

## Overview of German Adoption Law

Historically, adoption law in Germany (as in most Continental-European countries) was based on Roman law, under which the institution of adoption enabled childless couples to transfer their names and estates to posterity. Thus, adult adoption was the prototype. The adopter would adopt an adult whom he deemed suitable as a successor of his business or estate and future bearer of his name. This model prevailed in the civil codes or statutes of the German states during the 18<sup>th</sup> and 19<sup>th</sup> centuries and was also incorporated in the German Civil Code of 1900. Adoption was constructed as a contract between the adopter and the adoptee rather than a government decree regarding a child.<sup>1</sup>

In 1976, German adoption law was reformed to reflect changing attitudes and the fact that adoption was principally an institution to provide a new home for children. The legislature introduced the so-called decree system and abolished the contractual system of adoption. Today, adoption of children is the basic model, while the law kept some form of adult adoption (which this memo will address only briefly<sup>2</sup>). The legislature also changed the effects of adoption, giving adopted children the same legal status as biological children in relation to their respective parents. Also, in 1998 the legal status of biological fathers who are not married to the mothers of children put up for adoption was assimilated to that of fathers who are married to the mothers.

Germany has long recognized adoption from abroad and has implemented the respective provisions of the Hague Convention of May 29, 1993 (“Hague Convention”). It also has ratified the European Convention on the Adoption of Children of 1968.

### I. General Acts and Regulations Governing the Adoption Process in Germany

Federal law regulates adoption in Germany. The basic legal framework is set forth in sections 1741 to 1772 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) and the Adoption Agencies Act (*Adoptionsvermittlungsgesetz*). Procedural issues are addressed in the Code of Procedure in Non-contentious Matters (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit* – FGG).

### II. Substantive Conditions for the Making of an Adoption Order

#### A. Who may be adopted?

There is no minimum age for a child to be adopted. However, parents who give up their child for adoption may not consent to adoption until the child has reached the age of eight

---

<sup>1</sup> For a short overview of the historical development, see *Bosch*, *Entwicklungen und Probleme des Adoptionsrechts in der Bundesrepublik Deutschland*, *Zeitschrift für das gesamte Familienrecht*, 1984, 829 [830]; for a detailed account, see *Engler*, in: J. v. Staudingers *Kommentar zum Bürgerlichen Gesetzbuch*, Vol. IV., *Familienrecht Teil 3b, Achter Titel, Vorbem.*, No. 1 ss.

<sup>2</sup> Adoption of adults generally follows the rules for adoption of minors; special provisions relating solely to adults are set forth in Sec. 1767 – 1772 Civil Code.

*This memorandum is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this memorandum represent any undertaking to keep recipients advised as to all relevant legal developments.*

weeks.<sup>3</sup> There is no maximum age. Due to the historical development of adoption law in Germany, German law allows for the adoption of adults with no age limit. However, a person who has reached the age of majority may only be adopted if the adoption is “morally justified” (*sittlich gerechtfertigt*). This is a caveat to prevent misuse of this institution (*e.g.*, to circumvent immigration law).

A child who has already been adopted cannot be adopted by someone else except by the new spouse of the child’s adoptive parent, or, of course, if an adoptive parent dies or the adoption is revoked.<sup>4</sup>

B. Who may adopt?

1. Civil status requirements

The plain language of the law does not favor married couples, but interpretation of the standard of adoption – welfare of the child – results in the vast majority of adoptees being placed with married couples.

A married couple must adopt jointly – and only a married couple may adopt jointly.<sup>5</sup> Exceptions are permissible only if the spouse is legally incompetent or under the age of 21.<sup>6</sup> Likewise, a married person cannot adopt alone even if the couple has separated and has already filed for divorce. Only after divorce can either spouse adopt alone.

Married couples that already have children may adopt a child, unless the adoption would conflict with the interests of the biological children or could hamper the best interest of the child to be adopted.<sup>7</sup>

In all other cases, an adoption will only create rights between the adopting person and the child. Unmarried individuals can only adopt alone.<sup>8</sup> No two people can adopt a single child unless the second person married the first person after the first person adopted the child.<sup>9</sup>

A child may not be adopted by its “legal” parent. Ordinarily, the biological parent is also the legal parent. However, under German law, there are two exceptions. The mother of a child is the person who gives birth to that child,<sup>10</sup> so when a surrogate mother bears the child, only she is recognized as the “legal” mother. Consequently, the biological mother – the egg donor – is not the “legal” mother, so she may adopt the child.<sup>11</sup> Likewise, the “legal” father of a child born into an existing marriage is the husband of the mother. If the biological father is not the husband, he

---

<sup>3</sup> Sec. 1747 (2) 1 Civil Code.

<sup>4</sup> Sec. 1742 Civil Code.

<sup>5</sup> Sec. 1741 (2) 2 Civil Code.

<sup>6</sup> Sec. 1741 (2) 4 Civil Code.

<sup>7</sup> Sec. 1745 Civil Code; financial aspects do not count as interests in this regard.

<sup>8</sup> Sec. 1741 (2) 1 Civil Code.

<sup>9</sup> Sec. 1741 (2) 3 Civil Code.

<sup>10</sup> Sec. 1591 Civil Code.

<sup>11</sup> Maurer, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 8, Familienrecht II, § 1741, No. 4.

may adopt (unless, of course, his paternity has been successfully established in which case he is the “legal” father while the mother’s husband is not).<sup>12</sup>

Since 2001, same sex couples in Germany may enter into a registered partnership (*Lebenspartnerschaft*). Registered partners now have basic adoption rights, although not equal to those of married couples. As of January 1, 2005, a person may adopt the biological child of his or her registered partner.<sup>13</sup> The law does not, however, allow registered partners to adopt a child as a couple (like a married couple may and must). A registered partner may still adopt alone, but his or her registered partner would not be able to then adopt the adoptee.<sup>14</sup>

## 2. Age requirements

The minimum age for a person who wishes to adopt is 25 years.<sup>15</sup> There is an exception for married persons: to adopt jointly, it suffices if one partner is 25 and the other at least 21, even though only one spouse has reached the minimum age.<sup>16</sup>

There is no maximum age prescribed by law. Nevertheless, as in many other countries, the competent authorities tend to hold the view that a child should be placed with parents who are not beyond the age of 40. The guidelines for the placement for adoption issued by the Working-Group of State Youth Authorities (“Guidelines”)<sup>17</sup> – which are legally not binding, but do influence the practice heavily – state that the age difference between adopter and adoptee should not exceed 40 years.<sup>18</sup> However, as German couples now generally tend to have children at a later stage in life, the Working-Group of State Youth Authorities plans to reform the Guidelines in 2005 in order to allow more couples beyond the age of 40 to adopt.<sup>19</sup>

---

<sup>12</sup> see Sec. 1592 ss. Civil Code.

<sup>13</sup> Sec. 9 (7) 1 Registered Partnership Act (as altered by the Registered Partnership Reform Act Law, published in Volume I of the Federal Gazette on December 20, 2004, p. 3396 [*Bundesgesetzblatt I*, 3396]). When Germany introduced a registered partnership (*Lebenspartnerschaft*) for same sex couples in 2001, granting them equal rights to married couples in many areas of the law, adoption law was not one of those areas. Under German adoption law, registered partners were generally seen as two single persons (who can only adopt individually). However, after the German Federal Constitutional Court ruled in 2002 that the Registered Partnerships Act (*Lebenspartnerschaftsgesetz*) is constitutional (BVerfGE 105, 313), the Federal Government felt encouraged to extend rights of registered partners with the reform passed in November 2004. Before the reform, if a person adopted the child of his or her registered partner, the registered partner lost all legal ties to the child.

<sup>14</sup> Even though Sec. 9 (7) of the Registered Partnership Act now seems to allow that a registered partner may eventually adopt a child his or her partner has adopted before (as the law here merely speaks of “the child”) the reform was intended to restrict adoption rights to *biological* children of the respective registered partner. Thus, the ambit of Sec. 1742 Civil Code (allowing simultaneous adoption of a child by two persons only if they are a married couple) was not extended to registered partners. If a registered partner adopted the child adopted by his or her registered partner, the other partner would again lose all legal ties to the child.

<sup>15</sup> Sec. 1743 Civil Code.

<sup>16</sup> Sec. 1743, 2 Civil Code.

<sup>17</sup> Bundesarbeitsgemeinschaft der Landesjugendämter, *Empfehlungen zur Adoptionsvermittlung*, 4. edition, 2003. The Guidelines may be retrieved at [www.bagljae.de/Stellungnahmen/AdoptionsEmpfehlungen.pdf](http://www.bagljae.de/Stellungnahmen/AdoptionsEmpfehlungen.pdf).

<sup>18</sup> No. 3.311 of the Guidelines.

<sup>19</sup> See Ehrenstein, “Adoptionsrecht für ältere Paare”, *Die Welt*, December 14, 2004, page 4. The debate is said to have been boosted by the fact that in 2004, German Chancellor Gerhard Schröder (then 61) and his wife (then 41) adopted a child from Russia.

### 3. Religious / racial / other requirements

There are no legal rules as to race or religion. The Guidelines state that the religion of the child must be taken into account. It must be guaranteed that the child may practice his or her religion.<sup>20</sup>

There are no restrictions as to citizenship of the adopters.

#### C. Adoption authorities

While only the guardianship court (*Vormundschaftsgericht*) may declare the legal act of adoption, the task of bringing together the child and prospective adopting parents rests with adoption agencies. Germany has strict rules regarding agencies that may offer these types of services. The Adoption Placement Act generally restricts adoption-related services to registered adoption agencies under public supervision.

Ordinarily, before an adoption can be legally declared, the child must have lived for some time with the prospective parents and is thus placed with them for a probationary period (“*Adoptivpflegschaft*”).<sup>21</sup> Generally, placement for adoption is the task of public youth welfare authorities of local governments and city councils.<sup>22</sup> Many local and state agencies have organized common adoption agencies.

In addition to the public agencies, some nonprofit organizations qualify as adoption agencies under the Adoption Placement Act – mainly churches and other established welfare organizations.<sup>23</sup> They must be recognized by one of the central adoption agencies of the German states. A non-public entity can only be recognized if it employs at least two people full time with professional and personal qualifications and experiences that enable them to perform this task.<sup>24</sup> In most cases, these are social workers and persons with a pedagogical education.<sup>25</sup>

The adoption agency supervises the entire adoption process and counsels the prospective parents along the way. It assesses the situation of the child and the persons applying as adopters and reports to the guardian court on their suitability.<sup>26</sup> As a practical matter, these reports play an important role in the court’s determination whether the adoption is in the best interest of the child.

The 16 German states (*Länder*) have established central adoption agencies that have supervisory and special competences in matters of international adoption.<sup>27</sup> International adoptions may be placed by these central adoption agencies, although the central adoption agencies may delegate this responsibility to a local youth welfare authority.<sup>28</sup> Children may also

---

<sup>20</sup> No. 3.316 of the Guidelines.

<sup>21</sup> Sec. 1744 Civil Code.

<sup>22</sup> Sec. 2 (1) Adoption Placement Act.

<sup>23</sup> Sec. 2 (2) Adoption Placement Act.

<sup>24</sup> Sec. 3 (2) Adoption Placement Act.

<sup>25</sup> Soergel, Bürgerliches Gesetzbuch, Vol. 20, Familienrecht 4, Anh Vor § 1741, AdVermiG §§ 2, 3, 4, No. 9.

<sup>26</sup> Sec. 7 Adoption Placement Act.

<sup>27</sup> Sec. 2 (1) 2 Adoption Placement Act.

<sup>28</sup> Sec. 2a (3) Adoption Placement Act.

be placed for foreign adoptions by special agencies licensed under Sec. 4(2) of the Adoption Placement Act. Once an agency has been qualified for foreign adoptions, it may use the official title expressing this qualification (“*Anerkannte Auslandsvermittlungsstelle*”).<sup>29</sup>

The Central Authorities, according to Article 6 of the Hague Convention, are the central agencies of the federal states<sup>30</sup> and the Federal Prosecutor General (*Generalbundesanwalt*).<sup>31</sup> They collaborate with the central adoption agencies of the states and licensed private agencies to place international adoptions.<sup>32</sup> In any case of placement for international adoption – where either the child or the adopter is a foreigner – the relevant adoption agency must notify the Federal Prosecutor General.<sup>33</sup>

#### D. Standard applied before making an adoption order

The law defines the standard for issuing an adoption order in Section 1741 of the German Civil Code:

“A child may be adopted if such adoption will serve the welfare of the child and if it is to be expected that a parent-child relationship will develop between the adopter and the child.”<sup>34</sup>

The welfare (or best interest) of the child (*Kindeswohl*) is thus paramount in adoption procedures and decisions.

The probationary period (*Adoptivpflegschaft*) serves to determine whether child and parent will develop a parent-child relationship. There are no strict limits as to the length of this period; it depends on the circumstances of the case.

### III. Adoption Procedure

#### A. Who makes the adoption order?

The legal act changing the legal status of parent and child is made by the competent guardianship court (*Vormundschaftsgericht*) on application for such order by the couple or person who wishes to adopt.<sup>35</sup> The procedure is covered under the FGG.<sup>36</sup>

The court is required to investigate and examine all relevant facts *ex officio*.<sup>37</sup> Before the adoption order is issued, the court has to hear the adoption agency involved (or, if no agency was

---

<sup>29</sup> Sec. 4 (2) Adoption Placement Act.

<sup>30</sup> Sec. 1 (1) Adoptionsübereinkommensausführungsgesetz.

<sup>31</sup> Not to be confused with the Federal Minister of Justice who is a distinct (and supervisory) government agent.

The terminology in Germany is different from the U.S.

<sup>32</sup> Sec. 2a (4) Adoption Placement Act.

<sup>33</sup> Sec. 2a (5) Adoption Placement Act.

<sup>34</sup> Sec. 1741 (1) 1 Civil Code: “Die Annahme als Kind ist zulässig, wenn sie dem Wohl des Kindes dient und zu erwarten ist, dass zwischen dem Annehmenden und dem Kind eine Eltern-Kind-Verhältnis entsteht.“

<sup>35</sup> Sec. 1752 (1) Civil Code.

<sup>36</sup> Competence and venue are determined by Sec. 43b; see also Sec. 49 (1) No. 1, 55c, 56d, 56c and 56f.

<sup>37</sup> Sec. 12 FGG.

involved, the competent local youth welfare authority).<sup>38</sup> The court also has to hear from the child in person.<sup>39</sup>

## B. Consents required for the making of an adoption order

### 1. Consent requirements

First of all, the child must consent to the adoption order.<sup>40</sup> A child's consent must be accompanied by the consent of the child's current guardian.<sup>41</sup> If the child is under the age of 14 or is legally incompetent, the guardian must declare the child's consent.<sup>42</sup> If adopter and adoptee are of different nationalities and foreign law applies according to conflict of law principles, the child's consent must be affirmed by the guardianship court (*Vormundschaftsgericht*).<sup>43</sup> A child who is at least 14 years of age may repeal his or her consent as long as the adoption order has not been issued; the child does not need the permission of his or her legal guardian to do so.<sup>44</sup>

Secondly, the parents of the child must consent.<sup>45</sup> They may not consent before the child has reached the age of eight weeks.<sup>46</sup>

The reform of 1998 has given quasi-equal rights regarding consent to biological fathers who are not married to the mother of the child.<sup>47</sup> Formerly, his consent was not required. Now the law requires consent of the "biological parents" – regardless of their marital status.<sup>48</sup> Where the parents are not married, the biological father may also consent before the child is born. If the biological father has applied for custody of the child, an adoption order may be issued only if the guardianship court has ruled on his application.<sup>49</sup>

---

<sup>38</sup> Sec. 49 (1) No. 1, 56d FGG.

<sup>39</sup> Sec. 55c FGG.

<sup>40</sup> Sec. 1746 (1) 1 Civil Code.

<sup>41</sup> Sec. 1746 (1) 3 Civil Code.

<sup>42</sup> Sec. 1746 (1) 2 Civil Code.

<sup>43</sup> Sec. 1746 (1) 4 Civil Code. This rule allows German courts who have to apply foreign law due to conflict of law principles to scrutinize whether such adoption is in the interest of the child. It is a caveat for cases when foreign laws do not accept the best interest of the child as the paramount standard for adoption. See S.C. Saar, in: Ermann, *Bürgerliches Gesetzbuch*, Vol. II, 11<sup>th</sup> ed., 2004, Sec. 1746, no. 10.

<sup>44</sup> Sec. 1746 (2) Civil Code.

<sup>45</sup> Sec. 1747 (1) 1 Civil Code.

<sup>46</sup> Sec. 1747 (2) 1 Civil Code.

<sup>47</sup> Before this reform, it was a question of wide dispute among scholars and courts whether, in case parents were not married, the biological father of a child had to consent to the adoption; for an abstract of the discussion, see Frank, in: J. von Staudingers *Kommentar zum Bürgerlichen Gesetzbuch*, Viertes Buch, Familienrecht, 2001, § 1747, No. 2.

<sup>48</sup> However, the legal status of married and unmarried fathers is not totally equal. The reform was a result of a decision by the German Federal Constitutional Court which held the former law to be in violation of Art. 6 (2) of the German Constitution which protects the family, BVerfG 92, 158; a major pressure for reform in this respect is also the case law of the European Court of Human Rights on Art. 8 of the European Convention on Human Rights (protection of the family), see above all *Keegan v. Ireland*, decision of May 26, 1994. For a discussion of the 1998 reform see Frank, *Die Neuregelung des Adoptionsrechts*, *Zeitschrift für das gesamte Familienrecht*, 1998, 393 ss.

<sup>49</sup> Sec. 1747 (3) Nr. 3 Civil Code.

In the rare cases mentioned above in which a married person may adopt alone, the spouse must consent.<sup>50</sup> If a registered partner adopts a child, the other partner must consent.<sup>51</sup> If a married adult person is adopted, his or her spouse must consent, as well.<sup>52</sup>

All necessary consents must be declared in a notarial deed. Any consent becomes valid the moment it is received by the guardianship court.<sup>53</sup> A person must declare the consent him- or herself; it cannot be delegated to a legal agent or the like.<sup>54</sup> Except for the consent of a child who is 14 years of age or older, no consent given in an adoption procedure can be repealed.<sup>55</sup> However, any consent loses its significance if the application for an adoption order is denied or withdrawn.<sup>56</sup> The same is true for parental consent if the adoption order is not issued within three years after the consent was declared.<sup>57</sup>

As a matter of practice, all of these consents will normally have been declared before the child starts to live with his or her new parents for the probationary period. If a parent's consent to adoption has not been given at this stage, the parents must at least consent for the child to live with the couple or person who wishes to adopt.<sup>58</sup> Such consent will not be necessary if the biological parents have lost custody or the right to determine the whereabouts of the child.<sup>59</sup>

## 2. Circumstances in which consent is not required

A "legal" parent's consent is not required if the parent is permanently incapacitated or if his or her whereabouts are unknown.<sup>60</sup> In the latter case, the court is required to inquire about the whereabouts of the parent. However, after six months of unsuccessful inquiry, the court may deem the whereabouts to be unknown.<sup>61</sup>

Parental consent may be waived by the guardianship court in certain circumstances. The child may apply for waiver if a parent has grossly and permanently violated his or her duties toward the child, or if the parent has shown indifference towards the child.<sup>62</sup> If such violation of duties is not permanent, but is so grave that the child may not be left with this parent, consent may also be waived.<sup>63</sup> The child may also apply for waiver if the denial of an adoption order due to lack of consent would constitute a grave disadvantage for the child,<sup>64</sup> if the parent is gravely

---

<sup>50</sup> Sec. 1749 (1) Civil Code.

<sup>51</sup> Sec. 9 (6) 1 Registered Partnership Act.

<sup>52</sup> Sec. 1749 (2) Civil Code.

<sup>53</sup> Sec. 1750 (1) Civil Code.

<sup>54</sup> Sec. 1750 (3) Civil Code.

<sup>55</sup> Sec. 1750 (2) 2 Civil Code.

<sup>56</sup> Sec. 1750 (4) 1 Civil Code.

<sup>57</sup> Sec. 1750 (4) 2 Civil Code.

<sup>58</sup> Maurer, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 8, Familienrecht II, § 1747, No. 21.

<sup>59</sup> By court order according to Sec. 1666 Civil Code.

<sup>60</sup> Sec. 1747 (4) Civil Code.

<sup>61</sup> Maurer, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 8, Familienrecht II, § 1747, No. 21.

<sup>62</sup> Sec. 1748 (1) 1 Civil Code.

<sup>63</sup> Sec. 1748 (1) 2 Civil Code.

<sup>64</sup> Sec. 1748 (1) 1 Civil Code.

mentally ill and thus permanently incompetent to take care of the child, or if the child could otherwise not be raised in a family (*i.e.*, the adopting family) and would thus be gravely impaired in his or her development.<sup>65</sup>

If the parents are not married and the biological mother has sole custody of the child, the court may also waive the father's consent, but only if the denial of an adoption order would otherwise lead to a disproportional disadvantage to the child.<sup>66</sup>

In the case of indifference of parents toward the child, which does not rise to the level of a permanent and grave violation of parental duties, parental consent may only be waived if the youth welfare authorities have informed the parent of the possibility to waive their consent and if the parents have been counseled accordingly.<sup>67</sup> In these cases, consent may only be waived three months after the parent has been informed about the possibility of waiver. A parent need not be informed if he or she has moved without leaving an address and the youth welfare authorities have dutifully searched for but could not find the parent's new place of residence within a period of three months.<sup>68</sup>

### C. Interim orders

Under German law, there are no interim orders as to adoption. An adoption may be either fully declared or denied. During the probationary period, the youth welfare authorities usually have custody of the child and may thus allow the prospective adopters to take care of the child during the probationary period. No court approval is necessary.

### D. Secrecy and anonymity of adoption procedure; possibility of origin tracing

According to Sec. 1758 Civil Code, no information on the fact that a child has been adopted may be revealed without the consent of the adopting persons and the adoptee, nor may facts regarding the adoption be investigated. The principle also applies to preparatory stages of adoption, such as the placement of a child with a family for a probationary period.<sup>69</sup> If a person working at an adoption agency intentionally reveals such information, he or she may be punished under Sec. 203 of the German Criminal Code.

The birth certificate of an adopted child will name only the adopter as the parent.<sup>70</sup> Moreover, all adoption proceedings before the guardianship court are held *in camera*.<sup>71</sup>

Except for very rare and special cases, no public entity or private person may investigate or ask a family whether a child is adopted. If asked, parents and children are permitted to deny that a child is adopted, *i.e.*, they may lie.<sup>72</sup>

---

<sup>65</sup> Sec. 1748 (3) Civil Code.

<sup>66</sup> Sec. 1748 (4) Civil Code.

<sup>67</sup> Sec. 1748 (2) 1 Civil Code and Sec. 51 (2) Code of Social Law (*Sozialgesetzbuch*) Vol. VIII.

<sup>68</sup> Sec. 1748 (2) 2 Civil Code.

<sup>69</sup> Maurer, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 8, Familienrecht II, § 1758, No. 5.

<sup>70</sup> Sec. 62 (2) Personenstandsgesetz.

<sup>71</sup> Kahl, in: Kediell/Kuntze/Winkler, *Freiwillige Gerichtsbarkeit*, 14<sup>th</sup> ed., 1999, Vorb. §§ 8-18, No. 7.



The strict secrecy rule has been softened for adoptees. The German Federal Constitutional Court has held that each person has a constitutional right to know his or her own biological origins.<sup>73</sup> Thus, a person age 16 or over may access the public register, which keeps information of her or his origin<sup>74</sup> and may also see her or his adoption file.<sup>75</sup>

#### IV. Legal Effect of an Adoption

If a couple (or a single person) adopts a child, the child and adopters are legally treated like parents and children (so called “full adoption”).<sup>76</sup> German law has abandoned weaker forms of adoption that existed under the contract regime before the reform of 1977. Once the guardianship court declares the adoption, all ties to former relatives are legally ended<sup>77</sup> (unless a relative adopts<sup>78</sup>). The child will receive the family name of the adopting person(s) as its birth name.<sup>79</sup>

The adopted child will automatically become a German citizen if the adopting parents are Germans.<sup>80</sup>

As a rule, the adoption order is permanent. However, in certain cases of grave flaws in the process, the order may be repealed.<sup>81</sup> If consent was given mistakenly, under duress or under other circumstances that makes the legal statements void (*e.g.*, incompetence etc.), the order may be repealed, unless the consent is provided again without such flaws.<sup>82</sup> The same applies if the order was made without a valid application. However, the order may not be repealed if, in case of absent consent, the consent could have been waived according to the provisions outlined above.<sup>83</sup> Finally, the order may not be revoked if this would seriously endanger the welfare of the child (unless overriding interests of the adopter demand revocation).<sup>84</sup>

Only the person whose consent or application is invalid may ask for the revocation of the adoption order<sup>85</sup> and only within three years after the issuance of the adoption order (and only within one year after the lack of consent was noticed, the person has regained competence, or the situation of duress has ended).<sup>86</sup>

---

<sup>72</sup> Maurer, in: Münchener Kommentar zum Bürgerlichen Gesetzbuch, Band 8, Familienrecht II, § 1758, No. 6.

<sup>73</sup> Decision of the German Constitutional Court, BVerfGE 79, 256 [268 ss].

<sup>74</sup> Sec. 61 (2) 1 Personenstandsgesetz.

<sup>75</sup> Sec. 9b (2) Adoption Placement Act.

<sup>76</sup> Sec. 1754 Civil Code.

<sup>77</sup> Sec. 1755 Civil Code.

<sup>78</sup> Sec. 1756 Civil Code – in this case, only the ties to the former parents are ended.

<sup>79</sup> Sec. 1757 Civil Code with detailed rules as to law of family names if parents have no common family name.

<sup>80</sup> Sec. 3 No. 3 and Sec. 6 Act on Citizenship (*Staatsangehörigkeitsgesetz*).

<sup>81</sup> Sec. 1759 Civil Code.

<sup>82</sup> Sec. 1760 (1), (2) Civil Code.

<sup>83</sup> Sec. 1761 (1) Civil Code.

<sup>84</sup> Sec. 1761 (2) Civil Code.

<sup>85</sup> Sec. 1762 (2) 1 Civil Code.

<sup>86</sup> Sec. 1762 (2) 2 Civil Code.

As long as the adoptee is a minor, the guardianship court may also revoke the adoption order (without a motion by one of the persons involved) if grave reasons of the welfare of the child require the revocation.<sup>87</sup> If a couple has adopted, the court may also revoke the order with respect to only one of the spouses.<sup>88</sup> Revocation may be declared only if a biological parent will and may take care of the child after revocation of the order or if the revocation is to allow a new adoption.<sup>89</sup>

A revocation has only an *ex nunc*-effect, meaning that the adoption is considered valid up to the point when it was revoked.<sup>90</sup> The child will lose all legal ties to its adoptive relatives and the ties to the relatives of the child's biological parents are revived.<sup>91</sup>

## V. Recognition of Foreign Adoptions

German law deals with both adoptions from abroad into Germany as well as adoptions of Germans by foreigners, and has implemented the Hague Convention. There are common rules for all adoption matters with some form of international participation. The cooperation between the adoption authorities prescribed by the Hague conventions is regulated under the *Adoptions-übereinkommensausführungsgesetz*.

Under Sec. 43b FGG, the guardianship court may issue an adoption order if either the child or the adopting person is German or lives in Germany. Sections 22 and 23 of the EGBGB (*Einführungsgesetz zum Bürgerlichen Gesetzbuch* – the code dealing with various matters of conflict of laws) provide rules on how to determine the applicable law (domestic or foreign).

Adoption orders made by foreign authorities must be approved in order to be valid in Germany (the general rule for recognizing acts of foreign jurisdictions is Sec. 16b FGG). Details of this process are regulated in the *Adoptionswirkungsgesetz*.

On the international level, Germany ratified the European Convention on the Adoption of Children in 1980 and the Hague Convention in 2000. Germany has implemented the Hague Convention by way of the Adoption Placement Act and two separate acts: (i) the Adoption Convention Implementation Act (*Gesetz zur Ausführung des Haager Übereinkommens vom 29. Mai 1993 über den Schutz von Kindern und die Zusammenarbeit auf dem Gebiet der internationalen Adoption – working title: “Adoptionsübereinkommensausführungsgesetz”*) concerns international placement for adoptions and cooperation between the various authorities in different countries, and (ii) the Act on the Effects of Foreign Adoption (*Gesetz über die Wirkung der Annahme als Kind nach ausländischem Recht – working title: “Adoptionswirkungsgesetz”*) regulates the recognition of adoption orders of foreign jurisdictions.

---

<sup>87</sup> Sec. 1763 (1) Civil Code.

<sup>88</sup> Sec. 1763 (2) Civil Code.

<sup>89</sup> Sec. 1763 (3) Civil Code.

<sup>90</sup> Sec. 1764 (1) Civil Code.

<sup>91</sup> Sec. 1764 (2), (3) Civil Code.

## VI. Resources

The Federal Prosecutor General ([www.generalbundesanwalt.de](http://www.generalbundesanwalt.de)) is the designated federal Central Authority under Art. 6 of the Hague Convention. The subdivision responsible for Hague Convention matters (*Bundeszentralregister*) has a website in English that features all of the major acts and provisions regarding adoption:

[www.bundeszentralregister.de/adoption/english/index\\_engl.htm](http://www.bundeszentralregister.de/adoption/english/index_engl.htm).

The following sites are in German:

A comprehensive website on all questions of adoption and including the central legal texts (in German) is: [www.adoption.de](http://www.adoption.de). A good overview can also be found at the site of the Bavarian Central Youth Welfare Authority: [www.blja.bayern.de](http://www.blja.bayern.de).

The website [www.bagljae.de/Landesjugendaemter/KarteLjae.htm](http://www.bagljae.de/Landesjugendaemter/KarteLjae.htm) features links to all the central state youth welfare authorities of the 16 German federal states. All of them have information on adoption. The central state youth welfare authorities are Central Authorities under Art. 6 of the Hague Convention and also provide addresses of adoption agencies in their respective states.

The Bavarian Central Youth Welfare Authority provides a link with a list of all Bavarian and other central adoption agencies in Germany, as well as all other agencies which are licensed to place children for adoption from abroad into Germany (“*Auslandsadoptionsvermittlungsstellen*”): [www.blja.bayern.de/Aufgaben/Adoption/Adoptionsvermittlung/Praxis/Adoptionsvermittlungsstellen.Startseite.htm](http://www.blja.bayern.de/Aufgaben/Adoption/Adoptionsvermittlung/Praxis/Adoptionsvermittlungsstellen.Startseite.htm).