

## **The Trip to Germany for Observing Their Adult Guardianship**

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Visiting the city of Berlin

‘Outside the entrance of the Mariabronn cloister, whose rounded arch rested on slim double columns, a chestnut tree stood close to the road.’

This is the introducing passage of Hermann Hesse’s “Narcissus and Goldmund.”

We saw the street near the hotel we stayed in Berlin which Hesse wrote in his works when we walked early morning.

I liked this street, felt "This is Germany" and walked alone before the breakfast time.

However, the city of Berlin has been almost destroyed in the World War II, I heard. German people built one stone by one stone from the ruins of battlefield and rebuilt the city again.

I felt "order" in the German city of Berlin. It is felt everywhere in this town because they love “order" that I mean. They had burdens of the Nazis’ largest-ever war crimes, walked with the burdens and reached the current.

The path to the current prosperity of our country from the ruins of war, the Germans and the Japanese are very similar in each ethnic diligent; we were quite different in other aspects.

I visited District court in Berlin downtown. Where was in former East Berlin, it seems to be relatively poor region. We saw an unbelievable situation in the Family Court of Japan.

We met the situation that the judge himself heard to adult wards directly, of course, with their permission for us to be there.

I attended the interviews of 7 people. But I do not understand German; the judge explained those in English between and after the interviews. I am also not good at English; from a fragment of a judge and interpreter at the end, I was able to know the meaning of interviews of the seven whom I have witnessed approximately.

Two of the seven were alcoholic, one is (probably) a waste, one has mental retardation, one has depression, two were interviewed for the confirmation of whether or not to extend the period of guardianship.

In German adult guardianship law, that the disabled persons who do not have severe mental disability have adult guardians if they agree and which determined that 7 years are the longest period under guardianship. To extend this period, they are interviewed in person and get their consent respectively.

All of us were surprised first, the system that judges interview adult wards directly. In Japanese family court, judicial research officials make interviews instead of judges. In Germany, Judges always interviews by themselves.

Second, I was surprised, that the judge is very friendly in conversation to everyone. Paternal and authoritarian attitude were not seen. At the end of the hearing, judges always ask the interviewees to shake hands.

And third and most that I was surprised that adult wards came into judge's office by themselves; I did not notice that fact at first. They are seemed that they came to court at their own will. This fact means that the adult guardianship system in Germany is very widely accepted.

We visited the Association of Guardians. It is a small association which took place in the suburbs of Berlin.

We stayed there in a very short time, but we knew that the Association is organized by some of professional guardians. Professional guardians work only as guardians, undertake approximately 40 adult wards and support honorary guardians (public guardians). We heard that German State government subsidies professional guardians.

This fact may suggest what we aim at in the future; the association of guardians in Germany is a model for Japan Legal Support Center.

I knew the facts which Japan exceeds Germany in some aspects.

In Germany there is not a law like "Act on Prevention of Elderly Abuse and Support for Attendants of Elderly Persons" in Japan, only the criminal law can intervene in domestic violence to prevent elderly abuse.

I found that the infrastructure in Japan is more kind to the elderly and the disabled persons than in Berlin. I did not find a studded paving block to aid the blind. Public restrooms are very few. Only the big stations have escalators which are hard-to-use for the elderly and disabled persons. And the waiting time of the traffic signal is short. Cities of Japan are made kind to the elderly and the disabled persons.

My thoughts on why German people accept adult guardianship widely are as follows, cases of 1.3 million guardianship and 1.25 million lasting power of attorney have been used in Germany, contrary to the number of Japan's, Two hundred and some thousands cases of adult guardianship. Why do we make such a big difference?

There may be some reasons as follows:

First, Germany spent big amount of budget to broaden the adult guardianship program. I heard that the budget is spent on guardians' rewards and it enriched guardianships.

Second, in Germany, any person files for guardianship to court not as in Japan. Judges can rule for commencement of guardianships by themselves in case any related person does not file.

Third, almost all adult wards are not limited in their capacity to act after their guardianship started. Very Large numbers of courts, judges and personnel can make them have their whole capacity to act, I thought.

Lastly, I add one thing, it may be just my guessing, and Germans recognize guardianship system as one of their "rights."

German Guardianship Law appears to be the spirit of Article 1 of the German Constitution which defines as follows:

“The dignity of man is inviolable. To respect and protect it shall be the duty of all public authority.”

In addition, Germany has freedom of speech, but there is a forbidden book called “Mein Kampf” by Hitler. Hitler is still a biggest nightmare. I thought that Germany started with the words “the dignity of man is inviolable” after the World War II.

What do we learn Germany guardianship system and create for us to promote adult guardianship system in Japan, it may take some time to answer these questions; these are my feelings of the visit to Germany.

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Presentation at "Adult Guardianship Law," Japanese-German Symposium  
"Summary and outlook" on May 3, 2012

“Please feel the “Order” in town in Germany. It is the expression of German public. The German people feel “Order” which has been made in their long history very precious. Also, feel the “Individual” of every person’s there. Perhaps, you will do the very important job to ask what way the “Individual” will be respected in Japan, Mr. Matsui.”

An our firm's customer who had lived in Germany above 30 years and went back in Japan a few years ago and now serve as the head of the kindergarten gave me the words above before I made this trip to Germany.

On a clear day of May 1, 2012, I flew to Germany from Narita Airport. Mr. Masatoshi Yamazaki, executive director of Japan Legal Support Center’s headquarter, Junichi Kawaguchi, Tokyo Branch Chief of Japan Legal Support Center, and Mr. Hideyuki Inaoka, Tokyo Branch assistant chief of Japan Legal Support Center, and I made the party of four.

Professor Makoto Arai, president of Japan Adult Guardianship Law Association, Professor Akihisa Shibuya, Mr. Hiroshi Takahashi, executive director of Japan Adult Guardianship Law Association, Legal Support Center, Saitama Branch, and Mr. Hideo Hasegawa, executive director of Japan Adult Guardianship Law Association, Legal Support Center, Chiba Branch Chief, flew to London on April 27, 2012, to observe Protection Court and joined us in Germany on May 1<sup>st</sup>.

We made the trip to Germany to join the "Japanese-German Symposium on Adult Guardianship" and observe German courts and its Association of Guardians.

This is the final report which I made in the Japanese side on the "Japanese-German Symposium on Adult Guardianship" in Japanese-German Center on May 3<sup>rd</sup>, 2012.

"Adult Guardianship Law," Japanese-German Symposium  
"Summary and outlook" on May 3, 2012

Thank you very much for holding the very instructive symposium for adult guardianship of Japan today.

My name is Matsui and I am a solicitor. I am the president of Japan Legal Support Center which

has about 6,000 members and its members have about 20,000 cases, and Japan's largest guardian supplier.

We may be the world's largest supply organizations, so we secretly have a plan to register Guinness Book of Records...this is just a joke!

It becomes a personal matter, I was longing to German literature and from boyhood.

I love Hermann Hesse and Nietzsche and Thomas Mann.

I feel very grateful that I have come here in Germany where it's Adult Guardianship come first in the world.

Personally, there are three things that I want to know in Germany. I will talk that I felt in this symposium including these three questions.

First is the misconduct of Guardians who misappropriate the property of the adult ward and the measures against that in Germany, which is not the theme in this symposium.

In short, how much embezzlement was made by guardians and what measures are done to prevent this embezzlement?

In Japan, according to figures of 2011, 183 fraud cases made mostly by relative guardians in 10 months, its total damage was about 1.8 billion yen, equivalent to 17.5 million euro.

This is one of the biggest problems in adult guardianship of Japan facing right now.

In this symposium, I know the fact that courts play the fulfilling role to supervise guardians. Compared with Japan, there is less damages in guardians' misconduct Germany for the courts supervising system.

We have to resolve these problems in the near future.

From now on here, I will talk my feeling on each session of today's symposium;

In the session of "20 years' experience in German guardianship act," Judge Andrea Diekmann said, "the introduction of guardianship act in Germany in 1993 was major reform of the century."

I was able to understand what he meant after I listened to all of the sessions. I knew the facts that the reform which almost all adult wards' ability became unlimited was made and the enormous budget was spent for the guardianship system and support adult wards.

In the session of "health care in practice," the German side pointed out to us that the guardianship is not often used because Japanese guardians do not have medical consent rights. This is very fresh aspect for me.

In the session "custody and similar cases in practice," according to a report from the judge,

To file a permission adult ward to be taken in custody in hospitals or similar places, written opinion of the doctors is needed.

I felt this is very great that the courts have relations with physical restraint cases and respect for each person's human rights.

In the session "property management and reservations of guardians' agreement", I was very impressed that requirements are very high level for reservations of guardians' agreement. This is the attitude which there should not be violations of the right to self-determinate to respect adult wards' remaining capacity.

The session of the "training of honorary guardian (public guardian) ", is the secondary and the most thing I want to know in Germany.

In Japan, death in loneliness ("Kodoku-shi) and no-relationship death ("Muen-shi") are increasing. No-relationship death happens when the bodies are not taken by anybody after their death. Consumers' damages aimed at elderly and disabilities are increasing dramatically. Also elderly abuse does.

Public guardians have possibility to prevent these abuses in these situations in Japan.

And, the third I want to know is the way each one's self-determination of adult ward is respected in Germany.

The law defines that self-determination is also respected in Japan, but the Japanese did not respect self-determination as well as the Germans did in history.

We have managed through for the long time without self-determination; there are so many people not having family which decide instead these days in Japan.

In other words, in the coming future, the Japanese are required to have clear self-determination individually and their decisions are strictly respected, I think.

In this regard, the efforts in Germany which I knew in this symposium, like the attitudes and law, show very useful suggestions to the future of Japanese society and adult guardianship.

Legal Support Center has project plans of making guidelines for guardians and taking actions to train public guardians.

In advancing these projects, this visit to Germany gives us very important tips.

Thank you very much for having me today.