grundgesetz* or Basic Law (Art. 6 II 1 GG) states that the care and education of children are primarily the natural right of the parents and primarily their duty. Therefore, the duty of the government is to watch and support the parents (Art. 6 II GG). Only if the parents fail in these responsibilities can children be taken from the parents (Art. 6 III GG) and the government act as educator. The question therefore is, whether the duties and rights of guardians are more those of parents or more those of third persons who were appointed by the court. The tendency seems to be: more the third person. Therefore the draft starts with a list of rights of the child:

- promotion of his development and education to make him a personality who takes responsibility for his acts (*eigenverantwortlich*) and is able to accept duties in the society (*gemeinschaftsfähig*);
- care and education to the exclusion of violence, corporal punishments, emotional injuries, and of other degrading measures;
- personal contact with the guardian;
- respect of his will, of his personal connections, his religious denomination and cultural background; and
- participation in all matters which concern him, as far as is appropriate according to his stage of development.

§ 1790 BGB-E deals with the duties of the guardian. It corresponds mainly with the actual § 1793 BGB, which is: “The guardian has the right and the duty to care for the person and the property of the ward, and in particular to represent the ward.” The new rule would complement this by adding the matters that are excluded because they have to be done by the curator.

§ 1791 BGB-E deals with the question, how the job of the guardian is to be done. It brings various pieces of this aspect together which before were spread in different rules:

- “The guardian has to act independently (that means: he cannot be directed by the family judge or by the director of the *Jugendamt*) in the interest of the child.
- The guardian has to take account of the growing ability and the growing need of the child for independent responsible action and has to support it. The guardian has to discuss with the child questions of person and assets to the extent that, in accordance with the stage of development of the child, it is advisable; they have to seek agreement.
- The guardian must maintain personal contact with the child. He should, as a rule, visit the child once per month in his customary environment unless shorter or longer visiting intervals or a different place are required in individual cases.”

§ 1792 BGB-E deals with the special situation in which the child lives with his guardian. The rule provides that the guardian is allowed to take the child to his home. In this special case the relation of the two persons is dominated by the rules which are to be used for parents and a child. That means that guardian and child owe each other assistance and respect (§ 1618a BGB) and that the child has a duty to perform services for the guardian

in his household and business in a manner appropriate for its strength and its position in life (§ 1619 BGB).

If there are two persons who are both caretakers for the child (spouses or partners as guardians or guardian plus curator), they have to cooperate, § 1793 I-E. For spouses and partners, the rule is applicable which exists for parents who act together (§ 1629 I 2 and 4 BGB). For guardian and curator § 1793 II BGB-E says that they are obliged to share information and cooperate; and the curator has to take account of the opinion of the guardian. If there is disagreement between the different persons who have to decide, the court decides on application which means that the judge decides who gets the authority to decide.

The guardian is liable for damage which he causes in the conduct of the guardianship, § 1833 BGB and § 1795 BGB-E. If the child lives in the household of the guardian, he is only responsible for the care he would use in his own matters, § 1795 II BGB-E, §§ 1793, 1664 BGB.

The next chapter (§§ 1796-1798 BGB-E) deals with the guardian's care for the person of the child. In the current law there is only a general reference from the law of guardianship (§ 1796 BGB) to the law of the parental custody (§ 1626 BGB). The new draft focuses more on the special aspects of the law of guardianship. The most important thing in the practice is the right to specify the abode of the child. Many children are in foster families. Others are in homes for children and young persons. Though the main professional work will be done by the department of "Lodging Outside the Family" of the *Jugendamt*, the guardian has to take the decision and therefor to examine the propositions of the *Jugendamt*. To find the right place (e.g. with the adequate schooling, not too far from the parents etc.) is a very responsible job with a result which cannot be changed at a whim. The draft stresses that the guardian – even if the child does not stay with him – remains responsible for care and upbringing of the child. For further aspects of the care for the person of the child, the draft (§ 1796 I BGB) refers to the current law (§§ 1631a-1633 BGB: training and occupation; accommodation associated with deprivation of liberty; prohibition of sterilization; circumcision of the male child; surrender of the child; determination of contact; care for the person of the child in the case of a married minor).

§ 1796 II BGB-E cites two situations concerning the person of the child where the guardian requires the approval of the family court

- for an apprenticeship agreement that is entered into for longer than one year,
- for a contract directed to the assumption of a service or employment relationship if the young person is to be obliged to render performance in person for longer than one year.

In the current law these two items are part of a list of legal actions, mostly concerning the assets (§§ 1822, 1823 BGB) where the guardian needs the approval of the family court. Now the two items are clearly made part of the care for the person of the child.

§ 1797 BGB-E deals with the relation between the guardian and the foster parent, the guardian and the home for children, and the guardian and the specialist who has taken over the intensive social pedagogic support of the child (§ 35 SGB VIII). The guardian has to respect the concerns and the opinion of these persons.

§ 1798 BGB-E picks up on a rule which is already in the law for parents (§ 1688 BGB). It strengthens the position of foster parents. The foster parents and the other in § 1797 BGB stated persons may decide for the child in the place of the guardian and represent the guardian (not the child) in the normal course life. The guardian may reduce or exclude this right, if this is necessary in the interest of the child.

Chapter 3 “Care for the assets” and Undertitle 3 “Care and Control of the Family Court” will be regulated in the law of legal care (see above 3).

The last part of the draft “Undertitle 4” deals with the change of a guardian. This can happen *ex officio* because of reasons in the person of the guardian (neglect of duty, better person, quitting of employee of an association or other important reason, cannot be expected any longer) or upon request (guardian, aspirant for becoming guardian, child older than fourteen) because of the best interest of the child. The guardianship as a whole ends, if the requirements of § 1773 BGB are no longer fulfilled.

## **7 The Discussion of the Specialists**

The most important subjects of the discussion in preparation of the reform until now were:

- the relation of the different types of guardianships (is there a binding ranking between the types or is there a discretion for the judge or is “the most suitable”- § 1779-E BGB an indefinite legal term);
- the responsibility for care, when there are several caring people (foster parents plus guardian; home plus guardian ...). The draft uses in its explanatory statement the (ugly) word “strategische Gesamtverantwortung” (strategic overall responsibility). Who is the one who is ultimately responsible? Following a workshop in 2010, there is a group of scientists who strongly advocate split guardianship for these persons (Schwab in Coester-Waltjen, Lipp, Schumann, Veit, 2010, and Veit, Marchlewski, 2017: 779–785). But until now, the legislator has not accepted any of these proposals.

## **8 Technical Legal Words in German, English and Slovenian and Abbreviations**

To help the reader, I add a list of the technical legal terms in German, English and Slovenian. But the meaning of the words in the article is only the one from the German system.

<b>Actual law</b>	<b>German</b>	<b>English</b>	<b>Slovenian</b>
§§ 1626-1698b BGB	elterliche Sorge	Parental custody	starševska/ roditeljska skrb
	Sorgerecht	Right of custody	skrbništvo
§ 1626 BGB	Personensorge	legal care of the person	osebna pravna skrb
§ 1626 BGB	Vermögenssorge	legal care of the property/ assets	premoženjska pravna skrb
§ 1629 BGB	gesetzliche Vertretung	legal representation	zakonito zastopstvo
§§ 1773-1895 BGB	Vormund/ Vormundschaft	guardian/-ship	skrbnik/ skrbništvo
§§ 1909-1921 BGB	Pfleger/ Pflugschaft	curator/-ship	skrbnik/ skrbništvo za posebne primere
§§ 1712-1717 BGB	Beistand/ Beistandschaft	adviser/-ship	pomoč/ svetovanje
§ 58 FamFG	Verfahrensbeistand	guardian ad litem for minors	zastopnik mladoletnika pred posebnim postopkom
§§ 111-270 FamFG	Familiensachen	family matters	družinske zadeve
FamFG	Freiwillige Gerichtbarkeit	matters of non- contentious jurisdiction	nepravdno sodstvo
-	Entmündigung	deprivation of legal capacity	odvzem poslovne sposobnosti
§§ 1896-1908i BGB	Betreuung/ Betreuer	legal care/ legal care- giver	skrbništvo/ skrbnik za odrasle osebe
§§ 104-105a	Geschäftsunfähigkeit	incapacity to contract	poslovna nesposobnost
§§ 106-113	Beschränkte Geschäfts- fähigkeit	limited capacity to contract	omejena poslovna sposobnost
§ 1903 BGB	Einwilligungsvorbehalt	reservation of consent	pridržek privolitve
§§ 1773-1792 BGB	Einzelvormundschaft	sole guardianship	skrbništvo
§ 1791a BGB	Vereinsvormundschaft	guardianship by association	zavodsko skrbništvo
§§ 1791b, 1791c BGB	Amtsvormundschaft	official guardianship	uradno skrbništvo
SGB VIII	Jugendamt	Youth Office	Mladinski zavod (In Slovenia: Center za socialno delo - CSD)
§ 1774 BGB	Bestellte Vormundschaft	guardianship appointment	postavljeno skrbništvo

§§ 1791c, 1751 BGB	Gesetzliche Vormundschaft	guardianship by operation of law	zakonito skrbništvo
LPartG	eingetragener Lebenspartner	registered same sex partner	partnerska zveza (registrirana istospolna partnerska skupnost)
§ 1776 BGB	testamentarische Benennung	naming by last will	Imenovanje
§ 1937 BGB	testamentarisch	by last will	oporočni
§ 1 I SGB VIII	Eigenverantwortlichkeit	ability to take responsibility for his own acts	zmožnost prevzeti odgovornost za lastna ravnanja
§ 1 I SGB VIII	Gemeinschaftsfähigkeit	ability to take over duties in the society	zmožnost prevzeti obveznosti v družbi
“mit”: z.B. § 1791c BGB	kraft Gesetzes	by operation of law	po sili zakona
z.B. § 1774 BGB	von Amts wegen	of its own motion, <i>ex officio, proprio motu</i>	po uradni dolžnosti
z.B. § 1889 BGB	auf Antrag	on application	na zahtevo
E	Entwurf	draft	osnutek
TE	Teil-Entwurf	part-draft for the discussion	delni osnutek
EB	Entwurfbegründung	Explanatory statement	obrazložitev osnutka
z.B.	zum Beispiel	for instance (e.g.= <i>exempli gratia</i> )	na primer
	Statistisches Bundesamt	Federal Statistical Office	Nemški statistični urad

## 9 Conclusion

The draft contains several aspects which are welcome (the rules of priority; the rights of the child; the place of the rules concerning assets). But the questions concerning the relation between several guarding persons are still not regulated in a way which is realistic and supports the praxis. A comfort could be that the draft is only part of what has to be reformed and that we have the rule of discontinuity of the legislative period in Germany, which means that every bill which is not passed within the parliamentary term has to start over in the next term. Therefore, until now nothing is lost. The discussion may continue, and the new parliament may be convinced by the experts.

### Notes

<sup>1</sup> I prefer to use the technical terms from the German language, because translations do never completely catch the full meaning of such terminology – with all of its subtle nuances. Hence, there

is the danger that the reader will refer to meaning of such words of his own legal system – which is different and therefore, at least in part incorrect.

<sup>2</sup> OJ (BGBl.) I S. 42, 2909; 2003 I S. 738, 2. 1. 2002; last amendment: OJ (BGBl.) I S. 1495, 6. 6. 2017.

<sup>3</sup> For details see the standard publications on guardianship: Münchener Kommentar, 2017; Palandt, 2017; Soergel-Siebert, 2000; Staudinger, 2016; Dethloff, 2015; Gernhuber, Coester-Waltjen, 2010: §§ 1773–1895.

<sup>4</sup> See as well the just quoted standard literature § 1909 BGB.

<sup>5</sup> Compare the quoted standard literature §§ 1712 ff. BGB.

<sup>6</sup> OJ (BGBl.) I S. 2586, 2587, 17. 12. 2008; last amendment: OJ (BGBl.) I S. 1396, 1. 6. 2017.

<sup>7</sup> For details see in Keidel, 2017.

<sup>8</sup> OJ (BGBl.) I S. 266, 16. 2. 2001; last amendment: OJ (BGBl.) I S. 2010, 1. 6. 2017.

<sup>9</sup> For the current law see Hoffmann, 2014.

<sup>10</sup> OJ (BGBl.) I S. 1398, 27. 7. 1992; last amendment: OJ (BGBl.) I S. 1722, 20. 10. 2015.

<sup>11</sup> OJ (BGBl.) I S. 122, 19. 2. 2007; last amendment: OJ (BGBl.) I S. 2010, 20. 11. 2015.

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