

Information regarding the *Heimaufenthaltsgesetz*

The fundamental right of freedom of movement is a human right. In Austria, it is protected by the act on the “protection of the freedom of the individual”, which is an integral part of the federal constitution. Any restrictions of this fundamental right are only possible on the basis of statutory provisions.

The “*Heimaufenthaltsgesetz*”, or children’s and nursing home residence act, regulates the conditions under which the right of freedom of movement may be restricted in **children’s and youth facilities as well as in schools for physically or mentally disabled children, and in after-school care facilities.**

Restriction of freedom

Whenever a person is prevented from changing their location, against their will or without their consent, while being looked after or under nursing care, this is called restriction of freedom. Mechanical, electronic or medicinal means are used for that purpose.

For the legal prerequisites for any such measure to be met, the person concerned must suffer from a mental disease or intellectual impairment. A serious and significant danger to the person concerned themselves or their environment must exist. The measure restricting the person’s freedom must be proportionate to the danger involved. This means that it must be reasonable and absolutely necessary. In any case, alternative measures must be tried first. Any restriction of freedom must always be the last choice.

Restrictions imposed on minors that are considered age-appropriate do not constitute a restriction of freedom within the meaning of the *Heimaufenthaltsgesetz*, for example using a safety belt for a toddler in a pram.

There are no generally valid criteria for assessing whether the action concerned is age-appropriate. Decisions will always have to be taken on a case-by-case basis. In case of doubt, the matter should be reported to the residents' representative service.

Any restriction of freedom must be ordered by the educational director, who must inform the person concerned accordingly. This means that the children / youths concerned must be informed about the reason, type and duration of the measure. This must also be documented.

A subsequent report to the residents' representative service is required. Measures restricting a person's freedom must be checked regularly as to whether they are still required. If such measures are applied for more than 48 hours, a medical certificate must be obtained.

Residents' representative service

The residents' representative service will check directly on site if the measures to restrict a person's freedom are necessary and appropriate. For this purpose, the representatives will talk to the child/adolescent concerned, to staff members and the head of the facility. They will inspect the documentation and the medical certificates.

The residents' representative service or the head of the facility may apply for the measure(s) restricting a person's freedom to be examined by the local court (*Bezirksgericht*). In this way, a minimum standard under human rights law is guaranteed, according to which any person whose freedom is restricted is entitled to proceedings before an independent court. The court will decide if the restriction of freedom is admissible.

Training

The residents' representative service also offers training events on the application of the *Heimaufenthaltsgesetz*. If you are interested, please get in touch:

bewohnervertretung@vertretungsnetz.at

