

EUROPEAN PARLIAMENT

2004



2009

Committee on Petitions

28.01.2009

WORKING DOCUMENT

on the alleged discriminatory and arbitrary measures taken by youth welfare authorities in certain Member States, in particular the Jugendamt in Germany

Committee on Petitions

Chairman: Marcin Libicki

DT\798178EN.doc

PE418.136v04-00

EN

United in diversity

EN

WORKING DOCUMENT

on the alleged discriminatory and arbitrary measures taken by youth welfare authorities in certain Member States, in particular the Jugendamt in Germany¹

¹ This document reviews petitions received concerning the Jugendamt and other child welfare petitions. It contains recommendations which the Petitions Committee proposes. Its contents do not constitute an assessment or policy statement by the European Parliament as an institution.

1. INTRODUCTION

The Committee on Petitions of the European Parliament has received a very large number of petitions and supporting letters on the alleged discriminatory and arbitrary measures taken by youth welfare authorities in certain Member States, in particular the Jugendamt in Germany, with which this note is primarily concerned.¹

Such petitions are particularly difficult to assess due to the extreme sensitivity of each individual case. Even when very detailed allegations are made it is not possible for the Committee to draw absolute conclusions because of the lack of information from other parties. It is therefore most important for all petitioners to realise that the Petitions Committee cannot become a substitute for competent tribunals and judicial review bodies. It is also not possible for the Committee to clearly assess the extent of the problem raised by petitioners and therefore one cannot speak about a systemic failure. On the other hand it must be recognised that the functioning of the Jugendamt indeed appears to be an issue of real concern to many European citizens and this therefore needs to be urgently addressed by the responsible authorities at national, regional and local level in Germany, including the Bundestag responsible committees.

The Petitions Committee, under its rules of procedure, concerns itself with matters which come within the European Union's fields of activity. Consequently, its competence is related to the provisions of the Treaty which deal with the fundamental rights of European citizens, with matters related to possible discrimination on the grounds of nationality, origin or language, and with the interpretation of the implementation of EU legislative acts by national authorities, always bearing in mind that in such matters it is the European Court of Justice which is alone competent to formulate a binding judgement on the interpretation of Community law.

The Petitions Committee must be mindful of the fact that petitioners have written in such large numbers to the Committee partly because they have not received satisfactory explanations from competent authorities in Germany. In only one case treated in Committee up to this point has a petitioner received a formal apology from the competent German authorities who apologised for acts of discrimination against the child.

Different categories of petition.

Petitioners have contacted the Committee on an individual basis and as signatories supporting more organised campaigns which, often vehemently, contest the Jugendamt regime.

One major group of petitions make clear and specific allegations of discrimination by the German authorities against the non-German parent involved in separated mixed- marriages during subsequent supervised contact with their children. The petitioners state that the problem of discrimination arises from procedures regularly used by the Jugendamt, which

¹ 34 new petitions were received in 2008 concerning the Jugendamt, however since 2006 not only individual petitions but hundreds of individual cases have been submitted through correspondence which have been acknowledged but to which the Committee has been technically unable to respond in substance. Hence the importance of this document.

make it difficult or indeed impossible for the non-German spouse to have contact with his/her child. In particular, petitioners, who have only been granted supervised parental access, are deeply critical of the fact that when they meet with their children, officials representing the Jugendamt regularly check whether the parent is talking to the child in German. In the event that the language used by parent and child is not understood by the supervisor, the conversation is interrupted and the parent asked to leave. Based upon petitions received, it would appear that the most common discrimination occurs when a parent is speaking Polish, though many examples involve French or other languages.

A second group of petitions concerns cases where the child is separated from the parent by a decision of the Jugendamt on the alleged grounds that the parent is physically or mentally unfit to assume the responsibilities of bringing up a child. Naturally, a parliamentary committee cannot verify such allegations, nor the psychological or psycho-social justification which may have led to such categorisation. It can only note that in such cases where such grounds have been contested by the petitioners that they have apparently not been able to resolve this matter through normal procedures within Germany.

The third and largest group concerns various actions taken by the Jugendamt, where the petitioners believe that the Jugendamt is continually committing infringements of the European Human Rights Convention and of the EU principles proclaiming respect for fundamental rights and children's rights and they therefore are ask the European Parliament to intervene and ensure that the Jugendamt is abolished.

The Committee on Petitions has discussed these petitions on several occasions with the participation of the petitioners, the European Commission and the German authorities. On 22 March 2007 a delegation from the Committee on Petitions, accompanied by some petitioners, met with representatives from the German authorities in Berlin, including Dr. Reinhard Wiesner from the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth and Mr Andreas Hilliger from the Ministry of Education Youth and Sports of the Land Brandenburg, who admitted that certain shortcomings cannot be ruled out in few complex individual cases, but that this is being addressed by the regional governments by way of enhanced training for officials.

At the meeting of the Committee on Petitions of 7 June 2007 the German authorities further explained their position on the matter in the presence of petitioners. Mrs Gilla Schindler from the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth emphasised the integrity of the German system of family law regarding the rights of children and their parents without discrimination based on nationality, while recognising that, in certain specific cases referred to by the petitioners, the Jugendamt officials had fallen short of the necessary standards of professionalism.

At the same meeting the European Commission's representative indicated that this was a complex issue of national law, which nevertheless had possible European implications, and agreed that certain practices of the Jugendamt as described by petitioners could indeed be considered as discriminatory behaviour on the part of its officials.

2. LEGAL FRAMEWORK

The rights of the child are an integral part of European law as stipulated in article 24 of the European Charter of Fundamental Rights. Further, one of the main objectives of the new Brussels II regulation, which entered into force on 1 March 2005, is to ensure that the right of the child to maintain contact with both parents after a divorce, even when the parents live in different Member States, is fully respected.

In cooperation with the Policy Department responsible (Policy Department C - Citizen's Rights and Constitutional Affairs) an internal briefing document on the legal provisions regarding the exercise of parental responsibility in Germany was prepared in order to respond to this situation and clarify the exact legal basis at European and national level¹.

3. DISCRIMINATION ON THE GROUNDS OF NATIONALITY

Many petitioners² state that the problem of discrimination on the grounds of nationality arises out of the procedure adopted by the German Jugendamt, which following separation of the spouses, are discriminating against the non-German spouse in mixed marriages by making it difficult or indeed impossible for that spouse to have contact with his/her child in cases, where only supervised parental access has been awarded. During the meetings the supervisors check whether the parent is talking to the child in German, and in the event that either the child or the parent speaks in a language not understood by the supervisor, they brutally interrupt the conversation.

The officials further threaten non-German parents, that failure to obey their orders will lead to a ban on contact between the parent and the child, and in some instances these threats have been carried out. The petitioners state, that in making their decision known, the Jugendamt uses the argument that "from the professional pedagogical aspect, it is not in the child's interests for meetings with an accompanying official to take place in a foreign language. It is beneficial for the child to develop German as his/her language, since he/she is growing up in this country and is or will be attending school here".

The petitioners have underlined (and specialised evidence confirms,) that in contact with a parent who has communicated with the child in his mother tongue since birth, language plays a fundamental role. On the basis of the language, an emotional bond develops between the child and the non-German parent, and through the medium of this language the bond is progressively nurtured. The bond between the child and his/her parents is the main criterion in defining "the best interest of the child". The desire to speak to one's own child in the mother tongue - also during supervised visits - signifies therefore a desire to maintain an emotional bond with the child.

The petitioners underline that this ban on the use of a language other than German, which is said to be "harmless" in the eyes of the Jugendamt, gives rise to far-reaching consequences. It leads to a loss of the bond between the non-German parent and the child, and can have the effect of a judicial prohibition on contact, should the parent prove "disobedient".

¹ Briefing Note of January 2008 (PE 393.276).

² Petitions 38/2006, 712/2006, 713/2006, 848/2006, 849/2006, 1008/2006 and others.

The petitioners state that even requests by determined parents to arrange meetings at bilingual family service organisations have been rejected, as has the provision of a professional who knows the foreign language and may be present at a meeting between the parent and the child. Jugendamt justifies itself by citing numerous reasons and circumstances, running the gamut from accusing the parents of not making use of their fluent knowledge of German during contact with the child, right through to references to a lack of technical potential that would enable a meeting with a child to take place in the language in question.

The petitioners have also pointed out that in extreme cases, stubbornness on a parent's part leads to the non-German parent being deprived of parental rights. This type of "inhuman" procedure strikes at the core of parents' and children's rights. The petitioners say that the doggedness with which the Jugendamt forces through children's upbringing in German is so implacable that they do not hesitate to violate the principles of non-discrimination where origin and language are concerned. It is therefore Jugendamt, not the parents, whose decisions overlook the best interests of the child.

Other petitioners¹ complain, on a very different note, of the fact that foreign families living temporarily in Germany are not allowed to use home-schooling or distance education, which they regard as discrimination on the ground of nationality. The need for more and better trained researchers throughout the European Research Area is growing, and researchers and other highly skilled professionals whose jobs require frequent moves want naturally to bring their families with them. Their children have educational needs that are not met within the German school system and they are thus seeking educational alternatives, which is regarded as illegal and leads to threats of having the children removed from their homes by the Jugendamt.

4. ALLEGED PHYSICAL OR MENTAL UNFITNESS OF THE PARENT OF BRINGING UP A CHILD

A number of petitioners state, that Jugendamt without earlier warning has removed their children alleging that the parents are either physically or mentally unfit to assume the responsibility of bringing them up. Instead of relying on facts, authorities often base their decisions on subjective opinions and prejudices. This approach is particularly obvious in cases where the diagnosis or the therapy is controversial among experts, such as Lyme disease (borreliosis), Attention Deficit Hyperactivity Disorder (ADHD) or the scientifically very controversial Munchausen syndrome by proxy (MSbP) (Fabricated or induced illness). At the international symposium on "German youth welfare offices (Jugendamt) and the European Convention on Human Rights" in Bamberg on 20 and 21 October 2007² a number of such cases, which have also been the subject of petitions, were discussed³.

One of the cases was referred to the European Court of Human Rights⁴. The Court unanimously held that there had been a violation of Article 8 (rights to respect for family life)

¹ Petitions 477/2007 and 744/2007.

² See: <http://deutsche-jugendamt.blogspot.com/2007/11/bamberg-declaration.html>

³ Sub-petitions registered under petition 38/2006 and petition 151/2007.

⁴ Haase v. Germany (Application no. 11057/02).

of the European Convention on Human Rights, and which under Article 41 of the Convention (just satisfaction) awarded the applicants compensation for the damage suffered and for costs and expenses. The Court also instructed the German authorities to give the children back to the family immediately, but till now only two of the seven children can live home again. One of the children had been told by the Jugendamt, that her parents had died, and one child did later commit suicide.

Another example is a family, which had two of their children removed by the Jugendamt and placed in foster-care. The mother was accused of having MSbP, although the sickness of her two sons (zöliakie and epilepsia) was proved by doctors.

After two years of hart fighting the children could return back to their parents, but one of the sons had been sexual abused during his stay in foster-care.

In her comments to the case referred to in petition 151/2007 during the international symposium in Bamberg, the Australian medical anthropologist Dr. Helen Hayward-Brown said that this was one of the most serious cases of unfounded accusations of having the Munchausen syndrome by proxy, she had encountered in her ten years of scientific work.

5. THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND EU PRINCIPLES ON FUNDAMENTAL RIGHTS

The biggest group of petitioners claim that the German Jugendamt and the social authorities are abusing their state authority in a way, which is contrary to citizens rights and human rights, when dealing with not only non-German parents of bi-national children living in Germany but also with parents outside Germany in regard to cross-border conflict about custody and access rights. Complaints are also concerning refusals of the German authorities to recognize foreign paternity status¹.

Numerous petitioners² maintain that Jugendamt commands excessive power, that it officially serves to protect the youth, but in reality subjects children of single parent mothers under the control of the State, so as to bring them up in the ways dictated by the German administration. They claim that Jugendamt is an institution unheard of in other democratic nations, and that it functions as a kind of guardian administration and protector of German values.

Other petitioners allege that employees of the Jugendamt have the position of "third parent". They are involved in all family law proceedings, and they possess more rights than the biological parents. Those officials are responsible for proposing protective measures to the judge. They see themselves as protectors of the German well-being of the child, where the well-being of the child is to be interpreted in terms of the German nation and protection in terms of security (to protect German values). Petitioners point out that to stand up against officials of that German institution is futile. It may even be dangerous. It is further alleged that they threaten parents subliminally and permanently, with the withdrawal of rights of access or parental custody, and they have the power to carry those threats with, or without, a court decision.

¹ Petition 450/2006 and others.

² "Petition of 10 parents", which has been used as model for a great number of petitions.

A great number of petitioners underline, that in cases of bi-national couples, the Jugendamt is empowered with specific objectives:

- Every effort is to be made in order to prevent the children leaving German territory.
- Sole custody of the children is to be transferred immediately, parental guardianship in the medium term, to the parent who is the German national.
- Children are to be prevented from having any contact to their second culture and language. Access to the non-German parent is to be hindered by means of humiliating measures. National "cleansing" is to be achieved by means of numerous court proceedings. If the foreign parent refuses to accept German rules, measures are implemented to threaten and criminalise that parent.
- To ensure that maintenance/alimony payments are paid in Germany. Outstanding payments are tallied year after year and demanded from the foreign parent, when the legal rights to the children have expired, because they have become adults
- Access of foreign parents to all records and data, which the Jugendamt gathers in secret against them, is to be denied in accordance with the German data protection law.

The petitioners state that Jugendamt is a political institution. Its uncontrolled, arbitrary might and close integration and linkage with the judicial authorities is not compatible with the fundamental rules of universal justice and principles of human rights, and its working principles are based on unilateralism and nationalism, which are not compatible with the spirit of the European Union and the rules that "in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration".

6. QUESTIONS OF FAMILY RIGHTS ARE A EUROPEAN PROBLEM

Two parents whose children disappeared through parental kidnapping together with a great number of parents and representatives for international associations started on 25 April 2008 a walk under the slogan "Access Denied" from the European Parliament in Brussels to the seat in Strasbourg, where they arrived on 21 May. In Strasbourg they met with representatives from the European Parliament and submitted 11206 signatures to Marcin Libicki, chairman of the Committee on Petitions, in support of the "Access denied-petition"¹, with which petitioners protest against the shortcomings of family law as it is applied, not only in Germany but also in other EU member states, including Belgium, France and the Netherlands. Swiss petitioners were also present.

CONCLUSIONS AND RECOMMENDATIONS.

This document draws attention to a significant problem which demands a response from national authorities in the first instance. It is the Member States which is ultimately responsible for issues related to child welfare and have competence through the political

¹ Petitions 519/2008, 1346/2008 and others

system and through the legal channels which are available to all citizens. The European Union also has responsibilities which are clearly defined under the treaties and which establish fundamental principles regarding the respect for the integrity of the person, including of course the most vulnerable. Member States are under a clear obligation to ensure that European citizens can go about their lives without fear of discrimination especially by their national, regional or local public administrations. This requires better oversight, including by elected representatives at all levels, and more stringent safeguards than are currently available when it comes to the question of child welfare and the potential abuse of children's rights or parental rights and responsibilities. Moreover, this is not a recommendation which is aimed at any one Member State, but at all.

There is no doubt at all that each petition received on such matters concerning the German Jugendamt by aggrieved parents constitutes a personal appeal for justice and, at the same time, an expression of acute distress. It is also true that the Petitions Committee has attracted such appeals from parents who have been denied what they feel they should be entitled to by, in particular the Jugendamt, including fair and balanced treatment by officials. It has not received any correspondence from persons who have given an alternative assessment. Neither has the Committee visited the offices of the Jugendamt to verify the facts locally. This is the responsibility of the German authorities.

It would under the circumstances be out of place to criticize or condemn a system of administration of a Member State. At the same time it would be entirely inappropriate not to recognise the fact that there appears to have taken place a very large number of abuses of parental rights as a result of discrimination based on ethnic, national or linguistic criteria which have gone unregulated and apparently unchecked. This has been against the interest of the child in almost all the cases heard by the Petitions Committee. It appears, moreover, to be common practice for parents to be denied the right to speak to their children in their mother tongue, and to make matters worse the impact of this on a child and on his emotional stability is apparently minimised by the authorities responsible according to the testimonies received.

- Clear guidelines and instructions must be circulated to all Jugendamt offices reminding them of their responsibilities and of the fundamental rights of the parents and children they have under their charge. No doubt, for the vast majority of such offices such instructions may be unnecessary as they function already on this basis but manifestly some offices do require such clarification concerning their duties towards all parties..
- All parental languages should be admitted and tolerated without question by the authorities concerned for visiting parents in institutional environments.
- All parents should be informed by Jugendamt services of their rights of appeal against decisions which are taken, and under what conditions appeals may be lodged.
- All member states should encourage greater democratic or parliamentary oversight at national and regional level for child welfare agencies and thus allow citizens the opportunity to seek effective solutions closer to their place of interest.

- Closer Member State bilateral cooperation between child-welfare agencies should be actively encouraged in order to foster better coordination and improved understanding between responsible officials in order to facilitate decision-making by responsible authorities in the best interest of the child.