

Übersetzung durch den Sprachendienst des Bundesministeriums der Justiz.
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Act to Implement the Hague Convention of 13 January 2000 on the International Protection of Adults

(Erwachsenenschutzübereinkommens-Ausführungsgesetz – ErwSÜAG)

Protection of Adults Convention Implementation Act of 17 March 2007 (Federal Law Gazette I, p. 314), as last amended by Article 15 subsection (8) of the Act of 4 May 2021 (Federal Law Gazette I, p. 882)

Division 1 Central authority

Section 1 Designation of the Central Authority

The Central Authority within the meaning of Article 28 of the Hague Convention of 13 January 2000 on the International Protection of Adults (Federal Law Gazette 2007 II p. 323 – Convention) shall be the Federal Office of Justice.

Section 2 Translations in the case of incoming applications

- (1) The Central Authority may refuse to take action if a communication from another Contracting State is not drawn up in German or accompanied by a translation into German or, in the event of difficulty in obtaining such a translation, is not accompanied by a translation into English.
- (2) The Central Authority may obtain the necessary translations itself.

Section 3 Translations in the case of outgoing applications

If an applicant does not himself obtain the necessary translations for applications that are to be executed in another Contracting State, the Central Authority shall arrange for the translations to be made.

Section 4 Measures of the Central Authority

- (1) The Central Authority shall correspond directly with all competent agencies in Germany and abroad.
- (2) The Central Authority shall forward communications directed to the Central Authority or other authority of another Contracting State to them. It shall forward communications from another Contracting State to the competent German agency immediately and shall inform that agency about any measures already ordered.
- (3) The Central Authority shall take all necessary measures, including bringing in the police enforcement authorities to ascertain the whereabouts of the vulnerable adult in cases where the

adult's whereabouts is unknown and there are indications that the adult is in Germany. To the extent necessary to determine the whereabouts of the adult, the Central Authority may obtain vehicle keeper information from the Federal Motor Transport Authority pursuant to section 33, subsection (1), first sentence, number 2 of the Road Traffic Act. Subject to the requirements of the first sentence, the Central Authority may arrange for a notice for ascertainment of a person's whereabouts to be issued by the Federal Criminal Police Office and for a search notice to be recorded in the Central Register. To the extent that the Central Authority brings in other agencies to determine a person's whereabouts, the Central Authority shall transmit such personal data to these agencies as are necessary for carrying out the measures; such data may only be used for the purpose for which they were transmitted.

Section 5

Judicial administrative proceedings; remuneration for translations

The activity of the Central Authority shall be deemed to be judicial administrative proceedings. The amount of remuneration for translations arranged by the Central Authority shall be governed by the Judicial Remuneration and Compensation Act.

Division 2

Court jurisdiction and concentration of jurisdiction

Section 6

Subject-matter and local jurisdiction

(1) The adult guardianship court in the district of which a Higher Regional Court has its seat shall be competent for the district of this Higher Regional Court for

1. determining the recognition or non-recognition of a measure taken in another Contracting State in accordance with Article 23 of the Convention,
2. declaring a measure taken in another Contracting State to be enforceable in accordance with Article 25 of the Convention,
3. the consultation procedure in accordance with Article 33 of the Convention.

Schöneberg Local Court in Berlin shall have jurisdiction for the district of Berlin Higher Regional Court.

(2) The governments of the *Länder* shall be authorised to assign jurisdiction pursuant to subsection (1) by ordinance to a different adult guardianship court in the Higher Regional Court district or, where there is more than one Higher Regional Court established in a *Land*, to one adult guardianship court for the districts of all Higher Regional Courts or a number of Higher Regional Courts. The *Land* governments can transfer this power of authorisation to the *Land* administrations of justice.

(3) In respect of proceedings pursuant to subsection (1), first sentence, numbers 1 and 2, the adult guardianship court in whose area of jurisdiction the person concerned is habitually resident at the time the application is filed shall have local jurisdiction. If the person concerned is not habitually resident in Germany or if the habitual residence cannot be determined, the adult guardianship court in whose area of jurisdiction the need for care arises shall have jurisdiction. If no jurisdiction can be ascertained on the basis of the first and second sentences, the adult guardianship court that has jurisdiction in the district of Berlin Higher Regional Court shall have local jurisdiction. In cases under subsection (1), first sentence, number 3, local jurisdiction shall lie with the adult guardianship court in whose area of jurisdiction the person concerned is to be placed according to the proposal of the requesting authority.

(4) Article 147 of the Introductory Act to the Civil Code shall apply *mutatis mutandis*.

Section 7

Concentration of jurisdiction for other adult guardianship matters

(1) The adult guardianship court where proceedings referred to in section 6, subsection (1), first sentence, are pending, shall from that point in time onwards have jurisdiction for all adult guardianship matters concerning the same person, including directions pursuant to section 35 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction as well as Division 9 of Book 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The effect of the first sentence shall not arise if the application for a determination of recognition or declaration of enforceability is manifestly inadmissible. It shall cease to apply as soon as the court addressed is not competent by virtue of an incontestable decision; proceedings over which such court thus loses its jurisdiction shall be transferred *proprio motu* to the court with jurisdiction. The decision to transfer the proceedings shall be incontestable and binding on the court declared to have jurisdiction.

(2) Another adult guardianship court where an adult guardianship matter concerning the same person is, or becomes, pending at first instance, shall transfer such proceedings *proprio motu* to the adult guardianship court having jurisdiction pursuant to subsection (1), first sentence. The decision shall be incontestable.

(3) The adult guardianship court that has jurisdiction for a matter pursuant to subsection (1) or subsection (2) may, on important grounds, transfer or refer back such matter to the adult guardianship court that has jurisdiction pursuant to general provisions, provided that this does not lead to a disproportionate delay in the proceedings. As a rule, an important ground shall be deemed to exist where the particular expertise of the first court referred to above is not, or no longer, required for the proceedings. The decision to transfer the proceedings shall be incontestable and binding on the court declared to have jurisdiction.

(4) Section 273 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall remain unaffected.

(5) Article 147 of the Introductory Act to the Civil Code shall apply *mutatis mutandis*.

Division 3

Determination of recognition, declaration of enforceability, consultation procedure and certificates

Section 8

General procedural provisions for the determination of recognition and the declaration of enforceability

(1) The procedure under Articles 23 and 25 of the Convention shall be governed by Book 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Sections 275, 276, 297, subsection (5), sections 308, 309 and 311 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall be applied *mutatis mutandis*.

(2) The court shall hear the person concerned in person if the measure to be recognised or declared enforceable involves a measure being carried out in Germany within the meaning of section 312 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, an examination of the person's state of health, therapeutic treatment or a medical intervention within the meaning of section 1829 of the Civil Code or sterilisation to be carried out in Germany. In all other cases the court should hear the person concerned in person. Section 278, subsections (3) to (5) of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply *mutatis mutandis*.

(3) The court may hear the authority competent for adult guardianship in Germany if the person concerned so requests or if this serves the clarification of the facts of the matter. The hearing of other persons shall be subject to the court's discretion.

(4) Reasons must be given for the court's order.

(5) The order shall be notified to the person concerned and, where such person has been appointed, the guardian or other person with equivalent responsibilities. Where the measure that has been recognised or declared to be enforceable concerns placement in Germany, the order shall also be notified to the head of the institution in which the person concerned is to be placed.

Sections 288 and 326 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply *mutatis mutandis*.

(6) An order shall be subject to the remedy of complaint. Sections 303 and 305 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall apply *mutatis mutandis*.

(7) An order shall come into effect only when it becomes binding with final legal force. In exigent circumstances, the court may order that the order become effective immediately.

Section 9

Binding effect of the determination of recognition

A determination pursuant to Article 23 of the Convention that the requirements for recognition have or have not been met shall be binding on courts and administrative authorities.

Section 10

Endorsement for enforcement

(1) A title from another Contracting State that is enforceable there and requires acts of enforcement in Germany shall be declared enforceable pursuant to Article 25 of the Convention by way of being furnished, upon application, with an endorsement for enforcement.

(2) Section 20, subsection (1), first and second sentences, as well as section 23 of the International Family Law Procedure Act shall apply *mutatis mutandis*.

Section 11

Revocation or amendment of decisions on the determination of recognition or the declaration of enforceability

(1) If a measure taken in another Contracting State is revoked or amended in that State, and if the person concerned is no longer able to assert this fact in the proceedings under section 6, subsection (1) number 1 or number 2, he or she may apply for the revocation or amendment of the decision on the determination of recognition or the declaration of enforceability in separate proceedings. Sections 8 and 9 shall apply *mutatis mutandis*.

(2) The adult guardianship court that decided on the determination of recognition or the declaration of enforceability in the first instance shall exercise exclusive jurisdiction to decide on the application.

Section 12

Objection in the consultation procedure

(1) The court should object to placement in Germany pursuant to Article 33, para. 2 of the Convention in particular where

1. carrying out the intended placement is contrary to the best interests of the person concerned, especially because he or she has no particular link with Germany,
2. the foreign authority has not submitted any expert report establishing the necessity of the intended placement,
3. a reason for refusing recognition under Article 22, para. 2 of the Convention is apparent,
4. the person concerned was not granted an opportunity to be heard in accordance with the law in the foreign proceedings,
5. reasons exist that represent a hindrance to a necessary authorisation of the aliens authority, or
6. there is no arrangement regarding assumption of the costs for placement.

(2) In the event of placement involving deprivation of liberty or a measure within the meaning of section 1831, subsection (4) or section 1832, subsections (1) or (4) of the Civil Code, the court shall, without prejudice to subsection (1), indicate its opposition to the request in accordance with Article 33, para. 2 of the Convention where

1. in the requesting State, no court decides on the requested measure, or
2. on the basis of the communicated facts of the case, an order for the requested measure would not be admissible under national law.

(3) The court may hear the person concerned in person.

(4) The court may enter into an exchange of opinions with the requesting authority and ask the latter to provide additional information.

(5) The requesting authority shall be notified immediately of any objection pursuant to Article 33, para. 2 of the Convention. The decision to dispense with an objection shall be notified to the person concerned him- or herself and, where such person has been appointed, the guardian or other person with equivalent responsibilities, as well as the head of the institution in which the person concerned is to be placed. The order shall be incontestable.

(6) Sections 316, 317, subsection (1), first sentence, subsections (5), (6), sections 318, 325, subsection (1) and section 338 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction shall otherwise be applied *mutatis mutandis* to the procedure.

Section 13

Certificates regarding national measures of protection

(1) The certificate regarding a national measure of protection pursuant to Article 38 of the Convention shall be issued by the recording clerk of the registry of the court of first instance and, where the proceedings are pending before a higher court, by the recording clerk of the registry of such court.

(2) Section 319 of the Code of Civil Procedure shall apply *mutatis mutandis*.