FACT SHEET
Study “Family Law in Germany. Taking Stock”

In 1998 and 2009, major reforms of the law on children’s rights aimed at empowering children and improving their situation. This was to be ensured, among other things, by making joint custody the rule, by working toward reaching agreements between parents in family law proceedings, and by accelerating proceedings. A look at the figures and at case examples paints a distinctly different picture:

⇒ In Germany, an average of 148,600 proceedings concerning visitation rights and custody are recorded annually, involving up to 86,000 children in high-conflict[1] proceedings.

⇒ The study shows a clear east-west divide. While western Germany shows a 23.6 % increase in parental custody proceedings between 2010 and 2019, the increase in eastern Germany is 53.8 %.

⇒ The study is based on investigations of more than 1,000 cases. In the first part 92 proceedings are analyzed that were pending before the Federal Constitutional Court and the Federal Court of Justice. The majority of children involved were infants or toddlers when the proceedings began. The proceedings drag on for years and might be continued until the child is 18 years old.

⇒ Healthy and socially well-integrated children may be frequently interviewed by people who are strangers to them. Just like judges, “guardians ad litem”, for example, “explore” the “child’s will”. In addition, depending on the case, there are further interviews and analyses of the child by experts, the youth welfare service, custodians, legal guardians, counseling institutions, therapists, and others who are involved as witnesses. Children may be traumatized by this. In addition, the procedures and length of family law proceedings virtually require the manipulation of children in order to gain procedural advantages through the “child’s will”.

⇒ On the other hand, the study shows that a child’s will, which is formulated by the child against the background of psychological or physical violence or abuse, can be negated or ignored by the family court and the youth welfare service. In spite of violent backgrounds, there are relocations, court-ordered alternating models, or removals from a parent’s home.

⇒ Family courts commission expert witnesses to provide family reports. Children are examined – even when they are not at risk. A veritable “expert opinion industry” has formed, which generates an annual turnover of over 2 billion euros with family assessments (average price currently approx. 8,000 euros/assessment). This figure refers to the latest statistical data of 270,000 family reports per year in 2015. Most likely, this number has increased significantly in the meantime. There are no control bodies or binding quality criteria for expert opinions. Interviews with parents and children are often non-transparent. In practice, statements of children, parents, or third parties are at times even interpreted or falsified to achieve a specific result.

[1] Multiple long-term judicial proceedings

⇒ Psychological, physical, and sexual violence against children and mothers is sometimes ignored, trivialized, or negated in the examined proceedings. Often, an offender-victim reversal can be observed. This becomes particularly obvious against a backdrop of pedophilia or pedophilic tendencies. Even in these cases, a "parental conflict" is stated.

⇒ The situation of the affected children is dramatic. Long-term and multiple parallel proceedings and associated behavioral problems, the termination of childcare models that were tried and tested for many years in favor of "alternating models" as well as ad hoc relocations of children are becoming more frequent. This happens not only against the will of one of the parents, but also of the children who, out of loyalty, do not participate actively but actually do not want to live in an alternating model. Children's needs for security and stability are led ad absurdum.

⇒ Judges, experts, guardians ad litem (the children's "lawyers"), and the youth welfare service can work together in practice to prejudice the outcome of the proceedings. Family court-induced "parenting agreements" can be the result of pressure and threats with serious consequences for the children's lives (relocations, alternating models, removal).

⇒ Part 2 of the study deals with so-called problematic custody cases, i. e. removals that separated healthy and socially well-integrated children from their single mothers on an ad hoc basis. In 90 % of the 692 cases evaluated, children were taken into custody for a "lack of parenting ability", based on attributions that the bond between mother and child was too close. These attributions remained consistently unsubstantiated. About 90 % of the children concerned were of school age or were placed in daycare facilities. Apart from a few exceptional cases, there was no recorded evidence from daycare centers and schools that substantiated a limited ability to raise children. In particular, there was no consideration of positive assessments from daycare centers and schools, insofar as these were available. In some cases, children were taken into custody without prior notice and involving police force.

⇒ In none of the 692 cases reviewed was there any evidence that the respective youth welfare offices and family courts had made an allegation of violence, abuse, or provable neglect when separating mother and children. In two-thirds of the cases, allegations made by fathers and members of their relationship system against the mothers were placed on file as fact without verification. The risk to the child's well-being posed by the mothers was then substantiated on this basis, and a step-by-step approach was taken toward taking the child into custody or at least toward generous visitation rights in favor of the fathers. In the official statistics, such custodial interventions can be reported as "educational overload".

⇒ The evaluation of reasons for custodial interventions recorded by the Federal Statistical Office in 2018 shows a predominance of reasons that do not pose an immediate and unavoidable threat to the life and limb of a child, as stipulated by section 42 of Book VIII of the Social Code as a prerequisite for custodial interventions.

⇒ Mothers adverting to abusive behavior of fathers toward the children or themselves on the occasion of visits were, without exception, accused of making false statements – also without verification. Mothers were then urgently advised by their legal counsels to not make any allegations against the fathers, even after unmistakable hints from treating pediatricians or family doctors, in order to not diminish their prospects in the current proceedings. This was confirmed by pediatricians/family

doctors who, upon contacting the youth welfare service because of indications of violence and/or sexual assault, were advised by the youth welfare service to “not allow the mothers to exploit them.”

⇒ Ideologies and lobbying organizations influence family law proceedings. This can be seen, for example, in publicly available education and training materials that have left the much-needed neutral ground. For example, mothers are referred to as “child owners” being “in control”, and parents are degraded as “derailed” and “legally incompetent”.

⇒ Four narratives are widely spread as being the rule:

(1) Mothers alienate children;
(2) only a 50:50 split in care time allows children to grow up in a healthy manner;
(3) mothers want children and money; and
(4) mothers make up stories of violence and abuse.

The evaluations in this report show that these narratives are neither scientifically nor professionally tenable, yet they are regularly used to justify decisions in family law proceedings and in child and youth welfare.

In more than half of the 92 examined cases in Germany that have been brought to the Federal Constitutional Court since 1998, fathers were represented as complainants by the very same lawyer who is employed by one of the lobbying organizations that spread these narratives. Some of the cases resulted in far-reaching custody changes.

Overall, the following can be stated:

⇒ After separation or divorce, single mothers face significant risks in dealing with the youth welfare service, while fathers have a good chance of obtaining the changes they seek in visiting arrangements and/or transfer of custody, despite false testimony and even abusive behavior.

⇒ Mothers are under the general suspicion of “gatekeeping” towards fathers before the youth welfare service and the family court and are thus confronted with allegations of attempting “alienation”. The psychologically unproven legal construct of “attachment intolerance” can be used as a synonym for the scientifically untenable alienation theory, “PAS”. An accused mother faces the problem of having to prove these allegations untrue, even against a background of refuted slander, threats, and discrediting. As a rule, a “symmetrical parental conflict” is assumed, even in cases of psychological and physical violence. In these cases, however, it is exactly those instruments of family court proceedings that are supposed to promote agreements that are likely not applied.

⇒ Lack of qualification of those involved in the proceedings, insufficient personnel and time resources, especially among family court judges and in youth welfare offices, misconceived ideology based on narratives that are scientifically and professionally untenable as well as inadequate pay of qualified staff in youth welfare offices are just some of the reasons why family court proceedings can cause serious stress for children.

Background knowledge

Important reforms of family law and family procedural law since 1998

In **1998**, the Child and Family Law Reform Act was passed to abolish the differences between children born in wedlock and children born out of wedlock. Since then, parents generally retain joint custody in the event of **divorce**. Furthermore, the option of **joint custody by unmarried parents** was introduced as a **standard**. Pursuant to section 1626a (1) no. 1 of the Civil Code, they are entitled to joint parental custody if they declare that they wish to assume joint parental custody.

In **2009**, the Family Proceedings Act (FamFG) comprehensively reformed family court proceedings:

- **Urgent child-related matters**, in particular disputes concerning visitation rights and rights of residence, must now be processed with **priority and in an expedited manner** (section 155 (1) FamFG) and heard promptly (section 155 (2) FamFG).

- The court is to **attempt to resolve the conflict by mutual consent** if this is not contrary to the best interests of the child (section 156 (1) FamFG). In this context, the court may also order the parents to participate in counseling.

The rights of participation and involvement of the child concerned are strengthened. In matters of children's rights, the child is now supported by a **guardian ad litem** insofar as this is necessary to safeguard his/her interests (section 158 (1) FamFG).

Since **2013**, unmarried fathers have had the option of filing a court application for joint custody. Joint custody must be justified if it is not contrary to the best interests of the child.

Qualification requirements and further training obligations for those involved in family court proceedings:

- **Family court judges**: Since 01.01.2022, qualification criteria have been stipulated in section 23b of the Judicial Constitution Act (GVG). Among other things, verifiable knowledge in the areas of family law as well as basic knowledge of psychology, in particular child development psychology, and of communication with children must be presented. **There is no legal requirement or obligation for further training.**

- **Guardians ad litem**: Prerequisites for professional qualification pursuant to section 158a (1) FamFG are basic knowledge in the areas of family law as well as knowledge of the developmental psychology of children and child-oriented interview techniques. Proof of a socio-pedagogical, pedagogical, legal, or psychological professional qualification as well as a specific additional qualification as a guardian ad litem. The guardian ad litem must undergo further training on a regular basis, at least every two years. **There is no standardized curriculum for training**.

- **Expert witnesses and assessments**: An expert witness must have at least a psychological, psychotherapeutic, child and adolescent psychiatric, psychiatric, medical, pedagogical, or socio-

pedagogical professional qualification. In the case of a pedagogical or socio-pedagogical professional qualification, the acquisition of sufficient diagnostic and analytical knowledge must be proven by a recognized additional qualification (section 163 (1) FamFG). **A qualification as a legal psychologist or proven knowledge of forms of violence in accordance with the Istanbul Convention as well as practical work in a medical office/hospital are not required to date. Legally binding quality criteria for assessments do not exist.** Only non-binding minimum requirements have been developed by professional associations.

Wolfgang Hammer et al., April, 4th 2022