

# Human Dignity and the Right of Personhood of People Depending on Long-Term Care at Home – Legal Protection for Carers and the Cared-For

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## Background

Most **older people** wish to stay and be cared for in their **own home**<sup>1</sup>. Domestic care is also a central aim of welfare politics. In Germany ca. 1.25 million vulnerable elders under para. 14 of the German Social Security statute book XI (SGB XI) are cared for **without any professional help**.

Domestic care is known to be a **risk of elder abuse**. **Elder abuse** is "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person"<sup>2</sup>. Elder abuse is an important **public health problem**.

In a study by **Görgen et al.**, caring relatives were interviewed on their own difficult behavior in the last year. **52.3%** indicated to have used **difficult behavior towards the cared-for**. Over-straining / overloading / lack of skills in caregiving increase the risk for elder abuse<sup>3</sup>. In Germany the project VERA (*Interdisziplinäre Untersuchung zu Rechtsschutzdefiziten und Rechtsschuttpotentialen bei Versorgungs-mängeln in der häuslichen Pflege alter Menschen*) firstly includes the legal approach in an interdisciplinary project.

### Focus Group:

- (1) Vulnerable elders, who receive financial benefits in the form of care allowance by the care insurance
- (2) Vulnerable elders who are cared for by relatives without receiving benefits from the care insurance
- (3) A significant number of vulnerable elders who are under public guardianship because of dementia

## Research Aim, Interdisciplinary Approach

### Research Question:

**To what extent should the legal framework take into account the needs for protection of vulnerable elders in family care ?**

### Aim of this study:

**To develop a regulatory legal framework** providing aid-oriented prevention and intervention in family care of vulnerable elders by public agencies and courts.

### Interdisciplinary Approach:

**Gaps and potentials of the legal framework** for the protection of vulnerable elders in family care are analysed from different perspectives and disciplines: **legal sciences, gerontology, educational sciences, sociology, psychology and nursing research**.

**Comparison with legislation on child protection** taking into account the high value of the **individual self-determination right**.

## Preliminary Results and Discussion

- There is a **lack of legal regulations** on the issue of elder abuse in family care compared to an elaborated legislation of child protection<sup>4</sup>.
- There is a **lack of knowledge** on possibilities of support for carers.
- **Access** to support for carers is difficult.
- **Existing support is insufficient**.
- The desirable legal framework should **reinforce prevention** of care problems by giving more efficient support to carers and permit **legal intervention** in case of abuse or a risk to the elders' integrity.
- **Efficient prevention and aid based intervention** measures are preferable and should follow child protection **comparable to early aid and para. 1666 German civil code (BGB)**.
- Exchange with practitioners in order to review the effectiveness of the regulatory approach.

## Study Design

Analysis of empirical data on the situation in family care for older people (Synopsis of indicators from other scientific projects)

Analysis of existing legal framework with respect to existing gaps and potentials for the protection of vulnerable elders

Development of recommendations for legislation and administration

Final report

Months 1-12  
2015

Months 12-24  
2016

Months 24-36  
2017

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Der Beauftragte der Bundesregierung  
für die Belange der Patientinnen und Patienten  
sowie Bevollmächtigter für Pflege



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- References: 1) Oswald, F., & Konopik, N. (2015). Bedeutung von außerhäuslichen Aktivitäten, Nachbarschaft und Stadtteilidentifikation für das Wohlbefinden im Alter. [Impact of out-of-home activities, neighborhood and urban-related identity on well-being in old age] *Zeitschrift für Gerontologie und Geriatrie [Journal of Gerontology and Geriatrics]*, 48(5), 401-407.
- 2) World Health Organization (2016): Ageing and life-course. Elder Abuse. [http://www.who.int/ageing/projects/elder\\_abuse/en/](http://www.who.int/ageing/projects/elder_abuse/en/)
- 3) Görgen, T., Herbst, S., Kotlenga, S., Nägele, B. & Rabold, S. (2012). Kriminalitäts- und Gewalterfahrungen im Leben älterer Menschen. Zusammenfassung wesentlicher Ergebnisse einer Studie zu Gefährdungen älterer und pflegebedürftiger Menschen. BMBF (Hrsg.).
- 4) Zenz, G. (2014). Gewaltschutz im Alter – Ethik und Recht vor neuen Herausforderungen. In I. Götz, I. Schwenzer, K. Seelmann, & J. Taupitz (Hrsg.). *Festschrift für Gerd Brudermüller zum 65. Geburtstag* (S. 953-962). München: Beck..

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