

Taking into Care as a Social Educational Measure and a Benchmark for Child Protection in Germany? Negative Consequences for Children, Families, Public Health and the Economy

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ABSTRACT

Introduction: The number of children and young people being taken into care and placed in out-of-home care has been increasing in Germany for years - despite or perhaps because of child protection reforms. Child protection is always questioned when cases of child abuse become public. Child protection without taking children into care is hard to imagine. Child protection can be violated through unjustified detention. This usually receives little attention.

Methodology: Examination of the keywords “taking into care”, “out-of-home care”, “effect” and “side effects” of “taking into care” by the “Youth Welfare Office” in “Germany” in Pubmed, Google Scholar, and Google.

Results: The number of people taken into care increased after the change in child protection regulations for the youth welfare office in 2005: from 25,664 in 2009 to 66,400 in 2022. Apart from the unaccompanied entry of children in 2022 (28,600), 22,900 cases were due to excessive demands and relationship problems of the parents, and 18,500 cases were due to neglect, and physical and psychological abuse as the reason for being taken into care. The classification of cases varies greatly depending on the social worker's opinion. There are considerable differences in the assessment of the risk situation and the resulting decision to take someone into care. Depending on the federal state, the number of times taken into care and the duration of out-of-home care vary due to different interpretations of guidelines and the requirements of service instructions. The main problem is the high number of false-positive assessments of threats to children's well-being in connection with the ignorance of the effects and side effects of taking children into care, which is described as a social-educational measure. Anglo-American studies of children in foster families and homes found these children to have post-traumatic stress disorders, an increased risk of serious illnesses, hindrance to participation in social life with inability to go to school, and limitations in their ability to work. Many illnesses only appear in adulthood. The effects of being taken into care can endanger a young person's existence. Even the Federal Constitutional Court 11/2023 points out the negative effects of being taken into care. This causes material and immaterial damage to children and families and puts a strain on the public health system and the national economy.

Conclusion: Child protection must be oriented towards children and not adults, authorities, and institutions. Taking children into care, without even knowing or taking into account the effects of false-positive risk prognoses, that is described as a social educational measure, that is stigmatizing and associated with the loss of basic rights of children and parents, given the damage to children and families, as well as the burden of the public health system and the national economy, cannot be accepted.

Keywords

Taking into care, Out-of-home care, Youth welfare office, Side effects of taking into care, Post-traumatic stress disorder, Social-educational measures, Risk prediction, Child protection, Public health, Fundamental rights.

Introduction

On September 6, 2020, Deutsche Welle reported that German authorities were overwhelmed: “Child abuse: German authorities are overwhelmed.” Germany was horrified by the discovery of a nationwide case of organized child abuse and child pornography. As a result of this revelation, questions were asked about the state of child protection in Germany. According to the Federal Statistics Office, 175,000 children were in homes or foster families in 2018 and more than 50,000 were taken into care. Neglect or excessive demands on the parents and not abuse were usually given as the reason [1]. Can child protection be equated with taking children into care? The statistics do not show what consequences being taken into care has for children and parents.

Methodology

Collection of literature on taking into care, its effects on children and parents, traumatization, decision and implementation of taking into care in Germany in Pubmed, Google Scholar, and Google.

Results

The focus of public criticism is the handling of child protection and taking into care. In Germany, the youth welfare office and the family court, where applicable the public prosecutor's office, are responsible for child protection (state guardian office). It is difficult for judges, police, and youth welfare offices to determine whether a child has been abused, said Johannes Wilhelm Rörig, the Federal Government's Independent Commissioner for Child Sexual Abuse (UBSKM). Perpetrators are often family members, friends, and neighbors and it is difficult or impossible for children to report, especially if the mother is aware of the crime or is a co-perpetrator. Child abuse, according to Rörig, has gained pandemic characteristics where in 2019 15,000 cases of child abuse and 12,000 cases of child pornography were recorded, although these are only the known cases. The number of unreported cases is significantly higher. There is hardly any information about the cases of child abuse that were not accepted or dismissed by public prosecutors or courts. There are not always photos or videos; witness statements, especially those of children, are evaluated differently [2]. The problem is that the state does not seek a systematic solution to the abuse, but rather produces laws and rules in an uncoordinated, ad hoc reaction [3].

Child Protection and Taking into Care

Child protection and taking into care are not always under public scrutiny in Germany. Depending on the “height of the case”, the media repeatedly reports on abuse. Since 1991, the legislature has tried to improve child protection through four legal reforms: Child and Youth Welfare Act (KJHG 1991), Act for the Further Development of Child and Youth Welfare (KICK 2005), Federal Child Protection Act (BKSchG 2012), Children and Youth

Strengthening Act (KJSG 2021) [4]. While 25,664 admissions were registered in 2005, the number of admissions rose to 48,059 by 2014, with costs doubling to 9 billion euros. Because of the increased number of people being taken into care, Federal Family Minister Ursula von der Leyen (CDU) called on youth welfare offices in 2009 to only remove children from their families after a detailed error analysis [5]. Von der Leyen also criticized the practice of some youth welfare offices, saying that the basic rules in dealing with problem families were not yet observed everywhere: “*Precise error analyses of critical cases point to the sticking points in child protection: 1. No solitary decisions, but always the multiple eyes principle. 2. Always look at the child and don't trust what the file says. 3. Home visits where such are technically necessary*”[6]. Family support and taking into care for child protection by the youth welfare office – an unsolvable dilemma? [7].

Taking Into Care as a Socio-Educational Measure

In 2022, the youth welfare offices took over 66,400 children and young people into care for their protection, 40% more than in 2021. The number of children taken into care due to urgent child welfare threats increased by 5% (29,800 cases, the largest group). The most common reasons for being taken into care in 2022 were unaccompanied entry from abroad 28,600, parents/one parent being overwhelmed 17,300, signs of neglect 7,500, signs of physical abuse 6,500, relationship problems 5,600, signs of psychological abuse 4,500. 48% of admissions ended after 2 weeks, 33% after one week, and 11% after three months or longer. According to child and youth welfare law, the youth welfare offices are obliged to take children into care as social-educational help in acute crises or dangerous situations, if there is an urgent threat to the child's well-being (§42 paragraph 1 number 2 social code (SGB) VIII) [8].

Inadequate Research on the Consequences of Being Taken into Care

Can taking children into care be described as social-educational help when the physical, mental, and psychological effects of being taken into care have hardly been investigated in Germany? Children's specific psychological stress is often not noticed in youth welfare facilities and the children are therefore denied the necessary treatment. In Germany, there is an inadequate research situation on the consequences of being taken into care [9]. The children's situation is made more difficult by the fact that a large proportion of the risk assessment is unclear or is assessed as falsely positive [10]. We do not know how many children and parents suffer from the effects of false-positive risk assessments. The consequences for the public health system, social security funds, and the affected families are likely to be significant.

Taking Into Care – Impairment of the Basic Rights of Parents and Children

Separating children from their parents represents the greatest interference with custody rights (right to care and upbringing of children). Taking them into care is permissible solely to protect the child from severe acute or long-term dangers, subject to strict adherence to proportionality. According to the Federal

Constitutional Court (BVerfG), specific requirements must be placed on the child welfare and proportionality test. Taking children into care should be the last resort to protect a child if all other options for help have failed or the child's well-being is in acute danger. Because of the factual weight of the impairment of the fundamental rights of parents and children, the BVerfG goes beyond the usual scope of review. The Constitutional Court examines whether the family court has comprehensibly assumed that there is a lasting threat to the child's well-being and that this can only be averted by separating the child from the parents and not through less intrusive measures. The Constitutional Court examines *"errors of interpretation as well as errors in the determination and assessment of the facts"*. Children may only be separated from their parents if the parents fail or the children are at risk of neglect. If the child remains in the family, their physical, mental, or emotional well-being must be at severe acute or long-term risk. *"The assumption of a sustained risk presupposes that the child has already been harmed or that a danger currently exists to such an extent that significant harm can be foreseen with almost certainty as the child continues to develop."*

Separation and Out-of-Home Placement – BVerfG Guidelines

The BVerfG points out that the separation of the child from its caregivers *"regularly causes considerable psychological stress,"* which must be taken into account in further measures affecting the child. The principle of proportionality must be observed in all measures that restrict the fundamental rights of parents. Because of the necessity to avoid the separation of children from their parents, the state must, if possible, try to achieve its goal through helping and supporting measures aimed at establishing or restoring responsible behavior on the part of the parents. Particularly strict requirements must be placed on the proportionality of maintaining the separation if the requirements of Section 1666 Paragraph 1 Sentence 1 Civil Code (BGB) were not met when the person was taken into care [11]. Parents do not have to provide positive evidence of their ability to raise children. Separation of parents and child presupposes that there has been sufficient certainty that there has been a failure in upbringing that has seriously damaged the child. It is constitutionally objectionable if the court addresses possible deficits in parenting skills without providing evidence of *"the nature and severity of the feared impairments of the child and why the dangers are so serious that they legitimize out-of-home care."* Specialized courts must *"specifically identify the type of damage that threatens the child, its severity and probability of occurrence and evaluate them against the background of the fundamental rights protection against the separation of the child from its parents"*. *"If the courts base the separation of the child from the parents... on educational deficiencies and unfavorable developmental conditions from which the significant endangerment of the child's well-being does not, in exceptional cases, inevitably follow, they must carefully examine and justify why the resulting risks to the child's mental and psychological development exceed the limit of what is acceptable."* If this has not happened, it is an unconstitutional situation taking into care and out-of-home care. Other publications show that this is not an isolated case [12].

Unjustified Taking into Care

In a case study, now supported by around 1,000 confirmations, unjustified admissions into care were reported. Those affected had contacted the youth welfare office themselves. The separation, which caused extreme fear and trauma in children, was carried out without proof of excessive demands and a psychological assessment before they were taken into care. The youth welfare offices uncovered *"serious factual and technical errors as well as false allegations"* [13]. Similar findings regarding information from the youth welfare office, non-observance of the guidelines of the responsible state youth welfare office, failure to offer help and home visits, and the resulting lack of danger forecasting by the youth welfare office have already been documented [14]. The impression is that it may be easier and quicker to submit a request for taking into care as a not to be justified emergency if you do not (have to) submit the complete files. Often the incorrect decision to take someone into care is due to social workers of the youth welfare office making mistakes and not recognizing that they are making the mistake and even repeating it. The prevention of childhood tragedies would be supported through a culture of error [15]. When it comes to assessing child neglect and taking children into care, the opinions of child protection professionals and the public differ. The social workers know that their point of view is usually supported by the decision-makers. Established systems have a major influence on decisions made by professionals and in the judiciary [16]. The lack of comprehensible and effective participation of children in the process of deciding whether to take them into care is another reason why the child is placed in care and placed in out-of-home care in a way that is harmful to them [17].

Change in the Youth Welfare Office from Helper to Controller

There was an increase in the number of people being taken into care after the introduction of Section 8a Social Code SGB VIII in 2005, which was associated with special requirements for the youth welfare office to protect children in the sense of a guarantee obligation. The head of the Bavarian State Youth Welfare Office noted that the youth welfare office was changing from a helping to a controlling institution. Parents who turn to the youth welfare office for help should not be stigmatized [18]. The guardian state claims to act in the best interests of the child and the child's well-being when it separates the children from their parents when they are taken into care.

Lack of Investigation into the Damage Caused by Taking Someone into Care

While there are numerous treatises on the consequences of abuse and parental violence, in Germany, compared to Anglo-American, Scandinavian, and BENELUX countries, we know little about the consequences of the serious intervention of being taken into care, although there have been attempts to sensitize youth welfare offices to trauma-related disorders [19]. Taking people into care and placing them in homes or with foster parents can lead to post-traumatic stress disorder (PTSD), and thus hinder participation in social life. Long-term consequences include a lack of school-leaving qualifications, difficulty maintaining social contacts, inability to attend school and work, and chronic illnesses [20,21].

In any case, this results in significant damage for the child and their parents as well as the national economy [22].

Although there is reason to believe that there are negative trajectories of children being placed in out-of-home care, we know little about this [23]. We do not know the number and effects of unjustified detention - due to a lack of funding, according to a former chairman of a state youth welfare office (personal communication). *“So far there are only a few scientific findings on the effects of being taken into care on children. Therefore the possible statements are rather general. On the one hand, taking children into care is an important tool for protecting children, but on the other hand, they are associated with considerable emotional stress for parents and children due to the separation. Separations from their attachment figures lead to considerable insecurity in children...”* [24].

Damage Caused by the Youth Welfare Office

The Youth Welfare Office causes further damage to a child who is unjustifiably separated from the parents without proof of harm by a parent if, after being taken into care, the Youth Welfare Office forces the child to spend a long time in out-of-home care against the will of the child, without appropriate medical care and protection from re-traumatization, through years of procedures and conditions as a result of being taken into care and loss of use of his property. We don't find out about this because such cases are heard in family court behind closed doors to protect the child, or the child/young person remains silent out of shame or fear of being re-traumatized. The exclusion of the public from the proceedings is intended to protect children but also protects the youth welfare office from uncovering strange practices such as billing for unjustified care and out-of-home care. Whether this can be prevented by an independent “ombudsman” depends on its actual independence, expertise, powers, and support.

Overall View of the Child's Situation

The Federal Constitutional Court itself points out that separating a child from its parents and placing it in an out-of-home setting can have negative consequences. This should be taken into account when making a decision. These consequences must be outweighed by a reasonable prospect of eliminating the identified danger. The overall child's situation is relevant when deciding on taking into care and must improve overall [25].

Compliance with the Procedural Principles for the Protection of the Child

The general social service (ASD) of the youth welfare office (state guardian office) should carry out the overall assessment in cooperation with the family court. However, there are considerable differences concerning the assessment of the risk situation and the resulting decision to take someone into care. Depending on the federal state, the number of children taken into care and the duration of out-of-home care vary due to different interpretations of guidelines and the requirements of service instructions [26]. In Bavaria, children are taken into care more frequently and the duration of out-of-home care is longer. Why should a child

spend months or years in out-of-home care without any verifiable reason being apparent before or after being taken into care? This contradicts Mühlmann's statement that in Germany *“an urgent threat to the well-being of the child or young person requires that they be taken into care.”* (§42 Para. 1 No. 2 Social Code SGB VIII) [27].

A youth welfare office can remain inactive for months/a year despite being advised by the other state authorities to take action to protect children and then unexpectedly create an emergency for an unfounded taking into care. As already shown, this is associated with trauma, anxiety disorders, and long-term material and immaterial damage for a child. The classification of cases taken into care is carried out from the perspective of the respective youth welfare office specialist. There has only been a documentation requirement since 2014. In an analysis of the implementation of admissions into care by Urban-Stahl, it was noticed that there were no support plan procedures following §36 Social Code (SGB) VIII for admissions into care. Taking people into care would then lose the character of short-term help, especially if procedural principles are not observed. There were major differences in the way risk information was handled, in the risk analysis, in carrying out a home visit and in the way child protection measures were carried out, in the service instructions also concerning the involvement of management, as well as in obtaining information from other bodies (school, police, whistleblowers, witnesses, public prosecutor's office). The approach of the youth welfare offices and family courts is not uniform. If you want to understand the procedures of the two institutions, you need the files from the youth welfare office. File management in the youth welfare office is an essential administrative tool - *“memory of the Administration”* – and thus the basis for reports and reports, evidence for legal disputes and complaints, self-control, and professional legitimacy even if it is an excerpt and a selective description of reality (secondary information) [28,29]. *“They (note: the files) do not provide any information about how the case presents itself, but rather about how the respective specialists are at their disposal professionally process the information available to fulfill their order”*. But how should you deal with a file that only contains selected sections and some of whose file entries are incorrect? It is incomprehensible how decisions are made by family courts, regional courts, and administrative courts based on prepared or missing files [30].

Stigmatization of Children and Families

Miscoordination and conflicts between the youth welfare office and the family court often endanger the welfare of children [31]. The legislature leaves the need for coordination between the youth welfare office, family court, and administrative court to the actors in practice. Parents, children, and professionals are in a dilemma. The system is no longer transparent [32]. *“The enforcement of child and youth welfare measures ordered by the family court before the administrative court is an intolerable situation for all those affected, who in this way have to resolve the conflicts of the community of responsibility between the youth welfare office and the family court. If one assumes that the affected legal guardians or guardians do not bring themselves to an administrative court*

procedure in addition to a family court procedure, this poses the risk of unnecessary delay. This contradicts both adequate child protection and the requirement of effective legal protection in Germany" [33]. Taking a child into care represents considerable stigmatization for the child and parents." *A legitimate non-material interest in rehabilitation presupposes that the measure under attack results in a stigmatization of the person concerned results, which is likely to reduce his or her reputation in public or the social environment. This stigmatization must have had an external impact and must continue in the present*" [34]. Societal and social circumstances create fears when decisions are not foreseeable, are not gender-neutral, and are not free of prejudice [35]. New forms of interdisciplinary collaboration to promote child well-being are necessary [36].

Summary

The number of children and young people being taken into care and placed in out-of-home care has been increasing in Germany for years - despite or precisely because of the child protection reforms. Child protection is always questioned when cases of child abuse become public. Child protection without taking children into care is hard to imagine. However, child protection can also be violated through unjustified taking into care. This usually receives little attention. The number of children taken into care increased after the child protection regulations for the youth welfare office were changed in 2005: from 25,664 in 2009 to 66,400 in 2022. Apart from the unaccompanied entry of children in 2022 (28,600), there were 22,900 cases due to parents' excessive demands and relationship problems, while 18,500 cases were due to neglect, and physical and psychological abuse. The classification of cases varies greatly depending on the social worker's opinion. There are considerable differences in the assessment of the risk situation and the resulting decision to take children into care. Depending on the federal state, the number of children taken into care and the duration of out-of-home care vary due to different interpretations of guidelines and the requirements of service instructions. The main problem is the high number of false-positive assessments of threats to children's well-being in connection with the ignorance of the effects and side effects of taking children into care, which is described as a social-educational measure. Anglo-American studies of children in foster families and in homes demonstrated post-traumatic stress disorders, increased risk of serious illnesses, hindrance to participation in social life with inability to go to school, and limitations in their ability to work. Many illnesses only appear in adulthood. The effects of being taken into care can endanger a young person's existence. Even the Federal Constitutional Court 11/2023 points out the negative effects of being taken into care. This causes material and immaterial damage to children and families and puts a strain on the public health system and the national economy. Child protection must be geared towards children and not adults, authorities, and institutions. Taking people into care, without even knowing or taking into account the effects of false-positive risk prognoses, that is described as a social-educational measure, that is stigmatizing and associated with the loss of basic rights of children and parents, given the damage to children and families, as well as the burden of the public health system and the national economy, cannot be accepted.

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