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DG Justice, Freedom and Security
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COMPLAINT TO THE DIRECTOR GENERAL OF
JUSTICE FREEDOM AND SECURITY
ABOUT THE RECOGNITION OF THE JUDGEMENTS
OF GERMAN FAMILY COURTS
IN EC REGULATION 2201/2003

Copy to:

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Contents

1. Executive Summary

1.1. The purpose

1.1.1. The purpose of this complaint is to highlight the major formal deficiencies of the German Justice system, as applied to family courts, and to have Germany excluded from all EU agreements calling for the mutual recognition, in the EU, of the judgments of family courts within the EU, notably EC Regulation 2201/2003.

1.2. The period of Suspension

1.2.1. The period of suspension of Germany shall be the length of time taken to remove the deficiencies in the German Family Justice System and for it to be declared, by the appropriate EU authorities, to be fit for European cooperation.

1.3. The Principles observed in this Complaint

1.3.1. To avoid argumentation with German judiciaries, which, according to experience, lead nowhere, this complaint is based on the missing formalities of the German Family Justice system, together with indications of the implications, where this is necessary.

1.3.2. Where this is helpful, mainly the British and to some extent the American system, are used as a references. We, the complainants, are not suggesting that the regulations of these two nations should be taken over by Germany. They simply indicate, how the care taken by other Justice systems is missing in the German Family Justice.

1.4. The List of Defects and Deficiencies

1.4.1. The list of the Main deficiencies, applicable to Family courts in Germany is best described in tabular form together with reference documents. Furthermore, the table is two part, covering the major functional defects as well as the missing remedial elements.

Deficiency	Reference
Major functional Deficiencies	
<u>1. Expert Evidence</u> No adequate regulation of expert evidence or reports. Experts are selected from the private contact lists of individual judiciaries serving in family courts.	There is a German list system in place for other branches, e. g. for property experts, which is controlled by the IHK (Industrie und Handelskammer). A comparable regulation for family courts would reduce the financial dependency on the tasking agency and avert the danger of bogus experts. In GB there is a "Civil Evidence Act 1995" which specifies more closely the general tasking of experts.
<u>2. Hearsay Evidence</u> There are no clear regulations on hearsay evidence.	In GB, "Civil Evidence Act 1995" lays down, how hearsay evidence is to be treated
<u>3. Political Activities by German Judiciaries</u> In Germany there is no restriction on political and/or commercial activities by judiciaries.	In GB there are is a document, "Guide to Judicial Conduct", which forbids every form of political or commercial activity, including party membership. In the USA, there are similar documents, although passive party membership is permitted. See, for example, the Pennsylvania Code (Cannon 7). The participation of German Judiciaries in politics flies in the face of the recommendation of the Consultative Council of European Judges(CCJE), Opinion No. 3

Deficiency	Reference
Missing Remedies	
<u>4. European Convention for Human Rights</u> On 14.10.2004 the German Justice unilaterally rescinded the mandatory nature of the decisions of the European Court of Human Rights.	In GB the Human Rights Act 1998, lays down the mandatory nature of the Convention. It also makes possible recourse to the Convention at the first instance. This means that If a conventional incompatibility becomes apparent, the procedure is stopped pending clarification
<u>5. Habeas Corpus</u> German Justice does not have any “habeas corpus” legislation.	“Habeas Corpus” is, in GB and the USA, affected by legislation on Terrorism. Whilst it can be set aside for emergencies, exception rules for Psychiatry would be urgently needed in Germany, where this is likely to be used against children as a punishment e. g. for truancy.

1.5. Conclusion

1.5.1. If there is any method in the Family Court System in Germany at all, it appears to consist of a deliberate attempt to build as many vulnerabilities into the system as possible. In particular, the heavy reliance on expert witnesses when, at the same time, there is no regulated way of controlling these people, leaves the system wide open to abuse. The lack of any regulations covering the admissibility of hearsay evidence is an open invitation to denunciation, back-biting and falsehoods being used against families for all kinds of nefarious purposes. The German Jugendhilfe, with an annual budget of 21 Billion Euros, is a major political player in the court processes, presided over by politically susceptible judiciaries. There are innumerable chances for corruption to flourish and where there are unlimited opportunities, there are also takers.

1.5.2. The derogation of the European Human Rights convention is often justified by the assertion, that the Federal Constitutional Court is available for recourse. A constitutional complaint takes about 5 years to get to the FCC where, as current statistics show, there is an 82% rate of denial of due process. (This should not be confused with the success rate, which runs at about 2.5%) This adds up to a set of hypothetical and highly improbable rights.

1.5.3. One abuse leads to another and, for that reason, custodial psychiatry coming from the “chummy” relationships of experts and their judiciaries is available as a ready weapon against parents, who fight for their rights, or against children, who play truant from school. The absence of “habeas corpus” means that this abuse has no bounds.

1.5.4. The kindest thing that could be said about the German Family Court System is that it is a system of arbitration which sometimes reaches correct conclusions. To determine which are correct or incorrect would be an invidious task of “second guessing” a hypothetical court, acting correctly. With so many major defects and deficiencies, the decisions, reached by these courts, can only be described as generally “unsafe and unsound”.

1.6. Remarks on Mentality

1.6.1. The Fall of the Berlin Wall in 1989 showed the world that a dictatorship could be toppled using peaceful means and without anybody getting seriosly hurt. Old notions about the blind obedience to authority of German citzens rapidly dissolved. At the latest, the World Cup 2006 showed the world an outward-looking and positive mentality, and that nothing would be the same again in Germany. The same outward-looking mentality was apparent in a night of support for Haiti, when more than 20 Million Euro donations were received by "Bild Zeitung" and "ZDF"

1.6.2. The Institute of Demographics, Allensbach, has confirmed in 420.000 interviews since 1990 a new composure and self-confidence in the German way of thinking. In a Presentation by Dr. Renate Köcher, a director of the Insititute, she reported, that Germans are less interested in ideological debates than the were in the past and concentrate more on factual issues. The nationalistic fringes of politics do not enjoy much support.

Arrogance is unknown, and the Germans rather give the impression of an unruffled and self-confident nation. They have become popular in the world, and that is the way they want to keep it, according to the survey.

1.6.3. The German Justice and key parts of the administration, notably the Jugendamt, are fossils of a mentality which predates the German Reich. As such they are out of place in a modern forward-looking Germany, and enjoy neither admiration nor respect in it. In particular they do not reflect the “German Thoroughness” of other areas, being content to produce slovenly, unacceptable work. The mentality which drives this produces a susceptibility to corrupt and malicious structures around the family courts, which prey on children.

1.7. Recommendation

1.7.1. For a member nation, whose family courts produce, at best, unsafe and unsound judgments, there is only one recommendation possible: Suspension from the relevant agreements, notably EC Regulation 2201/2003, covering the mutual recognition of judgments in family matters, until such time as their family justice can be rendered “fit for European cooperation”.

2. Analysis of the Defects and Deficiencies

2.1. Expert Evidence

2.1.1. Family experts are tasked in Germany as a rule, by the family courts, and, less frequently, by the Jugendhilfe. In both cases, the expert will probably be an old friend or acquaintance of the person issuing the task. For the sake of brevity, this method of selection is known as the “chummy list” method. For this reason, there is no independence from the tasking authority, which is, for example, a requirement of the British regulation [1] and [2]. There are additional guidelines laid down in GB for medical doctors [3]. Vetted lists in GB are also available, for example [4].

2.1.2. There is no method of determining the qualifications and experience of an expert in German family courts. He is not asked this question and is not obliged to give details in the reports. For that reason, the “chummy list” method of selection in Germany is likely to produce some bogus experts, or experts with insufficient or no experience in the field required. Indeed, the appalling work quality of the experts reported in [5], “Human Rights Abuses through bad Workmanship” would lead one to thing that the “chummy lists” must contain mostly bogus experts.

2.1.3. In the table below, the British Civil Evidence Act [2] is compared to the German Civil Proceedings[6] in the matter of the production of expert reports:

Chapter and Paragraph	**German Civil Procedures**	**Remarks**
3.1. An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.	Not addressed.	A further safeguard against financial dependency on the tasking agency.
3.2. An expert's report must:		
3.2 (1) give details of the expert's qualifications;	Not addressed.	Omission of this Element can lead to admission of bogus experts and/or experts with insufficient experience for the task.
3.2 (2) give details of any literature or other	Not addressed.	This element is associated with the “state of the art” on which the report is

material which has been relied on in making the report;		based.
3.2(3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;	Not addressed.	This is an important element, which if ignored, leads to unsupported assertions, which are present in most expert reports in Germany.
3.2(4) make clear which of the facts stated in the report are within the expert's own knowledge;	Not addressed.	
3.2(5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;	Not addressed.	
3.2(6) where there is a range of opinion on the matters dealt with in the report – (a) summarise the range of opinions; and (b) give reasons for the expert's own opinion;	Not addressed.	
3.2(7) contain a summary of the conclusions reached;	Not addressed	
3.2(8) if the expert is not able to give an opinion without qualification, state the qualification; and	Not addressed	
3.2(9) contain a statement that the expert – (a) understands their duty to the court, and has complied with that duty; and	Not addressed.	

(b) is aware of the requirements of Part 35, this practice direction and the Protocol for Instruction of Experts to give Evidence in Civil Claims.	Not addressed.	
3.3. An expert's report must be verified by a statement of truth in the following form – I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. (Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)	This is, in Principle, covered in §410 as the expert is sworn either before or after the rendering of the report.	

2.1.4. The family courts in Germany using their version of expert evidence rules is a pernicious system, which is wide open to abuse. The “chummy lists” in use are an open invitation to slovenly workmanship and corruption in a system, which itself, is highly susceptible to corrupt practices. There are none of the checks and balances in place, which would ensure the necessary quality of expert reports and evidence.

2.2. Hearsay Evidence

2.2.1. There are no civil rules in Germany on how to deal with hearsay evidence. This means that anything goes in German family courts from denunciation, falsehoods through to malicious gossip.

2.2.2. Whether to admit hearsay evidence or not, is a decision of the legislative in each sovereign country. If it is to be admitted, then a carefully considered set of regulations is necessary. In GB, where admissibility is given, the following applies:

The regulations move some of the focus of hearsay evidence to weight, rather than admissibility, setting out considerations in assessing the evidence (set out in summary form):

- Reasonableness of the party calling the evidence to have produced the original maker
- Whether the original statement was made at or near the same time as the evidence it mentions
- Whether the evidence involves multiple hearsay
- Whether any person involved had any motive to conceal or misrepresent matters
- Whether the original statement was an edited account, or was made in collaboration with another, or for a particular purpose
- Whether the circumstances of the hearsay evidence suggest an attempt to prevent proper evaluation of its weight

- The credibility and competence of hearsay witnesses must meet certain criteria, which are to be carefully considered.

Detailed Rules are contained in the Civil Evidence Act 1995 Pt 35 [7].

2.2.3. Six children of a large German family were recently taken into care, on the basis of worthless hearsay evidence made by neighbors, people with a vested interest in falsifying or distorting evidence as well as the "Jugendamt". A conscientious judge should have been able to see through the falsehoods. However, it took nearly a year to demonstrate that the court had been misled and an order was forced through to release the children. The uncertainty and vulnerabilities of the family situation, however, led to it applying for political asylum in the USA.

2.3. Political activities of German Judiciaries

2.3.1. In a country where there is no separation of powers, it is not at all surprising that judiciaries should be appointed on the basis of their party affiliations divided up into quota systems. These judiciaries are also allowed to take an active roll in politics and many are compulsive publicity seekers, as their frequent press statements show. Participation in commercial enterprise is also permitted

2.3.2. In the UK, political activities are forbidden as the "Guide to Judicial Conduct" [8] states. More specifically:

> *"Each Justice will refrain from any kind of party political activity and from attendance at political gatherings or political fundraising events, or contributing to a political party, in such as way as to give the appearance of belonging to a particular political party. They will also refrain from taking part in public demonstrations which might diminish their authority as a judge or create a perception of bias in subsequent cases. They will bear in mind that political activity by a close member of a Justice's family might raise concern in a particular case about the judge's own impartiality and detachment from the political process."*

2.3.3. The Consultative Council of European Judges (CCJE) says:

> *"Judges' participation in political activities poses some major problems. Of course, judges*

remain citizens and should be allowed to exercise the political rights enjoyed by all citizens. However, in view of the right to a fair trial and legitimate public expectations, judges should show restraint in the exercise of public political activity. Some States have included this principle in their disciplinary rules and sanction any conduct which conflicts with the obligation of judges to exercise reserve. They have also expressly stated that a judge's duties are incompatible with certain political mandates (in the national parliament, European Parliament or local council), sometimes even prohibiting judges' spouses from taking up such positions."

2.3.3. The German Jugendhilfe is an industry, with an annual budget of 21 Billion Euros and is both a political and commercial organization, which is demand-cycle controlled within the bounds of its financing. It is the top player in German family courts. The political factor in a German judiciary's make-up completes the picture of the extreme vulnerability of the German family courts.

2.4. ***European Convention for Human Rights***

2.4.1. Germany abrogated the European Convention for Human Rights. In a judgment of the Supreme Court of the 14.10.2004 (3) she said (under bookmark 18) that the rulings of the European Court of Human Rights are not binding on any German Courts. This was merely an "outing" because Germany has never observed the Convention. Looking at the arguments put forward to justify the huge non-compliance with international treaties, the offending statement,

"As a result of the status of the European Convention on Human Rights as ordinary statutory law below the level of the constitution, the ECHR was not functionally a higher-ranking court in relation to the courts of the States parties. For this reason, neither in interpreting the European Convention on Human Rights nor in interpreting national fundamental rights could domestic courts be bound by the decisions of the EctHR",

contains easily recognizable verisimilitude: Art 46 of the convention does not apply any ranking to the decisions of the European Court of Human Rights, it simply says that they are to be obeyed, as is laid down in Art. 46 as follows:

Article 46 – Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

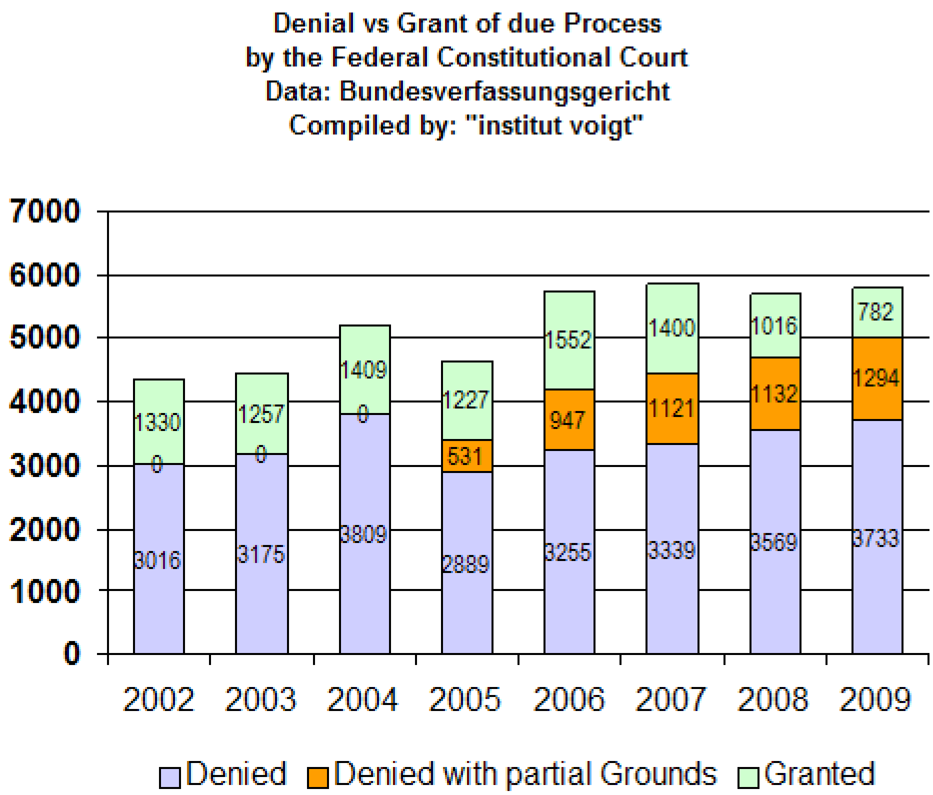
Sub-Para 2 of Article 46 goes on to say:

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

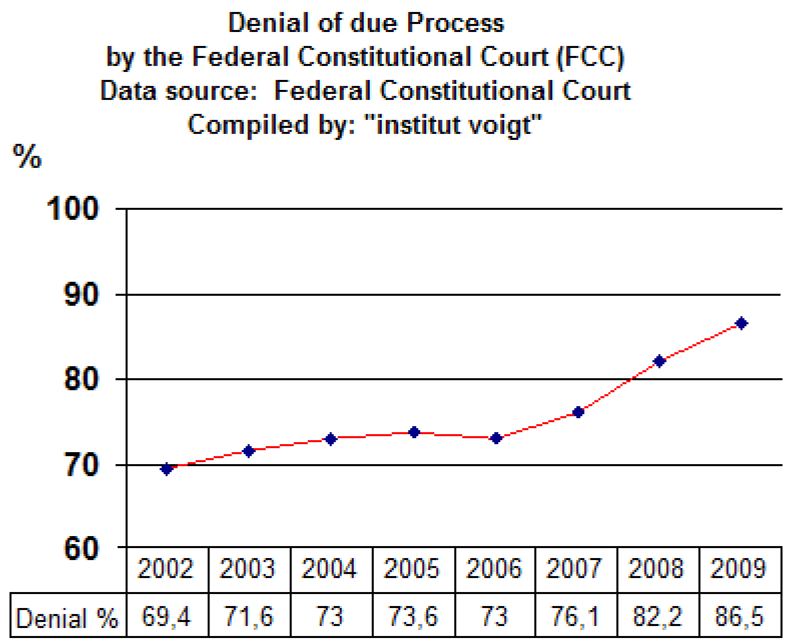
The situation could not be clearer: Germany is in breach of the international treaties, to which she signed up. Germany also puts into practice what she said on the 14.10.2004 and there are plenty of examples of this. This does not appear to have bothered anybody, least of all the European Court of Human Rights, who knew all about it.

Every sovereign nation can, of course, rescind the European Human Rights Convention at any time, but this should attract sanctions from the OSCE, such as expulsion from the organization. However, to perpetuate the facade of compliance, is quite another matter, which should set alarm bells ringing for all organizations, who adhere to international treaties and expect others to do so.

2.4.2. It is often said by German judiciaries “we do not need the ECHR, because we have a constitution”. An analysis of the statistics of the FCC, however, tells an entirely different story:



The statistics above are compiled from data published by the FCC itself. The complaints in the plots are those which have been categorized “Denied”, “Denied with partial grounds(since 2006)” and “Granted”. The “Denial” takes the form “Not accepted for a judicial decision”. Since there is no such thing, outside Germany, as “*nearly a hearing*” or even “*damned nearly a hearing***”** the classification “Denied” has been extended to include the area “Denied with partial grounds”. This leads to the statistics on the next page:



The curve shows that apart from a slight improvement in 2006 there has been a steady climb, in denial of due process by the FCC, from 70% in 2002 to 86,5% in 2009.

The utilization of the 13,5% correctly heard cases of 2009, for example, is an unknown factor. To deal with these would be a game of “second guessing” and a trap for the unwary. If the decision, reported in 2.4.1, is anything to go by, one must expect, at least, some arbitrary decisions as well as picking and choosing the cases. Otherwise, the topic will not be addressed, leaving the statistics on denial of due process to speak for themselves.

Anybody wishing for a remedy for the arbitrariness of the lower courts is headed for a big disappointment. After a wait of about 5 years, to experience the same arbitrary justice, must mean, in itself, a highly dramatic discovery. In GB there is the “Human Rights Act 1998”, enabling any citizen to claim his Convention rights immediately at the first instance. Paragraph 6(1) states:

> “*It is unlawful for a public authority to act in a way which is incompatible with a Convention right.”*

2.5. Habeas Corpus

2.5.1. A writ of *habeas corpus* is a summons with the force of a court order addressed to the custodian (such as a prison official) demanding that a prisoner be brought before a court, allowing the court to determine whether that custodian has lawful authority to hold that person. The writ can be issued in cases of the method of detention being “cruel or unusual”. The writ can be issued by any person.

In German family courts, the urgent need for a “Habeas Corpus”[11] legislation goes hand in hand with the extremely poor work quality of both the experts and the courts. In Germany, children are being locked up in psychiatric clinics simply for running away from school and on the strength of an expert's report to a court and, in most cases, the unshakable belief of a judge in his “old chum” (see 2.1.1)..

The mother of a large family was locked up in a psychiatric clinic after suffering hallucinations following a pregnancy diabetes, which was misdiagnosed. In another case the mother of a child in a psychiatric clinic wanted to know, on what authority her daughter was being treated with new drugs. The psychiatrists answer was, “Show me the law preventing me from doing what I like. You do not have custody of the child”. These would be further examples of situations where a writ of *habeas corpus* would be appropriate.

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Author	Work	Location
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