


ADULT PROTECTION LAW in Austria – new legislation since July 2018

 Country: Austria Population: 9,2 million Number of people under Adult Guardianship in total: approximately 73.000 (1 st Jan. 2025)
Relevant legislation Austrian Adult Protection Law is a federal law and part of the General Civil Code (Article 239 to 276; <i>Allgemeines Bürgerliches Gesetzbuch</i>)
Key terminology Adult Representation / Representative (<i>Erwachsenenvertretung / Erwachsenenvertreter:in</i>)
What types of guardianship exist? Since the fundamental reform by the Second Protection of Adults Act, that went into force on 1 st July 2018, there are three types of scheme for representing adults requiring assistance (beside the enduring power of attorney): <ul style="list-style-type: none">• Court appointed representation (<i>gerichtliche ErwV</i>): approx. 34.800• Statutory representation (<i>gesetzliche ErwV</i>): approx. 28.900• Elective representation (<i>gewählte ErwV</i>): approx. 9.300 The different forms are organized in stages, with legal representation being the last resort (<i>ultima ratio</i>). A legal representative may only then be appointed or become active, if this is unavoidable and mere support is not sufficient.
What are the main characteristics and tasks of guardianship? The represented person's legal capacity is generally retained, even if an adult representative has been appointed. The precondition for this is that the person is capable of making decisions in the respective situation. In general there is a strong focus on supported decision-making. Representation for 'all matters' is not possible. An adult representative may only be appointed by the court for specific and current matters. The duration of the court appointed representation was extended in 2025 and is now five (instead of three) years. Before this period ends, the court will review whether the representative should be reappointed. In these cases, the court can also obtain a 'clearing' from the adult protection organisations. Such a clearing is mandatory for first-time appointments. In the majority of cases, adult representatives are appointed for financial matters, representation before authorities and representation in relation to private contractual partners. In some cases, they are also responsible for decisions on medical matters and the place of residence.
Who has the power to appoint an adult guardian? An elective and a statutory representation can be established and registered with a notary, lawyer or adult protection organisation. A court appointed representation is decided by the District (Guardianship) Court.

In any case the Court has the right and obligation to review and monitor all kinds of representation.

What criteria do the court need to consider when deciding the need for a guardian?

The appointment of an adult representative by the court should always be the last resort. It is only permitted if

- support services (supported decision making) are not sufficient without legal representation,
- there is no (effective) power of attorney, and
- the registration of a (self-) elected or statutory representation is not (or no longer) possible.

The court has to appoint an adult representative for a person of legal age at their request or ex officio if the person

- is unable to deal with certain matters
- due to mental illness or a comparable impairment in their decision-making capacity
- without risk of disadvantage to themselves.

The court appointed representation of adults is limited to five years (since July 2025; previously: three years). It can be extended by the court before the deadline expires. If there are certain matters that need urgent attention the court can appoint a temporary guardian before the completion of court proceedings.

Can a person under guardianship seek review of a guardian's appointment and/or a guardian's decisions?

An Elective representation can be cancelled by the person or the representative. A Statutory representation can be revoked by the Person concerned - even in advance. On the other hand, a representation that has been appointed by the court can only be terminated by the court itself. The person - and to a limited extent their relatives - has the right to appeal against the appointment of an adult representative. The person can anytime also apply to the court for termination or reappointment at any time.

Does an existing enduring Power of Attorney (personal welfare/financial) remove the need for guardianship when capacity is lost?

Both, the power of attorney and its effectiveness, must be registered in a central register, the Austrian Central Register of Representatives (ÖZVV). If the power of attorney becomes effective (in case of loss of decision-making capacity), it takes precedence over an adult representative. The elective representation also has elements of a power of attorney and offers people with limited decision-making capacity the opportunity to manage their affairs independently.

Who can be appointed as guardian? (eg family members, private guardian, private body, public body)

- **Elective Representation:** The person is free to choose who should be their representative. This can be any person with whom the represented person has a close and trusting relationship.
- **Statutory Representation:** Certain close relatives (family) are considered as representatives. There is no order of precedence between the relatives.
- **Court appointed Representation:** The law specifies an order of possible representatives: I) self-elected representatives; II) close relatives; III) Adult protection organization; IV) Lawyer or notary; V) Other suitable person

An adult protection organization will be appointed if no person close to the person concerned is available or if special requirements are linked with the representation.

Lawyers or notaries will be appointed if the matters to be attended to are mostly legal in nature or if no close person or an adult protection organization is available.

What are the responsibilities of NPO guardianship organizations (eg support of family and volunteer guardians, recruitment and education of volunteer guardians)?

There are four adult protection associations in Austria who are recognized by the Federal Ministry of Justice. Their scope of duties includes: the representation of adults within the context of adult representation (*Erwachsenenvertretung*); the legal representation of persons who are hospitalised in psychiatric institutions (patient advocacy; *Patientenanwaltschaft*); the review of restrictions on freedom in institutions (care and nursing homes; institutions for children and adolescents; *Bewohnerververtretung*).

In the context of adult representation, these organizations are responsible for a variety of tasks that have been further expanded by the Second Adult Protection Act (2018). These are:

- Adult representation after court appointment
- Clarifications on behalf of the court (*Clearing*), that are mandatory as part of the initial appointment of a legal representative
- Counselling of affected persons, relatives and institutions
- Organizing training courses and information events
- Registration of elective and statutory representatives and powers of attorney.
- Networking and public relations work

Voluntary work is an important area within the scope of adult representation. Approx. half of the court-appointed representatives are run by volunteers from the associations.

Please describe your organization:

VertretungsNetz is an independent, non-political and non-profit organisation. The association is the largest of the four adult protection organisations in Austria and operates in all federal states (except Vorarlberg) on behalf of the Federal Ministry of Justice. The association was founded in 1980 as 'Verein für Sachwalterschaft', and is named 'VertretungsNetz' since 2007. Its work is based on the Adult Protection Act, the Federal law on the placement of mentally ill persons and the Nursing Home Residence Act. The UN Convention on the rights of persons with disabilities is an essential element of all all specialized areas of work.

The annual report can be accessed via the following website **Fehler! Linkreferenz ungültig.**
www.vertretungsnetz.at/vertretungsnetz/publikationen/