

Child Protection in Europe: Different Systems – Common Challenges

By Katja Schweppe

Suggested Citation: Katja Schweppe, *Child Protection in Europe: Different Systems – Common Challenges*, 3 German Law Journal (2002), available at <http://www.germanlawjournal.com/index.php?pageID=11&artID=196>

A. Introduction

[1] Child protection practice has undergone major changes in the last decades. While traditionally welfare institutions as well as the law itself were mainly concerned with orphans and children of unmarried mothers, nowadays the practice focuses on children in need of protection because they have been neglected or abused by their parents. And yet, child protection measures have not been the focus of research, discussion and reform like other areas of the law concerned with children, for example parental custody after divorce. Recent reforms (1) – or plans for reform (2) – in some continental European states are not to be expected to bring substantive changes.

[2] During the same period the individual rights of parents and children as well as the right for family life have been strengthened by several international conventions. Of these, the European Convention for the Protection of Human Rights and Fundamental Freedoms from 1950 (ECHR) (3) and, of course, the UN Convention on the Rights of the Child from 1989 (UN Convention) (4) are of special interest for an evaluation of child protection measures provided in Europe.

[3] The former enables individuals to go before the European Court of Human Rights (ECHR) with claims concerning the protection of rights granted by the Convention in cases where member states allegedly fail to comply. Of importance for the focus of this article are the right to respect for private and family life (5) and the right to a fair trial (6). The UN Convention is targeted specifically at the rights of children. Although member states to the convention are obliged to observe the rights secured by the convention, the articles of the convention are not as such meant to be directly applicable or enforceable. Still, the UN Convention does significantly influence policy and the development of the law concerned with children.

[4] This article focuses on the following questions: Does the legal framework and the current practice meet the needs of the concerned children? Who takes on the legal responsibility for children when parents fail to comply with their obligations? How are these children involved in decisions about their upbringing?

[5] In this context we have to consider the needs of the children concerned. They are children with special needs, due to their former personal experiences. They have either lost one or both of their parents or state intervention into the family was necessary because of neglect and/or abuse or other failure by the parents to comply with the child's needs.

[6] The following comparison of the child protection systems in Europe will show that although the legal framework does have separate origins, the practice does not differ that much. In exploring a number of specific aspects, some which are currently being debated in Germany, a comparison will be made with the situation in other European countries in order to highlight the ways in which different legal and political systems are facing similar problems.

B. Systems

[7] Most continental states still adhere to a civil law system, guided by the principle of an individual to be appointed as guardian, which was incorporated into Civil Codes at the end of the 19th century. The national regulations provide that in case a child is in need of a guardian, one person should be appointed to take legal and personal responsibility for the child. (7)

[8] The German System is an example of this approach. Though there was a major reform of the law concerned with children in Germany in 1998, the law concerning guardianship for minors has not been revised as yet. (8) The Civil Code in Section 1666 provides that, where the welfare of a child is placed at risk, the Family Court may restrict or withdraw parental responsibility if this is necessary to protect the child's welfare. (9) In such cases the court has to appoint an *Ergänzungspfleger* (curator) where specific aspects of parental custody are restricted. For instance, such a curator may have the right to determine the child's place of residence or the necessary medical treatment. In case of the complete withdrawal of parental responsibility, the court has to appoint a *Vormund* (guardian). The law provides that infringement of parental custody should never go beyond that which is necessary in the best interests of the child – *Grundsatz der Verhältnismäßigkeit* (principle of reasonableness). (10) Thus taking a child into care and the withdrawal of parental responsibility will be regarded as *ultima ratio*. In practice, most cases lead only to a partial withdrawal of parental responsibility. (11) In the following comment, the terms "guardian" or "guardianship" will include "curators" as well.

[9] In addition to these Civil Code provisions, the Child and Youth Services Act of 1990 plays a major role in the field of child protection. This Act provides a wide range of forms of assistance for families and children, including voluntary measures as well as measures ordered by a court.

[10] The German Civil Code provides, as a rule, that an individual person should be appointed as guardian, but the court may appoint a *Verein* (private association) or the *Jugendamt* (local youth authority) in cases where no individual person is available. (12) They perform the duties of a guardian through their personnel. Nowadays, due to difficulties with finding volunteers, guardianship is frequently administered by the local youth office. National German statistics for the year 1999 show that youth authorities were appointed to be guardian or curator in 80 % of the court proceedings involving the (partial) withdrawal of custodial rights. (13)

[11] We find similar approaches in other continental legal systems like Austria, Switzerland, Belgium and the Netherlands. (14) In Austria, custodial rights are transferred to the youth authority in most cases though the law gives grandparents and foster care-givers priority over third persons and the youth authority. (15) In 2001, a reform in Austria brought changes in terminology with the former institutions of guardianship and different curators being replaced by the "transfer of custodial rights," but no changes in practice can be noticed. Though the Swiss Civil Code does not include a provision which would allow for the transfer of custodial rights to an institution, curatorship and guardianship are frequently administered by guardianship authorities in Switzerland. (16)

[12] In the Netherlands a guardian is only appointed in the case of complete discharge or withdrawal of parental custody. The court may appoint an individual guardian or a child welfare agency as guardian. (17) Again, in practice it is more likely that an agency will be appointed. However, in most cases concerning child protection courts in the Netherlands do not appoint guardians but issue supervision orders. A supervision order does not restrict parental custody in general. It will be carried out by a social worker working for the child welfare agency appointed by the court. (18)

[13] The European states that represent the common law system show a different systematic approach. In England, and other parts of Great Britain and Ireland, the appointment of a guardian for a child is restricted to the death of his/her parents. If intervention is necessary, the English Children Act of 1989 provides that the court may grant specific orders, such as supervision or care orders. A care order transfers custodial rights to a youth authority, but the parents retain their parental responsibility. (19)

[14] In some states, child protection measures in practice are based on welfare law (thus public law) rather than civil law, though the civil code provides for the withdrawal of parental rights and for the appointment of a guardian. In Sweden, most child protection measures are organised by the social welfare committee. The appointment of guardians on the basis of the Children and Parents Code is rarely used in practice.

[15] The comparison shows that despite the systematic difference between common law and continental law, European child protection practice does not differ greatly. In all states national legislation provides for a wide range of measures, which allow for intervention, restriction and removal of parental rights. Discretion is granted to the courts in selecting the suitable measures. Courts may withdraw or restrict parental custody. The proceedings are guided by the principle of reasonableness. Infringement of parental custody should never go beyond that which is absolutely necessary in the best interests of the child. (20)

[16] The practice illustrates a general shift from civil law to public law: though guardianship is a civil law institution, public authorities exercise it in most cases nowadays. This development is due to changes in the welfare system on the one hand and the lack of volunteers on the other. In former times guardians often were appointed following the death of the father or both parents and the guardian was chosen from the relatives of the child. Today in most cases the need for a substitute for parental authority arises because of the withdrawal or restriction of parental rights. This professional approach is considered to meet the needs of the children concerned because it provides for expert guidance. Furthermore, professional guardians may have a better basis to co-operate with the parents when they retain parental rights.

[17] Consequently, problems or discussions that arise in one jurisdiction may affect the practice in other European states as well. Thus, practice faces similar challenges in the field of child protection. This will be illustrated in the following comment by discussing three further aspects: deficiencies within the welfare system, the transfer of custodial rights to foster parents and the situation of the children within the welfare system.

1. Deficiencies Within the Welfare System

[18] The organisation of guardianship within the administrative system - *i.e.* the youth authorities - is currently being debated in Germany, because of several deficiencies within the system such as the high numbers of children

allocated to one guardian, the lack of personal contact between children and their guardians and the inclusion of the guardians in the youth authority. Traditionally in Germany, but also in other countries, the guardian took responsibility for the administration of a child's property, claims for maintenance and for administrative aspects. To comply with these demands, guardians had to be trained in accountancy and law, while social and educational qualifications were not regarded as necessary. Guardians rarely had personal contact with the child. Social workers kept contact with the child and reported to the guardian about the child's well-being. (21)

[19] Some German youth authorities still adhere to this system, which includes a strict separation between administration and personal care. It enables guardians to manage a high number of cases, ranging up to several hundred. (22) A similar practice is reported by youth authorities in Austria. (23)

[20] Other youth authorities in Germany practice a different system. There the guardians play an active role in social and educational aspects. They take part in childcare conferences and have regular contact with the children. These guardians often have the qualifications of social workers. Remarkably, most youth authorities in Eastern Germany represent the second type of organisation. (24) They had the chance to develop new structures in the early Nineties, when the discussion on the needs of children living in the welfare system had already started.

[21] Research in Germany shows that personal contact between the child and the guardian is rare in most cases, though the guardian may legally have full parental responsibility. (25) Children, who were asked about the role of a guardian, rarely knew which persons working for the youth authority were appointed as their guardian. The children were neither informed about their rights to participate in proceedings nor did they know about the exact duties and rights of their guardian. A common answer was that a guardian "is the person who makes the decisions." (26)

[22] Of course there are other cases where children do know their guardian and have regular contact with him or her, though even in these cases the amount of contact a guardian can afford for each child is restricted by the workload. Obviously, the contact with a child depends much on the workload and on the structures within each local authority. Under these circumstances, financial restrictions may have an enormous effect upon the practice. In Germany the appropriate caseload, which would allow guardians to spend more time for every child, is being debated at the moment. In this context, the allocation of 50 children to one guardian is being discussed as an improvement of the current situation. (27) In contrast, social workers employed by child welfare agencies in the Netherlands are responsible for about 25 children. (28)

[23] Another aspect currently being debated in Germany is the leading role of local youth authorities in child protection cases. (29) The scope of activities of youth authorities encompasses: investigation into cases, making applications to the court, proposing adequate measures, care planning, placement of the child, support of and co-operation with the family (parents), and the control of the implementation of court orders. In most cases, the local youth authority has been in contact with the family in question for a considerable amount of time before court proceedings start, offering voluntary help. Thus the position of the youth authorities may be described as a *de facto* child protection monopoly. These findings may be transferred to other European countries. When the same youth authority is appointed as a guardian, this raises the question of independence of the guardian. Conflicts of interest may arise between the child and his/her parents or between the child and the authority, especially in case of financial restrictions. The guardian will have to balance these conflicts, which may have an adverse effect on his or her duty to represent the child's interests.

[24] The situation in the Netherlands differs from these findings insofar as, in child protection proceedings, investigation and application for intervention lie within the Child Protection Agency as a national institution, (30) while the execution of court orders lies within the authority of child welfare services. The social workers appointed as family-guardians are required to work with the family, *i.e.* with the parents and the child. In this context, comparative research on (potential) conflicts of interest would be interesting.

[25] In Germany, the discussion concerning inadequacies within the welfare system has brought another quite recent development: some courts appoint professional guardians, *i.e.* lawyers or independent social workers who receive payment either from the child's estate (usually inherited) or more often from the public Executive. (31) These guardians work independently from youth authorities.

[26] In England, findings of inadequacies within the system of child care led to the implementation of different instruments to monitor the implementation of the Children Act of 1989 and to control the work of the social services. (32)

[27] States do have a responsibility towards children in need. Art. 3 of the UN Convention requires that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. If states observe this

obligation, financial restraints or deficits within the institutions should not be relied on to justify the current system. National legislation requires states to put the interests of children first in family law or child care proceedings.

[28] One decision of the European Court of Human Rights may serve as an example for this responsibility to safeguard the interests of children in need. The case *Z and Others v. the United Kingdom* (33) concerned four siblings who claimed that the local authority failed to take adequate protective measures in respect of severe neglect and abuse, which they suffered due to ill-treatment from their parents. The court held that the failure of the authorities and the lack of effective judicial remedies amounted to violations of Art. 3 (prohibition of torture and inhuman and degrading treatment) and Art. 13 (right to an effective remedy before national authority) of the European Convention for the Protection of Human Rights and awarded damages to the children.

II. Custodial Rights for Foster Parents

[29] In contrast to the prevalence of welfare law we find tendencies which may be described as a move (back) to the civil law approach. The transfer of custodial rights to foster parents is being debated in several European countries. Research shows that many children remain in foster-care for a long time even in cases where intervention was initially planned on a temporary basis only.

[30] The aim of these developments is to grant custody rights to the persons with whom the child lives, subject to the condition that the placement is on a long-term basis. This recognizes the child's interest to permanent placement in cases where adoption does not seem appropriate. An example of this and a possible judicial measure is the "special guardianship" currently being debated in England. (34)

[31] In practice, authorities are often reluctant to approve the transfer of custodial rights to foster parents, basically because of the interests and rights of parents and the fear of loss of control over foster parents. In Germany, the appointment of foster parents to be curators or guardians is possible, but rare in practice, though there have been a few court decisions dealing with this subject. In Austria a Civil Code provision that gives priority to the transfer of custodial rights to foster parents over the youth authority is rarely used. A Swedish governmental report reviewing the Care of Young Persons Act of 1990 came to the conclusion that custody should be transferred to foster parents in a greater number of cases using the provisions of the Children and Parents Code. (35) In the Netherlands foster carers may be appointed guardians if certain requirements are fulfilled, *inter alia*, that the child must have lived in this family for at least a year. (36)

[32] Though there has been no thorough research into this area, findings in Germany show that children would appreciate if their actual carers were granted custodial rights, as the children name former or present carers when asked whom they would like to be the person responsible for them. (37) Furthermore, this would respect the children's right for family life, as granted by Art. 8 ECHR, as it enables children to establish legal bonds to their psychological parents, while at the same time their links to their natural family would not be cut off. Thus, whenever possible, legal responsibility and actual care for a child should lie within the same persons as this comes closer to parental care than parental custody exercised by an authority. (38)

III. Participation of Children

[33] Participation of children covers their role in court proceedings as well as the situation after the implementation of child protection measures.

[34] Although the position of children in judicial proceedings has been strengthened within the last decades, there are still deficits to be noticed. Art. 12 II of the UN Convention on the Rights of the Child gives children the right to be heard in judicial and administrative proceedings affecting their interests. (39) Most legal systems provide mechanisms for children to be heard in proceedings. Some include certain age limits. Laws in Belgium and the Netherlands place an obligation upon the courts to hear children from the age of 12 years onwards. (40) Children from this age onwards do have a right to initiate proceedings and complaint procedure on their own behalf, too.

[35] Though German law requires judges to hear a child personally, if the "inclinations, ties or wishes of the child are important for the decision," many children are not heard and are not informed about their rights. (41) There is no limitation as to the age of the child. From 14 years of age, however, the child must always be heard personally. (42) Research shows that less than half of the children were heard personally in child protection proceedings. Even a quarter of those aged 14 to 17 were not heard. (43) Provisions in Switzerland and Austria provide that children should be heard in child protection proceedings, but the child may be heard by a third person and children under 10 years are rarely heard personally. (44)

[36] This practice evidently runs contrary to Art. 12 of the UN Convention and it violates the procedural rights of

children under the European Convention for the Protection of Human Rights and Fundamental Freedoms. (45)

[37] Participation in court proceedings may also be provided by the appointment of a *Verfahrenspfleger* (guardian *ad litem*) for the proceedings. The English Children Act of 1989 provides for the appointment of such a guardian in context with applications for or discharge of care or supervision orders. (46) German law provides for the appointment of a guardian *ad litem* in family or guardianship courts proceedings relating to parental custody for a child whenever this is necessary in order to preserve the interests of the child, for example in the case of a conflict of interest between the child and parents or where the decision may include the separation of a child from his/her family. (47) Even though rules provide for the representation of children, this does not guarantee an adequate participation to the proceedings. Though this provision was enacted in 1998, especially in child protection proceedings the appointment of a guardian *ad litem* is not yet the rule in practice.

[38] Once a court order transferred custodial rights to a youth authority, the question is how children are involved in decisions concerning their upbringing. In childcare conferences where the measures of intervention are planned, the child is represented by his parents or his guardian/curator. Depending on the age of the child, the child should take part in childcare conferences, where the future care is planned, too. Yet we have to ask how children shall participate in these proceedings if they hardly know their legal representative, *i.e.* the guardian, or if they fear that the guardian is not independent from the institution they live in or from their parents. In this context it seems important that it is an independent person or institution the child knows and may turn to. Interviews with children show that children wish to participate in decisions concerning their upbringing. (48)

C. Conclusion

[39] Although we find different child protection systems in Europe, sometimes even within a single jurisdiction, practice shows that we share common challenges. There is a chance and a need to develop common standards for child protection.

[40] There are considerable differences between legal provisions and practice in those states which adhere to the institution of guardianship because youth authorities play an important role in child protection.

[41] Child protection organised by state authorities depends largely on the workload, qualifications and measures of control of the persons in charge and their independence from other institutions and the parents. Also there is a need for continuity to establish a relationship between children and the person responsible for them. (49)

[42] A guardian or social worker who is allocated to a child that has been abused or neglected, should be independent from the child's parents, *i.e.* this social worker should not work with the parents at the same time, because of the conflicts of interest between the parents and child.

(1) For example reforms of national Child law entered into force for Germany in July 1998, for Austria in July 2001.

(2) Plans to reform the law of guardianship for adults are currently debated in Switzerland, which may bring some minor changes concerning procedures for minors, too.

(3) Text available at: <http://www.echr.coe.int/Eng/BasicTexts.htm>.

(4) Text available at: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

(5) Art. 8 (1) ECHR.

(6) Art. 6 ECHR.

(7) See § 1773 ff German Civil Code, Art. 370bis § 4 Code Civil Belgium, Art. 1:295 Civil Code Netherlands, Art. 311 Swiss Civil Code.

(8) For the scope of the reform of child law see: Entwurf eines Gesetzes zur Reform des Kindschaftsrechts (Kindschaftsrechtsreformgesetz - KindRG). Bundestag - Drucksache 13/4899; *Bäumel et al.* : Familienrechtsreformkommentar (1998).

(9) § 1666 German Civil Code provides that, where the physical, mental or emotional welfare of a child is placed at risk by neglect or mistreatment of the child or because parents otherwise fail to comply with their parental duties, the Family Court shall order the measures necessary to protect the child when voluntary measures have been insufficient to protect the child's welfare.

(10) § 1666, § 1666a German Civil Code.

(11) See *Münder/Mutke/Schone*, *Kindeswohl zwischen Jugendhilfe und Justiz – Professionelles Handeln in Kindeswohlverfahren* (2000), p. 137: 11,6 % of the cases resulted in a complete withdrawal of parental responsibility; 29,3 % lead to the withdrawal of the right to determine the child's place of residence, in 27,3 % of the cases the right of personal care for the child was withdrawn.

(12) § 1791a, § 1791b German Civil Code.

(13) Statistisches Bundesamt (Wiesbaden 2001).

(14) In Belgium the transfer of guardianship to the youth authorities is regulated by the *Loi organique des centres publics d'aide sociale* (1976).

(15) See § 145, § 187, § 213 Austrian Civil Code.

(16) § 1666, § 1666a German Civil Code.

(17) Art. 1:266 ff, Art. 1:295 ff, Art. 1:302 Civil Code Netherlands.

(18) Art. 1:254 ff Civil Code Netherlands.

(19) s. 33 Children Act 1989 (available at http://www.hsmo.gov.uk/acts/acts1998/Ukpga_19890041_en_1.htm).

(20) This principle is mirrored by Art. 9 (1) UN-Convention which concerns the separation of a child from his/her parents.

(21) This approach is described i. a. by *Dölle*, *Familienrecht*, Band 2 (1965), p. 696 f.

(22) *Münder/Mutke/Schone*, *Kindeswohl zwischen Jugendhilfe und Justiz – Professionelles Handeln in Kindeswohlverfahren* (2000), p. 247 f, report practice of some youth authorities to allocate from 400 up to 800 cases to one guardian, who works with the support of administrative staff and social workers.

(23) As reported by practitioners working for youth authorities in Austria.

(24) *Hansbauer/Oelerich/Wunsch*, *Perspektiven der Vormundschaft*, JAmt 2002, p. 229 (231 f).

(25) *Münder/Mutke/Schone*, *Kindeswohl zwischen Jugendhilfe und Justiz – Professionelles Handeln in Kindeswohlverfahren* (2000), p. 259, found that some guardians had no personal contact to any of the children, most guardians saw the children in context with care planning conferences only, i.e. on occasions where other persons were present, too.

(26) *Zitelmann*, *Die Vormundschaft aus Sicht von Mündeln*. In: *Hansbauer (ed.)*, *Neue Wege in der Amtsvormundschaft* (2002), p. 54 (58 ff).

(27) See: „Dresdner Erklärung – die Zukunft der Amtsvormundschaften“, DAVorm 2000, p. 437ff, which was developed by practitioners from youth authorities.

(28) Numbers given by practitioners working for the *Ambulante Jeugdbescherming en Jeugdhulpverlening in Leusden* (Netherlands), a Dutch welfare organisation.

(29) See: *Zenz*, *Kontakt, Kontinuität, Kompetenz und Interessenvertretung ohne Interessenkonflikt. Anforderungen an die Vormundschaft aus Sicht der betroffenen Kinder*. JAmt 2002, p. 222; *Zenz*, *Zusammenführung von Amtsvormundschaft und Beistandschaft in einer eigenständigen Interessenvertretungsbehörde*. In: *Hansbauer (ed.)*, *Neue Wege in der Amtsvormundschaft* (2002), p. 107 ff.

(30) Art. 1:238 ff Civil Code Netherlands.

(31) See § 1836, § 1836a German Civil Code.

(32) See inter alia: Annual Reports of the Children Act Advisory Committee (till 1997), Reports from the Social Services Inspectorate, Children Act Reports published by the Department of Health.

(33) *Z and Others v. the United Kingdom*, application no. 29392/95, judgement 10 May 2001 (A summary and the full judgement of the Court are available on-line by searching HUDOC, at <http://hudoc.echr.coe.int/>).

(34) Such a special guardian shall be granted parental responsibility for the child and furthermore shall be entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child. See: Adoption and Children Bill 2002 para 94; *Department of Health*, Adoption – a new approach - A White Paper (Dec. 2000); Rather cautious: *Lowe/Murch*, The plan for the child - Adoption or long-term fostering (2002), p. 148f.

(35) SOU (Swedish Government Official Reports Series) 2000:77, p. 28: "custody should be transferred to foster parents in a greater number of cases ... in accordance with Chapter 6 of the Parental Code. ... social welfare committees should ... take the initiative to transfer custody to the child's foster parents if they consider it to be in the best interests of the child. They should be able to do this even without the consent of the custodians."

(36) Art. 1:299a Civil Code Netherlands.

(37) *Zitelmann* (2002), p. 57.

(38) See *Salgo*, Pflegekindschaft und Staatsintervention (1987), p. 393 f.

(39) Art. 12 II of the UN-Convention on the Rights of the Child provides that every child has the right to be heard in any judicial and administrative proceedings affecting him or her either directly or through a representative or an appropriate body. In addition to that Art. 9 II of the UN-Convention on the Rights of the Child refers to the child's right (as an interested party) to be heard in relation to proceedings involving separation from his or her parents.

(40) Art. 394 Code Civil Belgium, Art. 809 Act on Civil Procedures Netherlands.

(41) *Zitelmann*, Die Vormundschaft aus Sicht von Mündeln. In: *Hansbauer (ed.)*, Neue Wege in der Amtsvormundschaft (2002), p. 54 (57).

(42) § 50b German Law on Non-Contentious Matters.

(43) *Münder/Mutke/Schöne*, Kindeswohl zwischen Jugendhilfe und Justiz – Professionelles Handeln in Kindeswohlverfahren (2000), p. 130 f.

(44) Art. 314 Swiss Civil Code; § 182b Austrian Law on Civil Procedures.

(45) Although in general due to the nature of the petition system some decisions of the European Court of Human Rights may be considered to be parental orientated rather than promoting the interests of the children concerned, some decisions – though they concern petitions of parents - strengthen the position of children in judicial proceedings. For example, in two cases which concerned contact of fathers with their children, the ECHR held that the process of hearing the children child had not been satisfactory and thus the rights of the fathers had been violated. See *Sahin v. Germany*, application no. 30943/96; *Sommerfeld v. Germany*, application no.31871/96; judgements 11 October 2001.

(46) s. 41 Children Act 1989.

(47) § 50 German Law on Non-Contentious Matters.

(48) *Zitelmann*, Die Vormundschaft aus Sicht von Mündeln. In: *Hansbauer (ed.)*, Neue Wege in der Amtsvormundschaft (2002), p. 54 (68 f).

(49) See: *Zenz*, Kontakt, Kontinuität, Kompetenz und Interessenvertretung ohne Interessenkonflikt. Anforderungen an die Vormundschaft aus Sicht der betroffenen Kinder. JAm 2002, p. 222 (227)