

## Taking Into Care - In The Child's Best Interest? The German Youth Welfare Office is under criticism from the European Parliament

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### ABSTRACT

**Introduction:** The number of children taken into care by German youth welfare offices has been increasing for years as a result of changes in the law according to publicly known endangerments to child welfare. Due to an increase in petitions from non-German parents to the European Parliament's Petitions Committee against administrative acts that they felt to be arbitrary (e.g. taking into care), the European Parliament repeatedly (2007, 2018, 2022, 2023) dealt with the processes in the German Youth Welfare Office.

**Material and Methods:** Compilation of the documents of the Petitions Committee of the European Parliament in 2007, 2018, 2022, and 2023 on the German Youth Welfare Office. Additional searches in Pubmed, google scholar, and google under the keywords child welfare, the best interest of the child, damage to health through taking into care, harm to children through taking into care, the impact of financial threats to parents to youth welfare, psychological trauma through taking into care by the youth welfare office. Reproduction of the essential questions of the member European Parliament (MEPs) and answers of German authorities and family courts. Structure in: The principle "In the best children's interest" and "child wellbeing (welfare)", legal duties of the youth office, taking into care by youth office, the power of youth office, relationship court youth office, control of the German youth office, costs of the proceedings, guardian ad litem, duties and functions of the court. The answers of the German authorities are summarized in the respective sections, supplemented by relevant literature and personal communications.

**Results:** For years, the German youth welfare office has been criticized for either failing to protect the welfare of the child or protecting it too late. Over the past 20 years or so, changes in the law have led to increasing numbers of childcare takings based on undefined norms of the child's best interests and child welfare. In short: the guardian state is increasingly intervening in the family, which is protected by Article 6 of the Basic Law, with the unclear justification that the parents are overburdened or lacking (proof of) the ability to bring up children, precisely regarding Article 6 invoking the guardian state, and is separating parents from their children without having sufficient scientific knowledge about the consequences of taking the children into care. The families receive high bills for this, disregarding proportionality and exclusion criteria. The possibility of changing something by complaining is small. The responsible community decides on the complaint itself. Transparency is reduced with the exclusion of the public and the rejection of requests to inspect files. This led to the expressed suspicion of arbitrary measures and an increase in petitions to the European Petitions Committee, which has been dealing with the youth welfare office since 2007 and even came to Germany for a "fact-finding visit" in 2022. The questions from the MEPs on the above areas were partly answered incompletely or not at all or contradicted the literature and the evidence. The answers of the German community of responsibility prompted the MEPs to ask further questions (Amendments 2023).

**Conclusion:** It cannot be denied that the answers of the youth welfare office were not very convincing for the MEPs of the petition committee, taking into account the scientific literature and known documents. The lack of transparency (e.g., refusal to inspect files) and agreements reinforced the MEPs' negative impression of the youth welfare office (shadow body, where there is smoke, there is fire), and led to the announcement of further controls by the MEPs.

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## Keywords

Youth Welfare Office, Germany, European Parliament, Petition, Custody, Child Welfare, Best Interest of Child, Discrimination, Taking into care, Child protection, Children's Rights.

## Introduction

### Increase in taking into care by German youth welfare offices

The number of children taken into care by youth welfare offices in Germany has been increasing continuously since 2005. While there were around 25,000 children in 2005, the number rose to almost 50,000 children in 2014. The youth welfare offices announced to the public that the parents are usually overwhelmed with the upbringing of their children. In 2022, the number rose again to 66,400. Some decisions of the authorities are devastating, families are harassed and torn apart by state violence [1,2]. The amendments to the law in 2005 were justified with the creation of a more reliable assessment of the risk situation of children before harm. The advancement of state control involved significant interventions in families, the effectiveness of which was questioned. These interventions were essentially justified by the fact that the parents were overwhelmed, would argue (War of the Roses), neglected, and abused their children. The youth welfare office changed from a "culture of help" and "service orientation" to an "intervening authority that controls the upbringing in and through the family": Deficiencies in the court procedures and the decisions in individual cases are caused by the staffing and burden on the youth welfare offices. The Federal Ministry for Family Affairs and in particular the Federal Minister at the time, Ursula von der Leyen, complained on June 25, 2009, that youth welfare offices are all too often striving to get children out of their previous families and to bring about a separation between parent and child, rather than helping with other means of family support in the first place [3]. Nothing has changed since then, the numbers have continued to rise [4].

## Material and Methods

Collection of the documents of the Petitions Committee of the European Parliament 2007, 2018, 2022, and 2023 on the German Youth Welfare Office is pursued. Additional searches in Pubmed, google scholar, and google under the keywords child welfare, the best interest of the child, damage to health through taking into care, harm to children through taking into care, the impact of financial threats to parents to youth welfare, psychological trauma through taking into care by the youth welfare office. Reproduction of the essential questions of the MEPS and answers from German authorities and family courts. Structure in: The principle "In the best children's interest" and "child wellbeing (welfare)", legal duties of the youth office, taking into care by youth office, the power of youth office, relationship court youth office, control of the German youth office, costs of the proceedings, guardian ad litem, duties and functions of the court. The answers of the German authorities are summarized in the respective sections, supplemented by relevant literature and personal communications.

## Petitions Committee EP 2007

Numerous petitions went to the Petitions Committee of the European Parliament. This made the call for a check on the youth welfare office louder in the European Parliament.

The Petitions Committee of the European Parliament met with German officials in Berlin from March 21 to 23, 2007 to discuss discrimination against non-German parents by the youth welfare office. The petitioners stated that the youth welfare office threatened them with being excluded from contact with the child if they spoke to the child in a language other than German. The German authorities emphasized that the issue of discrimination should not be considered in isolation, but only in the context of the notion of the "best interests of the child". It was pointed out that the measures criticized only relate to a small part of the extensive measures taken by the youth welfare office. Apart from that, custody decisions were made by the family court based on a youth welfare office report. It may be that the non-German parent is disappointed with the court decision, and feels misunderstood by the court and the youth welfare office, for which one understands. After all, the verdict is justified, however, you can appeal the verdict [5].

It should be noted that the term child well-being is described imprecisely and everyone associates it with their ideas of upbringing, that the significance of discrimination is reduced. Finally, it is explained that the independent court decides whether it is in the best interests of the child for the non-German party to receive custody, based on a youth welfare office report. The problems and criticism presented by experts and those affected are not taken into account.

## Resolution EP against the German Youth Welfare Office

On November 29, 2018, the European Parliament passed a resolution against the German Youth Welfare Office. The EP established systematic discrimination, arbitrary measures, a lack of immediate, complete, and clear information about the procedure and its consequences, one-sidedness, and discrimination by the German youth welfare office [6].

## Fact-Finding Visit of the EP Petitions Committee November 2022

The report of the visit by the Petitions Committee on November 3rd and 4th, 2022 states that key recommendations of the decision 5 years ago were not implemented by the German youth welfare office.

The following participants in the mission are named:

Members of the mission: Dolors Montserrat (PPE) (Leader of the mission) Marc Angel (S&D) Kosma Złotowski (ECR) Tatjana Ždanoka (NI) Ex officio Member: Peter Jahr (PPE). The German participants can be found in the mission report.

**MEP Dolors Montserrat Leader of the mission** learned through petitions that Children cannot spend holidays abroad with the non-German parent, children have been taken away without a court

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order, the youth welfare office has only allowed German to be used in the upbringing of the child, the youth welfare office itself decides, even against court orders, whether a German mother should always have custody, whether there is shared custody, and when exactly the youth welfare office will take action. She wanted to know whether only the youth welfare office played the leading role in court proceedings or whether other parties were also asked.

**Marc Angel Vice President MEP** asked whether the youth welfare office always first seeks cooperation with the family before the child is taken away, whether the parents are informed about the basics of the youth welfare office information, and whether they are given access to the files, whether the children are given their lawyer when the parents are in a dispute, whether politicians have control over the youth welfare office and whether there is legal protection against the opinions of the youth welfare office. MEP Marc Angel wanted to know if the youth welfare office sent invoices to the parents concerned. MEP Marc Angel asked about litigation costs and whether lower-income parents get help in family court cases. Marc Angel wanted to know what exactly procedural assistance for the child is, whether they can appeal a court decision, whether both parents must agree to the child's change of nationality, and how much a parent can earn to have a lawyer assigned to them.

Ex-officio member **Peter Jahr MEP** noted that petitioners often report that the youth welfare office is a state within a state and can do whatever it wants. He wanted to know whether it is true that youth welfare offices do not take court decisions into account, whether there is a right to interpreters in court hearings, how the youth welfare offices react when there is an exchange between children and parents in a foreign language in the youth welfare offices, and whether everyone can speak in their mother tongue, whether it is realistic for the youth welfare offices to take children away without reason, and whether foster families can earn a lot of money by taking in children. MEP year wanted to know who controlled the youth welfare office.

**MEP Kosma Zlotowsky** pointed out that several petitions indicated that the family court usually follows the youth welfare office's suggestion. He wanted to know how the best interests of the child are defined, how it is compatible with the best interests of the child when twins are separated, that the courts have the final say, but do not question the opinion of the youth welfare office, i.e. who the youth welfare office reports to.

**MEP Tatjana Zdanoka** asks about the financial budget of foster families and nursing homes, she has indications that financial reasons determine the taking into care and not the best interests of the child, she asked for the numbers of children in foster families and nursing homes. Some of the questions were asked repeatedly; not all questions were answered. In particular, the lack of transparency of the youth welfare office has been criticized. The representatives of the German youth welfare office were repeatedly unable to provide objective data and answers to the questions of the MEPs.

The essential answers of German authorities (ministry, family court, youth welfare offices) to the questions of the MEPs are summarized in the first paragraph under the subheadings followed by a second paragraph discussion concerning the literature [7].

### **The Principle "In the Best Children's Interests" and "Child Well-being (Welfare)"**

The judge, like the youth welfare office, has to consider the "best interests of the child" and the "child's well-being", not the nationality and language of the parents. The "best interests of the child" and the "the child's welfare" are undefined legal concepts that have been substantiated by case law in individual cases. The concept of the well-being of the child is linked to external factors (e.g., a roof over one's head, health insurance, etc.) and the right to non-violence, and the development of an autonomous personality. Another component is physical and psychological integrity and thus protection against inappropriate educational measures and damage to the psyche. The children have a right to school education combined with compulsory schooling, there are obligatory health check-ups for children. All of these characteristics help the judge and the youth welfare office determine whether the child's well-being is at risk. Judges receive regular training to recognize child endangerment. Courts must decide to protect the child when the parents disagree, regardless of language and nationality. There are no known cases in which these principles are not observed or where a different decision is made [7].

The aim of the procedure, which is based on the best interests of the child, is the autonomy and self-determination of the child. Governmental institutions responsible for ensuring children's welfare often create unintended effects that are perceived as tragic. The aim of ensuring the child's well-being is turned on its head by these institutions. Structural difficulties make it difficult to ensure the welfare of the child through the available legal means. Legal procedures and social regulations, which may be beneficial to the child's well-being are not taken into account or the dangers of existing regulations are ignored. The institutions concerned with protecting the best interests of the child act as if there were no "gap between the normative goal of the best interests of the child principle and its institutional design and implementation". The normative core of the concept of the best interests of the child causes the exact opposite through the actions of the authorities: decisions and interventions are misguided and harmful if they produce the opposite of the child's best interests generally accepted by the institutions. Sutterlüty (2017) describes the process that a "normative achievement ... produces consequences that are both unintended and - measured against the underlying norm (note: here the child's welfare) undesirable" as a "paradoxical effect". And Sutterlüty further formulates: "If one assumes that the constitutional norms described above find broad approval in society - i.e. that a child's right to physical integrity and the development of his personality are rights worthy of protection - a normative paradox would arise if the procedures and decisions of family courts and the associated interventions by the youth welfare offices lead to a new threat or damage to the child

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concerned. The normative intention would then be distorted or, in extreme cases, turned upside down.” This makes it possible for “the welfare of the child ... to be characterized as an indefinite legal term or as a blanket term, ... and from an epistemological point of view leads to a “definition disaster” [8,9]. Statutory regulations are intended to secure the application of taking into care and enable the procedures to be monitored. Psychologists/psychiatrists are supposed to help and, by evaluating parents and children, facilitate and/or relieve the youth welfare office/court of the decision in custody and custody proceedings in a way that is as unassailable as possible. The guiding principle is to act “in the best interests of the child”. “Child welfare” and in the “best interests of the child” are vague norms that lead to courts making individual decisions on taking care of the future based on the information provided by the youth welfare office. Test methods are used that are unsuitable, unscientific, and questionable. Important questions as to whether and how children should be asked about this or what damage is caused by invasive interventions are not considered [10]. According to the professor of law, Andrea Charlow, the term “in the best interests of the child” is of the greatest importance for decisions on taking children into care. Nevertheless, as early as 1987, she found that in practice the well-being of the parents is taken into account by the very personal views of those involved in the procedure. Forecasts are made without any scientific basis, and often even contrary to the scientific standard and the principle of equality of the constitution. According to Professor Charlow, the term is misused by employees of the youth welfare office as well as by judges and parents to assert their interests [11]. “It gives too much space to the judge with his or her personal view of parenting and the family, with the result that an unpredictability arises that fuels conflict and harms children,” says Katharine T Bartlett, professor of law [12]. There is evidence of misconduct and non-compliance concerning the above principles. It is hard to believe that caseworkers of the youth welfare office do not recognize that their intervention in the best interest of the child is responsible for the opposite situation causing harm to the child.

### **Legal Duties of the Youth Welfare Office**

The youth welfare office offers parents advice if the child's well-being is not at risk and can help to obtain maintenance for the child. According to the law, the youth welfare offices are obliged to help families, protect children, and find amicable solutions, but also to assist in criminal proceedings. In the case of custody proceedings, the youth welfare office is informed and heard by the family court. If the youth welfare office has no information about the separating couple, the youth welfare office does nothing of its own accord. The Youth Welfare Office does not monitor the execution of court orders by the parents unless requested to do so by the court. Employees of the youth welfare office determine whether the child's well-being is at risk and talk to the family about it according to the four-eyes principle. If the parents agree, a protection plan is drawn up with the parents, which is continuously evaluated. If the parents are uncooperative and the child's protection is at risk (if the parents are drug addicts e.g.), if the danger is imminent, acute, and persistent, then the children can

be placed in care. First, the youth welfare office asks the parents if they agree. If this is not the case, the youth welfare office makes an application to the family court. Despite discussions with parents offers of specialized support, and advice continue unabated. Even if cases of child endangerment increase due to greater public attention and tips from citizens, only a fraction of children have to be separated from their parents as a last resort, with the measure subject to judicial control. Children up to the age of 12 are placed in foster families and children over 12 are in nursing homes. The youth welfare office always tries to enable parents to have contact with the children, with supervised handling when it comes to high-risk cases. The youth welfare office uses a pool of interpreters. As an educational specialist, the youth welfare office offers preventive help to enable good living conditions for families and their children. This includes financial support and assistance in enforcing child support. Based on decisions of the European Court of Justice and taking into account the recognized European values and principles, the employees receive guidelines for determining the center of life and determining the right of residence for the child. This does not include the choice of school, which is made by the court. The youth welfare office offers contact persons who accompany parents and children. It happens when there is a lack of skilled workers, and children from a family are separated or housed far away. There is a central contact point for cross-border family conflicts and mediation (ZAnK) for support in family conflicts. Youth welfare offices must participate in statistical data collection. Every federal state is now legally obliged to create an ombudsman for children [7].

The problems with the implementation of youth welfare services of Bavarian State Youth Welfare Office guidelines, which were based on the statutory tasks of youth welfare services, have already been mentioned. There is evidence of misconduct and non-compliance concerning the above-outlined legal duties of the youth welfare office [13]. While it is widely recognized that parents, foster parents, and the child all play a role in explaining child welfare outcomes, the role played by the youth welfare officer in influencing child welfare outcomes often remains in the background. The effects of clerks on services and sanctions are usually underestimated. The outcomes of the child welfare system are primarily influenced by the caseworkers. The exact nature and extent are still unclear. Characteristics such as gender, ethnicity, age, empathy, type of employee training and monitoring, and organizational culture are decisive for the success of youth welfare measures [14]. The youth welfare office should protect the child from harm to the child and should support the court in its decision-making in the event of manifest threats to the child's welfare by visiting the child and recording the child's environment. It is incomprehensible that this does not happen and that a youth welfare office refuses to deal with third parties who have described in writing the endangerment of children, that a youth welfare office fails to do so despite requests from state parties to child protection, that political influence is not made transparent. Even the obvious necessary treatment of a child after separation from parents may not be guaranteed.

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### **Taking Into Care by the Youth Welfare Office**

Children can only be taken from their families if the children are in danger. This intervention must be confirmed by a judge, the youth welfare office is bound by the law and court decisions. The aim is to make the family functional again. If a child is placed outside the family, the family will support getting the child back. Otherwise, long-term accommodation would result. The principle of proportionality and the best interests of the child should be observed. The youth welfare office intervenes when it is contacted by a parent and can give educational advice in this case. The youth welfare office can be approached if a child is endangered by neighbors, daycare, teachers, etc. The procedure of the youth welfare office becomes difficult if the family does not open the door or refuses to speak to the employee of the youth welfare office. In the worst case, and if there is reasonable suspicion that the child is endangered, the youth welfare office can enter the apartment with the police. However, children are not simply taken from their families. First, a support plan is developed and other experts are consulted to help the family. Taking into care is the last resort. The law authorizes the youth welfare office to take care of a child when the child's life is in danger. The youth welfare office can only take children into care if there is an imminent danger, if children could starve or freeze to death, or because of child sexual abuse. The procedure is different if the youth welfare office perceives a risk for the child (notification by doctor or school) and a court decision is required. In these proceedings, the youth welfare office plays a larger role, but the court decides independently. The guardian at litem and other parties are heard. In situations where the youth welfare office needs to make a quick decision to prevent a child from being endangered, the youth welfare office can take the child into care. If the parents disagree with the youth welfare office about the future of the child, the family court intervenes immediately and decides. The placement of a child is the last resort and this is repeatedly emphasized. It is very rare for children placed in out-of-home care to return to their parents, as they are often unable to take care of child protection. It is also common for children to go to the youth welfare office and ask to be removed from their families, especially girls with a migration background "who want a free life". The youth welfare office is committed to Article 6 of the Basic Law in its activities and has to monitor compliance with Article 6 of the Basic Law in the upbringing of the children by the parents (State Guard Office). Children are separated from their parents only in cases of danger to the child's welfare. Before the child is taken into care, the youth welfare office offers help to prevent children from being endangered. The decision to monitor a family against their will and/or to separate the child from the parents can only be made when other supports have failed. German case law has specified three criteria for endangering the child's well-being: current danger, substantial and future danger, as well as sufficient certainty in the determination of the danger by the youth welfare office. This shows that in each case, the risk must be assessed following the criteria of case law. The youth welfare office has to get a comprehensive impression of the child's home environment through the transparent involvement of the parents, home visits, and intensive background research, among other

options. The aim is to ban the danger for the child and to work together with the parents in an amicable manner. The law stipulates that several employees of the youth welfare office always work on a case. A supervisor must be involved in the case of taking into care. The Youth Welfare Office can take temporary measures to protect the child, as well as taking them into care, but if the parents do not agree, they must call the family court immediately. Permanent decisions such as the long-term separation of a child from its parents are made by the family court. While the parents are usually spoken to beforehand, there are cases where it would be too dangerous for the child to speak to the parents before the children are taken into care. The youth welfare office always acts correctly and uses its experience. The employees of the youth welfare office are even criminally liable if they abuse their power. Any decision to take into care must be confirmed by the judge. In the situations also described in the Petitions Committee, which are highly sensitive and/or when the youth welfare office has to deal with very personal situations, one is not surprised at the different interpretations of the cases and the decisions related to them. The youth welfare office has to inform the court immediately if the youth welfare office separates a child from the parents. A hearing must then take place within one month. Parents are deprived of the right to contact their children if they have caused psychological and physical harm to the child. The risk of endangering the child's well-being is usually examined by an expert, taking into account damage to the child's well-being over a longer period. Assumptions are not sufficient for taking into care [7].

Reasons given by the Youth Welfare Office in 2008 for the protective measure: neglect (4,017 cases throughout Germany, 366 cases in Bavaria), signs of abuse (3,066 cases across Germany, 331 cases in Bavaria), or signs of sexual abuse, in 628 cases across Germany and 69 cases in Bavaria. Neglect in particular has recently become more important, also in Germany: 65.1% of foster children are neglected in some way, and for 50% of them neglect is the main risk category [15]. Children were taken into care by the youth welfare office in 2009/2010 mainly because the parents were overwhelmed (in 44 percent of all cases) and because of relationship problems (22 percent), mostly because the parents' relationships had failed. Child neglect (13 percent) or signs of abuse (10 percent) are not the "main triggers" for youth welfare agency intervention. Laws and policies of [16] permissive parenting in Germany, including the provisional withdrawal of parental custody in conjunction with German youth welfare agency taking into care, appear to unveil cases of serious child abuse in Germany from obscurity to bright light, but may not have a significant impact on the control and reduction of such cases. In 2000, the federal government enforced prohibition laws in the German civil and social code to preventively protect children from violence. The cost of litigation, including the ongoing monitoring of parents' compliance with these laws, was €12.6 billion in 2018, a 146% increase since 2001. The number of withdrawals of parental authority rose by 65% to around 11,000 cases in the same period. The number of children taken into preventive custody on suspicion of child maltreatment, abuse, or neglect increased by 29% in 2018 to 40,379 cases. However,

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the actual number of cases of serious child abuse in Germany did not decrease as expected but increased by 39% to almost 3,500 reported cases in 2018. In a resolution, the European Parliament drew attention to the large number of petitions received on the role of the German youth welfare office in alleged discrimination. Parents in Germany can be inappropriately criminalized by preventive interference with basic parental rights. Parents were deprived of the freedom to choose the most appropriate style of upbringing [17]. Therefore, according to a decision by the Federal Constitutional Court, parents do not have to “prove” their ability to bring up children positively; there has to be sufficient certainty that there is a serious and damaging educational failure for a separation [18]. Section 1666 of the German Civil Code (BGB) is a preventive standard (avoidance of foreseeable damage). Endangering the welfare of children is not an observable fact in itself, but a legal and normative construct that serves to legitimize state intervention and as a benchmark in court proceedings for the necessity of court action. It is a legal construct through the application of the vague legal terms of Section 8a German Social Code (SGB) VIII and Section 1666 BGB to specific individual cases. The legal terms must be filled with the facts from the individual cases; it is a normative construct through the incorporation of norms and values of social workers, judges, guidance ad litem, and experts into the assessment of the best interests of the child. If evaluation processes about the life situation of children and the upbringing behavior of parents become necessary and if there are no objective standards for this, then it is important to consider how and on what basis such evaluations come about. Judges are dependent on socio-pedagogical and psychological evaluation processes: the employees of the youth welfare office report that the judges have different requirements for the drafting of these reports. The actions of the youth welfare offices when children are at risk have changed in the last 20 years, especially with the introduction of Section 8a of the VIII Book of the Social Code. If parents do not cooperate, do not comply with the requirements, or are not able to ward off the dangers to their child, the youth welfare office is required to appeal to the court according to § 8a SGB VIII. The time and form of court intervention are subject to the range of actions and decisions taken by the respective employee of the youth welfare office. The introduction of the discussion of a “possible endangerment of the child’s well-being” in 2008 in the course of the law to facilitate family court measures, which was adopted in § 157 Family Law (FamFG) (discussion of endangerment of the child’s well-being, temporary injunction), the legal options for the action of the courts and the youth welfare offices have been expanded. For the youth welfare office, there is a broadening range of justifications and times for appealing to the court since the endangerment does not necessarily have to be proven, but a “possible” endangerment can now be discussed in court. Part of it is about freeing up deadlocked communication by bringing in the judge as an external agent to use the authority of the court to convince the family to seek the help necessary to avert danger. If this is unsuccessful and the youth welfare office believes that there is a risk that can be averted by providing help with bringing up the child, the court – after consulting the youth welfare office to confirm that it is willing to

provide such assistance – has the option of ordering the family to make use of this assistance. If the youth welfare office considers the possibilities of commands and prohibitions against the family to be insufficient, the youth welfare office will press for a new regulation of custody by the court (withdrawal of custody and transfer to guardians/carers). The justifications for involving the court cannot be derived from the life situation of the families, but are aimed at supporting and safeguarding the youth welfare office’s activities. The instance with authority expands the range of activities of youth welfare, which is characterized by voluntariness and the need for negotiation, to include the dimension of judicial decision-making power. Early involvement is used by many youth welfare professionals to secure their actions and decisions and to share responsibilities with another authority [19,20]. There is evidence of misconduct and non-compliance concerning the regulations presented by German authorities (e.g., support, proportionality, children simply taking out their family, immediate intervention of the court, criteria of case law, home visit, working together amicably, liability of employees of youth welfare office, medical treatment, hearing within one month, assumptions on the risk of endangerment, intervention confirmed by informed judge, respect for child).

### **Effects of Taking into Care of Children**

It is well known that taking into care is stressful for a child. Professionals in care facilities should be sensitized to recognize specific strains to initiate urgently needed care. The children and adolescents who are often under great strain and taken into care have a special need for care and treatment, which can only be implemented in an interdisciplinary manner [21]. There are 29 studies (1960-1992) on the effects of child care outside the home on adult self-care, adjustment, family and social support, and personal well-being. The results suggest that adults placed in out-of-home care performed worse in school compared to those who did not receive out-of-home care; higher rates of school dropout, public support, homelessness, arrest, and chemical addiction, lower marriage rates, and poorer mental and physical health. Factors associated with outcomes include the type of placement, reason for admission, age at placement and discharge, number of placements, length of care, predisposition, occupation of the case worker, and contact and proximity to birth parents and foster families [22]. The notion of co-traumatization refers to a case understanding that recognizes that stresses of traumatic potential affect children and parents equally. This means that the parents’ helplessness is the result of a co-traumatic process in the parent-child relationship and the above aspects of parental helplessness represent the trauma-compensatory part of the symptoms of a post-traumatic stress disorder. Because the difficulties experienced in the relationship create traumatic stress for the parents, which can be compared to an existential threat. It arises for the parents from the actual or threatened loss of a child, the existential threat to the child itself, the experienced failure of the child’s development, and the experienced failure of the parental relationship with the child [23,24]. The disclosure of domestic violence or sexual abuse must be improved through structural measures and improving the

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knowledge of the professionals involved [25]. By 2021, there still is a lack of evidence-based guidelines for surveys and decisions on children traumatized by abuse to proceed in a child-centered, legal, gender-oriented, ethical principles and human rights-observing manner to enable healing of the traumatic changes [26]. Studies are required to assess the transition processes and results of young people after leaving the home to better understand general care. From an economic and social justice perspective, it is imperative that youth in care experience secure and sustained networks of support so that they can access the education, employment, housing, income, and community resources needed to make the transition to adulthood [27]. Raising children is, in fact, increasingly a public matter. Child and youth welfare is at the center of an area of tension between strengthening, promoting, and protecting the autonomy of children, young people, and parents on the one hand and the implementation of the state guardianship and social control needs on the other. Nationwide, developments in child and youth welfare are based on surveys by the German Youth Institute which above all relies on survey answers from the youth welfare offices [28]. Family resources and support related to the child's needs are crucial to the reintegration process. Case studies from the families of individual children may be central to our understanding of these processes [29]. Chronic school absenteeism and frequent school transfers, particularly among younger children, may be precursors to the high rates of school failure and subsequent school dropout among adolescents in foster care. The relationship between caregiving experiences and absenteeism and school transfers has not been well studied [30]. Children in out-of-home care had higher levels of behavioral problems and school dropouts than children with no history of out-of-home care. It was shown that maltreatment has mediating effects on the relationship between out-of-home care and children's well-being at school [31]. After a long time in care, the question arises as to whether family reunification can still be seen as a goal worth striving for. It is argued that the family situation that originally led to the placement may have changed little or not at all. Family dynamics may have changed during the child's absence, making adjustment difficult. The 20% of children in non-family foster families who are placed with their foster parents can be considered successful, according to surveys on the youth welfare office. For children who were younger at admission and in cases of loss of parental custody, the length of stay in non-family foster care increases significantly. The probability of cohabitation with the family of origin or with relatives is lower than with other types of exit if custody was withdrawn in the past, and the child was placed outside the home before the current care time [32]. The turnover rates of childcare staff in private and public childcare institutions are worrying. Although the causes of childcare workforce turnover have been extensively researched, empirical studies on the effects of turnover on children's outcomes are scarce. Additionally, the voices and experiences of youth within the system have been largely overlooked [33]. High turnover of clerks has been identified as a factor in poor child welfare outcomes. However, there is almost no empirical research that has examined the relationship between clerk turnover and youth outcomes in child welfare systems, and

there is a large knowledge gap on whether and how clerk turnover is related to youth outcomes [34]. There is sufficient evidence that taking a child into care leads to psychological traumatization, which can result in the child becoming unable to attend school and work if contact with unencumbered parents, which reduces traumatization, is refused despite the child's wish, and treatment by the youth welfare office is not made possible despite experts pointing out a trauma that requires treatment. It is noteworthy that despite an increase in the number of children being taken into care since 2005, the youth welfare office has no specific scientific knowledge of the long-term (negative) effects of the most severe intervention by youth welfare, taking into care. A former manager of the youth welfare office, who worked nationally, said that this is "too expensive" (personal communication).

### **The Power of the Youth Office**

The youth welfare office is part of the public administration and is bound by the law, as is the case for all public administrations. Claims made today must be verified on a case-by-case basis. The youth welfare office has to accept and implement court decisions. If an individual is convinced that court decisions have not been respected, they can return to the court. The youth welfare office has no power to decide about school and holidays, the family court alone does that. The youth welfare office alone is entitled to advise the parents. Parents can also appeal against court decisions. The youth welfare office did not have more powers than all other parties involved in the procedure. In addition, the youth welfare office cannot decide on a child's school. This is a decision made by the parent who has been given custody of the child. In the course of the hearings, it was found that the interventions of the German youth welfare offices often go too far. This was not disputed and it was acknowledged that very few children go back to their parents. The same applies to the responsibility of individual employees towards their legal hierarchy in their administrative authority. The guardianship is suspended until the court decides, but in urgent cases, the youth welfare office can decide. It was expressed that one does not feel that the youth welfare office is abusing its 'powers'. One does not believe that foreigners are discriminated against, and one cannot imagine that the youth welfare office treats parents differently. Youth welfare office employees and more than half of the people involved in custody procedures have a migration background. One could not accept the assumption that German parents are given preference over foreign parents. Youth welfare workers would neither favor nor discriminate against parents. Whether the youth welfare offices are mainly committed to German citizens could not be answered due to a lack of statistics [7].

There is ample evidence that in reports to family court officials are putting the custody battle or "War of the Roses" at the forefront of the proceedings and pretending allegations of abuse are false or unfounded. In addition, employees of the youth welfare office make it clear that they are opposed to legal representation. This goes so far that lawyers who are aware of this recommend their clients to keep the contact a secret for the time being. In doing so, employees are putting the best interests of the child aside [35]. However, the

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application of the child welfare standard should help to overcome resistance from parents towards the youth welfare office and, if necessary, to remove existing obstacles in the cooperation between the youth welfare office and parents with the help of the court. The authority of the court is used where the persuasiveness of the youth welfare office concerning the need for help reaches its limits and thus also affects the principle of voluntariness, negotiation, and the right to wish and vote laid out in § 36 SGB VIII. With the discussion of child endangerment, the judge is brought into play in his role as an authority figure. This authority is not based on a technical basis, but solely on the judge's judicial decision-making power over interference with parental custody. With the judge, someone comes into play who is endowed with power. Both the youth welfare office employees and the judges repeatedly state that exerting pressure on the parents is the central "leitmotif" of the (early) discussion of a possible risk. It is made clear to parents that the youth welfare office determines everything from school, and medical care, to the apartment and contact with the child as well as holidays - with and without a custody decision since the youth welfare office can intervene at any time as long as the child is not of legal age. This often happens without the specialists being able to name a specific risk. The court is involved to convince parents, even if they are below a risk threshold that would justify an intervention in custody, to take advantage of parenting assistance and to explain the court's options for intervening if the child's situation is suspected to deteriorate. This is intended to increase the pressure on parents to accept help. The high definition and interpretation power of the youth welfare office is enriched here with the very high decision-making and enforcement power of the court [20]. In this context, reports on the ethical framework of the profession of youth welfare office should not be overlooked. Violations of professional ethics related to violence and abuse toward clients occur in daily practice [36]. Gender sensitivity is under-recognized in procedures involving children [37]. Professionals should be aware of the adverse effects of victim blaming and internalized stigma on post-traumatic symptoms [38]. The report by lawyer Rainer Bohm "Caution Youth Welfare Office: Child Welfare Endangerment" of February 10, 2021, shows as an example what effects the use of the standard child welfare endangerment by youth welfare offices can have. "But in less than 20% of those taken into care by the youth welfare office, there is only a suspicion of violence or abuse. Instead, in the overwhelming majority of cases, the children are torn from their families because, in the opinion of the youth welfare office, the parents are overwhelmed or simply not suitable for their upbringing. Everything can be justified with "child endangerment". With such a wording requirement, our constitutional state leaves the path of predictable legal certainty and enters the area of arbitrariness! For the most caring parents, professional support is needed from the first contact with the youth welfare office. The youth welfare office has the option at any time, without a judge examining or assessing the suspicions, to take the children away and place them with someone else. For the suspicion of endangering the child's well-being and the child being taken into care, futile reasons such as the lack of proof of the child's ability to bring up children are sufficient. The youth welfare office creates facts by removing the children and then applies to

the responsible family court for the withdrawal of parental custody or a part of it. The children are severely insecure and traumatized by the coercive measure and the change in their environment. During this time, the youth welfare offices decide how often and how (alone or under supervision) the parents are still allowed to see their children. Their requests for short-term regular contact with the child are rejected with standard formulations. Criminals are granted more rights in criminal law than innocent citizens with their children, for whom the mere suspicion of "endangering the welfare of children" is often sufficient" [39]. There is evidence that the youth welfare office is a powerful player (e.g., return to court, case-by-case evaluation, the decision on school, discrimination, or favor of parents) who determines the fate of the child without - apart from a few exceptions - bearing the responsibility for wrong decisions that damage the child's development.

### **Relationship Court Youth Office**

The family court hears the youth welfare office based on legal provisions. Usually, the youth welfare office only observes the family and creates a report in disputed cases. The youth welfare office is not involved in every procedure, for example not in the case of an amicable divorce. If a child is at risk, the youth welfare office must be involved. The question of the relationship between the courts and the youth welfare office could not be clarified in the hearing by the MEPS. This also depends on the qualifications and experience of the judges - if they have attended special training. If the ultimate goal is child protection and a good relationship with the parents, this must lead to a critical exchange with the youth welfare office. The judge's approach is different from that of the youth welfare office since the judge must take into account the fundamental rights of parents and children. Judges are not obliged to confirm the measures taken by the youth welfare office. The youth welfare office is dependent on the courts since it needs the decisions of the court for its measures. One does not have the impression that the court only accepts a copy of the youth welfare office reports/notes, but one cannot say whether this is generally the case. Parents can divorce without involving the youth welfare office. The court is obliged to inform the youth welfare office in custody cases, while the youth welfare office clarifies and informs the court of family findings. If a custody application goes to a court and concerns a minor, the youth welfare office is automatically informed. The youth welfare office decides on the extent of its participation in each case. No report or recommendation by the Youth Welfare Office is binding on judges. One could not imagine how the youth welfare office could put pressure on a judge. One cannot think of a single case where someone tried to put pressure on a judge personally. The youth welfare office is "just a piece of the mosaic" [7].

In the discussion about the interaction of youth welfare offices, courts, and legal guardians, the concept of the community of responsibility appears more frequently - a concept that arose in the course of the specialist discussions on child protection and the introduction of Section 8a of the VIII Book of the Social Code. All three actors (e.g., judges, guardians ad litem, social worker of the youth office) maintain early and uncomplicated contacts in



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proceedings involving endangerment of the child's welfare, which begin in the run-up to the first appointment and can take on an informal character. If it was already established in an earlier study that informal decisions are made between the youth welfare office and the court in the run-up to the initiated proceedings, then with the increase in early reports by the youth welfare office to discuss a "possible" endangerment, the court, youth welfare office, and guardian ad litem are moving even closer together. It is not without reason that some of the affected parents feel they are a powerful unit. Since the judges have decision-making power, their action orientations have a particularly strong influence on the procedure. Ultimately, however, the moderating and mediating role of the judges is fragile because behind it is their fundamental decision-making power to withdraw custody rights, which they refer to when it becomes necessary in individual cases. On the other hand, for the autonomously oriented judges, the duty to investigate is in the foreground, they have a rather critical distance from the youth welfare offices. Overall, the interaction points to the intensification and dominance of corporate strategies of the three professional actors examined, partly neglecting the neutrality and independence of the respective task perception. The concept of the community of responsibility is not emphasized in public, however, any kind of alliance is often legitimized with the well-being of the child. If action is to be taken in the interests of the best interests of the child, the institutional actors involved should be more aware of the dangers of forming coalitions of any kind, especially the sometimes self-evident exclusion of parents in advance. They seem to rely on the fact that taking sides with children in an interdisciplinary manner makes them less susceptible to wrong child protection decisions. In the heat of the moment or in the face of extremely complicated family circumstances, a lack of distance arises. However, the already powerful alliance of institutional actors is reinforced by non-transparent agreements in the run-up to the court date. This means that principles such as openness, proportionality, and neutrality, which are intended to guarantee procedural fairness, are in question in proceedings involving a threat to the welfare of children [20]. There is evidence that the court may depend on the support of the youth welfare office and that the ultimate goal may be the self-protection of the case worker [40].

### **Control of the German Youth Welfare Office**

The family court determines whether the measures taken by the youth welfare office are justified. Measures taken by the youth welfare office are administrative acts that can be reviewed by the administrative court. The administrative court can be called upon to determine whether the youth welfare office acted legally correctly. In this way, two courts can be appealed to, directly and indirectly, to have the youth welfare office check the taking into care. There are several levels of control. The youth welfare office is required to respond to petitions in the state parliament of a German federal state. The Ministry of Social Affairs, as the legal supervisory authority, confirms whether the law has been observed. The youth welfare office is controlled by regional bodies concerning compliance with the laws, with the family ministry

being the highest level of control (official supervision). The youth welfare office is subject to sufficient control bodies [7].

In connection with the expansion of the discussions according to § 157 FamFG, the significant expansion of commandments and prohibitions can also be seen as a court decision. Concerning the burden on families, the question arises to what extent the requirements and the basic idea of SGB VIII are counteracted by this. This applies in particular to ambulatory help that penetrates the everyday life of families and tries to bring about changes in the educational situation of the children. In connection with the court proceedings, the role of the court as a review and control body for the administrative actions of the youth welfare office is less frequently addressed by the actors interviewed. Is it justified if a youth welfare office does not submit the relevant files of a taking into care that violates the norms either to the family court that decides on custody or to the administrative court that judges the legality of the taking into care? Is it possible that despite evidence of file manipulation, refusal of legal representation of the child in criminal proceedings by the youth welfare office, or denial of the child's legal protection rights, access to files is denied? There is evidence that this happens in reality. Ultimately, interventions in custody can only be justified if the possibilities for action aimed at voluntary use by youth welfare – not just by the specific youth welfare office – have been exhausted. This would be equivalent to a review in a court proceeding. However, the way the court deals with the youth welfare office, particularly in the context of § 157 FamFG, is characterized by a largely corporate basic understanding in which the previous actions of the youth welfare office are not put to the test, but rather the joint influence on the behavior of the parents is in the foreground [20]. There is no control without full access to the case charts of the youth welfare office to the courts and parties or the rejection of a request for transparency. The non-public proceedings may be harmful to child welfare (paradox norm). Every lawyer knows that according to changes in the system the theoretical possibilities in an appeal to change a previous court order a slim. A change in the system seems to be obvious resulting in a reduction of procedural rights in family court procedures.

### **Costs of the Process**

Regarding the question about the bills from the youth welfare office for taking a child into care/out-of-home care, the answers remained vague. That would depend on the income of the parents, whether they have to pay the bill to the youth welfare office. One could expect that parents with a certain income contribute to the accommodation costs. Since it is a question of municipal expenditure and financing, municipal support is limited and the principle of proportionality must be observed for the measure. That's why you can only commission certain service providers. Foster families would not earn any money with it, they only receive grants to cover the cost of living. Legal aid is available for the majority of family court proceedings; the procedures are therefore free of charge. In cases where no legal aid is possible, there is a deferral of payment. Interpreters are paid by the court. Legal aid can be applied for, so the procedure is completely free of charge [7].

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Financial stress is detrimental to children's welfare [41]. Conflicts about custody and taking into care, as well as financial burdens, are a problem for former spouses and also society, even if the parents are unmistakably accused in the family court proceedings. Custody should be based on which parent is more altruistically invested in the child than in their material interests [42]. The problems are compounded by a system that aims to make the best possible decision in every case but instead leaves parents with direct responsibility for the child subject to delays, injustices, and interventions so intolerable that they bring even more misery to the entire family court process than already exists. These delays, injustices, and interferences encourage decisions that effectively circumvent the system of fair reconciliation in the best interest of the child. A parent who is concerned about paying as little child support as possible can use the threat of litigation, as well as the pursuit of litigation that places costs on the parent caring for the child, as leverage to achieve their child-care goals. This may go as far as the expropriation of home ownership, poverty, and the child's inability to work or attend school as a result of decisions by the youth welfare office that disregard laws and case law as well as recognized norms [43]. On June 7, 2012, Frontal 21 reported on ZDF: according to a relaunch not rejected by the ZDF. German youth welfare is profit-oriented. There is nothing in the law that says youth welfare should be economically oriented. "That's it and this system feeds itself, as each youth welfare office can decide whether it needs to intervene." Not only profit-oriented companies are involved in ensuring the child's well-being, but all those involved in the process, according to a contribution on the German youth welfare profit orientation in Frontal 21 in the second German television channel (ZDF) not rejected by the ZDF Frontal 21, secure their job and income by identifying a need. The children's and parents' cries for help are dismissed as "crazy, conspiracy theory, mental illness" [44]. According to the above findings, can it be possible that decisions by the youth welfare office that disregard norms lead to numerous other inevitable family court proceedings to protect and safeguard the interests of a child that are worthy of protection, that the youth welfare office issues high bills regardless of the threat to material existence and regardless of the causes, and that the decisions of the youth welfare office inevitably result in serious financial burdens being declared "private" by state authorities? The answer is yes indeed. The procedures are for most of the parents not free of charge according to the court regulations on legal aid (Prozesskostenhilfe). The costs of such forced "family procedures" may sum up to a high six-figure cost including five-figure allowances for foster families per month for private partners of the youth welfare office. The impression is built up that these procedures are problematic only for a minority, which does not correspond to the reality in Germany.

### **Guardians Ad Litem**

The children would have a legal counsel who would represent only the interests of the child in the court proceedings. The guardian ad litem is always appointed by the court without any connection with the youth welfare office. The guardian speaks to

the child and parents and sends a report to the court. This is the case when the parents want a court decision. The most suitable procedural assistant is selected by the court from a pool based on his or her professional qualifications. The Procedural Counselor Act has changed since 1 January 2023, now the qualifications of the Procedural Counselor representing a child's interests are clearly defined to ensure that they are highly experienced and receive regular training. The procedural assistant makes his recommendation without consulting the youth welfare office [7].

The relationship between the judge and the guardian ad litem is generally uncomplicated, which is mainly because the judges can choose the guardians themselves. From the procedural counselor's point of view, this is not seen as a specific form of dependency. The order is justified with the good quality of the own work and the good cooperation. Few question critically how much a guardian can challenge even a judge's views on the child's affairs without risking being struck off their lists. In the course of such friction, the well-being of the child sometimes threatens to slip out of the actors' field of vision [20].

### **Duties and Functions of the Court**

The family court decides independently how much time a child spends with one parent and takes advice from the youth welfare office. The court does not decide on the language of the child, but only with which parent the child is staying. The parent with sole custody decides on the school. If, exceptionally, the Child Protection Court decides that a child cannot be alone with a parent, then the court-appointed custodial supervisor must understand what is being discussed with the child to ensure that the child is not being manipulated by the parents. This is important because the parents are required by law not to speak badly of one another. Parents can meet with the child abroad, provided the court has not determined that the child's best interests are at risk. If a parent has not had contact with the child for several years, the court can decide that contact should be carefully restored. Shared custody has existed for 20 years. There is a tendency to give more rights to the parent who has custody of the child. In addition, judges may obtain opinions from outside experts on custody. If a court decides that a child cannot see a parent, at home or abroad, for many years, there must be serious reasons. There are clear legal bases for the exclusion of access and contact blocking if the child's well-being is endangered. Contact and holidays are decided by the family court. The right of contact must be clarified within four weeks according to the statutory provisions. Concerning custody rights in the event of divorce, a change can only be made by the family court at the request of the parents. This also applies to parents' visitation rights. The youth welfare office does not act independently and is not involved unconditionally. If an application is made, the court will ask the youth welfare office about its findings on the family. This is part of the judicial duty to investigate. This gives the youth welfare office no formal role in the process. If the parents do not accept the youth welfare office's offer of advice and support, the court will accept this without any disadvantage for the parents. There is no obligation for parents to contact the youth welfare

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office in the event of a separation. Visitation rights are decided independently of nationality. The court acts independently; when the welfare of the child is at risk. Concerning the child's age at a hearing, the law requires the judge to make his impression if the child's well-being is at risk. This is done on an informal basis rather than a formal hearing with children, sometimes as young as three, without creating too much stress by asking questions. Older children are asked about personal wishes and needs. One cannot imagine that a court decision cannot be questioned. In any case, the recommendations of the youth welfare office are not binding for the court. Court decisions can of course be made against the opinion of the youth welfare office. Guardianship and custody proceedings allow the following procedures 1. The procedure is officially carried out by the court to protect the child based on information from doctors, childcare workers, or the youth welfare office on child welfare. The Youth Welfare Office is an obligatory participant in these cases, giving its opinion and recommendations to the court. All parties involved (parents, child, depending on age, guardian ad litem) must be heard within four weeks 2. In the event of a conflict between the parents, the case will only go to court if one of the parents requests it. The youth welfare office is not necessarily a party to the procedure but has an advisory role. Legally, cases involving foreigners are no different from cases involving Germans. In urgent cases, informal hearings can be held by telephone. Travel expenses can be reimbursed. A judge must have experience as a judge in another area to ensure that the family judge has sufficient professional experience. In over 90% of divorces, child custody is not decided in court. If the parents or the guardian ad litem disagree with a decision, they can appeal. The interpreter is provided by the court. If the need for an interpreter only becomes apparent during the proceedings, the hearing will be postponed [7].

#### Transfer of the Decision to Court Experts

Psychological court reports, according to Mnookin, cannot give precise predictions about taking into care of children. Scott and Emery noted that the illusion of scientific expertise is still maintained to obscure the weaknesses and shortcomings of the "best interests of the child" standard as court experts in proceedings. It is highly problematic when experts use scientific evidence that clinical observations or test data are inconsistent with the best interests of the child or incomparable factors in decisions about taking into care. Kimberly Emery and Robert Emery noted that the court's expert testimony is used as a "*dispute resolution funnel*" in court to settle the dispute before a court decision is reached [45-47]. There is sufficient evidence that expert opinions based on assumptions or disregard of scientific standards lead to decisions that harm the child's well-being.

#### Hearing of the child

Internationally, the child's right to a fair hearing in custody proceedings is emerging as a function of the child's entitlement to basic human rights – including respect and dignity – and their gradual progression towards autonomy. Child development studies suggest that children's abilities are constantly evolving, that young

children may possess greater abilities to formulate and express emotional responses than previously thought, and that even young children may be able to provide information highly relevant to parental care. Without the child's perspective, judges may have little ability to understand the impact of a particular custody or visitation decision on a child. Children have greater long-term mental health difficulties when not heard than when heard during custody and visitation battles. The best practice in one case is not necessarily the best practice for all cases. Children and families have unique concerns and burdens. The court's duty to protect the child's best interests should be a factor in the court's choice of method. Today's understanding of children's psychological, emotional, and cognitive development should inform how judges explore and evaluate children's perspectives. The dispute resolution structure should promote the substantive interest of the judicial system in determining the best custody arrangement for the child and the institutional interest in ensuring competent judicial adjudication and meaningful appellate review. Ironically, however, the "secrecy" of the child's perspective may diminish the child's voice, which should be integrated into the dispute resolution process [48]. There is evidence that hearing a child is conducted in disregard of scientific standards (e.g., methodological analysis), under circumstances unbearable that burden the child's dignity and mental health, even under threatening scenarios, and decisions are made with knowledge of these circumstances.

#### Divorce versus the Best Interests of the Child

Current norms for divorce are foolish and unrealistic (Wallerstein). Expecting hurt, disappointed, and angry people to separate amicably, be kind, share their neighborhood and children, find a new spouse and life in the same neighborhood, and support the children of first, second, and third marriages with equal willingness is unrealistic. Children are expected to believe the platitudes given to them, to blame no one, to happily forgo weekends and vacations to see their parents until they are of age, and not to judge. That too is unlikely. There is almost nothing relevant to the best interests of the child that recognizes the reality of the divorced family and the child in the divorced and remarried family, either in the legal system or in the work of mental health participants. It's time to pay more attention to children themselves, research literature, logic, and common sense [49]. Parents may be excluded from visiting rights for almost a year without any firm confirmation of child endangerment, the right of contact may not be clarified within four weeks. Parents who do not accept the taking out of their children will have to suffer from negative reactions from the youth welfare office.

#### Summary of the fact-finding visit

Dolors Montserrat noted that the Petitions Committee had received many complaints about the youth welfare office, leading to the fact-finding visit. "Where there is smoke there is fire". She wonders how come, that the youth welfare office has less power on paper than in people's minds and opinions. She notes that the youth welfare office intervenes even in cases in which the parents separate by mutual agreement. The youth welfare office is a "shadow body".

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The advice to accept advice from the youth welfare office is easy, but what happens if you don't do it?

The references to the findings published in scientific literature and references to evidence of child welfare damage caused by disregard of the norms by the youth welfare office allow the concerns of the Petitions Committee to be justified. The distrust towards the "responsibility community" youth welfare office is evident from the recent 34 "amendments" of the MEPs. This is a most regrettable finding for the employees of the youth welfare office, who protect the child's well-being with great personal commitment.

### Amendment Petitions Committee EP 2023

On March 29, 2023, 34 AMENDMENTS to the mission report were made after the fact-finding visit of March 3/4. 11. 2022 supplemented by MEPs (PE745.513v01-00), inter alia, "to call on the European Commission to add the breaches of rule of law and the abuses done by the Jugendamt and other German authorities in the Rule of Law Report on Germany and monitor this situation until it is fully resolved"; to call on the European Commission to use all the tools at its disposal to enforce the protection of children's rights in Germany; to highlight the need of improving the availability and the methodology of the collection of statistical data in order to increase transparency; to stress the importance of close and effective cooperation and communication between the various national and local authorities involved in childcare proceedings, from social services to the courts, as every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union; to stress the importance of close and effective cooperation, communication and between the various national, regional (Länder) and local authorities involved in childcare proceedings, from social services to the courts; to highlight the role of Ombudsman for Children in every Member State in order to safeguard the rights and well-being of every child; to call on to German authorities to specify whether the Jugendamts are or are not under the legal supervision and political control, whereas the final supervising authority is the Ministry for Family Affairs, as stated by the representative of the Ministry on Social Affairs; to provide a definition of "child welfare" [50].

### Summary and conclusion

The number of children being taken into care by German youth welfare offices has been increasing for years as a result of changes in the law according to publicly known threats to the welfare of children. Due to an increase in petitions from non-German parents to the European Parliament's Petitions Committee against administrative acts that they felt to be arbitrary (e.g. taking into care), the European Parliament repeatedly (2007, 2018, 2022, 2023) dealt with the processes in the German Youth Welfare Office. For years, the German youth welfare office has been criticized for either not protecting the well-being of children or protecting them too late. Over the past 20 years or so, changes in the law have led to increasing numbers of childcare takings based on undefined norms of the child's best interests and best interests. In

short: the guardian state is increasingly intervening in the family, which is protected by Article 6 of the Basic Law, with the unclear justifications of overloading the parents or (lacking proof of) the ability to bring up children, concerning Article 6 invoking the guardian state and separating parents from their children without having sufficient scientific knowledge about the often negative consequences of taking the children into care. The families receive high bills for this, disregarding proportionality and exclusion criteria. The possibility of changing something by complaining is small. The responsible community decides on the complaint itself. Transparency is reduced with the exclusion of the public and failure to inspect files. This led to the expressed suspicion of arbitrary measures and an increase in petitions to the European Petitions Committee, which has been dealing with the youth welfare office since 2007 and even came to Germany for a "fact-finding visit" in 2022. The questions of the MEPs on the areas "in the best interests of the child", "child welfare", "legal tasks of the youth welfare office", "taking into care by the youth welfare office", "power of the youth welfare office", "relationship with the youth welfare office", "control of the German youth welfare office", "costs of the proceedings", "procedural assistance" and "duties and functions of the court" were partly not answered or were incompletely answered or contradicted the literature and the evidence. The answers of the German community of responsibility prompted the MEPs to ask further questions. It cannot be denied, that the answers of the youth welfare office were not very convincing for the MEPs of the petition committee, taking into account the scientific literature and known documents. The lack of transparency (refusal to inspect files) and agreements reinforced the MEPs' negative impression of the youth welfare office ("*shadow body: where there is smoke, there is fire*"), and led to the announcement of further controls by the MEPs.

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