

THE REPRESENTATION OF THE LEGAL INTERESTS OF CHILDREN AND ADOLESCENTS IN GERMANY: A STUDY OF THE CHILDREN'S GUARDIAN FROM A CHILD'S PERSPECTIVE

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ABSTRACT

In 1998, the children's guardian was introduced into German law as a new legal institution to represent interests of children and young people in certain family and guardianship court proceedings. Until now, there has not been realized any comprehensive investigation about the perception of children and young people themselves about the new figure. This study focuses on the understanding of 52 children and young people concerning the guardian's role and their satisfaction with the representation. To a large extent, most children formulated appropriate and differentiated conceptions of the role and duty of the children's guardian even if there were a few uncertainties. Furthermore, most children reported on many positive and satisfying aspects, although individual aspects were designated as problematic.

INTRODUCTION

'Children's guardians are like angels' is the description a thirteen-year old girl used to explain her personal impressions of her children's guardian. The manner in which children and young people experience a children's guardian was the focus of an investigation carried out at the Department of Children and Adolescent Psychiatry/Psychotherapy at the University of Ulm (Stötzel, 2005). This paper reports that investigation. But first it is necessary to explain the background to the project.

The children's guardian was introduced into German procedural law¹ by the *Kindschaftsrechtsreform* (Children's Law Reform Act) of 1998. German law does not distinguish between public law cases and private

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law cases for these purposes. The legislation established a means for the independent representation of the interests of children and young people in certain procedures in family and guardianship courts². The legislation provides as follows:

s 50 FGG: Representative for the child in the proceedings.

1. The Court may appoint a representative for a minor child in proceedings that concern it where this is necessary in order to safeguard its interests;
2. Appointment is normally necessary when the
 - (a) interest of the child conflicts significantly with that of its legal representative;
 - (b) proceedings relate to measures resulting from a threat to the child's welfare, involving the separation of the child from its family or the withdrawal of all personal custody (ss 1666, 1666a of the Civil Code); or
 - (c) proceedings relate to removal from the foster parents (s 1632 para 4 of the Civil Code) or from the spouse, the life partner or person having access rights (s 1682 of the Civil Code).

If in such cases the court dispenses with the appointment of a representative for the proceedings, grounds must be given in the decision relating to the child.

3. The appointment may be waived or revoked if a lawyer or other appropriate representative properly represents the interests of the child.
4. The appointment shall end, unless it has previously been revoked when
 - (a) the decision concluding the proceedings becomes final, or
 - (b) the proceedings are otherwise concluded.
5. The expenses and remuneration of the guardian shall be regulated according to s 67 para 3.

The reasoning behind the German government's implementation of the new rule was to guarantee 'that the independent interests of the child are incorporated into the procedure so that the child does not become a mere object of the proceedings' (Deutscher Bundestag, 1996: 76). Shortly after enactment discussion started about the nature of the representation, as the law does not outline in detail whether the children's guardian should concentrate on the child's wishes or on the welfare of the child. The new rule states only that the guardian should represent the interests of the child, and this includes both aspects. Nor are the qualifications or training of the guardians specified. Legal and psychosocial professionals and even laypersons are generally considered suitable. As a consequence many different types of guardian are appointed and there is wide variation in practice. Additionally, when

the rule was introduced, many judges, being unfamiliar with it, did not know who should be appointed. There is still no unified system of management or panel administration; in Germany children's guardians work as private and freelance practitioners.

At first sight it seems a matter for congratulation that, about eight years after its introduction, the German government could announce that the children's guardian 'in principle has proven an effective means for the administration of children's rights' (Deutscher Bundestag, 2004: 4). This statement is not surprising considering that three years ago, the explanatory report to the ratification law of the European Convention on Children's Rights dated January 25 1996, reached the following conclusion about the exercise of children's rights: namely, that with the law for the reformation of children's rights, and especially with the establishment of the children's guardian and the personal hearing of the child, far-reaching protective measures had been taken in line with the requirements of the convention and thus no further legislative adjustments were required for the ratification of the convention (Deutscher Bundestag, 2001: 20f).

However, the basis for the government's appraisal, in particular, the criteria according to which the value of the office of the children's guardian is assessed, remains an open question. It is cause for concern that the results of available empirical studies neither confirm nor refute the evaluation. In other words, the appraisal does not have any scientific foundation. It is hoped that an 'extensive study on the office of the children's guardian' which has up to now been put on hold (Deutscher Bundestag, 2004: 6) by the government will now be considered in earnest. But the statements quoted, however, indicate that such hope might be misplaced³. In any event, the legislature is still responsible for commissioning a comprehensive research project on children's guardians. Unfortunately it has not done this yet.

Thus far only a few, isolated, attempts have been made to compile empirical knowledge about children's guardians. Central to the present contribution are the results of the Ulm study mentioned above. This presentation will also address the great difficulty in carrying out a research project without governmental support⁴. That the efforts are worth making will be attested by the results attained. Thus this can also be understood as an appeal to place the concerns of children and adolescents seriously at the centre of political interests.

1. THE OFFICE OF THE CHILDREN'S GUARDIAN STARTS ITS SEVENTH YEAR: WHAT HAVE WE LEARNED?

The institution of the children's guardian established by s 50 of the Act on Matters of Non-Contentious Jurisdiction is very comprehensively

described in professional literature. Children's guardians can turn to five published handbooks (Balloff and Koritz, 2005; Bienwald, 2002; Bode, 2004; Röchling, 2001; Salgo et al, 2002), dealing with this topic as well as to numerous contributions in professional literature and conference documentation. Nevertheless, many issues remain controversial and unfortunately are not always constructively discussed. The number of rulings passed by the higher courts regarding the applicable statutory provision demonstrates the urgency of the need for clarification in practice. As a result of the adjudication research undertaken for the investigation, approximately 150 extensive published rulings on s 50 of the Act on Matters of Non-Contentious Jurisdiction (Stötzel, 2005, Appendix C) were discovered. So there is empirical evidence that many questions concerning the office of the children's guardian have not, at least thus far, been conclusively and uniformly answered.

As mentioned in the introduction, there is little empirical data that could contribute to a constructive discourse here. Research has been based on regional, or contextually restricted and small, sample studies (Baier, 2002; Lehmann-Gerstel and Unger, 2000; Lipinski-Wollenberg and Raack, 2003; Moritz, 2004; Peters and Schimke, 1999; Stötzel, 2000 and Balloff and Stötzel, 2001/2002; Walter, 2000). In its legal study on the reform of the children's rights law (Proksch, 2002), the federal government has generally complied, albeit late, with the express recommendation made by Salgo (1996: 579), that 'research and evaluation of the reform... is to be secured from the beginning'. However a scholarly research project specifically on children's guardians is still lacking. The study by Proksch (2002) is also not able to fill in the gaps, because, though representatively constructed and working with a wide data basis, it does not focus on the office of the children's guardian⁵.

The *Statistisches Bundesamt* (Federal Office of Statistics) annually publishes the number of procedures concluded before a local court in which a children's guardian was appointed (Statistisches Bundesamt 2000/2001/2002, 22-5, 2004a/2004b, 24-7).

Though these figures demonstrate the increasing significance of the children's guardian, they also confirm the suspicion that the appointment of a children's guardian is the exception rather than the rule. Of course, not every court procedure requires an independent interest-representing party. Yet, the absolute figures also continue to lag behind the 'need' conjectures as formulated by Balloff (1998: 442; 1999: 222) and confirmed by Salgo (2002: 189). As Table 1 shows, on average, a children's guardian is appointed in Germany in less than three percent of the so-called 'other' procedures that have been concluded. In the remaining statistical category of marriage procedures, the children's guardian plays virtually no role whatsoever. Thus, the

Table 1. Absolute numbers and percentage of 'other procedures' with children's guardian

Year of conclusion at local court	1999	2000	2001	2002	2003
Absolute number of procedures	2,544	3,757	5,483	6,418	7,121
Portion of 'other procedures'	0.87%	1.26%	1.77%	2.00%	2.22%

Absolute and – based on the so-called 'other procedures' – relative number of procedures concluded annually with children's guardian.

(Note: other procedures = procedures concerning separate matters in divorce proceedings, other family matters and legal aid procedures.)

appointment of a children's guardian cannot have occurred in all 23 case constellations which the federal government had indicated in its statements regarding the ratification law of the European Convention concerning the exercise of children's rights as a procedure within the meaning of s 50 paragraph 1 of the Act on Matters of Non-Contentious Jurisdiction (Deutscher Bundestag, 2001: 21ff).

There is a considerable risk that justice will not be done to the position of the child, which is to be protected in terms of its basic rights, and for which very reason the office of the children's guardian was established, if opportunities can be found in practice to abuse the legal provisions which must be followed in certain procedures. Salgo (in Salgo et al, 2002, 10ff) rightly comments that the:

accumulation of numerous, indefinite legal terms in the wording of Section 50 of the Act on Matters of Non-Contentious Jurisdiction... are seen by some courts as a virtual invitation for non-compliance with the strict requirements for instituting a children's guardians.

It will be seen from Table 2 that there are regional discrepancies concerning the appointment of children's guardians. For example, the fraction of concluded court procedures with children's guardians in Rhineland-Palatinate for 2003 was only 1.27 percent, while in Bremen 6.93 percent of the so-called 'other' procedures involved a children's guardian. The smallest fraction of concluded procedures with children's guardians is registered by the Cologne Oberlandesgericht (Higher Regional Court) and amounts to just 0.78 percent for 2003.

2. DEVELOPMENT OF A RESEARCH IDEA

A. *Children as Involved Parties in Research*

Since the introduction of the *Kinder- und Jugendhilfegesetz* (German Child and Youth Welfare Act) in 1991 and the German ratification in 1992 of the 1989 United Nations Convention on the Rights of the Child, discussion about participation of children and adolescents has

Table 2. Percentage of concluded 'other' procedures involving children's guardians

	1999	2000	2001	2002	2003
Germany	0.87	1.26	1.77	2.00	2.22
Former federal states	0.81	1.15	1.66	1.88	1.93
New states	1.26	1.89	2.38	2.67	3.17
Baden-Württemberg	1.34	1.80	1.86	2.50	2.18
Bavaria	1.39	1.20	1.36	1.40	1.44
Berlin	0.90	2.45	2.91	2.49	2.96
Brandenburg	1.38	1.77	2.77	3.30	2.47
Bremen	2.44	5.18	4.34	6.56	6.93
Hamburg	1.76	0.57	2.95	3.17	3.91
Hesse	1.38	2.18	2.29	2.16	2.04
Mecklenburg-Pomerania	0.24	1.56	2.44	2.66	4.50
Lower Saxony	0.71	1.06	1.68	2.20	2.45
North Rhine-Westphalia	0.05	0.40	1.36	1.60	1.49
Rhineland-Palatinate	0.63	0.84	1.29	1.42	1.27
Saarland	1.37	1.25	1.12	1.08	2.22
Saxony	1.77	2.29	2.70	3.15	3.74
Saxony-Anhalt	1.45	2.22	2.70	3.15	3.74
Schleswig-Holstein	0.96	1.08	0.85	1.11	1.55
Thuringia	0.94	1.34	1.43	1.74	1.64

Family statistics for 1999 to 2003 as compared in terms of percentages.

Source: Statistisches Bundesamt Wiesbaden (2000/2001/2002a, Familiengerichte 1999/2000/2001- Arbeitsunterlage, S. 22-25, Statistisches Bundesamt Wiesbaden (2004a/2004b) Rechtspflege Familiengerichte, S. 24-27.

(Note: other procedures = procedures concerning separate matters in divorce proceedings, other family matters and legal aid procedures.)

steadily increased. The intention was that with the reform of children's law, the 'rights of the children... [should be] improved' (Deutscher Bundestag, 1996: 1). Fegert (1998: 150f) notes that the reform lacks criteria according to which the participation and involvement associated with the improvement of the legal position of the child can be assessed. One of the few features that directly address the interests of the child, he asserts, is the children's guardian.

In view of the persistence of the participation discourse, it may come as a surprise that research on this topic thus far has been marginal at best and, in particular, that children themselves have rarely been included as central participants. Among the few exceptions, Hansbauer (2000) and Blandow et al (1999: 62ff) urgently stress the need for involving children and adolescents and taking their expectations and needs into account in an evaluation of quality development in the area of home education. Including children in the quality development of participation models that would have an impact on them is the dominant feature of involving children in research. Looking at research literature published thus far, the statement made by Grundmann et al (2001: 16) that 'studies about a child's perspective of the social circumstances... was, up until now, the poor cousin of research'

can probably be affirmed. That the needs of children are not taken into account with the same regularity as adults is, however, understandable in view of the numerous methodical and ethical issues which result from such a procedure and which cannot all be answered satisfactorily – and all the more so when one considers the experiences gained within the context of the study described below.

B. Formulating the Central Research Questions

On the topic of the children's guardian, only one qualitative study has been conducted in Germany in the context of which the experiences of represented children themselves were studied (Stötzel, 2000; Balloff and Stötzel, 2001/2002). The topics of the interviews with seven children living in the area of Berlin/Brandenburg covered the manner in which the children understood and perceived the role of the children's guardian and their satisfaction with the representation. On the basis of the Berlin/Brandenburg study, questions and hypotheses for the Ulm study were formulated that describe the child's understanding and experiences. Thus, the objective of the present study was to gain insight into the perception of the represented children and, furthermore, to determine whether and how activities of the children's guardian are connected with the child's perception. The following questions were explored:

- What do children understand about the children's guardian?
- How do children perceive the issue of the child's wishes and well-being?
- How do children experience and evaluate the representation by a children's guardian?
- What connections can be identified that link the activity of the children's guardian and understanding and experience of the child?
- What conclusions can be derived for the everyday practices of the children's guardians?

3. REALIZATION OF A RESEARCH IDEA: PRACTICAL PROBLEMS

In order not to limit the study to a regional sample, we decided to mail questionnaires to children and children's guardians. Thus questionnaires were developed for children in order to be able to determine all variables crucial for the questions. Together with statements which the children had to select using multiple choice questions concerning the central issues of how they understood the role of the guardian and their satisfaction with the representation provided, so-called open questions

were posed and the children were asked to answer them using their choice of words. A questionnaire was also developed for the guardians that served to emphasize all the variables determinable about the guardians from their perspective and to focus on particular characteristics of the guardians themselves. They also had the opportunity to make observations regarding the study as well as their occupational situation.

Two crucial problems emerged during the planning phase of the study: on the one hand, a representative sample could not be achieved from the outset as there is no data on the population of the children represented by a children's guardian. Thus, for example, no descriptions concerning characteristics such as age and gender of the represented children can be gathered from the information provided by the statistical authorities. Ultimately, this information can only be used to state the number of court procedures in the individual districts of the higher regional courts – and the statistical information refers only to this and not directly to the children in the study.

Furthermore, recruiting a sufficiently large sample of children and adolescents was problematic in itself. To contact the participants nationwide through the courts did not appear feasible without governmental support due to the complex organization (federal and state regulation) that would be necessary. Thus, in the end children were contacted by their guardians, although it had to be accepted that this procedure would be likely to result in a disproportionate number of positive cases in the sample. Thus, for a variety of reasons, children's guardians are more likely to have considered the cases 'that went well', and it is also more likely that satisfied children – and also satisfied parents – would have been prepared to participate when the guardian him/herself personally informs them of the study.

As in the course of a pilot study in the region of Berlin/Brandenburg in the summer of 2002, there was little success in establishing contacts via the guardians, this method was modified and tried again for the nationwide main sample survey. In summer of 2003, about 1,250 copies of the investigation materials were distributed to approximately 1,000 children's guardians in Germany. These included questionnaires, reply forms in case of unwillingness to participate, information and declarations of consent for children's guardians, children and parents as well as return envelopes without postage provided. Moreover, the Berlin family courts directly contacted 79 children, after the relevant files were procured with the support of the relevant state authorities.

4. RESULTS AND DISCUSSION

All materials returned by the end of November 2003 were included in the evaluation. Ultimately, 160 questionnaires from 82 children's

guardians were available, which were based on 137 different judicial procedures. Fifty-two children returned their questionnaires. Of these unfortunately only two were from the sample survey for Berlin courts. Since the guardians for these two children did not participate, ultimately a sample survey made up of 50 questionnaire pairs resulted, each of which consisted of answers from the child and its guardian. In addition, using a brief response form, 119 guardians stated why they did not participate in the study.

A. Some Characteristics about Children's Guardians, Children and Judicial Procedures

Set out below are some of the characteristics about the information gathered, in particular through the questionnaires as completed by the children's guardians.

First, as far as *regional distribution* is concerned, the major overall sample survey was, for the most part, able to meet the requirement for a national base for the investigation. With the exception of the higher regional court districts of Bamberg and Nuremberg in Bavaria as well as the states of Bremen, Saarland and Rhineland-Palatinate – the latter with the higher regional court districts of Koblenz and Zweibrücken – all regions are represented. A particularly active participation for the districts of Hamm (19 procedures), Stuttgart (17 procedures), Hesse (12 procedures) and likewise for Berlin could be recorded, in which context twelve of the 23 total procedures were achieved via the sample survey of the Berlin courts.

As regards *gender of children's guardians*, the proportion of female guardians, in this sample, is much larger than that of their male colleagues. 65 (79 percent) of the 82 total participating children's guardians are female, only 17 (21 percent) male. This may be partially explained by the fact that considerably more women than men follow the psychosocial occupations from which children's guardians are often drawn (Statistisches Bundesamt Wiesbaden, 2002b). Certainly, women much more frequently choose the office of children's guardian because it is possible to positively reconcile the demands of family and career as a result of the high degree of flexibility involved.

As regards *age distribution*, 84 percent were between 36 and 55 years, with an average of about 45 years. This data indicates a rather high age of entrance into the vocational field of children's guardian.

As for *basic qualifications*, it is to be noted that many attorneys are active as children's guardians, but that they had neither taken additional training nor were members of a corresponding association. They were not reached by the chosen method of contact and the eleven percent who were lawyers surely underestimates the significance of this occupational group in the field. Over half (53 percent) of children's guardians

participating were social workers/social pedagogues. The group of pedagogues, exclusively made up of older women, and psychologists – this group is relatively young – as well as the educators/teachers each have a fraction of less than ten percent. Eight of the 82 guardians have been professionally trained in two fields, four of them being both educators and social pedagogues. In addition, one participant has also concluded basic legal training.

Altogether 70 of the 82 children's guardians (85 percent) reported that they had participated in specialized post-graduate training for children's guardian. Five of the 11 guardians who, according to the information provided, did not do this are lawyers. Thus, the proportion of lawyers who do not have further training is clearly larger when compared to the overall sample survey. It stands to reason that these results – at least as compared with individuals employed in psychosocial careers – reflect the frequently described resistance to further education demonstrated by lawyers. This may also reflect the fact that a legal education – again, more so than a psychosocial one – is seen as providing a wide knowledge and turning out multifarious, competent graduates. A culture promoting post-graduate training and continuous education, such as exists in the psychosocial vocational fields, is rather under-developed in the legal profession. An important exception to this is the obligation under occupational law for various specialist attorneys to undergo further training. Even if the German legislature does not regard a specialized training for children's guardians to be obligatory, the characteristics of the sample survey described here prove that many children's guardians do want to prepare themselves for this task. Why should it be different for lawyers? The interdisciplinary requirements that are to be met by children's guardians are certainly acknowledged by everyone active on it. The standards of the *Bundesarbeitsgemeinschaft Verfahrenspflegschaft für Kinder und Jugendliche* (Federal Working Group of Children's Guardians for Children and Adolescents (Weber and Zitelmann, 1998)) state, concerning the issue of suitability and qualification, that 'practical experience as well as special legal, pedagogical and psychological expertise' is required for anyone assuming the role of children's guardian. The acquisition of the necessary expertise by means of a special additional training program should be required for all occupational groups.

The *vocational experience* of our sample of children's guardian in this survey, which was conducted about five years after the legislation came into effect, ranged considerably between one and 368 cases begun, and also included 185 concluded cases. The average, however, is lower and lies at 30 cases begun and 22 concluded. For cases taken over as well as concluded cases, the focus of the distribution is clearly in the lower range: the median could be calculated for 12 assumed and ten concluded cases.

Several characteristics of court procedures will now be addressed. In 39 of the 137 total cases (29 percent) the *subject matter of the proceedings* was endangerment of the child's well-being (like child abuse or neglect). Furthermore, procedures concerning custody (24 percent) and right of access (20 percent) as well as both aspects (14 percent) were described numerous times by the children's guardians. Finally, in seven cases (5 percent) the subject of the proceedings and reason for the appointment of the children's guardian was the removal of the child from the person with care and in one case the removal from a step-parent. Thus, the distribution of the various subject matters of the proceedings is closely in line with the scenarios as reported by Walter (2000) for appointing children's guardians at the Institut Gericht and Familie (Institute for Court and Family) in Berlin/Brandenburg. Since the portrayal by Walter takes into consideration all representations – that is, all cases independent of the age of the children represented – the fact that the data is consistent can be taken as evidence that the concentration on older children, which took place for methodical reasons in the present study, did not have a distorting effect on the distribution of the contents of the proceedings.

In addition, the children's guardians were asked to submit information regarding the *duration of the proceedings*. Unfortunately, the comments provided by several of the guardians raise the suspicion that not all participants answered this question based on the actual duration of the proceedings – from the point the court is invoked or an application is made – but instead on the duration of the appointment of the guardian – which usually is later. Thus it must be assumed that the time periods provided underestimate the overall duration of the proceedings in the overall portrayal. Therefore, it is all the more cause for concern that 26 percent of the examined proceedings lasted longer than one year – or, rather, probably the activity of the children's guardian alone covered this period. The average duration was 12 months; the median was calculated for ten months. A comparison of the duration of the proceedings with and without a guardian would also be interesting especially with regard to the effectiveness of the role of the guardian – an aspect which the German government believes needs to be determined. Unfortunately, however, such a comparison appears impossible given that control over all other complex procedural conditions would be required.

The *age distribution* of the sample of 160 children and adolescents, about whom the guardians report, is certainly not representative. The average and median age at the time of the analysis was approximately 13 years. The distribution appears bell-shaped and ranges between four and 19 years. In contrast, while exchanging information or experiences with guardians or other individuals employed in the field and familiar with this topic, the age distribution is described as skewed to

the left; that is, there is a tendency that the higher number of the children represented are in elementary and preschool. The interests of toddlers and infants, which are not at all addressed in the present survey, are also often represented. The guardians seem, therefore, in selecting the proceedings relevant for the questionnaire and the children represented therein, to have assumed that the questions refer to the representation of older children, the more so since their participation was a significant objective of the study. The age of the 52 children actually participating is spread over a range of seven to 18 years. The average and median age is 13 years. In this case as well the range of the age distribution appears bell-shaped.

As for *gender of the children*, 57 percent of the 160 were girls; the higher female proportion occurs between the ages of 12 to 17 and can be found especially in the group of proceedings concerning access (contact). The gender balance is more even for younger and older children. A 'particularly pronounced over-representative portion of 15–18 year old girls' was also determined in a case study about children in well-being cases (close to public law cases, Mündler, Mutke et al, 2000: 84).

The following questions arise. Are guardians appointed more often for girls than for boys? Does this occur particularly often in proceedings concerning access? Unfortunately these questions must remain unanswered. Here it would have been particularly helpful to be able to draw on statistical information in order not to become enmeshed in speculation. The question of whether the appointment of a children's guardian is influenced by the gender of the child should certainly be pursued.

Further questions were raised. Several guardians and children pointed out that there had as yet been no hearing of the children (38 (24 percent) of 160 total children). Twenty-one children (13 percent) were not given a hearing either with or without a guardian. This is astonishing in view of the high age of the children. Under s 50b of the Act on Matters of Non-Contentious Jurisdiction, children of 14 and older are always to be granted a personal hearing. A hearing is also obligatory for younger children when the inclinations, attachment or wishes of the child are significant for the decision or when it seems appropriate given the circumstances. When a guardian has been appointed, that is most likely always the case. A differentiated observation concerning the subject matter of the proceedings reveals that this group (children without hearing) relatively often deals with child protection proceedings pursuant to ss 1666/1666a of the German Civil Code and proceedings concerning rights of access. The methods of hearing children in child protection procedures have also been criticized in another study, which established considerable shortcomings in practice (Mündler, Mutke et al, 2000: 130ff).

In contrast, in the research study commissioned by the Bundesministerium der Justiz (Federal Department of Justice) which went hand in hand with the implementation of the new provisions of the children's law, family judges reported almost without exception that children and adolescents should be heard in proceedings concerning custody and access and, furthermore, that this is normal practice, even when the children are under the age of 14. Moreover, nearly half of the family judges indicated that the hearing should take place in the presence of an appointed children's guardian and that this is done (Proksch, 2002: 270ff). It is probable, however, that this sort of question leads to biased answers which reflect what is personally and socially desired. Thus, unfortunately the results do not allow reliable insight into the actual hearing practices of the family courts. Further research appears to be called for.

B. Results in the Combined Sample of Children and Children's Guardians

Children's guardians for 50 of the 52 total participating children also returned a questionnaire. In the result, a database of 50 pairs of questionnaires (one each for child and guardian) was available. Several of the guardians participated in the study with more than one child they had represented. Thus the average sample survey is created by 30 guardians referring to 41 court proceedings.

This combined sample revealed certain characteristics. First, the proportion of girls (63 percent) is higher than that of the total sample. As can be seen from Figure 1 this dominates the middle-age range of the sample between eleven and 15 years of age. For the sample survey of the questionnaire pairs, the proportion of girls rose to 66 percent, since the guardians of the two male participants from the sample survey of the Berlin courts did not respond and these two boys are therefore not included. In addition to the question of whether girls are represented by a guardian more frequently than boys, it should also be considered whether girls were more willing to participate in the study than boys. Or did the guardians contact more girls than boys amongst the children they represent? In this sense results from an English study show that parents preferred to ask their daughters to participate in a study (Thomas et al, 1999: 13).

The female dominance described for the children and adolescents continued to be the case for the children's guardians as well. Only two of the 30 guardians who participated together with their represented children are male. Twenty percent of the joint sample of associated children and their guardians involved guardians who are lawyers. This is nearly twice as high as in the total sample of all guardians. Thus lawyers were able to win over many children for participation in the study. This also inflated the percentage of guardians who did not have

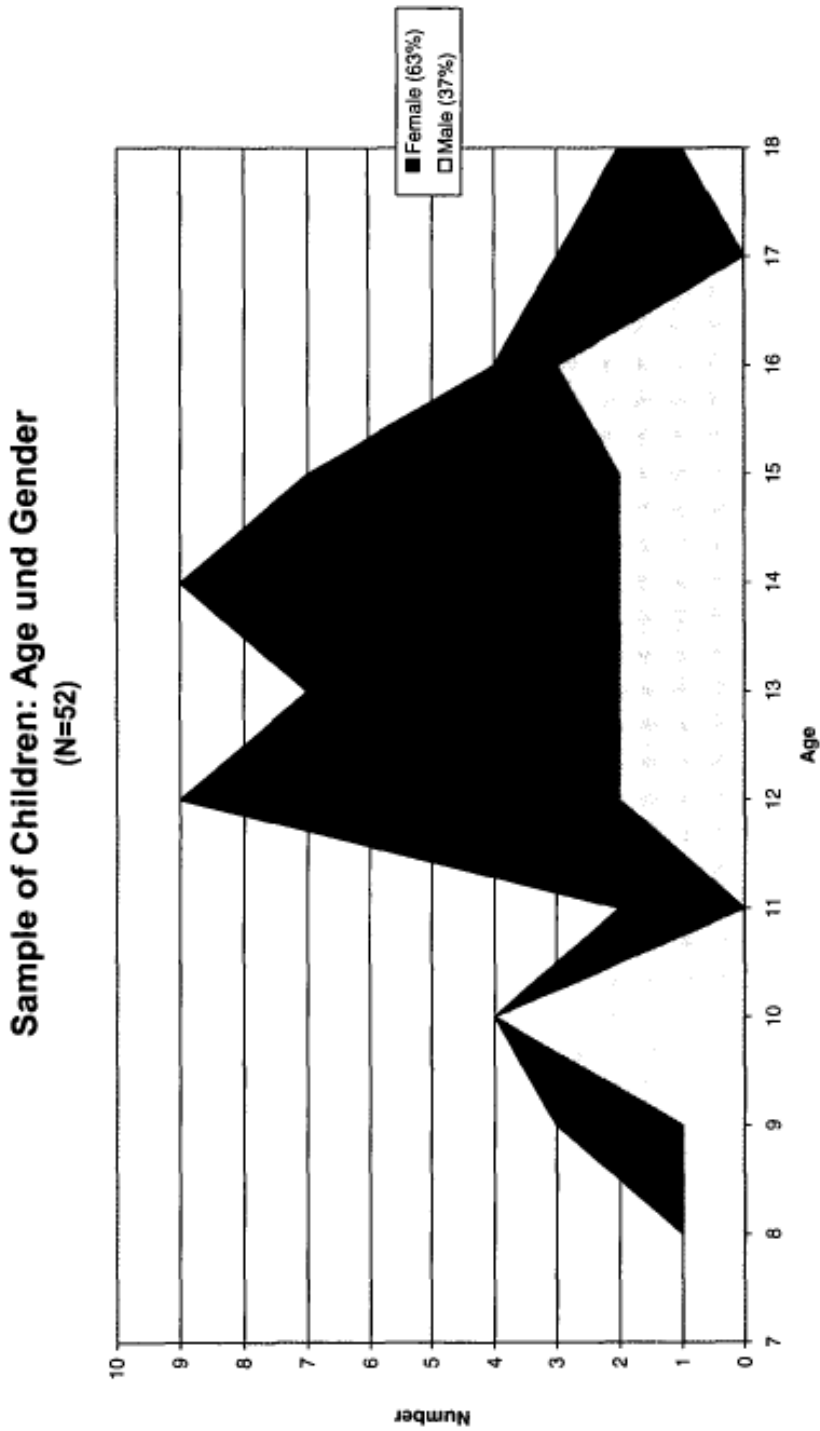


Figure 1. Distribution of age and gender of the 52 children who participated in the study
Age and Gender of Children (n = 52)

specialized training, two-thirds of which are lawyers. Finally, the guardians in the joint sample tend to have greater professional experience. Thus they were also in a position to draw on a larger base of – suitable – cases.

Compared to the larger overall sample, only few of the proceedings relevant here concern access and threats to the child's well-being. In addition to the regions already mentioned, which are not addressed in the overall survey, the higher regional court districts of Hamburg, Cologne and Oldenburg are not represented in the joint survey since no child participated in the study from these regions.

In addition, it is reported that more extensive contact is spent between the child and its guardian and that the proceedings are lengthy in their duration. There is, however, no correlative connection between the two characteristics – at the level of the questionnaire pairs, a longer duration of proceedings does not correlate with longer contact. Still, it is possible that both characteristics influenced the motivation of the children's guardian to inform the child and family of the study, while also enhancing the latter's willingness to participate in the study. Whether it can be demonstrated that the satisfaction of the children is influenced by temporal factors will be described later.

Another matter has implications for the children's answers. A comparison of the general professional satisfaction of the guardians and their satisfaction regarding specific cases was intended to provide additional information as to the extent to which the survey was biased towards positive cases and satisfied children. Ultimately, those guardians who were satisfied with their representation in the individual case were prone to attract more children for the investigation. An increased satisfaction of the guardian correlated positively with the positive court experience of the child ($r=0.58$; $p<0.0001$). This must be considered when interpreting the following results.

The experience of the represented children

The perspective of the child is central to the study. Accordingly, the number of variables used to gauge that perception is extensive. In the context of this paper it is not possible to present all these variables. In addition, not all results could be satisfactorily supported. Therefore the following presentation concentrates on the children's knowledge about the role of the guardian; their satisfaction with the representation; and the correlations between greater knowledge and a positive experience for the child will also be considered.

The Child's Understanding of the Guardian

Table 3 depicts the average values the 52 interviewed children achieved for the criterion *level of information* (knowledge) and the

Table 3. The Child's Level of Information (Knowledge)

	Designation of variables	Children (N=52)	Children's guardians (N=50)
Criterion	Status of information of the child	2.36	Not inquired
Predictor 1	Explanation of role and function	2.53	2.48
Predictor 2	Explanation of legal foundation and appointment by judge	2.37	2.94

Average value of criterion and predictors of the topic 'knowledge' of the child
(Note: Average values between 0 and 3 for all children and children's guardians are presented.)

factors viewed as relevant (predictors). Predictor 1 (explanation of role and function) describes the conveyance of fundamental information to the child. Predictor 2 (explanation of legal foundation and appointment by judge) is based on two special aspects which presented themselves as particularly problematic in the conclusion of the preceding exploratory study (Stötzel, 2000: 83f; Balloff and Stötzel, 2001/2002, 82f/50f). The average value for all answers of the children and their guardians is presented for each predictor.

For the children, both the values for knowledge and their data for the two predictors reach values within the upper range of the scale. However, there is hardly any correspondence between the data of the child and the guardian. Therefore, the individual child and its guardian appraised the predictors in different ways.

In the text below, some answers are shown which the children freely formulated concerning the role and duty of the guardian from their perspective:

Imagine that a friend asked you: What is a children's guardian? What does he or she do? What would you answer?

A children's guardian ...

- is a person committed to my wishes, rights and issues and shows me my possibilities;
- is like a lawyer but for kids, who represents our opinion;
- is a person who is paid by the state, represents a child in proceedings and explains to it its rights and obligations;
- supports my feelings and what I want and communicates it to the court – someone like a lawyer;
- helps you in family difficulties and advises you about what is best for you. Children's guardians are good friends with whom you can talk about everything;
- is like a lawyer for children, someone who represents their opinion and the well-being of the child from the child's perspective;
- represents your own opinion in court for you since you're still too young to have your own lawyer;

- is the children's lawyer and takes care of the children during legal proceedings and parental disputes about custody. He listens to the children's opinion and tries to represent this opinion to the judge;
- is a person from the judge, who promises to help you and then doesn't do it;
- represents the parents in court.

In the overall examination of the answers, three features stand out in the children's descriptions. Twenty-six of the 52 surveyed children used wording which contained the aspect of representation ('represents/defends the opinion/wishes/rights' of the child at court). Furthermore, 21 children referred to supporting activities of the guardian reaching beyond representation ('sticks with you; supports; advises; tells you possibilities'). Twenty-two children used the term 'lawyer'. Three children noted that the children's guardian was a person who does not help and doesn't take care of the rights of the child. Two children noted the independence of the children's guardian ('person from the judge; paid by the state'). Likewise two children described the children's guardian as 'a friend', among other things. One child portrayed the guardian as a 'judge for children,' another as a person who represents the parents before the court.

In general, to a large extent most children formulated appropriate and differentiated conceptions of the role and duty of the children's guardian. Only the exclusive understanding of representing the parents would probably be designated as objectively wrong. In this instance, the answer probably incorporates an evaluation, just as in the remarks that a children's guardian is a person who does not care. Also the term 'friend', used by the two children is certainly inaccurate, but the children combined this with a more extensive description. Thus, the quality of the free expression of the children corresponds with the quantitatively determined high values of the knowledge of the child. English investigations also determine a comprehensive, if also partially incomplete but nevertheless not incorrect, understanding of the role of their guardian (Clark and Sinclair, 1999; McCausland, 2000). Uncertainties appear over where the guardian comes from (ie under whose authority he or she operates, McCausland, 2000: 55f, 96). In the study described here, the children had appropriate conceptions and yet also reported on explanations of the children's guardian about legal foundation and appointment by the judge (predictor 2, average value: 2.37; see fig. 4). As Masson and Winn Oakley (1999: 96, 149) suggest, these verbal declarations could be supplemented by means of written documentation, in order to use this medium to offer the children an opportunity to provide more details about the information received.

The child's satisfaction with the children's guardian

The criterion *positive experience of the child* (satisfaction) refers to the child's general assessment of being generally glad to have had a children's guardian and to wish the same for other children. Beyond that, six predictors were observed which are possibly connected with the child's experience. Their average value is to be inferred from Table 4. Predictor 1 (experienced sympathy and friendliness) describes personal characteristics of the children's guardian, while predictor 2, respect felt as a subject and individual, summarizes aspects of the working relationship between the child and guardian – for example, whether the child was involved in the scheduling of dates. Predictor 3 (explanation of the legal procedure) addresses the explanations given by the children's guardian concerning the judicial procedure while predictor 4 (support in court), is specifically related to the child's personal hearing. Predictor 5 (opinion represented) describes the explicit inclusion of the child's desires and ideas into the procedure, and predictor 6 records the 'clash of interests with the legal representative'.

The average value (2.46) computed for the criterion from the children's view describes a very good overall assessment that was predicted quite well by the guardians in the individual cases ($r=0.52$; $p<0.0001$). A certain measure of agreement exists between the child and its guardian concerning the degree of explanation of the legal proceedings (predictor 3; $r=0.29$; $p<0.05$), but not for the other variables. All average values resulting from the answers lie in the middle to high range of the answer-scale.

Children were also asked to express their opinion and satisfaction freely by responding to this question: Imagine that a friend would like to know your personal opinion about your children's guardian. He or she asks you: What did you like and what did you not like? How would you answer your friend?

Table 4. Positive experience of the child (Satisfaction)

	Designation of variables	Children (N=52)	Children's guardians (N=50)
Criterion	Positive experience of the child	2.46***	2.43***
Predictor 1	Experienced sympathy and friendliness	1.26	not inquired
Predictor 2	Respect felt as a subject and individual	2.36	2.83
Predictor 3	Explanation of the legal procedure	2.32*	2.64*
Predictor 4	Support in court	2.09	2.82
Predictor 5	Opinion represented	2.46	2.92
Predictor 6	Clash of interests with the legal representative.	1.46	2.55

Average value of criterion and predictors of the topic "satisfaction" of the child
(Note: Average values between 0 to 3 for all children and children's guardians are presented; conformances between the child and guardian: * $p<0.05$; *** $p<0.0001$).

I thought...

- it was good that my guardian was really nice and always listened to me. Confidence and sympathy were there immediately, the support helped me a lot;
- my guardian was very good because he helped me a lot and supported me. I did not like that I only had a little bit of time to describe my situation to my guardian;
- at first that I did not need a lawyer. But then it was good to know that someone was there to whom I could turn if I needed to;
- it was nice that one time I got to eat ice-cream with my guardian. I didn't like that nothing was achieved in the proceedings by the guardian;
- it was good that my guardian told the judge exactly what I told him to and that he only said those things to him which I wanted to be told;
- it was nice that he could always answer my questions and always understood me. You could talk to him about everything and it was easy to describe feelings to him;
- it was good that my guardian was always there and helped me to come to an understanding with my parents. It was too bad that the children's guardian couldn't offer any legal help;
- that we always got along well in personal discussions. But in the end he only told the judge what he wanted to hear;
- that it was difficult to get across everything to the children's guardian so that he could really explain my opinion to the judge. You could trust the guardian;
- it was good that my guardian always listened to me attentively, understood me – or at least left me with that feeling – and represented my opinion well.

Thirty of the 52 interviewed children stated exclusively positive aspects. Two children formulated only criticism. Twelve children reported both positive aspects and ones that –from their point of view – were not good or contained no clear assessment. While the answers of two children were impossible to classify, three children submitted no answer or said that they couldn't respond to the question.

The activities of assistance and support of the guardian were described by 24 children as satisfactory ('stood up for me; was on my side; asked good questions; good to know that someone is there'). Twelve children assessed relationship aspects positively ('listened; understood me; you could talk about everything'), while 13 children praised the personal characteristics of the guardian ('was nice; we got along well with each another'). In addition, entertainment and fun enjoyed with the guardian, small presents and promises kept were positively noted by individual children.

Difficulties in the representation ('too little time to describe the situation; difficult to convey everything like this; did not ask what is important'), betrayal or insecurities in this context ('at the end he only said what the judge wanted to hear; feeling that later everything we talked about was told to others') ineffectiveness of the representation ('nothing came of it; could not help legally'), personal characteristics of the children's guardian ('was cheeky; was irritated'), too many personal questions which the guardian posed and his/her lack of dedication were all problematic features.

Concerning the satisfaction of the children, there are clear parallels with other studies (Cashmore and Bussey, 1994; Chaplan, 1996; McCausland, 2000; Ruegger, 2001a/2001b; Sobie, 1985/also in Salgo 1996: 78f).

What influences the 'Knowledge' and 'Satisfaction' of the child? That is, what can be derived from the results of the present study for the activities of the children's guardian?

In order to be able to derive conclusions for the function of children's guardians from the study, connections between the variables examined were analysed. It was particularly interesting to see, from the perspective of the children, which factors the criteria depend upon, and then to use this basis to draw conclusions about the function of the children's guardian.

The results reveal that the higher the level of knowledge of the children, the more they say they have received general explanations from the guardian concerning his or her role and duties, and the more they say they have received specific information about the legal foundation of the guardian and his or her appointment by the judge. In addition to the obvious high-quality explanation given by the guardians, this means that the children in question were able to absorb this information and integrate it into their own knowledge. These results should encourage guardians to view comprehensive explanation techniques and conveyance of information as a natural component of their function.

Two aspects have emerged as crucial for the satisfaction of the children. The children are more satisfied the more they make the statement that, from their perspective, their guardian supported them during their personal hearing with the judge and expressed their opinion lucidly to the court. Thus, the role of the guardian in the hearing seems to be central for the children and therefore should be well prepared with them. As for representing the child's opinion, it should be noted that the results clearly demand this be done in each case – and this independent of the role model with which the guardian identifies. What is decisive for the child's experience is not the objectively

determined representation of its desires, but that, from its perspective, it was well represented. In this case, the guardian should try to convey this to the child, for example, by providing continuous feedback about his or her work.

Finally, the analyses have demonstrated a further connection the meaning of which could not be conclusively clarified on the basis of the existing data: This is that the more time the guardian spends with them, the less the children are satisfied. Results from English studies suggest that this connection is a function of other factors – for example, that proceedings are particularly complex or the child has developmental or relationship problems – which require both an increased duration of contact and exert a negative influence on the satisfaction of the represented child (Hunt, Head et al, 2003; Hunt, Drucker et al, 2003).

5. OUTLOOK

If the study contributed to the clarification of a number of questions, it was not, however, able to explain others. The methodology, which included children as central participants, should be demanded for future projects; its feasibility was demonstrated. A multi-modal approach which convincingly does justice to the information and approval rights of the participating children (especially informed consent in a child-fairly way), appears of particular importance. We can also draw on the experiences of other research groups (Thomas et al, 1999, 149f; Butler et al, 2003: 215f). Furthermore, we must obtain the support of courts in future projects, in order to be able to include children who are not pre-selected by the guardian. In this case, the numerous active lawyers come to mind who were not able to be contacted using the procedure selected.

This study focused on the perspective of the children. Nevertheless, it must not be forgotten that the experience of the children and the quality of the representation of their interests are inseparably linked to the experiences of the guardians. Many guardians said that representing children is an essential requirement for placing the child more in the centre of judicial procedures. The job is demanding, comprehensive and stimulating, and it is achieving increasing recognition.

It is satisfying to note that many people have taken on this responsible job. However, it is worrying that out of 50 guardians who voluntarily referred to their degree of satisfaction with what they were doing, 32 were critical about their remuneration and observed that present conditions made representation of children by qualified people almost impossible. 'Currently, a weak child has a weak children's guardian at its side; this is a mockery of the child's rights' (Stötzel, 2005: 154). The

fact that services, which have already been performed, are not paid for not only leads to dissatisfaction but also reduces the willingness and enthusiasm of guardians to work in this field. The guardians thus express a clear need of action that must be taken seriously in order to be able to continue to attract qualified and dedicated individuals to represent the interests of the child. Only then can the office of the children's guardian prove itself 'as an effective means for safeguarding children's rights' (Deutscher Bundestag, 2004: 4).

NOTES

¹ Section 50 of the *Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit* (FGG, Act on Matters of Non-Contentious Jurisdiction).

² See 5.1 for further information about the content of the proceedings.

³ Recently the government has published a draft for a new procedural law (FGG-Reform) which also involves s 50 FGG.

⁴ The project was supported by a grant of the 'Studienstiftung des deutschen Volkes'.

⁵ The Munich 'Deutsches Jugendinstitut' (German institute on youth) has dealt with the children's guardian involved according to Section 70b of the FGG, whose role has been provided for by law since 1992 for court procedures in which adolescents are subjected to housing measures including detention. It does so in the context of the ongoing project 'Freiheitsentziehende Maßnahmen im Rahmen von Kinder- und Jugendhilfe, Psychiatrie und Justiz – Indikatoren, Verfahren und Alternativen' (Detention measures in the context of providing aid to children and adolescents, of psychiatric measures and the courts – indicative factors, procedures and alternatives).

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