

FAMILY PLANNING

Group 8

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Structure

Case presentation

What questions arise?

Topics that need to be considered

Partnership

Sex

- getting married
- blocking the contact between Anna and Luis
- living together

- having sex
- risk of Anna becoming pregnant
- sterilization, other contraceptive methods

Person centered approach

Case

Anna T. is 23 years old and has Down syndrome. She lives with her parents and works in a facility for people with disabilities. Her mother is the Betreuerin (appointed by court) in the matters of property and health care, as well as authority matters – or her mother is the assistant (appointed by the court). Anna T. met 27-year-old Luis H. at her workplace. The two fell in love and have a relationship. Anna T's mother is very worried that her daughter might get pregnant and then she would have to take care of the child. She wants to prevent pregnancy at all costs and wonders if sterilization or another contraceptive method is indicated as a precaution, or if she could stop contact between her daughter and her boyfriend altogether.

Anna T. and Luis H. say they want to have sex. They also want to live together and are considering marriage. Luis H. also has Down syndrome and lives in an assisted living. He has a professional Betreuer in the matters of property and health care, as well as authority issues – or he has an assistant.

Case presentation



NO Pregnancy!
Thus No Contact with him! Go for Sterilization!



Met in workplace,
want to have sex and marriage



Anna, 23
Down Syndrome

Luis, 27
Down Syndrome

Betreuer :
Property, health care, authority issues



Questions that arose in the beginning:

- What do Anna und Luis want?
- Are Anna and Luis capable of forming their will? Under what circumstance is the guardianship allowed?
- Under which circumstances is a sterilization allowed? Can Anna be forced to take contraceptive methods? Do Anna and Luis need the agreement of their Betreuer to marry? To move in together?
- Is there a contradiction between the mother of Anna as her mother and as her Betreuer?

Topics need to be considered

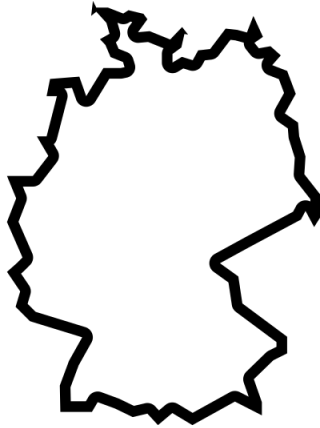
1. Partnership

- a. Getting married
- b. Blocking the contact between Anna and Luis
- c. Living together

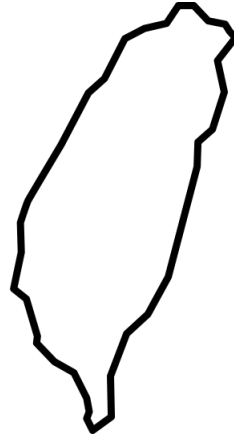
2. Sex

- a. Sexual intercourse
- b. Risk of Anna becoming pregnant
- c. Sterilization, other contraceptive methods

How does the current legal system in the two countries work?



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A thick black line drawing of the geographical outline of Germany, centered on the page. A green arrow points from left to right across the middle of the map.

Germany

Guardianship

Anna's mother is the Betreuerin (appointed by court) in the matters of property, health care and authority matters.

- Appointment of a guardian according to § 1896 German Civil Code
 - § 1901 (1) German Civil Code: Betreuung includes all activities that are necessary to manage the affairs of Anna in accordance with her best interests.
 - § 1901 (2) German Civil Code: This also includes the possibility of shaping her life according to her own wishes and ideas within the scope of her abilities.
 - Function of legal support:
 - i. Establishment of capacity to act
 - ii. Protection from self-harm
 - Anna is capable of acting and doing business despite the establishment of a legal guardianship, § 104 German Civil Code doesn't fit

Getting married

- Marriage and family shall be under the special protection of the state order (Article 6 Basic law state)
- Generally: There is no reservation of consent (Einwilligungsvorbehalt) for marriage (§ 1903 (2) No. 1 German Civil Code)
- A person who is incapable of contracting may not enter into a marriage (§ 1304 German Civil Code)

Anna is capable of acting (§ 104 German Civil Code)

➡ **This means that Anna and Luis could marry without restrictions if they wanted to.**

- Note: In the area of matrimonial property law, the area of property care may be suitable

Blocking the contact between Anna and Luis

1. Care relationship (Betreungsverhältnis) between Anna and her mother (§ 1896 German Civil Code)
 2. BUT Anna's mother doesn't have the power of the Betreuung for the area of determination in contact with another person
- *she is not authorized to prevent contact with Luis.*¹

¹ compare § 1896 (2) German Civil Code, see also OLG München, Beschluss vom 30.01.2008, 33 Wx 213/07

Living together



- Article 19 UNCRPD - Independent living and inclusion in the community

→ *Anna is also free to live with Luis.*

BUT: Guardianship in the area of property: ensure that Anna does not get into financial trouble

- Inpatient and outpatient (assisted) housing options

→ which form of housing is most suitable depends on the wishes and abilities of Anna

- housing costs as part of inpatient integration assistance for people with disabilities, § 102 (1) No. 4 Social Code IX.
- outpatient services: to organize everyday living as independently as possible
 - provided in kind, in cash or in the form of services (§ 105 (1) Social Code IX) and dependent on income and assets
 - personal budget, § 29 Social Code IX

→ **Since Anna's mother, as her guardian, is responsible for authority matters, Anna's mother should submit an application for integration assistance together with Anna.** (Overall plan procedure, § 117 ff. Social Code IX)

Sexual intercourse

- The right to sexual self-determination for people with disabilities is not specifically regulated in any law.
- It results from the general right to self-determination that's anchored in the constitution and applies as for any other human being (Art. 1,2,3 Basic law state)
- ➔ There is no legal basis for the Betreuer to prohibit sexual intercourse between Anna and Luis!

Risk of Anna becoming pregnant

- Getting pregnant and raising a baby has to be separated into two different parts; before and after childbirth.
- No legal right to forbid pregnancy.
- Check the capability of raising a child between the parents and take action according to §§1666, 1666a Civil code if necessary → this however may result in separation of the child from the parents (cf. LG Fulda Beschl. v. 17.3.2011 – 5 T 13/11, BeckRS 2013, 22698)
- Support measures can be put in place, such as parent-child facilities (§19 SGB VIII) or “accompanied parenthood” (cf. Mobile 2021)

Sterilization

§1905 Civil Code: Sterilization

The German law and the UN Convention on the Rights of Persons with Disabilities in general **prohibit sterilisation against the will of the person concerned** → Sterilization against free will is only allowed under specific and severe circumstances, e.g.

- Becoming pregnant may result in a possible danger to life and/or risk of serious impairment to the physical/mental health of the pregnant woman. (cf. Abs. 1 Nr.3 und 4)
- Conception isn't preventable by any other reasonable means (cf. Abs. 1 Nr. 5)

→ sterilization is definitely not allowed in Anna and Luis' case, especially because there are milder means to avert the pregnancy such as the contraceptive coil or three-month injection/pill.

(vgl. LG Fulda Beschl. v. 17.3.2011 – 5 T 13/11, BeckRS 2013, 22698)

Other contraceptive methods and abortion

§1904 Civil Code: approval of the guardianship court for medical measures

- So long as the measure corresponds to the will of the person being cared for (as determined in accordance with §1901a civil code) no consent by the guardianship court is required concerning contraceptives and abortion.

→ Both don't equate to potentially risky medical intervention (vgl. Schneider 2020: Rn. 37).

Other contraceptive methods and abortion

§1906a Civil Code: Approval of the guardianship court for compulsory medical measures to take place.

- Not only consent of the guardian but also of the guardianship court is required (vgl. Schönke et. al. 2019: Rn. 38f.).
- Compulsory medical measures must be necessary to avert imminent significant harm
 - based on review literature, pregnancy is not to be assessed as a significant risk (vgl. Hoffmann 2018: 104).
- Anna or Luis can't be forced to take any contraceptives or have an abortion against their will.



Guardianship

Commencement
of
Guardianship

NO LEGAL CAPACITY

✓ Under
Assistance

Anna's mother is the Betreuerin (appointed by court) in the matters of property, health care and authority matters.

- Anna's situation is more likely to be "under assistance" , which is regulated in article 15-2 of *Civil Code* in Taiwan.
 - A certain number of juridical acts without the approval of the assistant are not valid.

Getting married

- The Betreuer of Anna, who is under assistance, can only approve property issues mentioned in Article 15-2.
 - Getting married clearly is not one of the behaviors that needs Betreuer's approval. Therefore, Anna has the right to decide whom to marry.



Blocking contact between Anna and Luis

- Personal freedom is one of the highest rights mentioned in Constitution.
- The Betreuer is **NOT** given the power to restrict the personal liberty of the person under assistance.
- So, Anna's mother is of course not authorized to forbid the contact between Anna and Luis.

Living together

- Moving in with someone is not one of the behaviors mentioned in article 15-2, and it can also seem as “acts relating to pure legal benefit or the necessity based on the person’s age, status, and daily life”, which means that in this situation Anna can do her own decision.
- Hence, Anna has the right to live with Luis.



Sexual intercourse

- Having sex is not considered as a juridical act. Besides, it is not mentioned in any law or *article 15-2 of the Civil Code* as acts requiring consent of her Betreuerin.
- Therefore, Anna and Luis are supposed to have the right to have sex even **under guardianship**.

Risk of Anna becoming pregnant

- Becoming pregnant or giving birth are not considered as juridical acts. Also they aren't mentioned in *article 15-2 of the Civil Code* as the acts requiring the consent of her Betreuerin.
- Therefore, the Betreuer doesn't have the right to prohibit Anna from being pregnant.
- However, child-rearing and child custody might be issues that need to be discussed in Taiwan.

Other contraceptive methods and abortion

- Anna has **Down syndrome**, which is one of the conditions allowed to get a induced abortion or sterilization, according to article 9 and 10 of the *Genetic Health Act* respectively .
- However, Anna is **under assistance**, meaning that the Betreuerin has the ultimate right to decide whether Anna gets an abortion or sterilization, **even when the decision contradicts with her will**.
 - Goes against the ***International Bill of Human Rights***, which honors the right of self-determination. Thus, the ultimate decision should be given to Anna.

Person-centred approach



To provide people with disabilities with social services that enable inclusion, self-determination and the choice to live in the community.

Core statement of the UN CRPD:

The Convention therefore does not focus on the principle of inclusion, but on the following:

The right to equal recognition as self-determined shapers of their own biography

Not limited to fundamental decisions, but also the right to make the large number of small decisions that determine everyday life in a self-determined way

How can Anna T. and Luis H. be supported so that their wishes are fulfilled?

PREREQUISITE FOR DECISIONS:

There are
(similarly good)
choices &
knowledge about
them.

Information
about choices is
comprehensible

The ability to
decide
(empowerment)

Applies to people with disabilities regardless
of the degree of impairment.

ATTENTION

Rules, procedures and lack of
trust prevent own decisions.

HOW CAN THIS BE CHANGED?

How can Anna T. and Luis H. be supported so that their wishes are fulfilled?

REQUIREMENTS FOR EMPLOYEES



Look for strengths



Asking about wishes



Give support in development



Take your time, "get a picture of the disability",
keep asking..

It's A Process!

Potential role contradiction

IN PRINCIPLE:

Parents, as guardians of their adult children  equal to any other legal guardian (guardianship duties and rights).

- ➔ **Assumption of guardianship by parents:** respect the right to self-determination of the person being cared for and - as much as possible - leave the decisions to him/her.
- ➔ As a rule, guardianship is then carried out well and beyond what is actually necessary because of the close relationship and family ties.
- ➔ Unfortunately, there are also numerous cases in which the guardianship of the parents as legal representatives is seen as legitimising the total disposal of the adult, cared-for child.
- ➔ The definition of the individual areas of responsibility and the resulting limits are often not perceived.

Person centered approach : Going deep into the case

If communication solves the problem, legal approaches are not needed.

External help such as family counselors or consultation centers can be of help.



Beratung für Menschen mit Behinderung

- Sexualität und Partnerschaft
- Familienplanung
- Kinderwunsch
- Schwangerschaft und Geburt
- Schwangerschaftskonflikt
- Verhütung

As for Taiwan:



目前身心障礙者婚姻與生育輔導的法定服務資源付之闕如，且優生保健法法條和內容對身心障礙者構成歧視，監察院糾正衛福部，並要求行政院督促所屬積極改善

External help aids with **communication** and **information provision**.

Communication & Information : Marriage

Make sure that

Anna understands the meaning of marriage.

Anna and her mother understand each other.

- the mentioned principles should be applied to both of them

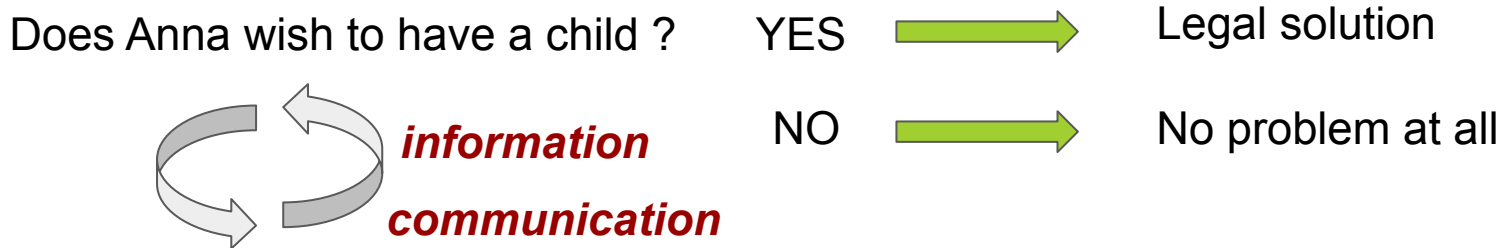
They are provided with sufficient **information**.

- what support is given.
- cases of previous Down syndrome marriages.

Issues of pregnancy should be handled the same way

Pregnancy

Issues of pregnancy should be treated the same way:
thorough communication, information provision



Same process regarding sterilization.

Instead of communicating, Anna's mother tend to be manipulative.
which may deteriorate their relationship.



不要治標不治本

Don't just treat the symptom, treat the roots.





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