

Resident representation and the right to personal freedom of movement
(HeimAufG)

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RepresentationNet Residents' Representation

SHEET representative network

is an independent, non-partisan, non-profit, not-for-profit association

is based in the field of human rights

in particular the following laws:

- o Adult Protection Act, since 2018 (which replaced the guardian law in force since 1984),
- o Accommodation Act, since 1991 (UbG),
- o Home Residence Act, since 2005 (HeimAufG).

SHEET representation network – as of December 31, 2022

SHEET HeimAufG – scope (as of December 31, 2022)

SHEET Resident representation according to HeimAufG

Legal representation of

people with a mental illness

or an intellectual disability,

who are affected by measures restricting freedom in facilities in accordance with the HeimAufG.

Goal

Residents can live as independently as possible in the facility.

SHEET Role of resident representatives

"Lawyer function"

- Extrajudicial review of the restriction of liberty
- Representation of the residents

to the institution and the court

- Any application for judicial review

SHEET Resident Council Review Process

SHEET restriction of liberty = a form of violence...

quoted from M. Weissenberger-Leduc & A. Weiberg (2011)

Everyone has the right to liberty and security

(Art 1 PersFrG)

Eligibility Requirements-Freedom Restrictions

Material requirements:

Formal requirements:

SHEET What are the restrictions on freedom?

SHEET These are also restrictions on freedom

Locked rooms, wards, exit doors

Blocked stairways

or lifts

Failure to provide assistance

Bring back, bring back

Prohibitions and Warnings

...

SHEET restrictions on freedom and their dangers

Bruise, bruise, abrasion ..

SHEET abdominal belt in a wheelchair – risks

Strangulation, chest compression

SHEET Practical examples

1. Elderly and care facility: Ms. 89J; no adult representation; Psychiatrist Assesses Medication Decision-Making Ability; Bwin refuses medication (blood pressure); Bwin often visits the administration to get money; She is then given a sedative (Valium) in her morning coffee.

2nd hospital: male 82y; restless after urinary tract infection; unsteady gait; tries to climb over side part; is fixed day and night in bed with a waist belt. Strap open only during visiting hours.

SHEET PREVENTIVE HUMAN RIGHTS CONTROL Volksanwaltschaft

Responsible for the protection and promotion of human rights since July 1, 2012

SHEET "National Prevention Mechanism" (NPM) based on OPCAT, UNBRK

federal commission and six regional commissions

control facilities in which personal freedom is or is being withdrawn or restricted (home detention facilities, correctional facilities, asylum facilities, psychiatric institutions)

reports and recommendations

SHEET Ombudsman Board of Residents

preventive

no individual representation

Reports to the National Council and the state parliaments

Report to UN Subcommittee on the Prevention of Torture ("SPT")

Legal representation according to HeimAufG

checking after reporting a FB

Review visits have a preventive effect

Individual representation

☒ extrajudicial

☒ judicial

SHEET 18 years of HeimAufG - summary and outlook

... the sensitization of the facilities and especially the nursing staff regarding the human right to personal freedom has increased

... the caregivers are the central group of people, so that instead of restrictions on freedom, as many milder means and alternatives as possible are used

... there is good cooperation with many institutions

... the HeimAufG and the legal protection provided by the residents' representatives and their expertise on the HeimAufG are increasingly recognized and in demand

SHEET 18 years of HeimAufG - summary and outlook

... "mechanical" alternatives and new electronic (alarm) systems are increasingly being purchased / used

... more and more concepts that meet the needs of the residents are being implemented

... there is a great need for action to reduce the (excessive) use of psychotropic drugs

... more awareness needed regarding subtle (often unacceptable) restrictions on freedom"

☒ ... above all the culture and the attitude determine the extent of freedom restrictions or alternatives!