

L5/0118/650
29.03.2010

Executive Summary
To L5/0118/650
Dated 29.03.2010

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The Purpose of this Report

The purpose of this report is to highlight the formal defects and deficiencies of the German family courts, to briefly analyze these and to make a recommendation on the continued participation of Germany in the EC Regulation 2201/2003.

The formal Deficiencies

The list of deficiencies are shown below, together with brief remarks on their effects. To avoid unnecessary legal debates, only these formalities will be discussed. In the main paper, more detailed explanations are included together with references to the American, British and, as necessary, other international systems, with the aim of showing the care being taken in other countries, which is missing in the German system.

- i. No adequate control over the tasking of experts.
- ii. There is no adequate regulation governing hearsay evidence.
- iii. German judiciaries are allowed to belong to political parties and actively participate in political activities.
- iv. The judgments of the European Court of Human Rights are not recognized as binding in Germany, effectively abrogating the European Convention for Human Rights.
- v. No equivalent legislation for "*habeas corpus*".
- vi. There are no fully implemented "*Freedom of Information*" laws in Germany.

The Effects of the Deficiencies

- i. Experts are not selected from an authorized central list with quality control, but from the private lists of the tasking agencies, usually the judges in family courts. These are known as the "Chummy Lists", because mostly these are old friends' lists. The main paper includes a statistical analysis of the generally slovenly quality of workmanship of the outputs of both the experts and the tasking agencies.
- ii. Since Germany has no regulation on the admissibility of hearsay evidence or the ways of treatment of it, family courts are a free area for calumny, malicious gossip and false witness.
- iii. The "Jugendhilfe" in Germany is a political container of non-government organizations backed by an annual budget of 21 billion Euros. They are always well represented in family courts. The membership in political parties as well as the susceptibility of German judiciaries to political factors are, therefore, a grave danger to law and order.
- iv. The Federal Constitutional Court unilaterally abolished the European Convention for Human Rights on the 14.10.2004. What substitute rights are defined in the German Constitution are impeded by an 86,4% (for 2009) denial of due process by this court, making human rights in Germany hypothetical and unattainable.
- v. Particularly the behavior of psychiatric clinics in Germany, where children and their parents are locked up for trivial reasons and subject to all kinds of dangerous treatments, make "*habeas corpus*" in Germany a must.

- vi. A survey conducted in 2009 revealed that more than 70% of the people subjected to family court procedure, were denied access to court files. This could be attributable to the fact, that Germany is the only country in the EU not to have fully implemented “Freedom of Information” laws.

Recommendation

The kindest thing that could be said about the German family court system, with its deficiencies, is that it is a system of arbitration which sometimes reaches correct conclusions. To decide, which conclusions would be right and which would be wrong, would call for “second guessing” a hypothetical, correctly functioning tribunal, which would be an impossible task. For that reason the decisions of the family court in Germany can only be classed as “unsafe and unsound”.

A system of family courts that can only produce unsafe and unsound decisions can only be classed as “unfit for European cooperation”. It is, therefore, recommended that Germany be suspended from international agreements such as EC Regulation 2201/2003 until such time as the necessary improvements can be effected.

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