



in Special Consultative Status with ECOSOC

Psychosocial dynamics conducive to torture and ill-treatment

General observation:

The target of our NGO is to enhance children's rights, especially the right to see both parents on a regular basis. Therefore, this call will be answered with special respect to this target and the use of white torture by state agencies or the judiciary in order to restrict this right.

We request confidentiality of this submission, as in Germany so-called “whistle blowers” are regularly prosecuted and severely punished (which is another occurrence of torture).

Please refer to the annex for more details

The special rapporteur of the UN has acknowledged in his recent report on psychological torture¹ that some of the practices used by the German Jugendamt fulfill the criteria of so-called “White torture”. The present paper will demonstrate how the general German public is made to accept these practices.

The German Jugendamt („Youth Office“) is an institution which has nearly illimited powers and is not bound by orders of the Family Courts. The Jugendamt and related professions generate income from children taken away from their parents and placed in foster families and homes. The number amounts to 52,590 cases per year (2018)².

The Jugendamt has the power to separate children from their parents even if there no valid charge of crime or omission causing a danger to the children against them. The needless separation of the family causes lifelong psychological pain. In some cases, the Jugendamt has intentionally given children for decades to pedophile networks of foster parents and others, well aware of the fact that they would continually rape these children³.

As new scandals are being discovered every year, the German media, NGOs and the general public repeatedly demand for an effective control over the Jugendamt. Regularly, the German Government refuses to do so. Instead public authorities create (false) public awareness in favour of the Jugendamt, e.g. by advertising campaigns (“a support which is appreciated”).

The judiciary does not fulfill its task. German judges are not independent from the executive power, they frequently transgress the law. Increasingly high requirements have been set up for

¹ https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_49_AUV.docx

² www.destatis.de

³ see footnotes 7, 8, 9 and 18

access to the Federal Constitutional Court which can hardly be met by the applicants (denial of justice). At any stage of a procedure the CC has the right to “not accept an application for decision⁴”. This systematic denial of justice creates a feeling of helplessness which is a characteristic of psychological torture. Furthermore, the CC has lately modified its jurisdiction, stating that the will of a child has to be respected even when it is the result of massive influencing, thus legalizing brainwashing practices⁵. Parental alienation and deprivation are generally not sanctioned; they may be used by the Jugendamt in order to sanction “unpopular” parents.

Every case of child abuse is brought to the press as evidence that the Jugendamt has still not enough competences (“get rid of the ‘friendly parent illusion’⁶”). The fact that 998,6 children out of 1.000 live well with their parents is concealed from the public.

Errors of the Jugendamt are generally denied. If this is impossible, authorities speak of (“regrettable singular errors”). The systematic character of the cases is denied. The fact that many children come to harm or to death while in custody of the Jugendamt^{7,8,9} is hushed up.

The crime of torture as defined by UNCAT , i.e. any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, is not included in the German penal code. It can therefore not be punished. The only alternate charge, bodily injury caused by an officer of the law, can only be prosecuted within five years after commitment of the crime¹⁰.

As the crime of torture is absent from the German law, the United Nations’ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol, is not applied. Furthermore, arguing that where there is no crime there is no victim the victims of torture by the Jugendamt or the judiciary are denied any assistance by or just compensation from the state¹¹.

The system is widely supported by the fact that in Germany there are no people’s prosecutors, but state prosecutors. Whenever an agent of a Jugendamt or another authority is being charged with criminal behavior, it is sufficient for the prosecutor to declare that “prosecution of the alleged crime is not in public interest”, in order to refuse instruction of the case. Furthermore the European Court of Justice (ECJ) has ruled that German prosecutors are not sufficiently

⁴ § 93b BVerfGG

⁵ BVerfG vom 25.04.2015, Az. 1 BvR 3326/14, Rn. 21

⁶ Ludwig Salgo in DER SPIEGEL, 14.06.2020

⁷ https://de.wikipedia.org/wiki/Wormser_Prozesse

⁸ https://de.wikipedia.org/wiki/Missbrauchsfall_L%C3%BCgde

⁹ https://www.deutschlandfunk.de/missbrauch-von-berliner-pflegekindern-studie-sieht.1773.de.html?dram%3Aarticle_id=478608

¹⁰ § 340 StGB

¹¹ arg. § 253 BGB

independent of the executive power. Hence, they are no longer authorized to issue European arrest warrants¹².

In many cases the Jugendamt agents are exempted from punishment by law, e.g. when making oral or written declarations to the family court. Under these circumstances, and although their declarations have to be considered and are generally followed by the family judge, they may lie at leisure (and frequently do so) without the slightest risk of being held responsible¹³. Often The parents cannot correct these lies or they do not even know precisely what they are being charged with as they are systematically refused the access to their own Jugendamt files¹⁴.

It is one of the most characteristic elements of torture to create a feeling of helplessness as well in the children as in their parents who realize that a court will decide on their future fates (e.g. lifelong separation) on the basis of a network of lies. Once a false declaration is written down in the minutes of the court proceedings, it is taken as granted. The general public who has no knowledge of the real facts will then believe the written version and hold the Jugendamt as the child's savior out of a very dangerous situation, adding discrimination of the parents to the separation from their children. The federal ministries and the national parliament (Bundestag) are aware of this situation, but do not esteem it has to be altered¹⁵.

Following the same principles and its own "bad practice" the Jugendamt officials and the competent ministries either give untruthful answers to all international bodies who enquire about the situation or fail to answer some questions at all. As the same public servants give totally different answers to individuals enquiring about the fate of their children, it can be implied that said officials are lying deliberately¹⁶. Of course this behavior influences widely the perception of the German legal system by foreign countries and international bodies. Applicants and petitioners have to fight against a strong reserve on the part of these bodies, the more so as they are often libeled as querulous persons.

All the preceding facts and actions are concealed from the general public so as to create the impression that the Jugendamt's only concern is the welfare of the children. As we have stated initially, the Jugendamt and related professions are a real business with an annual turnover of abt. 33,2 Mrd. Euros. The Jugendamt agents themselves and many related professions generate their incomes from this business.

Several cases have been reported where Jugendamt agents were members of associations or private owners of foster homes, some even abroad, who perceived fees for each child that was sent to them by the Jugendamt. Jugendamt agents are being contacted and promised primes by managers of homes for each child they send them. Cases are known where Jugendamt agents "invented" children and sent them to foster families, sharing the allocations for the non-existing child with the foster family.

¹² ECJ, decision of 27.05.2019, joint applications C 508/18, OG and C 82/19 PPU/PI

¹³ § 138 ZPO

¹⁴ VGH Baden-Württemberg, decision of 27.04.2020 - 12 S 579/20

¹⁵ Letters of the BMJ and BMFSFJ

¹⁶ written evidence can be produced

The worst case is actually being investigated by the press is the case of a complex pedophile network involving homes, foster parents, at least one school and several Jugendämter in Berlin¹⁷. Even the Kinderschutzbund (association for child protection) seems to be involved¹⁸. All this has been hidden from the public in order to maintain the Jugendamt's good reputation. But even when there are no crimes of this kind implied all these so called "Freie Träger der Jugendhilfe" – sociologists, pedagogues, social workers etc. etc. generate their income from the tasks they are being awarded by the Jugendamt. Hence they will never contradict a Jugendamt for fear of losing the next contracts, nor will they declare any contracts they fulfill as unnecessary – out of evident reasons. This is equally valid for such institutions as the Kinderschutzbund (association for child protection) for even they have economic links with the Jugendamt.

The Deutsches Institut für Menschenrechte (German Institute for Human Rights) is financed by the federal Parliament (Bundestag). It refuses to take action against the Jugendamt.

The association Weißer Ring which assists victims of crimes refuses to help victims of the Jugendamt pretending that they can only intervene if a crime has been recognized. In this regard the prosecutors' refusal to instruct the crimes committed by the Jugendamt bears double fruit.

Lastly, the International Institutions have not been successful in the matter until now.

The European Parliament – committee on Petitions has declared that it is not competent in all questions of national family law, as this chapter does not fall under the competence of the EU. The committee ignores the fact that Germany constantly violates the Charter of Fundamental Rights of the European Union. No country where Human Rights are in such a precarious state would be admitted to the EU, but this does not seem to apply to the older members. Like all other international bodies, the Committee has received false information from Germany on several occasions. Other questions have not been answered at all¹⁹. As far as we are informed the Committee actually plans a third information visit in the same matter to Berlin – an unprecedented event at the parliament.

The European Court of Human Rights did have a good standing Case Law concerning child abduction and visiting rights. Until 2004, Germany had been sentenced 18 times for violation of Human Rights in family matters. In 2004 a former judge from the German Constitutional Court joined the ECHR. From that time on, we notice that there are two different types of justice: against Germany, where complaints for child abduction are declared unreceivable, and against other countries, where the former standing case law of the court is still applied. This phenomenon has been stated by several individuals. It requires thorough investigation.

The Human Rights Council of the United Nations has made recommendations to Germany, in the 1st, 2nd and 3rd UPR to install an effective control over the Jugendamt. Although Germany has accepted all three recommendations (2009, 2013 and 2017) nothing has changed in the matter, but the German government now pretends that the control is already in place.

¹⁷ See footnote 9

¹⁸ <https://www.n-tv.de/politik/Paedophile-im-Kinderschutzbund-article11325656.html>

¹⁹ written evidence can be produced

Because of all the elements mentioned above, the victims of the Jugendamt are very badly perceived in Germany. They cannot even express their grief about the loss of their children because in the general opinion "the Jugendamt does not intervene without reason".