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Joint Submission

**United Nations
Human Rights Council**

**Universal Periodic Review on Germany
2nd Cycle**

**Mid-Term Report
October 2015**

**Joint UPR Submission
Germany - Mid-Term Report / 2nd Cycle**

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1. Executive Summary

In the second cycle of the UPR on Germany, several recommendations have been issued concerning an effective supervision and/or control of the child welfare administration called Jugendamt. Although Germany has formally accepted these recommendations, nothing has been undertaken in this direction. Furthermore, Germany has clearly expressed its determination not to modify the current status of the Jugendamt. Recent events have shown that the combination of financial responsibilities with welfare in one single organism has effectively lead to several cases of child trafficking – a fear which we have already expressed in earlier submissions.

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

Convention on Action against Trafficking in Human Beings

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

Recommendation (2006) 8 – Assistance to Crime Victims

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.

3. Evolution since July 2013

In the Report of the Working Group on the UPR on Germany (A/HRC/24/9) Germany has been asked to install an effective control on the authority called Jugendamt in recommendations no. 124.49, 124.145 and 124.146. 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). Germany has formally accepted all these recommendations (Document A/HRC/24/9/Add.1).

On April 24, 2014, Trennungsväter e.V. enquired the German Chancellor, Mrs. Angela Merkel, about the implementation of recommendations 124.49, 124.145 and 124.146. On June 23, 2014 the Federal Ministry of Family, Seniors, Women and Youth replied that Germany had accepted these recommendations because it regarded them as fulfilled. Literally: "*Hence, there is no need for action in this respect*" (cf. annex 2). In other words, Germany has given the false impression that it would take action following the said recommendations whereas, in reality, it never intended to do. The same has already been the case in the 1st cycle of the UPR.

The Committee On Petitions of the European Parliament (PETI), too, is deeply concerned about the violations of Human Rights by the Jugendamt. In the absence of the initiator MEP Philippe Boulland, German MEPs tried to remove a debate on the Jugendamt from the agenda of the European Parliament's Committee on Petitions. After his return, Mr. Boulland succeeded at the very last minute to maintain the debate on April 1st, 2014. In a press conference he stated that Germany is the only state who refuses to discuss aspects of Child Welfare with the Committee – a highly anti-democratic, if not totalitarian attitude.

In the session of PETI on May 5, 2015, it has been stated that in some cases the proceedings of the Jugendamt may be classified as torture as specified by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As torture is not a criminal offence and thence, not punishable by German law, it would be highly desirable for the UNHRC to invoke the International Criminal Court in order to investigate these cases. The Committee On Petitions decided to instate a work group which shall deal with the Jugendamt problem in all its aspects.

Since July 2013 the European Court of Human Rights has taken two decisions which are of particular importance for this report:

On 28 January 2014, the Grand Chamber of the European Court of Human Rights stated in a ground breaking judgment of the European Court which established beyond doubt that the state has a positive duty to take steps to protect children from abuse. Moreover, it drew clearly from a number of cases which established that this included a positive obligation under Article 3 of the ECHR to take reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge. It was clear from the judgment that the European Court did not accept Ireland's argument that its educational system was acceptably different from other jurisdictions – under the Convention, there could be no abdication of responsibility for the protection of children. From a legal perspective, this judgment merely adds to the existing case-law concerning children's right to protection from harm and the state's explicit duty to take effective measures to protect children from harm the risk of which was known or ought to been known to the state (dec. no. 35810/09).

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 procedures. 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 (dec. no. 62198/11).

On 26.07.2014 Germany has voted against the UNHRC resolution on the protection of the family (A/HRC/29/L.25). Unlike all other states, Germany has motivated this rejection by the General Suspicion that violence may also occur in some families. This is clearly a violation of Human Rights. Every individual has to be considered as innocent as long as he or she does not commit a crime.

The financial administration of the city of Dortmund has conducted a study which showed that in 66% of all cases the Jugendamt was unable to prove the necessity of external placements of children in foster homes or families. It has been recently revealed that there may be several cases of child trafficking by the Jugendamt: Children are placed in foster care of an agency which is owned and/or conducted by an agent of the Jugendamt. This agency then places the children abroad under circumstances which do not serve the best interest of the child (e.g. hard work in farms where nobody speaks German). Even adequate schooling is not provided (cf. e.g. <http://www1.wdr.de/daserste/monitor/sendungen/mit-kindern-kasse-machen-heimkinder-104.html>). This is one of the items that should be investigated by the ICC).

In contradiction with the German reply no. 91 in document A/HRC/24/9/Add 1 the Constitutional Court has ruled on 29.07.2015 that it is not a violation of the constitution that the Family Court may not give orders to the Jugendamt. It has argued that the parents have the right to appeal to the Administrative Courts in such cases (dec. no. 1 BvR 1468/15). This means that the Jugendamt may break at leisure any decision or order of the Family Courts (art. 36a of book VIII of the German Social Code – SGB VIII). The Administrative Courts, when invoked, generally state that it is not their task to interfere with family matters. Numerous decisions can be produced to this effect. This means that only the private party (parents and/or relatives) is bound by decisions of the Family Courts, whereas the State Party (Jugendamt and/or Courts) is not – a situation known only from totalitarian states.

4. Status quo

Please refer equally to our submission of 30.09.2012 (annex 1). The situation has not improved.

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 matters (https://www.thueringen.de/imperia/md/content/tmsfg/abteilung4/referat31/fe_koop_ja_famg_1__6__2010__neuaufgabe_.pdf). 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.

From the above it follows that the Jugendamt may, at leisure, lie to the courts. Since these shall not question the reports, the Jugendamt thus provokes wrong decisions by the Family Courts. Although the Jugendamt is entirely and solely responsible for these decisions, they cannot be attacked as they have been taken by an independent Court of Justice. As the Courts of Appeal, too, draw their knowledge from the reports of the Jugendamt, they generally confirm the decisions as being „formally correct“.

Furthermore the Courts create facts by their inactivity, especially with regard to the alienation of children from one or both parent(s). The German legal system relies on the principle that injustice will be justified by duration of time (so-called Stockholm Syndrome). Unlike children who fall under the rule of the so-called Hague Convention (EU Regulation 2201/2003) children who are abducted within Germany are not immediately returned to their parent(s), thus being discriminated for something on which they do not have the slightest influence.

Moreover several experts, e.g. former federal Minister Dr. Norbert Blüm (cf. His book „Einspruch“), have stated that the decisions of German Family Courts are frequently inconsistent with the legal norms. Especially fundamental rights are often violated by excluding visiting rights etc. What is more, such decisions have frequently been taken by judges who were not in charge of the specific cases. This is particularly reproachable since this practice of the 3rd Reich has been severely banned.

According to its own statistic, The Constitutional Court, whose task it is to intervene against violations of Fundamental Rights, refuses to decide in 97,5 % of the cases that are submitted (cf. (http://www.bundesverfassungsgericht.de/DE/Verfahren/Jahresstatistiken/jahresstatistiken_node.html)). Unfortunately this practice is increasingly being taken up by the ECHR.

German Courts have begun to punish persons who claim compensation for illegal acts by the Jugendamt or the Family Courts by overriding the initially court decisions stating the illegality and imposing heavy fees for the lawsuits on the plaintiffs.

5. Recommendations

Please refer equally to our submission of 30.09.2012 (annex 1). The situation has not improved.

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 of 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 judiciary.
- Guarantee full access to all Jugendamt and court files to all parents.
- 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

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 at least once a year until full approval is obtained.

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