

## **COURT-APPOINTED REPRESENTATION**

### **What does court-appointed representation mean?**

It is possible that an adult individual may no longer be able to take care of certain matters without the risk of suffering a disadvantage due to a mental illness or a comparable restriction in their ability to make decisions. In this case, he or she may be represented by a 'relevant person's representative' (Erwachsenenvertreter). This representative is only appointed by the court if the adult individual concerned has no power of attorney, is unable to choose a representative themselves, has no support from close persons such as relatives or difficult living circumstances make this solution necessary. A court-appointed representation does not automatically restrict the adult individual's legal capacity. Even if a representative is appointed, alternatives and support must continue to be sought out regardless.

### **Who are we?**

The VertretungsNetz Association advocates the fundamental rights of people with mental illness or intellectual impairment. VertretungsNetz employees support and advise those affected and their relatives in matters pertaining to representation but also in cases of forced accommodation or restrictions on freedom in hospitals, nursing homes, children's and youth facilities or facilities for the disabled.

VertretungsNetz operates offices in all federal states except Vorarlberg, is non-partisan and non-profit and works on behalf of the Ministry of Justice.

### **What do we offer?**

We offer advice to both those who need a representative as well as their relatives. We also train those who want to represent a close person or have already begun to do so.

In addition, we represent people with limited decision-making abilities as court-appointed representatives. The court determines the matters in which we represent our clients, e.g. in representing them before specific authorities, in concluding contracts, in regulating their finances or in securing appropriate housing.

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Before a court appoints a representative, we clarify on behalf of the court whether there is any other option whereby the represented individual can achieve a higher level of self-determination. The new Adult Protection Law provides for three additional possibilities of representation: enduring power of attorney, the elective and the statutory representation. If support is gained from the personal environment, such as from the family or psychosocial services, then the need for a court-appointed representative can also be completely eliminated.

### **How does a court-appointed representation occur? How does the judicial process work?**

1. Within the scope of a so-called '**clearing**', VertretungsNetz as an adult protection association establishes the living situation of the individual concerned. What specific issues need to be addressed and what risks can be identified? Where is support needed in order for the individual concerned to have the capacity to act upon their own legal rights? Does the social environment or do institutions, authorities or associations offer opportunities for support? The aim, where possible, is to avoid a court-appointed representation and to source the appropriate support or guardian.
2. On the basis of the clearing report, the court then decides whether the proceedings should be continued. If that are to proceed, then the person concerned shall be invited to an **initial hearing**. For the further proceedings a legal adviser is appointed, who will represent the interests of the individual concerned and shall offer support. In matters of urgency, a temporary adult representative will be appointed for the duration of the proceedings. The court may also instruct a doctor to submit an expert opinion, determining whether the decision-making ability of the individual concerned is limited. It is also possible to apply for an expert to be consulted.
3. The court shall examine all available evidence and may convene an oral hearing for deliberation. It is also possible to request such a court hearing. The proceedings end with a **decision (judgement)** as to whether and to what extent a court shall appoint representation. A court can only appoint a representative for current issues. These must be precisely defined.

### **What is a requirement for approval?**

In cases where a court-appointed representative is in place, the individual concerned generally remains capable of acting in legal transactions. However, the court may assume that a person could be seriously and significantly harmed by their decisions. It may then be determined that, in exceptional cases, certain legal acts undertaken by the person represented will not take effect until they have been approved by their court-appointed representative. Thus, without this approval, the act becomes invalid. However, the legal or procedural acts for which such approval is required must be precisely defined and described.

### **What are the duties of a court-appointed representative?**

The court-appointed representative must make personal contact with the client at least once a month. The client must be informed of all intended decisions in good time so that they have the opportunity to comment on them. Said comments must then, in principle, also be taken into account.

At least once a year the court must be informed as to how often and in what manner the individual and their representative have had contact. The specific actions of the representative within the scope of the area of application must also be listed. This then highlights which matters still require a representative. If the representative is also responsible for income and asset management, a care account must be drawn up. This can be simplified in cases where a representative is also a relative. Particularly important decisions (such as moving to a nursing home or selling a property) are subject to court approval.

### **When does a court-appointed representation end?**

- when the court terminates it (e.g. if the matter is settled or the requirements are no longer met).
- after five years (It can, however, be renewed within the scope of separate proceedings).
- if the individual concerned passes away.

Persons represented may apply at any time for the annulment of a court-appointed representation or the requirement for approval. It is also possible to transfer to a different form of representation (elective or statutory). We will be happy to advise you in this regard.

### **What does court-appointed representation cost?**

The representative can apply to the court for compensation and reimbursement of expenses (e.g. travel, telephone and postage costs). As a rule, 5% of the net income of the individual represented shall be paid as compensation. Specific income such as care allowance, family allowance and housing allowance may not be included in the calculation. If the assets of the person represented exceed 15,000 euros, the adult representative can apply for 2% of this amount (after deducting the base amount of 15,000 euros). The actual amount of the compensation shall be decided by the court.

### **Further information and contact details**

Contact details and further information can be found on our homepage:

[www.vertretungsnetz.at](http://www.vertretungsnetz.at)