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FORUM SOZIALE INKLUSION e.V.

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on Germany**

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1. Executive Summary

In spite of over twenty sentences against the Federal Republic of Germany by the European Court of Human Rights in matters of Family Justice, violations of children's and parents' Human Rights still occur frequently in Germany. The legal rules about parental authority and visiting rights are still being frequently violated by family courts. A specific German feature is an authority called "Jugendamt" which is not subject to any efficient supervision. This situation has even deteriorated since the 1st and 2nd UPR cycles. There is still no political intention to modify the situation. The undersigned declare that all facts stated in these annexes are still valid. Germany has failed to fulfil its commitment to establish a form of effective control over the Jugendamt.

This report outlines the violations of Human Rights, details the legal basis as defined by International Conventions and German National Law and points out remedial actions for this situation.

2. Violated Human Rights and International Agreements

United Nations – Universal Declaration of Human Rights:

Art. 12, 16 (3), additionally Art. 3, 5, 7, 10 and 25 (2);

UNICEF – Convention on the Rights of the Child:

Art. 16, 9, 5, Art. 3 (2) and (3), 6, 8 (1), 12, 18, 19, 20 (1), 23, 25, 27 (3), 29 (1c), 35, 37 and 39

United Nations – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 2 and 16, additionally Art. 4, 5, 14 and 15;

Charter of Fundamental Rights of the European Union

Art. 7, 20, and 24, additionally Art. 1, 3 (1), 4, 6, 7, 21, 23 and 26;

European Convention on Human Rights

Art. 6, 8, 13 and 46, additionally Art. 3, 5 (1) and 14;

Council of Europe

Recommendation (2008) 17 Addendum IV - Elements for European Guidelines for Child-Friendly Justice

Recommendation (2006) 8 – Assistance to Victims of Crimes

German Constitution (Grundgesetz)

Art. 6, 20 (3), 97 (1), additionally Art. 1 (1) and (3), 2, 3, 5 (1), 17, 19 (1), (2) and (4), 101, 103.

Please note that, formally, Germany does not have a Constitution. In its place there is a so-called "Grundgesetz" or "Basic Law" which should have been replaced by a Constitution after the reunion of East and West Germany, but this has never taken place.

3. Evolution of the situation since the UPR 2013

The facts enumerated in section 4.1 (below) have already been submitted to the UNHRC in the framework of the UPR 2009¹ and 2013². These facts are still valid. **Germany has not fulfilled**

¹ cf. Annex 1

its engagement to establish an effective judicial control over administrative decisions of the Jugendamt.

The recommendations contained in section II of the Report of the Working Group³ include:

“124.49 Secure proper follow-up to the accepted recommendation from the first UPR cycle and introduce tools that will improve the effective judicial control over the administrative decisions of the Office of Youth called Jugendamt (Poland)” (repeated)

“124.145 Introduce independent and effective legal and professional supervision of the Youth Office (Jugendamt) and ensure that the Jugendamt decisions be in conformity with binding international norms, including the rulings of the European Court of Human Rights (Turkey)”

“124.146 Respect its commitments to an effective judicial review of the administrative decisions of the Office of Youth (Jugendamt) (Congo)”

Furthermore Germany has been asked to continue and intensify its efforts against human trafficking (rec. no. 124.63, 124.139, 124.140, 124.141 and 124.147) and against torture (rec. no. 124.27, 124.43, 124.63, 124.124, 124.125, 124.152, and 124.188).

Italy referred to concern about the work of the Jugendamt⁴, but did not formulate a specific recommendation.

In Addendum 1 “Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”⁵ Germany has declared:

“124.49, 124.146

Accepted. Already now it is possible to subject decisions made by the Youth Welfare Office to judicial review.”

“124.145

Accepted. It is already possible to have decisions taken by the Youth Welfare Office examined by a court to verify their compliance with applicable German law and also with the European Court of Human Rights’ rulings with regard to the provisions of the European Convention on Human Rights.”

As in the first UPR cycle, this statement is incomplete; it is even partially false⁶.

On 21-03-2014 Germany committed in the Joint Statement on the Universal Periodic Review⁷ to write and publish as appropriate a Mid Term Report two years after its review, which updates on progress achieved in implementation of the recommendations⁸. From 2015 on, Germany has failed to sign this commitment. A Mid Term Report for the 2nd cycle has not been submitted. Our own Mid Term Report is joined to the present paper⁹.

² cf. Annex 2

³ document A/HRC/24/9

⁴ section I, item 116

⁵ document A/HRC/24/9/Add.1

⁶ For details cf. section 4 “Facts” in Annex 2.

⁷ General debate HRC25, Item 6

⁸ https://www.upr-info.org/sites/default/files/news/2014_03_morocco_uk_statement_47_states.pdf

⁹ cf. Annex 3

Furthermore, although Germany has accepted the recommendations no 124.49, 124.145 and 124.146, nothing has been done to implement these recommendations. In a letter of 23-06-2014 the Federal Ministry of Families, Seniors, Women and Youth informed the President of Trennungsväter e.V. that Germany had accepted these recommendations only because it considered that they were already fulfilled. Hence it is not intended to take any further action¹⁰. It is a frequent experience that German citizens obtain completely different answers from the administration than international bodies.

The general impression is that Germany likes to point its "index fingers" at others but is unwilling to accept external criticism. Consequently, the German Commissioner for Human Rights and Humanitarian Aid does not report to the Home Office but to the Foreign Office. In a television interview the former Commissioner, Mr. Markus Löning, confirmed that his task was not to survey the respect of Human Rights by Germany but by other nations.

In our submission to the 2nd cycle of the UPR on Germany we have provided ample evidence that the recommendations to Germany are not fulfilled in the least. Human rights are violated on a systematic basis by the Jugendamt and Family Courts. Since 2013, the general situation has not changed significantly. It has even deteriorated in some respects:

1. On 26.07.2014 Germany has voted against the UNHRC resolution on the protection of the family¹¹. Unlike all other states, Germany has motivated this rejection by the General Suspicion that violence may also occur in some families. This is an obvious violation of Human Rights. Every individual has to be considered as innocent as long as he or she is not proven guilty of a crime. By this refusal Germany denies parents adequate protection against illegitimate actions of the Jugendamt.
2. Although the European Parliament has again lined out the huge number of petitions against the German Jugendamt and asked the German authorities for clarification in this respect¹², no answer has been received until now.
3. On 15.01.2015 the ECHR ruled that Germany had not, in spite of being sentenced more than 20 times, established an effective legal remedy against excessive duration of court procedures¹³. It stated that the rules of art. 198 ff. GVG do not protect the victims effectively. Furthermore victims of such durations are not granted an adequate compensation for the destruction of their family life.
As a reaction the new rules 155 b and 155 c have been incorporated into the German Family Code which stipulate that a party may complain about excessive durations with the obligation to the court to assess this complaint within a delay of 1 month. This possibility is, however, strictly limited to procedures concerning parental custody and/or visiting rights. Furthermore, first experiences with this new rule seem to indicate that the courts tend to reject this new legal remedy.
4. The number of children who are taken into custody is increasing every year. According to the Federal Statistical Office, this number amounted to 84.200 in 2016, 6.600 more than in 2015, more than twice as much as in 2013¹⁴.
Investigations of the audit office of the city of Dortmund have shown, that in that city the necessity of the measure could not be sufficiently proven in two thirds (66 %) of the

¹⁰ cf. Annex 4

¹¹ document A/HRC/29/L.25

¹² Annex 4, section II, items 8 and 17

¹³ Decision no. 62198/11

¹⁴ Frankfurter Allgemeine Zeitung 23-08-2017

cases¹⁵. It is highly probable that the percentage is similar in other cities.

5. On 29-07-2015 the Federal Constitutional Court has ruled that it is in compliance with the German Constitution that Family Courts have no power of sentencing the Jugendamt or private institutions working for the Jugendamt to accompany parents and children during so-called "supervised visits"¹⁶. This reinforces further the statement that, unlike the parties of a procedure, the Jugendamt is not bound by decisions of the Family Court. In the concrete case, the denial of the Jugendamt to accompany visits in spite of decisions of the Family Court may result in the total loss of contact between parents and their child. The Jugendamt can act at its leisure as we have already demonstrated in 2009 and 2013.

6. On 25-04-2015 and 17-09-2016 the Federal Constitutional Court (BVerfG) has ruled that a child's declaration that it does not want to see one of its parents is binding for the courts even if there is evidence that the child's will has been manipulated in this sense over a considerable amount of time¹⁷.

This is in immediate contradiction with the BVerfG's previous jurisdiction.

From now on the practice of alienating parents and the Jugendamt to delay court proceedings in order to gain time to manipulate the child's will (cf. the 4ENT-method¹⁸) is legalized. The German family justice is now based on the principle that, after a certain amount of time, the child who has been withdrawn from one or both parents will declare its solidarity with the alienator, a clinical phenomenon that is known as Parental Alienation Syndrome, a special manifestation of the Stockholm Syndrome.

In other words, the principle that, except for rare exceptional cases, the regular contact with both parents serves the best interest of the child, has been replaced by the Law of the Jungle: whoever grabs and manipulates the child first will get full parental custody, excluding at the same time all visiting rights with the other (or both) parent(s).

It should be noted that, e.g. in Brazil, Parental Alienation is considered as a criminal offence¹⁹ since it will generally cause great harm to the mental development of the child. Professor Ursula Gresser, of the University of Munich, has demonstrated that this harm may have negative effects on the DNA of both the concerned parents and children which can be traced even two generations later.

7. On 08-09-2017 we have received a letter from the Kreis Rottal-Inn stating that under some circumstances an agent of the Jugendamt cannot even be supervised by his own immediate superior.

8. The German Federal Government has stated several times that federal control of the Jugendamt would be against the Basic Law. This is obviously a self-serving declaration. On 17-07-2017 the Bundestag passed (after only minimal debates) a law modifying no less than 13 articles of the Basic Law (90, 91c, 104b, 104c, 107, 108, 109a, 114, 125c, 143d, 143e, 143f, 143g)²⁰ in order to be able to perceive a road toll on the Autobahn. The Federal Ministry of Family, Senior Citizens, Women and Youth (BMFSFJ) itself promotes a modification of the Basic Law in order to integrate so-called "children's rights"²¹. Hence the fact that the responsibility of the Jugendamt does not lie with the Bund right now cannot be regarded as an obstacle.

¹⁵ RuhrNachrichten 10-04-2014

¹⁶ Decision no. 1 BvR 1468/15

¹⁷ Decisions no. 1 BvR 3326/14 and 1 BvR 1547/16

¹⁸ cf. Annex 6

¹⁹ Law 12 318 of 26-08-2010

²⁰ Bundestags-Drucksache 18.11135 of 13-02-2017

²¹ for details refer to section 4

4. Facts

This section deals with additions and modifications of the situation since the 2nd cycle of the UPR on Germany in 2013.

Please refer to our submission to the 2nd cycle of the UPR on Germany (Annex 2) for the original text of section 4 containing a detailed analysis of the situation. All indications in that section are still valid.

4.1 Negation and Violations of Human Rights

In opposition to the statements made during the UPR, Germany has further enhanced the position of the Jugendamt in all family affairs. The State of Thuringia has even declared in its formal recommendations that the full factual control of the procedure lies with the Jugendamt whereas the role of the court is limited to procedural matters²². This is an unequivocal index that the independence of the judges is undermined in favour of the Jugendamt which is the real decision-maker. The same applies to the so-called „Verfahrenspfleger“, or attorney of the child, who cannot be revoked even if he commits severe errors.

There are strong currents in the actual government to provide the Jugendamt with even more power and to weaken the position of the natural parents. In order to so, there is a campaign called "Children's Rights Into the Basic Law" which is financed by public money and aims at including special articles concerning so-called children's rights in the Basic Law²³. Experts see no need for any modification as children are Human Beings whose Human Rights are already granted by the Basic Law (GG). In several conferences it has been made clear that these new articles shall, in fact, reinforce the position of the Jugendamt as the self-appointed "defender of the child" versus the parents' natural right to bring up and educate their children as defined in art. 6 of the GG.

It is worth while noting, at the same time, that a modification of the Basic Law does not seem to be a major obstacle - provided this modification is asked for by the Jugendamt.

At the same time it is intended to strengthen the positions of foster families as opposed to the children's natural families²⁴. It is now planned to state that, once a child has been taken out of its natural family, it does not serve its best interest to periodically check if it can safely return there. Instead it is being said that children who have got used to their foster parents could suffer a trauma if they are being returned to their natural families.

This is not only a violation of the natural right of respect of family life, it is also diametrically opposed to the idea of foster care. Unlike adoptions which are meant to be permanent, foster parents are appointed when the natural parents are temporarily unable to assume the education of their own children. The aim of foster care is to bridge this momentary problem and to enable the children to get back into their families when the situation is over.

It is a fact that many couples become foster parents because their wish to adopt a child cannot be fulfilled, either because of a lack of a sufficient number of adoptive children or due to personal reasons with the foster parents, e.g. when one of the potential parents is too old to adopt a child.

As foster parents are generally organized in leagues and have strong lobbies with the Jugendamt, their interest in keeping a child they have accepted indefinitely is generally held higher than that

²² https://www.thueringen.de/imperia/md/content/tmsfg/abteilung4/referat31/fe_koop_ja_famg_1_6_2010_neuaufgabe.pdf

²³ <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/kinderrechte>

²⁴ Stuttgarter Nachrichten, 06-04-2017

of the natural parents to get their children back once their temporary problem is resolved. By modifying the Basic Law the evaluation criteria could be completely reversed, thus depriving natural parents definitely of their children if they place them confidently in a foster care for what they think to be a limited duration.

4.2 Financial Motives

In the preceding UPRs we have already reported that that the actions of the Jugendamt and the judiciary might be motivated by financial considerations. Several new events have further enhanced these suspicions.

The annual overall budget of Child and Youth Assistance was 40,7 bn. Euros in 2015²⁵. Many persons of various professions rely significantly or depend entirely on payments by the Jugendamt. This is why they never denounce violations of Human Rights by the Jugendamt and the judiciary, even when they are members of an association or another body that should deal with the protection of children (e.g. Kinderschutzbund).

As an example foster parents will receive a monthly subsidy of 745 to 913 Euros per child (depending on the age)²⁶. Natural parents who raise their own children will only perceive a monthly allowance of 190 to 225 Euros (depending on the age and the number of children)²⁷. As the "cost" of a child is basically the same, and independent of the kind of family it lives in, this difference in favour of foster families discriminates natural families.

If a child has to be placed in a home, the organization which operates that home will receive a monthly contribution of abt. 7.000 Euro for a child without disabilities, and higher if the child is physically or mentally disabled.

We can produce evidence on a case where a home offered a reward to social workers (agents of the Jugendamt) for every child that was sent there in order to "fill" vacant places.

4.3 Child trafficking

The practices motivated by financial considerations can even go as far as to create a suspicion of systematic child trafficking.

It is not rare that an executive of the Jugendamt works in his spare time in Personal Union as a senior member or even director of an association or a company that owns and operates homes. He or she is thus enabled to send a child to a home in his function with the Jugendamt for whom his association will then perceive monthly payments by that same Jugendamt.

Sometimes the personal intermeshing is hidden, e.g. when the company that operates the homes is managed by or even personal property of a close parent of the member of the Jugendamt. The creativity in these cases seems to be without limits.

The media have revealed cases where children have been sent to a foster family in Poland and a home in Hungary so that their parents could not find them and maintain the contact. In these countries the children did not always have contact to German speaking persons and were not

²⁵ Federal Statistical Office,
<https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Soziales/Soziales.html>

²⁶ <https://www.test.de/Pflegeeltern-Das-muessen-Sie-wissen-wenn-Sie-ein-Kind-aufnehmen-wollen-5137593-5137601/>

²⁷ <http://www.kindergeld.org/>

always schooled adequately²⁸.

- According to the media one adolescent who attended grammar school in Germany had to work as a farm hand in Poland.
- The head of the Jugendamt of the city of Gelsenkirchen and his deputy have been convicted of sending children into a home in Hungary that was run by a company belonging to them. There was no pedagogic concept for these children in Hungary²⁹.

These actions were illegal according to German law because the strong requirements for sending children abroad³⁰ had not been met. None of the persons implicated have been punished for their deeds by which they have not only ruined the families but also the entire future of the children. We have evidence of at least one case where a Jugendamt has been convicted by a court of kidnapping a child by failing to apply a court decision. None of the responsible members have been punished.

A second type of fraud has been discovered within the Jugendamt itself. This category reinforces the fear that many actions of the Jugendamt and/or its agents may be motivated by financial considerations.

- A head of the Jugendamt of the city of Hamburg has been convicted of having booked fees for assistance to fictional children in non-existing homes onto his own personal account. Due to the absence of control over the Jugendamt he was able to keep this up for more than twelve years, thus cheating the public treasure of abt. 500.000 Euros³¹.
- In the city of Witten the auditors have discovered that the Jugendamt has spent abt. 300.000 Euros between 2011 and 2015 without providing proof of the expenditure. It is unknown whether the money has been spent as agreed³².
- In Munich the Jugendamt paid hundreds of social workers on a flat-rate basis at least in the years 2015 and 2016 although there were no concrete tasks for them. According to the auditors the estimated financial loss for the municipality is estimated at several millions of Euros³³.

It has to be emphasized that whenever agents of the Jugendamt cause loss of Public Money the matter is immediately investigated and the responsables are sanctioned, whereas harm to children - sometimes even leading to injuries or death - and/or their parents will either not be prosecuted or result in minor penalties for the responsables. The state prosecutors will argue "lack of public interest" and deny prosecution.

4.4 Financial contribution of parents

Whenever the Jugendamt takes children out of families, it will, regardless of the reason, try to recover its spendings from the natural parents. This means that parents whose children have been placed in a foster family will be asked for a contribution of 745 to 913 Euros per child and month, if they are placed in an institution the contribution can be higher than 7.000 Euros / month. (The average gross income of Germany was 3.703 Euros per month.) Exceptions are

²⁸ German State Television 30-04-2015

²⁹ Der Westen 02-05-2015

³⁰ Regulation Nr. 2201/2003 of the European Council of 27-11-2003, art. 56

³¹ Die Welt 25-11-2016

³² Westfälische Allgemeine Zeitung 14-06-2017

³³ tz 01-02-2017

made only if the parents prove that they cannot afford the due amount. In that case the contribution will be reduced, but the parents will be left with a sum that is equivalent to the absolute minimum for their own subsistence, leading immediately to their impoverishment.

4.5 Judiciary

According to a broad majority of lawyers, German judges have been neglecting their commitment to the law since a long time. This concerns especially judges of Family Matters³⁴. Neither the wording nor the spirit of the laws of the German family code are respected any more. Judges tend increasingly to "interpret" the situation, creating their own rules, excusing randomly criminal acts of the "good" parent or the Jugendamt and sentencing "bad" parents even for having obeyed the same judge's previous sentence. Courts even deny their own previous decisions in a given case if necessary. This might seem incredible, but we can produce court decisions to this effect. This statement concerns the courts of appeal as well.

A frequent feature is slowing down procedures, e.g. by denials of justice. If a child is within the hands of the Jugendamt or a manipulating or even torturing parent, courts can influence the outcome of the situation by delaying e.g. a hearing, as long as possible. The longer a child is under the influence of a manipulating person or institution, the surer the outcome of the hearing. Evidence can be produced about a procedure where a demand of visiting rights has not been decided in the first instance after twelve (12) years!

Judges often interfere with cases that do not fall within their competence. The right to challenge a judge on grounds of bias has been undermined and does not longer exist effectively. Miscarriage of justice, once a criminal offence, is no longer punished. A leading decision has abolished it altogether for all courts with more than one judge.

Regardless of the outcome of a procedure the Jugendamt is not bound by the decisions of the Family Court. In opposition parents who refuse to apply said decisions will be sanctioned. The Administrative courts refuse to handle Jugendamt matters, pretexting that they are under the responsibility of the Family Courts. Even when a Jugendamt is sentenced by a court to produce its files to the court and refuses to do so, the administrative courts will not intervene by misquoting the relevant law.

In some cases, e.g. when disabled children are concerned, German national courts have to submit the case to the European Court of Justice in order to ask for the Court's interpretation of European Law³⁵. Although it is compulsory to do so, the national courts generally fail to submit these cases by using a row of subterfuges against the parents.

Lastly, there is a so-called Constitutional Court (CC) in Germany whose role is to assess alleged violations of Human Rights. This court has made itself highly inaccessible by putting up increasingly complicated formal rules for invoking it. Any formal mistake will immediately result in rejection of a case. Human Rights are being sacrificed to formalities on a regular basis.

Furthermore, according to art. 93d (1) of the Procedural Code of the CC (BVerfGG) the CC has the right "not to accept" any case for decision. This is an evident denial of justice, and what is more, in the field of alleged violations of Human Rights. According to its own statistics, the CC makes use of this right in 97,5 % of all cases. In conformity with aforesaid article no motivation will be given for the non-acceptance; it will not even be published in the decisions of the CC. It is as if such a case had never existed.

³⁴ Dr. Norbert Blüm, ex-minister, "Berufsbedingt überheblich", Die Zeit 27-06-2013

³⁵ Treaty on the Functioning of the European Union, Art. 267 (3)

It has to be emphasized that the CC is not a normal court. Its members are "suggested" by the political parties. They need not even to have been judges at ordinary courts, some coming directly from universities to the CC. The last three responsible judges for Family Affairs have professed to be feminists. It can hardly be sustained that these judges are impartial when assessing a case of a father's interests vs. a mother's.

4.6 Torture

It is very frequent that children and/or parents are submitted to physical or psychological torture³⁶ by intentionally inflicting to parents, and more frequently to children, severe pain or suffering, in order to intimidate them, generally to obtain from them the consent to the measures taken by the Jugendamt or to coerce them to make certain declarations in court.

Agents of the Jugendamt went as far as telling several children that their parents were dead or did not love them any more in order to obtain their consent to remain in their foster families. Other children have been brought to tears by judges in order to make them declare that they wanted to live (or did not want to live) with a specific parent. A mother who washed the inside of her daughter's mouth with soap every time she said she wanted to live with her father was supported by the Jugendamt. Many other examples can be given.

Another feature of torture is punishing parents for complaining about the Jugendamt. We can produce a video recording of a scene where an agent of the Jugendamt annihilates a visit of a father with his child because she (the agent) feels intimidated by the father. At the same time she orders the child to be brought to another institution (where the father cannot find it).

When parents complain about the Jugendamt in court, they will generally not succeed. A child that has been taken away is generally lost forever. On the other hand the judiciary will charge the plaintiffs heavy fees for the lost lawsuit (we have evidence of a case where this fee amounted to 100.000 Euros), thus ensuring that parents will generally not try to sue the Jugendamt and its agents. Although this is not in conformity with German Law, the higher courts will generally reject the appeal. Some families have had to sell their homes because of such arbitrary decisions. The aim of this proceeding has been stated by a lawyer in one of these lawsuits in writing: "he that loveth danger shall perish therein". Hence, the fact that a parent seeks to retrieve his abducted children is considered as dangerous by the judiciary.

This has to be qualified as an act of cruel, inhuman, or degrading treatment or punishment as defined by the United Nations' convention.

These acts of Cruel, Inhuman or Degrading Treatment and Punishment are generally inflicted by or at the instigation of the Jugendamt or with the consent or acquiescence of the judiciary. In the case of alienating parents they are inflicted with the consent or acquiescence of the Jugendamt and the judiciary.

4.7 Conclusions

We have already expressed, in the framework of the 1st and 2nd UPR on Germany, our fear that the large numbers of violations of Human Rights by the Jugendamt and the German judiciary might be of a systematic nature and serve particular interests but not the best interest of the child. This fear has now been further enhanced by the events during the period under review.

In order to demonstrate the systematic character we have developed a model for the functioning

³⁶ according to the definition in art.1 of the UN's Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

of the system³⁷. This model is called the "4 ENT"-model because all of the German words describing the four phases start with the syllable ENT. The model has been submitted to several experts who have confirmed that it describes the system with precision.

Any given case will be executed in four different phases, each one of which is based on the preceding phase and add its own contribution of illegal actions.

Torture and/or brain washing is essentially used in Phase 2, when the child remains under the control of an alienating parent or the Jugendamt. The denial of the Jugendamt and family courts to restore the legitimate situation (mostly through inactivity) will result in Parental Alienation and/or the Stockholm syndrome - two closely related phenomena.

Non-respect of the law and Human Rights (cf. section 4.5) occur essentially in phase 3.

After the end of phase 4 the Jugendamt and other institutions will receive regular payments from the parents whose children they have illegally abducted.

Mr. Marcus Weinberg, member of the German Bundestag, has publicly declared that, regarding the immense number of complaints against the Jugendamt and the similarity of many cases, there seems indeed to be a systematic problem and has asked for an investigating committee on the matter³⁸. It is yet not clear whether his request will be granted.

On the other hand there are strong tendencies in the Bundestag and the Ministry of Family Affairs to further enhance the power of the Jugendamt³⁹. These parties even suggest a modification of the Basic Law to this effect. The proposed modification is a further violation of the Right to respect of Family Life and, as such, not compatible with the UN Charta of Human Rights.

5. Recommendations

In order to guarantee the observation of Human Rights in German family affairs, the legal position of the Jugendamt and its agents must be profoundly modified. Based on the experience since the last UPR on Germany, it would be advisable to abolish the Jugendamt completely and to assign the essential tasks to other authorities having a structure in compliance with national law as well as with the international conventions on Human Rights. The degree of disorganisation has become so immense that a reform of the existing structures seems impossible.

The necessary modifications will have to account for the following:

- Install professional and legal control over the Jugendamt.
- Make the control structures effective and easily accessible to the public.
- Apply all rules of German national law to the Jugendamt and its agents and to the Verfahrenspfleger and Umgangspfleger in order to make them responsible for their actions. Tolerate no exceptions.
- Separate all instances responsible for the best interest of the child from organizations bearing an economic interest, such as homes, foster families etc.
- Reinforce observation of Human Rights by the legislator and observation of the law by the

³⁷ cf. Annex 6

³⁸ Die Welt 17-09-2017

³⁹ <https://www.bmfsfj.de/bmfsfj/themen/kinder-und-jugend/kinder-und-jugendschutz/kinderrechte>

judiciary.

- Guarantee full access to all Jugendamt and court files to all parents.
- Re-instore the commitment of the judiciary to the Law
- Re-instore application of the rules on challenging a judge on grounds of bias (art. 42 ff. ZPO) and miscarriage of justice (art. 339 StGB).
- Create the office of an “Ombudsmann”, responsible for contentious cases and authorized to lead investigations.
- Establish objective rules for the choice of Experts and Children’s Attorneys, establish compulsory rules for their qualification and execution of their tasks
- Apply recommendations on Assistance and compensation to Crime Victims
- Create a committee for investigating previous affairs rapidly and effectively, reinstating all parents and children whose Human Rights have been violated into their previous rights
- Grant a just compensation to all victims of Violations of Human Rights
- Assume the cost of all medical and psychological treatments that will be necessary to heal the victims and prevent them from committing suicide as has happened before

Concrete remedial actions will have to be elaborated in detail by a group of independent experts whose sole concern must be the best interest of the child. Therefore they must not have any economic interest in any decision concerning the child. International best practice has to be considered during the definition of the future structures and procedures. The execution of these remedial actions should be reported to the European Commissioner for Human Rights or the UNHRC at least once a year until full approval is obtained.

Amberg / Wasserburg / Köln / Hamburg, October 3, 2017



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This submission has 7 annexes.