ADF INTERNATIONAL

Fifth Section,
European Court of Human Rights,
Council of Europe
67075 Strasbourg-Cedex, FRANCE

12 April 2017

Dear Judge Nußberger, President of the Fifth Section

RE: *Dirk Wunderlich and Petra Wunderlich v. Germany*, Application no. 18925/15
Observations of the Applicants and Application under Rule 86 of the Rules of Court.

Further to our previous correspondence, I have the pleasure of enclosing with this letter the written observations of the Applicants together with a proposal for friendly settlement pursuant to Article 39 of the Convention and Rule 62 of the Rules of Court. Additionally you will find enclosed a request for just satisfaction and legal costs pursuant to Article 41 of the Convention and Rule 60 of the Rules of Court.

In light of the important and complex issues raised in this application and the far-reaching consequences of this case for the rights of children and parents in Germany, I respectfully apply under Rule 86 of the Rules of Court for an opportunity to develop the arguments raised in the enclosed written observations at an oral hearing to be held for that purpose before this esteemed Court.

Yours sincerely,

R Clarke.

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Enclosures : (1) Written observations with annex, (2) request for just satisfaction and costs, (3) proposal for friendly settlement.

WUNDERLICH v. GERMANY (no. 18925/15)

OBSERVATIONS OF THE APPLICANTS

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(a) Summary

1. This case, as communicated, concerns two interferences with the family life of the two Applicants – Dirk and Petra Wunderlich – by the Respondent, the German government. In particular, this case challenges:

    a. The removal of the parents' right to determine the place of residence of their four children, and other parental rights, between 6 September 2012 and 15 August 2014.

    b. The physical taking into state care of the four children between 29 August 2013 and 19 September 2013.

2. The Respondent accepts that both of these events took place, and that they both amount to interferences with rights protected by Article 8 of the Convention.

3. These Observations will therefore respond to the factual account given by the Respondent which is disputed, in part, and then argue that the interferences were not justified under Article 8 (2).

4. In respect of the factual account, the Applicants will argue that a number of wholly irrelevant and prejudicial matters have been asserted which were not the basis for the Respondent's interference.

5. It will be demonstrated that the interferences were not based on sufficient and relevant reasons but were rather based on incorrect assumptions about the children as well as invalid presumptions regarding the consequences of homeschooling both generally on society, and individually on the children.

6. Germany's preliminary objection should be dismissed because the Applicants exhausted domestic legal remedies through three levels of the German judicial system. Further, the application was lodged with this Court within 6 months of the date of the final decision of the Federal Constitutional Court on 20 January 2015.

7. The abstract aim provided by the Respondent for these dramatic interferences does not hold up to scrutiny. In sending a bailiff and more than 30 police officers into the Applicants' home and using force to carry out their (crying) children into the hands of Youth Welfare Office to take them into a foster home, it will

be argued that the Respondent's approach was, in short, to default to the nuclear option, as a blanket policy which is not proportionate to any aim.

8. The only allegation of harm advanced by the Respondent is that the children were being educated at home. The Applicants contend that this presumption applying to all children is over broad and is a strikingly different approach from that taken in almost all other Council of Europe states. Although the Convention does guarantee the right to education, it does not require mandatory schooling in state schools.[1]

9. Germany's response specifically acknowledges the fact that the Applicants were caring parents who loved their children and provided an education that was adequate and suitable for the children.

10. The Respondent has advanced no reasons – beyond general assertions – to satisfy the requirement for "relevant and sufficient" reasons. This is particularly true in light of the fact that the Respondent admits that the children were found to be developing "according to their age" before the interferences and were receiving an education within a loving home environment.

11. Germany attempts to justify its actions on the grounds that forced schooling is necessary because allowing homeschooling would foster social isolation and stands against a pluralistic, open society, which requires people to be able to deal with those who think differently. Germany has provided no substantiation for this general assumption, and no particular evidence to support its interferences in this case.

12. The forcible removal of the Applicants' children from the family home solely based on the fact that they were educated at home, and the longer term removal of other parental rights, is a staggeringly disproportionate interference in the family life of the Applicants.

(b) Facts

[1] "Further, it does not affect the right of parents to enlighten and advise their children, to exercise with regard to their children natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions." *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 54, Series A no. 23. See also the Separate Opinion of Judge Verdross: "This conclusion is not weakened by the entitlement given to parents to send their children to a private school subsidised by the State or to have them taught at home."

13. This Court requires that for "facts challenged by the Government any relevant evidence, domestic decision or other document have to be submitted with the pleadings."[2] However Germany's response is almost entirely *unsupported* by documentary evidence. Moreover, it contains facts and allegations that are both incorrect and irrelevant. The Applicants respond to Germany's account of the facts, contained in paragraphs 8-39, as below.

14. The two Applicants are the mother and father of four children who live together in Ober-Ramstadt, Germany. The father (first Applicant) is a professional gardener, having been previously employed by the Technical University Darmstadt in this role. Between 2008 and 2011, the Applicants and their children lived in various countries. The purpose was not, as Germany characterizes, to "evade compulsory school attendance in Germany," (para. 11, Respondent's Observations) but to homeschool their children in peace. The Respondent not only assumes to know the mind of the Applicants but also mischaracterizes one of the four freedoms of the European single market – freedom of movement – and the provisions of Article 2 of Protocol 4 to the Convention: "Everyone shall be free to leave any country, including his own."[3]

15. On the Applicants' return to Germany, on 12 December 2011, the first Applicant proactively sent an email to the school and youth welfare authorities (pp. 1-2, Applicants' Application Bundle) requesting to meet with both authorities. On 16 December 2011, he received a positive response from the Youth Welfare Office, but a negative response from the School Authority.

16. The first Applicant did meet with the Vice-Director of the Youth Welfare Service on 17 January 2012. During this meeting, the first Applicant offered to enroll the children in correspondence classes by an officially recognized school under the supervision of the school authorities. Furthermore, he stated his willingness to enroll his children in after-school clubs and to allow the state authorities to meet with his children at any given time even without prior notice. Indeed, up until the later violent intervention, the Applicants re-iterated this offer. It is reflected in the School Authority's own notes of a meeting held with the

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[2] ECtHR, "Guidelines on Submitting Pleadings Following Simplified Communication", section (a)(8)(iii).

[3] Protocol No. 4 to the ECHR, Article 2(2). This Protocol was ratified by the Respondent, without relevant Reservation, on 1 June 1968.

Applicants (disclosed in separate proceedings) in which reference is recorded to discussion of "Fernschule", meaning "distance learning."[4]

17. On 26 March 2012, during a scheduled visit to the Applicants' home by the Youth Welfare Office, the officer was able to meet with the children and reported in an email dated 3 April 2012: "We had the impression that all children were developing according to their age. On the part of the Youth Welfare Office there is currently no need for action" (p. 3, Applicants' Application Bundle).

18. In response to that email, the School Authority wrote, on 11 April 2012, that "I am certainly of the opinion that there is a danger to the children, because they are systematically withdrawn from all social aspects of society and live in a so-called parallel society" (p. 3, Applicants' Application Bundle). It is notable that this assessment, given by the *legal* expert of the School Authority, was completely different from the Youth Welfare Authority's assessment of 26 March 2012, in spite of the fact that no discussion with the parents had taken place (indeed, it was refused). Furthermore, the School Authority had never visited the Applicants' home and yet made an "assessment" of endangerment without leaving their desks and without the relevant training.

19. In paragraph 12 of the Respondent's Observations, Germany suggests that staff from the Youth Welfare Office were unable to access the children during three unannounced visits. The Court is invited to note that it was the Youth Welfare Office of Darmstadt *City* which attempted visits on 9 February 2012 and 13 February 2012. The *City* office has jurisdiction in the city in which the first Applicant's mother lives. This office visited the Applicant's mother's house on 9 February 2012 and advised the family, who were staying there, that they must move back to their own house, in the *county* of Darmstadt-Dieburg (which falls under the regional jurisdiction of a different Youth Welfare Office). When the City welfare office returned to the mother's house on 13 February 2012, it should be of no surprise that the family were no longer there, having done what was demanded of them.

[4] Notes from School Authority Meeting of 26 August 2013, Applicants' Additional Annex, p. 1.

20. Moreover, neither of these visits, nor the visit mentioned by the Respondent of 6 March 2012 (paragraph 12, Respondent's Observations) were announced in advance to the family, and yet they are being faulted for being unreachable.

21. On 13 July 2012, the School Authority applied to the Darmstadt Local Court for a measure under section 1666 of the German Civil Code (para. 13, Respondent's Observations). The Respondent asserts, inter alia, the following as relevant and sufficient reasons for obtaining the order: (1) The suggestion that the First Applicant had written or stated that he considered the children to be his "property"; (2) The family's health insurance status; (3) The allegation that the children had no contact with peers; (4) The allegation that by homeschooling their children the parents would not be in a position to raise their children in such a way as they would be able to develop prospects for their future life in Germany; (5) Allegations relating to the Applicants' stay in France during which they allegedly had "no access to education whatsoever"; and (6) A fine against the First Applicant for an offence from 2008. Each of these will be dealt with in turn:

(1) <u>The suggestion that the First Applicant considers the children to be "property"</u>

22. In a belated attempt to justify the decision of 6 September 2012 to remove the Applicants' right to determine their children's place of residence, Germany quotes (para. 15, Respondent's Observations) – incompletely – from a letter sent by the first Applicant on 17 August 2012 which the Respondent claims to show that the first Applicant considers the children to be his property. This allegation does not appear in the District Court's short reasons for taking custody of the children and was not part of the Respondent's decision-making at the time (pp. 26-29, Applicants' Application Bundle). The Applicants accept that this language was used in a letter written by the first Applicant however, the Respondent takes this quote completely out of context. The First Applicant was quoting from the book "Brave New World": "Every one belongs to every one else."[5] He was highlighting the dystopian nature of the Respondent's assertion that the children belong either to it, or to society.

(2) <u>The family's health insurance status</u>

[5] Aldous Huxley, *Brave New World* (1932).

23. The Respondent asserts that part of the reason for the application to the court of 13 July 2012 was that the children lacked health insurance (para. 13, Respondent's Observations). However, by the subsequent hearing in the case on 5 September 2012, the Applicants informed the court that they had secured health insurance. This was no longer an issue and, in fact, demonstrated precisely the opposite – a willingness to co-operate on the part of the Applicants.

(3) The allegation that the children had no contact with their peers

24. Germany suggests that the list of concerns could be "summed up" by saying the children were "growing up in a 'parallel world' without any contact with their peers" (para. 13, Respondent's Observations). This displays a substantial overreach which suggests the state has assumed a power to police the family lives of its citizens. This stands in contrast to the account given by the court-appointed guardian ad litem who stated the children had indicated they "met up with friends who lived nearby but not in the same town." One child, J, is reported to have said that "he had not made any friends yet where they lived, but he had a friend in Darmstadt" (as reported in para. 19, Respondent's Observations).

25. Given the family had moved to their then residence five months prior, after being away from the area for a number of years, it is hardly unusual that the children would have relatively few friends. The Applicants contend that the number of friends their children had is of no relevance in taking custody from them. It is further submitted that the location of their clearly existent friends should not be cause for concern.

(4) The allegation that the children had no prospects

26. This allegation is pure (and incorrect) speculation based upon erroneous assumptions about the four children and their parents' chosen method of education. The Applicants contend that the mere fact that homeschooling is permitted in almost all Council of Europe nations (see below, section (d)(v)) is itself evidence of the falsity of the assertion. If homeschooling caused such problems for the free and democratic societies of Europe and the many other countries around the world where homeschooling is permitted, evidence of such problems would be widely available. There is no such evidence provided by Germany and all actual evidence in this case is to the contrary. In this case

the authorities knew no later than April 2013 – four months before applying to take emergency custody – that the Applicants' children were developing "according to their age" (p. 3, Applicants' Application Bundle) and that the Applicants were "seeking officially recognised school degrees for their children" (judgment of 25 April 2013, p. 99 of Applicants' Application Bundle).

(5) The allegation that the children had "no access whatsoever" to education in France

27. The Youth Welfare office made a statement in the ongoing proceedings on 7 August 2012 in which they variously claimed that "the children were isolated, had no access to education whatsoever" and had "been taken into public care in France" (para. 14, Respondent's Observations). First, it is noted that this assertion is irrelevant to the matter at hand and was not used by any of the domestic courts to justify its orders in removing custody in either situation.

28. Answering further, the only reason French authorities investigated the Applicants' family was due to allegations made by the German authorities to their French counterparts.

29. In contrast to the German approach, at the first court hearing in France on 9 October 2009, the Judge concluded that "the children, that had been described by [the German authorities] as completely introverted, were quite the contrary, happy and approachable while being able to express themselves well." Moreover, the Applicants had "submitted by their counsel several proofs, that showed that the children had social contact to their neighbours' children on a regular basis. They were sociable and did not show any kind of deviant behavior."[6]

30. Turning specifically to the assertion that the children were not educated in France, the Judge noted that "during the proceedings, [the Applicants] presented receipts of the month of August for school supplies in the amount of more than 500 EUR as well as photos showing their children while learning."[7] The Respondent cannot be allowed to bolster a weak case by introducing allegations supposedly showing French authorities becoming involved when

[6] Judgment of the Tribunal Pour Enfants, 209/0298, 9 October 2009. Applicants' Additional Annex, pp. 2-5.
[7] *Ibid.*

they themselves initiated such proceedings which were found to be without merit by the French tribunal.

(6) A fine against the first Applicant for an offence from 2008

31. Germany prejudicially relies upon a matter which is not substantiated or referenced by any of the domestic judgments in this case (para. 13, Respondent's Observations). However, the First Applicant accepts that he was fined for an incident in which he disciplined his eldest child who was eight years old at the time with three light slaps to the bottom. Because physical chastisement of any kind is unlawful in Germany, the First Applicant accepted the fine. Since then there has been no recurrence in the almost ten years that have elapsed since. Even at the time of the events giving rise to this application, the incident was in the distant past and, if it had formed part of the decision-making, it would have formed part of the reasoning of the domestic courts; it did not and is therefore irrelevant.

32. In conclusion, these six allegations are without substantiation, were ultimately irrelevant to the domestic decision-making process, and should be disregarded by this Court.

33. Moving to the next part of the Respondent's Observations, the Applicants accept the facts described in paragraphs 16-17 except insofar as the Applicants cannot confirm the contents of conversations between the case assistant and the children.

34. The Applicants accept the statements outlined in paragraph 18 except that there is no mention of the alleged difficulties with "Pythagoras" or German grammar in the judgment of the Court of 6 September 2012 and therefore invites the Court to disregard this prejudicial and unsubstantiated assertion. Moreover, Pythagoras' theorem is taught in the *ninth* year (at 15 years old), and their oldest child was 13 years old at the time of this hearing.

35. The Applicants accept the facts outlined in paragraph 19, but note that the "reasoning" adopted by the Family Court, and relied upon by the Respondent is taken almost literally from a decision of the Federal Court of Justice of 2007, which, since then, has been considered as a "blueprint" for the withdrawal of custody from parents who homeschool, considered below.

36. The Applicants deny the assertions in paragraph 20. Their inclusion seems to be a transparent attempt to muddy the waters with irrelevant, untrue, and prejudicial material. Not only is the source of the "complaint" of 11 September 2012 an "anonymous" and unverifiable phone call alleging that the first Applicant would kill to protect his children, but the serious allegation contained within the paragraph is flatly contradicted by the Respondent's own account of matters which states that they have a copy of the 94 page letter but that it makes "no mention" of the allegation (para. 20, Respondent's Observations).

37. The Applicants accept the facts outlined in paragraph 21.

38. The Applicants accept the facts alleged in paragraph 22 insofar as the children refused to accompany the Youth Welfare officer to the office. The children made this decision of their own will and without input from the Applicants.

39. The Applicants do not have any knowledge of the facts alleged in paragraph 23 except insofar as the authorities had prior knowledge of the satisfactory developmental stage of the children, as outlined above.

40. The Applicants agree the statements outlined in paragraph 24 reflect the content of the judgment of the 25 April 2013 of Frankfurt Higher Regional Court returning the right to determine place of residence during school holidays.

41. The Applicants agree the statements outlined in paragraphs 25-27.

i. Removal of the children from the family

42. The Applicants have no knowledge of paragraph 28. Moreover, this unusual admission, that the authorities were seeking accommodation for the children in June 2013 appears to suggest a pre-arranged plan – over several months – by which the Respondent conspired to remove the children from the home. It is therefore unclear why an urgent emergency application, without notice, was necessary in August 2013. A regular application would have allowed the Applicants to be accorded appropriate due process for such a serious interference.

43. Furthermore, the Respondent has omitted other relevant information, namely that the Youth Welfare Office had, on 14 June 2013, applied to the Family Court requesting the transfer of further aspects of custody, and that from that time a new *main proceeding* was pending – 53 F 1216/13 (pp. 226 f.,

Applicants' Application Bundle). Due to the fact that this proceeding was delayed – the applicants having made a request on the grounds of bias on 11 July 2013 – with the new school term starting in August, a new *urgent procedure*, under the pretext of there being some supposed "danger" was then initiated in August 2013.

44. The Applicants accept that a meeting took place on 26 August 2013 between themselves, their lawyer, the Youth Welfare Office and the School Authority. During this meeting, the Applicants again offered to provide for correspondence classes by an officially recognised school under the supervision of the school authorities, to enroll the children in after school clubs and to allow visits by the Youth Welfare Office. This is reflected in the School Authority's notes from the meeting.[8]

45. The Applicants had no knowledge of the application made by the Youth Welfare Office on 27 August 2013 seeking emergency (interim) physical custody of the children. The Applicants note that the "emergency" proffered by Germany to justify the intervention was the anonymous letter from 11 September in the *previous* year. Not only was this letter eleven months old but the Respondent also admits that the contents do not contain the statement of concern (para. 20, Respondent's Observations).

46. The Applicants agree the statements outlined in paragraph 31. Moreover, the Applicants note that their home was surrounded by a total of 40 police officers and social workers. When the Applicants engaged in dialogue with the authorities, asking what was happening, they were told to open the door or that it would be broken down. Armed police with a battering ram approached the door which was opened by the first Applicant.

47. After opening the door, the Applicants were roughly handled and their children were visibly shocked and frightened. The first Applicant was forcibly restrained in a chair.

48. The Applicants agree paragraph 32, noting that the children were carried out of the home by force, traumatized severely, and were all crying and unwilling to go with the authorities.

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[8] Notes from School Authority Meeting of 26 August 2013, Applicants' Additional Annex, p. 1.

49. The Applicants accept paragraphs 33, 34, 35, and 36 noting that the children were physically returned to their parents on 19 September 2013, but the right to, *inter alia*, determine place of residence was not returned.

50. Following the return of the children in September 2013, the children attended state school for the school year. Contrary to the Respondent's assertion that the children would struggle to integrate, the children did just that (and their teachers were very impressed with them).

51. The Applicants accept paragraphs 37-39 noting that it was not until 15 August 2014 that the Frankfurt Higher Regional Court returned the Applicants' right, *inter alia*, to determine place of residence of their children despite the court having heard on 15 October 2013 that "the mother and children appeared to have a loving relationship, the children were clearly affectionate and attentive towards their mother and, apart from preventing them from attending school, there were no longer any other reasons which were apparent which necessitated any state action sanctioned by the family court" (para. 37, Respondent's Observations).

52. Following the children's attendance at school during 2013–2014, the family withdrew the children from the public school and have continued to educate their children at home without substantial interference by the Respondent.

(c) National Law and Practice

53. With regard to paragraphs 40-53 the Applicants accept that these paragraphs accurately state both state and national law without prejudice as to the Convention-compliance of such provisions and practice either generally, or in the instant application.

54. The application of §§ 1666 in this case is taken according to an interpretation given by the Federal Court of Justice in 2007:

> **13** b) […] Additionally, it is also the case that the persistent refusal of the first party to send their children to a state primary school or to a recognized private school *constitutes an* ***abuse of parental custody which lastingly endangers the welfare of the children*** *and which involves and necessitates measures by the Family Court according to §§ 1666 of the Civil Law Code* [= Removal of custody]. There are no reservations under constitutional law, either against compulsory school attendance or – in principle – against measures by the Family Courts taken to enforce school attendance, in line with the requirements of the

> §§ 1666, 1666 a of the Civil Law Code. […] *According to this, the parents are even then not entitled to withdraw their children from school if parts of the curriculum or methods utilized by the school are in opposition to the religious convictions of the parents.* This applies as long as the State takes its educational mandate seriously and carries it out responsibly in the sense of the requirements of the Basic Law; in this case there is no evidence to the contrary.
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> […]
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> **15** c) Free of legal errors are also the partial removal of custody and the appointment of a custodianship. These measures are basically suited *to counteract the abuse of parental custody* by the first party. The removal of the right to determine the residence of the children and to decide on the children's education, creates along with the appointment of a custodianship the prerequisites that the children are compelled by a guardian to attend a state or recognized private school in Germany to appropriate measures in order *to avert damage to the children through continued exclusive homeschooling by the mother.* From a legal point of view, it is completely acceptable, as well as self-evident in light of the demonstrated resistance of the parents, that such a guardian be empowered – as occurred in the judgment of the Family Court – to enforce the handover of the children, *by force if necessary* and by means of entering and searching the parental home, with the aid of a marshal of the court or of the police. As the Higher Regional Court has explained, *there are no milder measures that can effectively protect the children from parental abuse and enforce the state's educational mandate in the well understood child's interest. The partial removal of custody and the appointment of a guardianship are also not out of proportion with the welfare of the children which is being pursued hereby*; they are required for the state's custodianship.[9]

55. If one drew a formula from the main reasons set out, it would look like this:

> "homeschooling" = "damage" = "abuse of parental custody" ⇀ "necessitates measures"

It is obvious that this assumption is false. In Germany homeschooling is not only prohibited (contrary to international law, as set out below), but German courts also consider homeschooling as an "endangerment to the children's welfare", and they act accordingly without meeting the high bar, as recognized by this Court, before taking custody, into consideration. The mere fact that parents "persistently" homeschool is considered sufficient to "justify" the withdrawal of custody.

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[9] Judgment of the Federal Court of Justice of 11 September 2007, XII ZB 41/07, paras. 13, 15. Emphasis added.

(d) Alleged Violations of Article 8 of the Convention

56. This Court has stated on numerous occasions that the mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life.[10] Thus, any domestic measures that hinder the parent and child from each other's company constitute a *prima facie* interference with the rights protected by Article 8.[11] With regard to Article 8, the Court has held that:

> The margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake.[12]

57. In the present case, the issues at stake could not be more serious, involving taking physical custody of children and the withdrawal of other aspects of parental rights over a long period. It is therefore submitted that the margin of appreciation to be enjoyed by the State will be narrow (see further, below).

i. Response to Preliminary Objection

58. In paragraphs 61-64, the Respondent argues the Applicants did not meet the deadline for filing in respect of the partial withdrawal of parental custody and taking of physical custody of the children in interim orders 53 F 1697/13 EASO and 53 F 1698/13 EAHK. This is not correct. The Applicants filed claims for declaratory relief in these proceedings with the Higher Regional Court in a timely way with the references 6 UF 273/13 and 6 UF 274/13 (pp. 293-314, Applicants' Application Bundle). The decisions indicated that "the complaints are admissible according to ss. 87 (4) FamFG…"

59. Those cases resulted in Judgments dated 15 August 2014 (pp. 422-438, Applicants' Application Bundle). These decisions were further appealed to the Federal Constitutional Court on 18 October 2014 (pp. 580-646, Applicants' Application Bundle) with the reference 1 BvR 3258/14. This application was dismissed by order dated 20 January 2015 (p. 653, Applicants' Application

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[10] See *Olsson v. Sweden (no. 1),* judgment of 24 March 1988, Series A no. 130, p. 29, § 59; *Eriksson v. Sweden*, judgment of 22 June 1989, Series A no. 156, p. 24, § 58; *Margareta and Roger Andersson v. Sweden*, judgment of 25 February 1992, Series A no. 226-A, p. 25, § 72.
[11] See *K. and T. v. Finland* [GC], no. 25702/94, § 151, ECHR 2001-VII and *Johansen v. Norway*, judgment of 7 August 1996, Reports of Judgments and Decisions 1996-III, pp. 1001-02, § 52.
[12] *Görgülü v. Germany*, no. 74969/01, 26 February 2004, § 42.

Bundle), and received on 28 January 2015. The Application to this Court was filed on 16 April 2015, less than 3 months later.

60. Remarkably, the Respondent argues that the application was "received by the Court on 20 April 2015" and so is out of time because the time "began to run when the children were separated from their parents and subsequently placed in a home in autumn 2013." In this, the Respondent commits both a remarkable mistake of law, and a serious mistake of fact.

61. Rather than being received on 20 April 2015, the Court's Communication of the case clearly indicates that the application was "lodged on 16 April 2015". Secondly, Article 35 of the Convention states that "the Court may only deal with the matter after all domestic remedies have been exhausted, … and within a period of six months from the date on which the final decision was taken." It is clear therefore that the time begins to run with communication of the final decision domestically. That came with the decision of the Federal Constitutional Court on 20 January 2015, and received on 28 January 2015, from which no appeal was possible.

ii. Was there an interference?

62. The Applicants respectfully submit that there are two related but distinct interferences identified in the Communication of this case:

    a. The transfer of, *inter alia*, the right to determine place of residence to the Youth Welfare Office, ordered by the Darmstadt District Court on 6 September 2012, and lasting until 15 August 2014.

    b. The forced physical separation of the Applicants' four children from their parents on 29 August and until 19 September 2013.

63. In paragraph 66, the Respondent accepts that both (a) and (b) listed above constitute an interference with the rights guaranteed by Article 8 and this matter is understood as not in issue. Article 8 is a qualified right which means that interferences may be permitted but only if they satisfy the limited grounds set out in Article 8(2).

64. This is understood to mean that any interference must be (i) in accordance with law; (ii) in pursuit of a legitimate aim; and (iii) necessary in a democratic society.

iii. Did the two interferences pursue a legitimate aim?

65. The Government provides only one sentence by way of explanation as to the aim pursued by these dramatic interferences: "the aim…was to protect both the health and the rights and freedoms of the Applicants' children" (para. 69, Respondent's Observations).

66. According to Article 18 of the Convention, "the restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed." This Court has made it clear in the context of another qualified right that:

> It is not sufficient that the interference involved belongs to that class of the exceptions … which has been invoked; neither is it sufficient that the interference was imposed because its subject-matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms: the Court has to be satisfied that the interference was necessary having regard to the facts and circumstances prevailing in the specific case before it.[13]

67. Although Article 18 is generally considered to have no autonomous existence, it is of relevance when the Court considers whether the Respondents actions were taken in pursuit of a legitimate aim. The Respondent suggests that the aim was to protect the health and rights of the children but does so without any further explanation as to how these interferences sought to do this. Although the State is legally entitled to a presumption of good faith, it is one which is nonetheless rebuttable[14]:

> the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. Indeed, … the presumption of good faith is rebuttable.

68. The Respondent's state of knowledge as reflected in its admission at the time of the first interference (6 September 2012) demonstrates that the intervention was not aimed at protecting the children's health or any right protected under the Convention. The Convention recognizes a right to education and the children were receiving an education. The children had been assessed as

[13] *Ibid.,* § 65.
[14] *Lutsenko v. Ukraine*, no. 6492/11, 3 July 2012, § 106.

developing in accordance with their age. Any genuine concerns about the lack of health insurance had been corrected by the Applicants in a timely way.

69. This becomes even clearer the "later" one travels through the timeline of the interference, which continued until 15 August 2014 – almost two years later. By the end of Summer 2013 – only "halfway" through this interference – in addition to knowing all the above, the State had also taken physical custody of the children in order to subject them to educational assessments. They knew the results of these assessments, which showed the children, were performing well and, in some areas, "above average" (para. 89, Respondent's Observations). Moreover, they knew the children enjoyed a close and loving bond with the parents, and that they themselves expressed a preference to be educated by them at home. Despite the Respondent's stated aim, it is impossible at this stage to see how the continuing removal of the right to, *inter alia*, determine residence sought to safeguard the children's rights or health. In fact, given the stress it caused the family, it is quite possible that the effect was precisely the opposite.

70. Regarding the continued removal of the right to determine place of residence, and the taking into physical custody, Germany's presumption of good faith has been rebutted because, as Germany admits, at the time of both takings it knew that the children were being adequately cared for and educated. Moreover, it is submitted that the interferences in question were taken – or continued – at a time when it was clear they did not serve an aim permitted under Article 8 (2).

iv. Were the interferences necessary in a democratic society?

71. However, if this Court is minded to go on to consider the necessity of the interferences, it is respectfully submitted that they fail to be justified. The question of necessity implies that there must be no less restrictive means by which the legitimate aim can be accomplished. This Court has held that the adjective "necessary", "is not synonymous with 'indispensable'", however, "neither has it the flexibility of such expressions as 'admissible', 'ordinary' …, 'useful' …, 'reasonable' … or 'desirable.'"[15]

[15] *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24.

72. Moreover, "[a]ccording to the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued."[16] The Respondent's approach in this case was a sustained violent interference which was grossly disproportionate to any aim pursued.

73. The mutual enjoyment by parent and child of each other's company constitutes "a fundamental element of family life."[17] It is clear that it is the State which must justify an interference and that any margin of appreciation will be narrow:

> The margin of appreciation so to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. While the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care, in particular where an emergency situation arises, the Court must still be satisfied in the particular case that there existed circumstances justifying the removal of the child, and it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child, as well as of the possible alternatives to taking the child into public care, was carried out prior to implementation of such a measure

74. Both of the interferences outlined above were serious in nature. In the first, the parents were deprived of the very fundamental and inherent right of parents to decide where their children live. Moreover, they were deprived of the right to make legal applications on behalf of their children. Neither of these were done in the context of an emergency situation – indeed, the situation persisted for two years and was based upon demonstrably inaccurate information. The second interference was even more violent in nature, affecting the parent-child relationship at its very core by taking away the children.

75. These interferences had the effect of both making it difficult to live as a family unit and causing harm resulting from the trauma of the forced separation for three weeks and uncertainty in respect of the place of residence of the children for even longer. It is therefore submitted that the interferences were of a particular intimate nature with the very existence of the family bond at stake.

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[16] *Olsson v. Sweden (no. 1)*, 24 March 1988, § 67, Series A no. 130.
[17] *P., C., & S. v. the United Kingdom,* no. 56507/00, § 113.

In light of the fundamental nature of the rights at stake, the burden the state must discharge is therefore particularly weighty.

76. In *Palau-Martinez v. France*,[18] the Court considered the case of an applicant whose two children had been subject to a residence order in favour of their father. The applicant mother complained that the reasoning had been based on a "general and abstract ground and had failed to investigate whether, in reality, the children's upbringing was disrupted to an extent that justified changing their place of residence."[19]

77. After finding the aim of protecting the children's interests to be legitimate, this Court turned to consider the question of proportionality. In finding a violation of Article 8 taken with Article 14, the Court considered that:

> [T]he Court of Appeal…asserted only generalities concerning Jehovah's Witnesses. It notes the absence of any direct, concrete evidence demonstrating the influence of the applicant's religion on her two children's upbringing and daily life…Accordingly, the Court considers that the Court of Appeal ruled in abstracto and on the basis of general considerations, without establishing a link between the children's living conditions with their mother and their real interests. Although relevant, that reasoning was not in the Court's view sufficient.

78. The interferences in this case were similarly missing direct or concrete evidence in support of such dramatic interventions which will be outlined below both in terms of the factual state of knowledge of the authorities at the time, and the resultant failure to justify the interferences.

<u>What did the authorities know?</u>

79. The Respondent has argued that the measures were proportionate, "at least based on the facts available at the time" and admits that it was "not necessary from an ex post perspective" (para. 90, Respondent's Observations). The Respondent's reasoning in paragraph 90 is extraordinary. The Respondent concedes that all of their fears were unfounded and has, at the same time, contended that the forceful removal of children at the hands of more than 30 police officers is justifiable.

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[18] No. 64927/01 (16 December 2003).
[19] *Ibid*., § 14.

80. Moreover, it is crucial to examine what the authorities knew *at the time of each interference* in order to properly assess if the interferences were simply unjustifiable *after the fact* (as admitted by the Respondent), or whether they were similarly unjustified at the time.

81. The Applicants had proactively sought communication with the authorities on their arrival back in Germany in December 2011 and the family had met with the Youth Welfare Office as early as January 2012.[20] The School Authority refused to meet with the family (paras. 15-16, above).

82. In March 2012, two officers of the Youth Welfare Office visited the children at home and determined that they are developing well according to their ages. At that meeting, the Youth Welfare Office had reported that there was no need for intervention (para. 17, above). It is unclear what changed since then to justify the interferences in this case. At this juncture, the family is co-operative, offers have been made. The only refusal is on the part of the School Office to meet with the family. Around four months later, in July 2012, an application for custody was made to the court under § 1666 – through the *School Office* (rather than the Youth Welfare Office).

83. Although reference has been made to a conviction of the first Applicant, that was existent at the time of the original review and there was no basis for any continued concern. In respect of the long letter mentioned above, and upon which the Respondent seems to place so much weight, the Respondent has accepted that it does not contain the pejorative allegation reported in an anonymous phone call. Even any nugatory examination of the content of the letter would have revealed a father concerned for the welfare of his children, rather than the selective interpretation offered in paragraph 15 of the Respondent's Observations.

84. The degree of co-operation by the Applicants included the acquisition of health insurance upon request, the offer of approved distance learning classes, the enrollment of the children in extra-curricular activities and the facilitation of a meeting between the children and the court appointed case assistant before the Court hearing on 5 September 2012. It is thus difficult to see what had

[20] Paragraph 15, above.

changed such as to justify the need to assume the parental right to determine a child's place of residence.

85. This complaint becomes even more acute with regard to the even greater interference in which the children were physically removed.

86. Further challenging the Respondent's narrative that this was an emergency measure invoked to prevent imminent harm coming to the children is the fact, reported at paragraph 28 of the Respondent's own Observations, that the authorities were searching for alternative accommodation for the children no later than June 2013 – some two months before the "emergency application" was made without notice to the family – and that the "main" proceedings had been ongoing since June: 53 F 1216/13 (pp. 226 f., Applicants' Application Bundle; para. 42, above). In addition, it is understood that, in an email of 18 July 2013, the Youth Welfare office invited a number of interested parties including the police and school authority to a meeting to discuss the "preparation of the taking of the Wunderlich children."[21] This meeting was arranged (and held) before the authorities applied for an interim order and is demonstrative of a prejudgment of the facts of the case and the assumption that home education amounted to child endangerment with no further consideration of the circumstances of the family and the well-being of the children.

87. In seeking this interim order, the Respondent relied upon the letter which didn't contain the allegation they advanced before the court, despite them being in possession of a copy thereof. Moreover, given that the letter was apparently dated 17 August 2012, it is difficult to see how this could justify the need for immediate interim action 1 year later. If the concern the Respondent espouses really existed, it is respectfully submitted that action would have been taken much earlier.

88. An *ex parte* injunction of this nature involving the violent removal of children from the home is only justified if the children are in imminent danger of serious harm. The lack of agreement as to the education of the children is not a sufficient reason to justify such an interference especially when all of the

[21] Email to conspirators of 18 July 2013, Applicants' Additional Annex, p. 6.

history and evidence indicates that the children's physical security and mental well-being were being properly cared for.

89. The final aspect relied upon was the possibility of the family exercising their freedom of movement and moving their residence to France. The Higher Regional Court latterly recognizes, in its Judgment of 15 August 2014, that "the division does not see an endangerment of the children's welfare through the planned emigration to France… Once the children are no longer subject to German compulsory schooling due to the change of their place of residence, the limitation of parental care is not justified under any circumstance."[22] It is submitted that this is clearly correct. However, despite that having been the case all along, the possibility of the family moving was used by the Respondent authorities to justify taking away physical custody for three weeks, and other aspects of the parents' rights for much longer.

90. Given the paucity of these "other" factors, the only remaining aspect that the authorities advanced to justify their decisions is the decision of the family to home educate their children, and the legal presumption that this meant they were thereby endangering them.

91. The legal presumption is found in a decision of the Federal Court of Justice (ruling of 17 October 2007, file no. XII ZB 42/07 – nearly identical with the ruling of 9 September 2007 file, no. XII ZB 41/07 – considered, para 35), cited in the Respondent's Observations at para. 49, in which they argue that

> the parents' persistent refusal to send their children to a state primary school or an approved grant-aided independent school represents an abuse of parental custody which endangers the best interests of the children concerned and necessitates that the family court take measures. The parents are not allowed not to comply with compulsory school attendance even if individual course contents or teaching methods at the school run counter to the parents' religious convictions.

92. The Respondent therefore concludes that:

> no specific (expert) findings are thus required regarding the specific advantages and disadvantages of home education, since the advantages of non-home education as well as the

[22] Judgment of the Higher Regional Court of Frankfurt of 15 August 2014, 6 UF 30/14, Applicants' Additional Annex, pp. 7-19.

> relatively disadvantages…are readily apparent to the judge given his or her expertise. (para. 49)

93. Germany further makes clear that the sole issue in this case is that the children were not attending school. It is noteworthy that the authorities never requested that the Applicants provide evidence that the children were learning (as was the case in France).

94. In summary, it is submitted that the Respondent knew that the children were not, in fact, endangered such as would warrant removal of parental rights, or physical custody, before either interference was undertaken. If they were not aware of this, it was only because of an unwillingness to perform even rudimentary investigations on their part due to the working assumption that the Applicants were endangering their children. Instead, rather than taking any measure of reasonable enquiry, the Respondent sprung upon the Applicants a dawn raid, tearing the children away in a manner which they have now accepted was grossly disproportionate.

<u>Failure to justify retention of legal custody between September 2013 – August 2014</u>

95. The Respondent admits that their concerns for the forced separation were not justified:

> Because (as it turned out later) the level of the children's attainment on the one hand gave *no cause for concern* (as had originally been feared), their *social skills were not limited*, and it had been ruled out that the Applicants posed a danger to the children's physical integrity and, on the other hand, the *children's attachment to the Applicants was good*, removing the children from their family home was, despite the attendant advantages for their school education, not necessary from an ex post perspective. (para. 90, Respondent's Observations, emphasis added)

96. The Respondent therefore recognizes that, as of no later than 12 September 2013 when the children were returned following assessments, the children's attainment gave "no cause for concern" and that they were being raised in a loving environment with no cause for concern for their physical welfare. There is then, even at this stage, the complete absence of any justification for the continuation of the invasive measures applied against the family until one year later – August 2014. Even if the reasoning of the Respondent is accepted in full, there is no justification advanced for the retention of partial legal custody

even after the raid on the family, the evaluation of their children, and their attendance at a public school.

97. The Respondent admits that "German procedural law ensures that transferring the right to determine a child's place of residence is a measure which is restricted as to time and is revoked as soon as circumstances allow. Section 1696 (2) of the German Civil Code thus provides that measures under the law of child protection must be cancelled as soon as there is no longer a danger to the best interests of the child or the measure is no longer necessary" (para. 89, Respondent's Observations). This measure places an obligation on Germany – in line with its Convention obligations – to have returned custody immediately and yet Germany retained custody for another year.

98. However, even before the assessments in September 2013, it is submitted that the taking into care of the children was not necessary – that is to say, that it was disproportionate to any legitimate aim. The Respondent recognises that "a child's placement in a state institution generally represents serious [sic] interference with the family life of those concerned and therefore requires substantive reasons" (para. 72, Respondent's Observations).

99. Rather than a proportionate response to an examination of the facts in this case, the decisions of the domestic courts can be distilled into a simple legal presumption that the decision to home educate children equates to child endangerment which justifies physical intervention. It is submitted that the application of this *de facto* presumption in this case in the form of the two interferences identified is a violation of Article 8 of the Convention.

Failure to apply the best interests of the child standard

100. The Court has established that in all cases relating to children, the best interests of the child are paramount.[23] Where the Respondent fails to properly consider the best interests of the children, it is submitted that it will be very difficult for it to discharge its burden of justifying the interferences.

101. Principle 2 of the Declaration on the Rights of the Child 1959 sets out this standard which is repeated in Article 3 § 1 of the Convention on the Rights of the Child 1989. To comply with Article 8 of the Convention, states must respect

[23] *Sommerfeld v. Germany* [GC], no. 31871/96, § 62, ECHR 2003-VIII (extracts).

the fundamental nature of the family life relationship between parents and their children by ensuring that all interventions in the family are intended to be temporary in nature and be guided by the ultimate aim of family reunification.[24]

102. This Court has established that the State is not permitted to decide that it can arrange what it considers to be a "better" environment for the children:

> The fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy a family life with their child.[25]

103. The Respondent admits that the Applicants' four children were clearly getting an education. This is demonstrated by the judgments in this case considered alone. The national courts note that they heard that the children were educated "using teaching resources used by public schools" (District Court, 6 September 2012, p. 26, Applicants' Application Bundle) and that there are "classes given by the parents" which amount to "daily homeschooling that takes place five hours per day…" (Higher Regional Court, 25 April 2013, p. 99, Applicants' Application Bundle).

104. Germany was aware of these facts before the taking of the children into physical custody. While the Respondent alleges that teaching children of multiple ages together could not possibly provide a proper education, it is indeed the approach Germany itself takes in some public schools. For example, in rural parts of Bavaria in the "Volksschule" where children are taught together if there are too few children for a full class. In some cases, schools may combine all four years of elementary students together.

105. Moreover, the Frankfurt Court of Appeal acknowledged that the Applicants sought "officially recognized school degrees for their children" (Higher Regional Court, 25 April 2013, p. 99, Applicants' Application Bundle). Finally, in its judgment of 15 August 2014, the Higher Regional Court in Frankfurt recognized that "the assessments of the level of education which have taken place showed that the children would be able to attain external school degrees

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[24] See *Olsson v. Sweden* (no. 1), 24 March 1988, § 81, Series A no. 130.
[25] *K. and T. v. Finland*, no. 25702/94, § 173, ECHR 2001-VII.

after their education at home" and that "it has become clear that the children do not lack any social skills."[26]

106. Bearing in mind the requirement that the Respondent acts in the best interest of the child, the Respondent has produced no substantiated evidence to show the children were in any danger such as would justify the retention of partial custody for nearly two years and the forced separation of August 2013. There is no evidence that the children were in any way harmed by the parents' choice to teach them at home – quite the contrary. Moreover, this evidence became available before these interventions were carried out given that the Respondent admits that from March 2012 it was aware that the children were developing normally and that no custody action against the family was needed (paras. 15-18, above).

107. Although the Respondent's observations seek to buttress a weak case by reference to spurious allegations, it is clear from a reading of the judgments that the operative assumption, stemming from a decision of the Federal Court of Justice (paras. 35 and 91, above), was that home education equated to child endangerment. This was the reason the School authorities initially sought to intervene, despite the informed view of the Youth Welfare Office, it was the reasoning of the District Court in removing the right to determine place of residence, and it was the reasoning of the Court in granting the emergency order to take the children by physical force.

108. The Respondent seeks to build a fiction in which it was impossible for it to have determined the facts. There are two fundamental issues with the argument of the Respondent. Firstly, if the Respondent had had so little information at the time of its dawn raid, it should never have acted in the way that it did. Secondly, the record demonstrates it *was*, in fact, aware of much information *before* the interferences complained of. Of course, the legal test this Court must apply is not whether these interferences permitted the State to better inform their view, but whether the interferences were *necessary* which it is submitted they were not.

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[26] Judgment of the Higher Regional Court of Frankfurt of 15 August 2014, 6 UF 30/14, Applicants' Additional Annex, p. 7-19.

Failure to work towards family reunification

109. Where the Respondent interferes in family life, it engages an obligation to see the family restored to its prior state as soon as possible – and to undertake measures in support of this.[27] Where a state actively seeks to comply with its obligation to work towards reunification, that will mitigate against a charge of disproportionality. Where a state fails to work towards reunification, an interference becomes more serious and will be harder to justify.

110. In this case, the State authorities have failed in their obligation under both domestic law and under Article 8 of the Convention to "take measures to rehabilitate the child and parent"[28] and this serves as further evidence demonstrating the disproportionality of the interference. Following the initial interference to take partial custody, it is difficult to see what steps were taken by the authorities to work towards a return of the seized part of the parental right – indeed, the only thing the authorities appear to have been working towards was a further taking of rights.

111. Equally, during the period of physical custody, it is not possible to find work towards reunification given that *only one visit* with family was permitted during the entire three-week period. Finally, in the one year between the family being found "fit" to take back physical custody of the children, and the full rights being returned, there is no evidence of the required proactivity on the part of the Respondent in seeing *full* custody returned throughout the period that this was retained.

The high threshold for justifying blanket prohibitions

112. Despite the Respondent's assertions that this matter cannot be fully adjudicated because the matter has been "settled" by the Federal Court of Justice is antithetical to the whole Convention system and the right guaranteed thereby. If all Respondents before this court were able to discharge their

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[27] *T.P. and K.M. v. the United Kingdom*, no. 28945/95, § 78, ECHR 2001-V (extracts)*:* "The Court reiterates that the seriousness of measures which separate parent and child requires that they should not last any longer than necessary for the pursuit of the child's rights and that the State should take measures to rehabilitate the child and parent, where possible. … Notwithstanding therefore that the initial measure was justified, the Court has examined whether the procedures which followed were compatible with the requirements of Article 8 in ensuring that they protected the interests of the first applicant and second applicant in this respect."

[28] *Ibid.*

obligations by arguing that their domestic courts "had settled" the issue, then this Court would be redundant. It is therefore insufficient to simply say that the Federal Court of Justice has decided, but it must be demonstrated why following this approach walks within the permissible contours of the Convention.

113. It is particularly noteworthy that the legal position in Germany amounts to a de-jure prohibition on homeschooling. Despite the Respondent's contention that this is irrelevant for the Court's consideration, it is submitted that this is not the case. Given that it is this ban – without other reasons surviving the requirement for a sufficient investigation of the facts – that allegedly justifies the interferences, the ban must be subject to scrutiny. It amounts to a blanket prohibition. Under this Court's case law, blanket prohibitions – insensitive as they are to particular situations – require particularly strong justifications.

114. *Ahmet Yildirim v. Turkey*[29] concerned a challenge to Turkey's blocking of all Google Sites hosted pages. Although this Court recognised that the measure was not "strictly speaking ... a wholesale ban...", the reasoning of the Court suggests it was the lack of a mechanism to weigh up proportionality that was decisive (at paras. 66 and below): "there is no indication that the judges considering the application sought to weigh up the various interests at stake, in particular by assessing the need to block all access to Google Sites. In the Court's view, this shortcoming was simply a consequence of the wording of [the law] which did not lay down any obligation for the domestic courts to examine whether the wholesale blocking of Google Sites was necessary." In the instant case, the way the assumption is applied irrespective of circumstances or the real best interests of a child amounts to a blanket ban. It is further submitted that if the blanket ban is disproportionate to the aim sought, the acts flowing from it will also be.

115. The Respondent cites the admissibility decision of *Konrad v. Germany* which challenged the German ban on the practice of home schooling.[30] The ECtHR

[29] *Ahmet Yildirim v. Turkey*, no. 3111/10, 18 December 2012.
[30] *Konrad v. Germany* (dec.), no. 35504/03, ECHR 2006-XIII.

noted that the compulsory school attendance (as compared to compulsory education) followed:

> the general interest of society in *avoiding the emergence of parallel societies* based on separate philosophical convictions and the importance of integrating minorities into society. The Court regards this as being in accordance with its own case-law on the importance of pluralism for democracy.[31]

116. It is respectfully submitted that this Court granted too great a deference to the Respondent authorities in concluding that blanket compulsory *schooling* was a legitimate or proportionate means of achieving the (arguably non Convention-compliant) aim of social cohesion. The Court concluded that parents were free to educate their children in accordance with their convictions, but in their free time, after the compulsory schooling is "done." This conclusion stands in stark contrast to the wording and spirit of Article 2 (second sentence) Protocol No. 1 and the right to family life in Article 8. Used in the context of a complete ban on home education it is possible that the undefined concept of "parallel societies" is really just a form of pluralism, so sought after and understood by this Court to be one of the preconditions for a democratic society.

117. It should also be noted that the decision of the Court in *Konrad* was an admissibility decision, and that the issue at stake has never been addressed by the Court on its merits thus necessitating an examination of the impugned measures in the broader international and national legal context across the Council of Europe.

v. Education under international and national law: the margin of appreciation

118. The margin of appreciation is narrow when the state interferes by taking custody of children or physically removes children from their family. Although this communication concerns Article 8, Germany has asserted its reasons as relating to education. It is submitted that any interpretation of Article 8 must be consistent with the Convention, read as a whole. Protocol 1, Article 2 is the *lex specialis* of education and Germany's reasons must therefore be analysed under the court's A2P1 jurisprudence.

119. The wording used in Article 2 (second sentence) Protocol No.1 guarantees *respect* for parents' rights in directing the upbringing of their children. The

[31] *Ibid.* Emphasis added.

ECtHR has also confirmed that the application of the parental rights under Article 2 (second sentence) Protocol No. 1 is far reaching in that it applies:

> not only to the content of education and the manner of its provision but also to the performance of all the "functions" assumed by the State.[32]

120. Beyond the Convention, this interpretation is supported by other international law documents.

121. The International Covenant on Civil and Political Rights (ICCPR) provides, at Article 18 (4), that signatories, including the Respondent, must "have respect for the liberty of parents … to ensure the religious and moral education of their children in conformity with their own convictions."

122. The Human Rights Committee was called upon to consider the applicability of the rights under Article 18 (4) in the context of parents wishing to exempt their children from parts of a curriculum. In *Leirvag v. Norway*,[33] the inadequate operation of exemptions for parents constituted a violation of Article 18 (4). This Court reached a similar conclusion in the case of *Folgerø and Others v. Norway*[34] in deciding that refusal to grant parents an exemption from parts of the curriculum that did not respect their philosophical convictions violated parents rights protected under the Convention.

123. The Convention on the Rights of the Child states that "Parents…have the *primary responsibility* for the upbringing and development of the child."[35]

124. Article 13 (3) of the International Covenant on Economic, Social, and Cultural Rights states that signatories must:

> have respect for the liberty of parents … to chose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

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[32] *Valsamis v. Greece*, 18 December 1996, § 27, Reports of Judgments and Decisions 1996-VI.
[33] Communication no. 1155/2003, 3 November 2004.
[34] *Folgerø and Others v. Norway* [GC], no. 15472/02, ECHR 2007-III.
[35] Convention on the Rights of the Child, Article 18(1), (2).

125. Writing on the issue of home education, former UN Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos stated:

> Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children … The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. In this context, the Special Rapporteur received complaints about threats to withdraw the parental rights of parents who chose home-schooling methods for their children.[36]

126. International law thus provides significant weight to the understanding of Article 8 outlined by the Applicants. The entire body of international human rights law affords a prior right to parents to direct the upbringing of their child. It is submitted that it cannot be consistent with that to demand physical attendance at a particular institution for instruction at the hands of the state – with default being punished by the removal of the very rights attempting to be exercised. While the Convention anticipates mandatory *education*, this should not be obfuscated with the very different idea of mandatory *schooling*. While most countries in Europe have the former, almost none have the latter, with Germany standing alone – something which points to the fundamental nature of this right and the consequently narrow margin of appreciation.

127. The corpus of international law is at least recognised to some extent in the German constitutional framework with Article 6 (2) of the German Basic Law reading, "the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them." The German state apparently defines upbringing as that which can happen outside of regular schools hours – this interpretation is inconsistent with the Convention, given the right it provides to parents to "direct" the upbringing of the child – and defies logic.

128. Moreover, Article 7 (1) of the German Basic Law provides that "the entire school system shall be under the supervision of the state." This provision relates to the establishment of public schools and does not imply any obligation on the part of the state to force children to learn in any particular way. The undercurrent throughout this case – namely, that the state exercises an

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[36] A/HRC/4/29/Add.3, 9 March 2007, para. 62.

"educational mandate" – fundamentally confuses the idea of "mandatory education" with "mandatory schooling." The Federal Administrative Court has recent restated this misunderstanding":

> **21** *The parental authority is relativised* on a first level *by the independence of the state's power* to impact over the school sector. […]. This competence is explained – *and receives its internal justification* – by the importance of schools for the development of life chances of the upcoming generation and for the cohesion of society. […] Simultaneously it shall contribute, at the given conditions of a mainly pluralistic and individualistic society to stimulate every person to a sense of responsibility against the whole, and shall fulfill with this a integrative function, essential for the community […]. The state would not be able to fulfill these extensive tasks without compulsory school attendance whose constitutional admissibility is therefore beyond question. […]. *Due to compulsory school attendance the parents have to accept* ***that the state****, as a provider of education,* ***takes their place*** *in extent of the schooling sphere of activity. Therefore, the parents' possibility to influence their children directly in a pedagogic way is limited to the time when the children are not in school.* To fulfill its tasks the state depends on determining the educational program for schools in accordance with its own ideas in principle independently to the will of the involved pupils and their parents […][37]

129. The international legal consensus outlined above is relevant insofar as, in accordance with the case law, it may result in a narrower margin of appreciation. The Respondent is wrong in claiming that the "German legal situation…falls within the margin of appreciation" (para. 78, Respondent's Observations). This is so because of the extreme nature of the interference which cannot be ignored by reference to the margin of appreciation. This position is reinforced by the international and national (see below) position which is further supportive of the right of parents to home educate.

<u>The approach of other Council of Europe States</u>

130. Almost all other Council of Europe States respect the right of parents to educate their children at home. This represents a considerable consensus which is reflective of the fundamental nature of this right.

131. By way of example, in the United Kingdom, parents have the right to teach their children at home at any age, and are not required to follow the national

[37] Judgment of the Federal Administrative Court of 11 September 2013, 6 C 12.12, para. 21. Emphasis added.

curriculum so long as the children otherwise "receive a suitable education." The authorities are not permitted to insist on seeing a child in order to question them about the sufficiency of their home education.[38] It is estimated there are around 27,000 children educated in this way in England.[39]

132. In Ireland, Article 42 (2) of the Constitution provides that: "Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State."[40] This explicitly allows a growing number of children to be educated at home.

133. In Belgium, the Constitution explicitly provides for a "free choice to parents"[41] which enables parents to choose home education for their children.

134. Home education is also legal in Italy. The Italian Constitution provides that parents have the duty and right to support, instruct, and educate their children.[42] Further implementing registration make provisions for this method of instruction.

135. Homeschooling is permitted in the majority of the other Council of Europe States[43] which demonstrates two things. Firstly, it demonstrates the fundamental nature of the parental right to direct the education of their children, and the consequently narrow margin of appreciation afforded to the state in this case. Secondly, it demonstrates the positive outcomes of such arrangements as against the Respondent's position that it *de facto* harms children, thus nullifying any alleged social need for such a position.

vi. Failure to give relevant and sufficient reasons

136. The Court also asks the parties to address a second communicated question: "Did the domestic courts give relevant and sufficient reasons as to whether the

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[38] The relevant legal and policy positions are set out in: House of Commons Library, "Briefing paper: Home education in England", No. 5108, 18 January 2017.
[39] *Ibid*.
[40] Constitution of Ireland of 2015, Article 42 (2).
[41] Constitution of Belgium of 2007, Article 24 § 1.
[42] Constitution of Italy, Article 30. See also the Legislative Decree of 16 April 1994 regarding public education (DL 16/4/94 no. 297), Articles 111, 147, and 148, as well as the updated Legislative Decree of 19 February 2004 on primary education (DL 19/2/04 no. 59).
[43] See collection of laws available: <https://www.hslda.org/hs/international/>.

well-being of the children was endangered by the Applicants' exclusively teaching them at home?"

137. This question is relevant to both of the interferences outlined above given that any interferences will only be "necessary in a democratic society" when supported by "relevant and sufficient" reasons.[44] This Court does not offer an appeal from the decision of domestic courts and its role is rather to assess whether decisions are compatible with the Convention. The standard of "relevant and sufficient" requires a level of review that goes beyond simply considering whether the state has exercised any discretion reasonably, carefully, and in good faith. It follows that each interference in this case must be justified by reference to relevant and sufficient reasons prevailing in this specific case.

138. In *Olsson v. Sweden*,[45] three children were taken into state care because the authorities considered their development was in danger. In that case, the reasons were found to be relevant and sufficient as there was evidence that the children were developmentally slowed and that multiple other measures had been tried without success.

139. The Court came to the opposite conclusion in *K & T v. Finland*,[46] in finding a violation where the authorities used a care order as a 2nd or 3rd option, rather than as a measure of last resort to respond to a real risk of harm.

140. It is submitted that the facts of the instant case are much closer to *K & T* than they are to *Olsson* insofar as the children were *demonstrably* not in danger, that other measures had not been tried, and that the reasoning is based on an incorrect (and unsubstantiated) factual assumption.

141. Section 1666 of the German Civil Code (BGB) provides that the court has to take necessary measures in cases where the physical, mental or emotional welfare of a child is endangered and the parents are neither willing nor able to

[44] *Sunday Times v. the United Kingdom (no. 1)*, no. 6538/74, 26 April 1979, § 62.
[45] Cited above.
[46] Cited above.

prevent this endangerment. It requires a current danger which could lead to severe damage if not stopped.[47]

142. The Respondent has sought to justify both interferences by saying they were motivated to stop a serious endangerment of the children which would have resulted in lasting danger. These are irrelevant reasons, and insufficient reasons as they simply are not present in this case. They are generalities of the kind relied upon in *K & T*. The fact that the Wunderlich children are, in fact, being educated is clear from the judgments in this case and as set out above.[48]

143. Furthermore, the reasoning for these interferences is entirely circular. The reasoning is essentially that: homeschooled children are in danger because they are homeschooled. The Respondent alleges outcomes of homeschooling in terms of social isolation and of slowing in learning levels both domestically, and before this Court. This is an assumption not grounded in any fact – either in this case, or in general. No material is provided in support of this controversial contention – significant material to the contrary was available to the authorities in this case.

144. More generally, the United States has by far the largest and fastest growing homeschooling population consisting of more than 2 million children. The educational outcomes of homeschooled students there are well-documented and demonstrate that students educated in this way perform well-academically and integrate socially.

145. One commentator cites numerous researchers to find that homeschooled adults were "indeed heavily involved in community life at the local and national levels and were more civically involved than the general population of adults."[49] He concluded that academic and social outcomes are at least as positive, and in many cases better, than those for comparable students in public or private schools.

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[47] Federal Court of Justice FamRZ 2005, 344 – quoted from Higher Regional Court of Frankfurt, 6 UF 254/12 of 25 April 2013, p. 102, Applicants' Application Bundle.
[48] Paragraphs 98-102, above.
[49] Joseph Murphy, *Homeschooling in America: Capturing and Assessing the Movement* (2012: Corwin), p. 151.

146. Further research strongly indicates that the more exposure a child has to homeschooling, the more tolerance a child is likely to exhibit.[50] Similarly, studies have concluded that "Despite a widespread belief that home educated students are not adequately socialized, the preponderance of research suggests otherwise… home schoolers watch much less television than other children, and one researcher found that they displayed significantly fewer problems than public school children when observed in free play."[51]

147. Although there might be instances of problems with individual families and children, the blanket (and circular) view which the Respondent authorities have adopted regarding home education cannot be applied to an entire and diverse population in an open and pluralistic society. Rather than being supportive of pluralism and openness, such an intolerant view of pluralism is the anathema to a free and democratic society.

148. These studies make the argument that mandatory schooling is the only way to achieve integration untenable. It is demonstrably clear that homeschooling is no indicator of the ability to integrate, or to succeed academically or professionally. The Respondent's blind assertions fail to meet this Court's standard for providing relevant and sufficient justification of removing children from their parents, particularly where those children were developing well, in a loving home environment – facts the Respondent was aware of before interfering.

(e) Conclusion

149. In the most ironic passage of the Respondent's observations, it is contended that "Children can more effectively learn the social skills needed to get along with those who hold different views…and asserting one's own convictions against majority-held views when they come into contact with society and the different opinions expressed in society" (para. 49, Respondent's Observations). The Applicants concur that it is of paramount importance that children are able to form their own opinions and that that minority views should not just be tolerated, but welcomed. Unfortunately, the approach of the

[50] Albert Cheng, "Does homeschooling or private schooling promote political intolerance? Evidence from a Christian university" (2014) 8 *Journal of School Choice* 1, pp. 49-68.
[51] Patrick Basham, John Merrifield, and Claudia R. Hepburn, "Home Schooling: From the Extreme to the Mainstream" (2007) *Studies in Education Policy*, p. 3.

Respondent authorities is to teach these children precisely the opposite lesson to that which they pretend to impart.

150. The Applicants have contended that, in taking away partial custody for 2 years, and full custody for 3 weeks, the Respondent authorities have seriously violated the Applicants' rights under Article 8 and in so doing have significantly exceeded the narrow margin on appreciation available to them.

151. Furthermore, while the Respondent accepts the interventions were unjustifiable after the event, it has been demonstrated by the Applicants that the authorities knew even before the first intervention that it was not necessary. Finally, the reasons the domestic courts provided for dramatic interferences affecting the most fundamental right protected under "family life" were circular and unsubstantiated. At no stage during the proceedings were the Applicants' children endangered. The fact that the children did not attend a school is the only reason for the disproportionate action of the authorities.

152. The ideological formula applied by the Respondent, that – "homeschooling" = "damage" = "abuse of parental custody" → "necessitates measures" – has been strictly followed. This aims to enforce an alleged "State's educational mandate" rather than real concern for the children's welfare. Moreover, based on legal presumptions and factual mistakes as it is, there is a total lack of "sufficient" and "relevant" reasoning as required by this Court. In the absence of action from this Court, the violations present in this case are certain to be repeated by the Respondent as a result of systemic failures in the system.

153. For the reasons outlined above, this Court is respectfully invited to find a violation of Article 8.

For the Applicants:

Robert Clarke
Director of European Advocacy
ADF International

EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

APPLICATION NO: 18925/15

Dirk Wunderlich and Petra Wunderlich

Applicants

v.

Germany

Respondent

ANNEXES TO APPLICANTS' FINAL OBSERVATIONS

Filed on 12 April 2017

WUNDERLICH v. GERMANY (no. 18925/15)

INDEX TO APPLICANTS' ADDITIONAL ANNEX

(1)

26.8.13

Gespräch im Jugendamt mit
Fam. Wundelich

IN: H. Fr. Wundelich, H. RA Vogt, H. Behrns,
H. Wiebe, Fr. Baier, H. Harms, Fr. Hagen,
× H. Thielmann (Georg-Müller-G
Schule) (40 Kids) ↓ Gründer + Vater
H. Thielmann stellvert.
Georg-Müller hat in Zyl. d. Waisenkinder
unterrichtet.
jetzt im 3. Schuljahr
CH aus / m. christl. Überzeugung
4 Jahrgänge altersgem. Klassen

Herr Wiebe ist nicht erwünscht und
geht
in der Auseinandersetzung ist d. öffentl. Schule"
→ "selbst wenn so eine Schule gäbe, die alle unsere Vor-
stellungen verwirklicht, würden wir sie nicht
in die Schule schicken".
"wir lehnen Schule an sich ab" !!!
Es gibt keine Legitimation für die Schulpflicht
Privat d. Familie

TRIBUNAL POUR ENFANTS
Place Edmond Henry
B.P 575
88026 EPINAL CEDEX

EXTRAIT DES MINUTES ET ACTES DU GREFFE
DU TRIBUNAL DE GRANDE INSTANCE D'EPINAL
DÉPARTEMENT DES VOSGES, SEANT A EPINAL

Juge : *Constance DAUCE*
Affaire : *209/0298 (Assistance éducative)*
Parquet : *09007215*
O N° : **1590/2009**

MAINLEVEE DE MESURE DE PLACEMENT PROVISOIRE ET ORDONNANCE AUX FINS D'INVESTIGATION ET D'ORIENTATION EDUCATIVE

Nous, Constance DAUCE, Juge des enfants au Tribunal de Grande Instance d'EPINAL,

Vu les articles 375 à 375-8 du Code Civil, 1181 à 1200-1 du Nouveau Code de Procédure civile relatif à l'assistance éducative.

Vu la procédure concernant :

WUNDERLICH Machsujah, née le Vendredi 23 Juillet 1999
WUNDERLICH Joshua, né le Samedi 30 Septembre 2000
WUNDERLICH Hananjah, née le Samedi 27 Avril 2002
WUNDERLICH Sorajah, née le Mercredi 14 Septembre 2005

Père : WUNDERLICH Dirk - Chez Mme CHANAL Dominqiue 130, rue du Palmont - 88650 ST LEONARD

Mère : WUNDERLICH Angéla - Chez Mme CHANAL Dominqiue 130, rue du Palmont 88650 ST LEONARD

Vu la requête du Procureur de la République en date du Mercredi 30 Septembre 2009
Vu l'ordonnance de placement provisoire de Monsieur le Procureur de la République en date du 28 septembre 2009
Vu l'audience en date du Vendredi 09 Octobre 2009 à laquelle les parties ont comparu de sorte qu'il sera statué par décision contradictoire
Après avoir entendu les mineurs, les parents assistés de M° BILLAMBOZ, de l'interprète Mme DIECKMANN et l'Aide Sociale à l'Enfance et le Foyer de la Providence en leurs explications

Attendu que par requête en date du 28 septembre 2009, le Procureur de la République nous a saisi de la situation de Marchsujah, Joshua, Hananjah et Sorajah WUNDERLICH, respectivement âgés de 10, 9, 7 et 4 ans après avoir ordonné le placement des mineurs en urgence compte tenu de leur non scolarisation, de l'absence de contact des mineurs sur l'extérieur et du risque de fuite présenté par la famille ;

Attendu que le signalement à l'origine de notre saisine faisait état d'un mode de vie et de croyances de Monsieur et Madame WUNDERLICH compromettant gravement le bon développement de leurs enfants ;

Qu'il ressort du signalement que Madame BECKER a accueilli la famille

pendant deux mois entre mars et mai 2009; qu'elle a contacté l'Aide Sociale à l'Enfance pour faire part de ses inquiétudes, dénonçant l'attitude des parents qui selon elle, s'en remettent à la volonté de Dieu pour justifier l'absence de scolarisation et de soins médicaux ;

Qu'elle a indiqué que les enfants faisaient preuve de cruauté envers les animaux et grandissaient dans un cadre de vie où ils n'avaient pas le droit de rire ou de sourire ;

Attendu par ailleurs, que d'après les informations transmises par les autorités allemandes, la famille WUNDERLICH est connue des services sociaux allemands ; que Monsieur WUNDERLICH a été condamné pour des faits de maltraitance sur sa fille Machsujah à payer un amende en 2007 ; qu'une demande de retrait de l'autorité parentale a été déposée devant le Tribunal de DARMSTADT le 31 mars 2009 ; que toutefois, cette procédure n'a pu aboutir, la famille WUNDERLICH étant partie d'Allemagne sans laisser d'adresse ;

Attendu toutefois qu'à l'audience de ce jour, Monsieur et Madame WUNDERLICH ont été amenés à s'expliquer sur les accusations de Madame BECKER ainsi que sur les informations transmises par les autorités allemandes ;

Qu'ainsi, ils ont expliqué avoir le projet de s'installer en France depuis 2008 afin de pouvoir enseigner à leurs enfants à domicile, ce qui est formellement interdit en Allemagne et qui est considéré comme de la maltraitance selon le droit local ;

Que n'ayant pas trouvé de logement à l'automne 2008, ils ont décidé de rentrer en Allemagne pour y passer l'hiver ; qu'alors les enfants n'étaient pas scolarisés conformément aux lois applicables en Allemagne ;

Que suite à la visite d'assistantes sociales, Monsieur et Madame WUNDERLICH ont décidé de revenir en France dès le mois de février 2009, afin d'éviter une nouvelle procédure judiciaire ; qu'ils n'avaient alors pas connaissance de la demande de retrait de l'autorité parentale formulée par les services sociaux allemands ;

Qu'à leur arrivée en France, ils ont d'abord été accueillis par la famille BECKER, puis suite à une dégradation de leurs relations avec cette famille par Madame CHANAL qui vit dans une maison à SAINT LEONARD avec sa fille et sa petite-fille ;

Que s'agissant de l'obligation scolaire, Monsieur et Madame WUNDERLICH affirment dispenser une instruction quotidienne à leurs enfants, tout en reconnaissant une interruption ces derniers mois, du fait de leur errance ; Qu'ils produisent à l'audience, une facture de plus de 500€ de fournitures scolaires datée du mois d'Août ainsi que de photographies montrant les enfants en train d'étudier ; que les enfants, entendus séparément en début d'audience, ont relaté une journée type avec leurs parents en indiquant des temps d'études le matin et l'après midi ;

Attendu par ailleurs, que les enfants qui, selon Madame BECKER sont totalement renfermés sur eux-mêmes, sont apparus au contraire souriants et sociables, s'exprimant aisément ; que Monsieur et Madame WUNDERLICH par le biais de leur conseil ont versé un certain nombre d'attestation selon lesquelles les enfants sont régulièrement en contact avec les enfants du voisinage ; qu'ils sont très sociables et ne présentent aucun trouble du comportement ;

Attendu que l'éducateur présent pour le Foyer LA PROVIDENCE, où sont accueillis les enfants depuis le 28 septembre dernier a indiqué qu'une fois passé le choc du placement, aucun trouble du comportement n'avait été relevé chez les enfants depuis leur arrivée ; qu'il a toutefois été relevé un retard scolaire important, notamment chez Machsujah ;

Que depuis le placement deux rencontres parents-enfants ont été organisées ; que lors de ces visites, il n'a pas été observé de comportement anormal de la part de Monsieur WUNDERLICH vis à vis de ses enfants ; qu'au contraire, il a été relevé un fort lien affectif au sein de cette famille ;

Qu'en outre, Madame WUNDERLICH a pris la parole de façon très naturelle à l'audience pour confirmer ou préciser les déclarations de son mari ;

Attendu que les époux WUNDERLICH ont indiqué qu'ils ont l'intention de s'installer de manière définitive en France ; qu'aussi, Monsieur WUNDERLICH qui est inscrit à Pole Emploi, où il prend des cours de langue française, a précisé qu'il avait fait les démarches nécessaires auprès de la mairie déclarant que ses enfants ne seraient pas scolarisés dans un établissement mais bénéficieraient d'une scolarité à domicile ;

Que s'agissant des démarches administratives, il peut être entendu qu'étant ressortissant d'un pays étranger, toutes inscriptions administratives(notamment auprès de l'inspection académique) ne soient pas complètes à ce jour ;

Attendu qu'au vu de tous ces éléments, les informations contenues dans le signalement à l'origine de la mesure de placement décidée par le Procureur de la République ne sont pas confirmées en l'état ; qu'au contraire Monsieur et Madame WUNDERLICH ont apporté des explications complètes et précises quant à leur situation ; qu'il convient en conséquence d'ordonner la main-levée du placement prononcé à l'égard de tous les enfants ;

Que toutefois, il apparaît indispensable d'ordonner une mesure d'investigation et d'orientation éducative afin de vérifier les conditions de vie des mineurs auprès de leurs parents, de veiller à ce qu'ils bénéficient d'une réelle scolarité ainsi que d'ouverture vers l'extérieur ; que cette mesure devra également permettre de soutenir Monsieur et Madame WUNDERLICH dans leurs démarches d'insertion en France ;

Que Monsieur et Madame WUNDERLICH ont adhéré à l'audience à cette mesure et qu'il leur a été rappelé l'importance de leur collaboration future ;

Attendu qu'afin d'assurer la mise en place rapide du suivi éducatif, la présente décision sera assortie de l'exécution provisoire ;

Attendu qu'il convient de déterminer si la santé, la sécurité ou la moralité des mineurs sont en danger ou ses conditions d'éducation gravement compromises ;

Attendu qu'il convient en conséquence de procéder à une étude de la personnalité des mineurs et de la situation familiale ;

PAR CES MOTIFS

Le juge des enfants, statuant en chambre du conseil et par décision contradictoire avant dire droit ;

Ordonnons la mainlevée du placement provisoire de WUNDERLICH Machsujah, WUNDERLICH Hananjah, WUNDERLICH Joshua et WUNDERLICH Sorajah

auprès de l'Aide Sociale à l'Enfance 2, rue Grennevo -88000 - EPINAL à compter de ce jour

Désignons le **CENTRE D'ACTION EDUCATIVE** - 29 Faubourg d'Ambrail 88000 EPINAL aux fins de procéder à une étude de la personnalité de :

WUNDERLICH Machsujah, WUNDERLICH Joshua, WUNDERLICH Hananjah et WUNDERLICH Sorajah dans un délai de 6 MOIS,

par le moyen de la mise en oeuvre de l'ensemble des techniques du service dans le cadre de sa mission, notamment de l'un ou plusieurs des examens suivants :

- examen psychologique

et de nous faire connaître le résultat de ces investigations qui pourra comporter toute proposition éducative utile ;

Disons qu'un rapport devra nous être déposé avant le 09 avril 2010 ;

Fait à EPINAL en notre cabinet, le 09 octobre 2009
Constance DAUCE,
Juge des enfants

TRIBUNAL DE GRANDE INSTANCE D'EPINAL
Le Juge des Enfants

POUR COPIE CERTIFIÉE CONFORME
LE GREFFIER

TRIBUNAL DE GRANDE INSTANCE D'EPINAL
Le Juge des Enfants

Lettau, Christa (LSA SSA DA)

Von: Lettau, Christa (LSA SSA DA)
Gesendet: Montag, 22. Juli 2013 12:27
An: 'Behnis, Klaus'
Betreff: AW: Vorbereitung der Inobhutnahme der Kinder Wunderlich

Alles klar Herr Behnis!

Mit freundlichen Grüßen
Im Auftrag

Christa Lettau
Verwaltungsfachliche Aufsicht

Telefon: +49 (6151) 3682 - 411
Fax: +49 (611) 32767 - 1222
E-Mail: Christa.Lettau@da.ssa.lsa.hessen.de

Landesschulamt und Lehrkräfteakademie
Staatliches Schulamt für den
Landkreis Darmstadt-Dieburg
und die Stadt Darmstadt
Rheinstraße 95
64295 Darmstadt
Internet: www.schulamt-darmstadt.lsa.hessen.de

Von: Behnis, Klaus [mailto:K.Behnis@ladadi.de]
Gesendet: Donnerstag, 18. Juli 2013 09:02
An: Hajdu, Susanne (LSA SSA DA); Franz, Sabine (LSA SSA DA); Lettau, Christa (LSA SSA DA); kerstin.neumann@polizei.hessen.de; Löhe, Sabine; Kissel, Bettina; Krimm, Ute
Cc: Harms, Rolf; Weber, Otto
Betreff: Vorbereitung der Inobhutnahme der Kinder Wunderlich

Sehr geehrte Damen und Herren,

zur Vorbereitung der Inobhutnahme der Kinder der Familie Wunderlich wurde als Termin der 08.08.2013 um 10:00Uhr im Polizeipräsidium Südhessen, Klappacher Str., Raum 9 vereinbart. Wir danken Ihnen für die Beteiligung an dieser Vorbesprechung.

Mit freundlichen Grüßen
Im Auftrag

Klaus Behnis

Kreisausschuss des Landkreises Darmstadt- Dieburg
Abteilungsleiter Jugendhilfe
Jägertorstraße 207
64289 Darmstadt
Tel.: 06151/881-1442
Mail: k.behnis@ladadi.de

Abschrift

6 UF 30/14
53 F 1216/13 SO Amtsgericht Darmstadt

OBERLANDESGERICHT FRANKFURT AM MAIN

BESCHLUSS

In der Familiensache

betreffend die elterliche Sorge für
1.Machsejah Wunderlich, geb. am 23.07.1999,
2. Joshua Wunderlich, geb. am 30.09.2000,
3. Hananjah Wunderlich, geb. am 27.04.2002,
4. Serajah Wunderlich, geb. am 14.09.2005,

an der beteiligt sind:

1. Machsejah Wunderlich, geb. am 23.07.1999, Im Höhlchen 13, 64372 Ober-Ramstadt,

-Beschwerdeführerin-

2. Joshua Wunderlich, geb. am 30.09.2000, Im Höhlchen 13, 64372 Ober-Ramstadt,
3. Hananjah Wunderlich, geb. am 27.04.2002, Im Höhlchen 13, 64372 Ober-Ramstadt,
4. Serajah Wunderlich, geb. am 14.09.2005, Im Höhlchen 13, 64372 Ober-Ramstadt,

Verfahrensbevollmächtigter zu 1, 2, 3, 4:
Rechtsanwalt Johannes Hildebrandt, Wittelsbacher Straße 6, 91126 Schwabach,

5. Landkreis Darmstadt-Dieburg
- Jugendhilfe -, Jägertorstraße 207, 64289 Darmstadt, -Ergänzungspfleger-

6. Verfahrensbeistand zu 1, 2, 3, 4:
Roland Wiebe, Eschenstraße 7, 64625 Bensheim,

7. Petra Wunderlich, Im Höhlchen 13, 64372 Ober-Ramstadt,
8. Dirk Wunderlich, Im Höhlchen 13, 64372 Ober-Ramstadt,

beide Antragsgegner und Beschwerdeführer,

Verfahrensbevollmächtigter zu 7, 8:
Rechtsanwalt Dr. Andreas Vogt, Niederhoner Straße 20, 37269 Eschwege,
Geschäftszeichen: 179/13 VO01

9. Landkreis Darmstadt-Dieburg - Allgemeiner Sozialdienst / Jugendamt -, Jägertorstraße 207, 64289 Darmstadt,

hat der 6. Senat für Familiensachen des Oberlandesgerichts Frankfurt am Main mit Sitz in Darmstadt auf die Beschwerden der Beteiligten zu 1), 7) und 8) gegen den Beschluss des Amtsgerichts – Familiengericht – Darmstadt vom 18.12.2013 durch den Vorsitzenden Richter am Oberlandesgericht Schwamb, die Richterin am Oberlandesgericht Schuschke und den Richter am Amtsgericht Herrmann am 15. August 2014 **beschlossen:**

Der angefochtene Beschluss wird aufgehoben.

In Abänderung des angefochtenen Beschlusses sowie des Beschlusses des Amtsgerichts Darmstadt vom 06.09.2012 (Az.: 53 F 1440/12 SO) in der Fassung des Beschlusses des OLG Frankfurt am Main vom 25.04.2013 (6 UF 254/12) werden das Recht der Aufenthaltsbestimmung, das Recht zur Regelung der schulischen Angelegenheiten, das Recht zur Antragstellung bei Ämtern und Behörden, sowie das Recht zur Antragstellung auf Hilfe zur Erziehung gemäß § 27 ff. SGB VIII für die Beteiligten zu 1) bis 4) auf die Kindeseltern, die Beteiligten zu 7) und 8) zurückübertragen.

Gerichtskosten werden für das Verfahren nicht erhoben. Außergerichtliche Kosten werden nicht erstattet.

Der Beschwerdewert wird auf 3.000,00 € festgesetzt.

GRÜNDE

I.

Die beteiligten Kindeseltern erstreben die Rückübertragung entzogener Teilrechte der elterlichen Sorge für ihre Kinder. Hintergrund des Sorgerechtsentzugs ist die Weigerung der Kindeseltern, ihre Kinder in öffentlichen bzw. zugelassenen Privatschulen unterrichten zu lassen. Stattdessen erteilen die Eltern ihren Kindern zu Hause Heimunterricht.

Mit Beschluss des Amtsgerichts – Familiengericht – Darmstadt vom 06.09.2012 wurde den Kindeseltern das Aufenthaltsbestimmungsrecht, das Recht zur Regelung der schulischen Angelegenheiten sowie das Recht zur Antragstellung bei Ämtern und Behörden für ihre vier Kinder entzogen und auf das Jugendamt Darmstadt-Dieburg als Pfleger übertragen. Außerdem wurde den Kindeseltern aufgegeben, die Kinder an das Jugendamt zur Durchsetzung der Schulpflicht herauszugeben. Die von den Kindeseltern erhobene Beschwerde wurde mit Beschluss des erkennenden Senats vom 25.04.2013 mit der Maßgabe zurückgewiesen, dass die Übertragung des Aufenthaltsbestimmungsrechts sich nicht auf die Zeit der hessischen Schulferien bezieht. In der Begründung hat der Senat ausgeführt, der Entzug der Teilbereiche der elterlichen Sorge diene ausschließlich dazu, die Kinder während der Schulzeiten einer Schule zuzuführen. Nach §§ 1666, 1666a BGB sei die Einschränkung des Sorgerechts der Kindeseltern gerechtfertigt, da die beharrliche Weigerung der Eltern für einen Schulbesuch ihrer Kinder Sorge zu tragen eine Gefährdung des Kindeswohls darstelle.

Das vorliegende Verfahren wurde mit Antragsschrift des Jugendamtes vom 14.06.2013, mit der ergänzend der Entzug des Rechts zur Antragstellung auf Hilfe zur Erziehung gemäß §§ 27 ff. SGB VIII beantragt wurde, eingeleitet.

Nachdem anlässlich eines Gesprächs zwischen dem Ergänzungspfleger, den Kindeseltern und dem Bevollmächtigten der Kindeseltern sowie zweier Mitarbeiterinnen des staatlichen Schulamtes die Kindeseltern erklärt hatten, dass sie eine Be-

schulung ihrer Kinder außerhalb der Familie auch weiterhin ablehnten, auch wenn es sich um eine christlich geprägte Schule handele und auch nicht Bereitschaft gezeigt wurde, eine Lernstandserhebung der Kinder zu veranlassen, beantragte das Jugendamt den Erlass einstweiliger Anordnungen dahin, dass das Aufenthaltsbestimmungsrecht auch auf die Zeit der hessischen Schulferien ausgedehnt, das Recht der Antragstellung nach dem SGB VIII für alle Kinder entzogen und auf das Jugendamt Darmstadt-Dieburg als Pfleger übertragen werden solle, sowie die Herausgabe mit der Ermächtigung, dass Gewalt auch gegen die Kinder angeordnet werden solle, welche das Amtsgericht antragsgemäß am 28.08.2013 erließ (Az. 53 F 1697/13 und 53 F 1698/13). Das Jugendamt setzte die Herausgabeanordnung am 29.08.2013 mit polizeilicher Hilfe, bei der zumindest passiver Widerstand der Kinder überwunden wurde, durch und brachte die Kinder in einer Jugendhilfeeinrichtung unter. Nachdem die Kindeseltern in der nachträglich durchgeführten Anhörung am 19.09.2013 erklärt hatten, sie seien nunmehr bereit, für den Schulbesuch ihrer Kinder Sorge zu tragen, wurden die Kinder in die Obhut der Eltern entlassen. Mit Beschluss vom 24.09.2013 wurden die einstweiligen Anordnungen aufgehoben.

Mit Schriftsatz vom 14.10.2013 – dem ersten Tag der Herbstferien – wandte sich der Bevollmächtigte der Kindeseltern an den Ergänzungspfleger und kündigte an, die Kindeseltern wollten gemeinsam mit den Kindern während der Herbstferien nach Frankreich reisen, um dort dauerhaft zu leben. Das Amtsgericht, das das Schreiben in Abschrift erhalten hatte, teilte den Beteiligten mit Schreiben vom 15.10.2013 mit, es behalte sich vor, von Amts wegen ein Rückführungsverfahren nach internationalen Rechtsvorschriften einzuleiten, sollten die Eltern unter Missachtung des auf das Jugendamt übertragenen Aufenthaltsbestimmungsrechts auch außerhalb der Schulferien in Frankreich verweilen. Nach Ende der hessischen Schulferien beendeten die Kindeseltern zunächst ihre Weigerungshaltung und schickten ihre Kinder in die Schule, so dass die beiden älteren Kinder die örtliche Gesamtschule und die beiden jüngeren Kinder die örtliche Grundschule ab dem 28.10.2013 besuchten. Am Sportunterricht nahmen die Kinder mit anfänglichem Einverständnis des Schulamtes nicht teil.
Die Kindeseltern beantragten daraufhin im vorliegenden Verfahren, die Einschränkung ihrer elterlichen Sorge aufzuheben. Mit Schriftsatz vom 11.12.2013 schloss

sich die Minderjährige Machsejah, die zu diesem Zeitpunkt das 14. Lebensjahr vollendet hatte, den Anträgen an.

Mit dem angefochtenen Beschluss vom 18.12.2013 hat das Amtsgericht den Kindeseltern ergänzend auch die elterliche Sorge hinsichtlich des Rechts zur Antragstellung auf Hilfe zur Erziehung gemäß §§ 27 ff. SGB VIII bezüglich der vier Kinder entzogen und die Anträge der Kindeseltern, ihnen unter Aufhebung des Beschlusses des Amtsgerichts Darmstadt vom 06.09.2012 in der Fassung des Beschlusses des OLG Frankfurt am Main vom 25.04.2013 das Aufenthaltsbestimmungsrecht, das Recht zur Regelung schulischer Angelegenheiten sowie das Recht zur Antragstellung bei Ämtern und Behörden für die Kinder sowie die Hilfsanträge der Kindeseltern, das Recht Anträge gemäß §§ 56 Abs. 2 S. 3, 60 Abs. 2 S. 2 des Hessischen Schulgesetzes auf die Kindeseltern zurück zu übertragen, sowie hilfsweise das Recht, mit den betroffenen Kindern aus der Bundesrepublik Deutschland auszuwandern, zurück zu übertragen und dort den Aufenthalt der Kinder zu bestimmen, zurückgewiesen, desgleichen die entsprechenden Anträge und Hilfsanträge des Kindes Machsejah. Zur Begründung hat das Amtsgericht ausgeführt, ohne den Entzug des weiteren Teilbereichs „Recht zur Antragstellung auf Hilfe zur Erziehung gemäß § 27 ff. SGB VIII“ und Übertragung auf das Jugendamt als Pfleger sei der Beschluss des Oberlandesgerichts Frankfurt am Main vom 25.04.2013 nicht umsetzbar. Nach verwaltungsgerichtlicher Rechtsprechung bedürfe es einer ausdrücklichen Übertragung des Rechts auf das Jugendamt, damit Anträgen auf Hilfe zur Erziehung gemäß §§ 27 ff. SGB VIII stattgegeben werden könne.
Auf der Grundlage des Beschlusses vom 25.04.2013 gehe das Gericht weiter davon aus, dass verfassungsrechtliche Bedenken gegen die Schulpflicht nicht bestünden und die Bedenken der Kindeseltern gegen die Rechtsprechung des Bundesverfassungsgerichts und des Bundesverwaltungsgerichts nicht geteilt würden. Im Hinblick auf die nunmehr vorgetragenen Auswanderungspläne der Kindeseltern führt das Amtsgericht aus, diese hätten zwar grundsätzlich Freizügigkeitsrecht nach Art. 11 GG, dies Recht sei aber im Hinblick auf das Kindeswohl pflichtgebunden. Vorliegend sei davon auszugehen, dass das angestrebte „Homeschooling“ der Kindeseltern das Kindeswohl erheblich gefährde. Auch wenn die Kinder seit dem 28.10.2013 beschult würden und die Isolation im Familienverband

dadurch in Ansätzen habe aufgebrochen werden können, würden diese Bemühungen durch die Auswanderungspläne der Kindeseltern ad absurdum geführt werden. Die Isolation im Familienverband würde in Frankreich durch die fremde Sprache sogar noch weiter verschärft werden. Das Erlernen von Toleranz und eines Dialogs mit Andersdenkenden im Sinne einer gelebten Toleranz würde dadurch ausgeschlossen. Der Entzug der Teilrechte der elterlichen Sorge müsse daher aufrechterhalten werden, um den weiteren Schulbesuch der Kinder, der sich auch auf die Teilnahme der Kinder am Sportunterricht erstrecken müsse, zu gewährleisten.

Gegen diesen Beschluss richten sich die Beschwerden der Kindeseltern vom 16.01.2014 sowie der Minderjährigen Machsejah vom 20.01.2014, mit der sie ihre erstinstanzlichen Ziele weiterverfolgen.

Sie führen aus, Sorgerechtseingriffe und familientrennende Maßnahmen zur Durchsetzung der Schulpflicht seien verfassungswidrig.

Auch das Jugendamt habe mit der Begründung, dass außer der Verhinderung der Beschulung keine Sachverhalte mehr erkennbar seien, die ein staatliches familiengerichtliches sanktioniertes Einschreiten erforderlich machen würden, die Aufhebung der Einschränkung der elterlichen Rechte für die Kinder beantragt und seine Entlassung als Pfleger beantragt.

Schließlich sei zum Zeitpunkt des Beschlusserlasses ein regelmäßiger Schulbesuch längst gewährleistet worden.

Zudem stehe das Recht der europäischen Union einer gerichtlichen Entscheidung entgegen, mit der ein Mitgliedsstaat einem seiner Staatsangehörigen das Verlassen des Hoheitsgebietes faktisch unmöglich macht.

Der Verfahrensbeistand beantragt, die Beschwerden zurückzuweisen. Die Einschränkung der elterlichen Rechte sei notwendig, da erst durch die Intervention des Jugendamtes im Wege der kurzfristigen Fremdplatzierung der Kinder eine Beschulung der Kinder ermöglicht worden sei. Die Auswanderungspläne der Kin-

deseltern machten deutlich, dass nach wie vor Widerstand gegen die Erfüllung der Schulpflicht geleistet werde.

Während des laufenden Beschwerdeverfahrens wurde der Schulbesuch der Kinder wieder beendet. Nachdem alle vier Kinder zunächst am 24.06.2014 an ihren jeweiligen Schulen krankgemeldet wurden, erklärte der Kindesvater mit einer E-Mail vom 25.06.2014 gegenüber dem Landesschulamt, die Familie werde „zu unserem geliebten Familienleben zurückkehren und all die Projekte wieder in Angriff nehmen, die im letzten ¾ Jahr aufgrund des Zwangsaufenthaltes in der Kunstwelt „Schule" sinnlos liegengeblieben seien". Mit Schreiben vom 01.07.2014 erläuterte der Bevollmächtigte der Kindeseltern, dass der Schulbesuch der Kinder mit sofortiger Wirkung beendet sei.
Zuvor hatte das Landesschulamt, das die Kinder bis zum 31.03.2014 von der Teilnahme am Sportunterricht befreit hatte, am 16.05.2014 Strafantrag gegen die Kindeseltern wegen Entziehung an der Schulpflicht gemäß § 182 des Hessischen Schulgesetzes gestellt.
Die Beschwerdeführer führen aus, es werde angestrebt, die Kinder wieder zu Hause zu unterrichten. Die durchgeführten Lernstandserhebungen machten deutlich, dass die Kinder externe Schulabschlüsse auch nach der Unterrichtung im häuslichen Bereich erreichen könnten. Die Unterrichtung der Kinder im häuslichen Bereich entspreche nicht nur dem Willen der Eltern, sondern auch dem der Kinder.

Am 16.07.2014 führte der eingesetzte Amtspfleger ein Gespräch mit den Kindeseltern und den Kindern, in dem diese ihre Haltung, den Schulbesuch auch künftig zu verweigern, bekräftigten.

Das Jugendamt vertritt nunmehr mit Stellungnahme vom 22.07.2014 die Auffassung, dass mit den auf das Jugendamt übertragenen Teilbereichen der elterlichen Sorge eine Lösung des Konflikts mit den Kindeseltern nicht erreicht werden könne. Erneute Versuche einer zwangsweisen Zuführung der Kinder in die Schule seien zum Scheitern verurteilt, wobei eine erneute zwangsweise Herausnahme der Kinder nicht mehr als verhältnismäßig angesehen werde.

Das staatliche Schulamt vertritt in einem Schreiben vom 16. Juli 2014 an das Jugendamt dagegen die Auffassung, dass die hartnäckige Entziehung der Kinder von der Schulpflicht eine akute Kindeswohlgefährdung darstellt.

Wegen der weiteren Einzelheiten des Beteiligtenvorbringens wird auf die gewechselten Schriftsätze Bezug genommen.

II.

Die zulässigen Beschwerden sind begründet.

Der Senat geht allerdings nach wie vor davon aus, dass die Verweigerung der Kindeseltern, den Schulbesuch ihrer Kinder sicherzustellen, eine Kindeswohlgefährdung darstellt. Insoweit wird auf den Beschluss des erkennenden Senats vom 25.04.2013 Bezug genommen. Insbesondere hat der Senat nach wie vor keine verfassungsrechtlichen Bedenken gegen die Schulpflicht, die auf Art. 7 GG beruht.

Der Senat sieht daher weiterhin in der Weigerung der Kindeseltern, ihre Kinder einer öffentlichen Schule oder einer anerkannten Ersatzschule zuzuführen, einen Missbrauch der elterlichen Sorge, der das Kindeswohl nachhaltig beeinträchtigt. Dass die Kinder in der Zeit vom 28. Oktober 2013 bis zum 23.06.2014 die Schule besucht haben, ändert an dieser Einschätzung nichts, da die Kindeseltern zwar unter Beweis gestellt haben, dass sie in der Lage sind, ihre Kinder zum regelmäßigen Schulbesuch anzuhalten und diesen sicher zu stellen, sie aber nunmehr seit dem 24.06.2014 zu ihrer Verweigerungshaltung zurückgekehrt sind, so dass sich die Gefährdungslage in gleicher Weise darstellt wie vor dem Schulbesuch. Der Senat ist auch nicht der Auffassung, dass durch die zwischenzeitlich erfolgte Lernstandserhebung und die Feststellung, dass der Bildungsstand der Kinder nicht besorgniserregend ist, die durch die Verhinderung des Schulbesuchs eintretende Gefährdung des Kindeswohls gemindert oder gar beseitigt wird. Denn der Schulbesuch dient nicht nur der reinen Wissensvermittlung, sondern soll den Kindern auch die Gelegenheit geben, in das Gemeinschaftsleben hineinzuwachsen (vgl. OLG Hamm, Beschluss vom 20.02.2007, zitiert nach Juris). Dem entspre-

chend hat das Bundesverfassungsgericht mit Beschluss vom 31.05.2006 ausgeführt, dass sich der staatliche Erziehungsauftrag nicht nur auf die Vermittlung von Wissen richtet, sondern auch auf die Erziehung zu einer selbstverantwortlichen Persönlichkeit und die Heranbildung verantwortlicher Staatsbürger, die gleichberechtigt und verantwortungsbewusst an demokratischen Prozessen in einer pluralistischen Gesellschaft teilhaben (vgl. Bundesverfassungsgericht, Beschluss vom 31.05.2006,FamRZ 2006, 1094 ff). Der Senat hält es daher nach wie vor für notwendig, dass die Kinder durch den Schulbesuch auch künftig die Möglichkeit haben, sich in ein Gemeinschaftsleben außerhalb der Familie zu integrieren, dort ihre sozialen Kompetenzen zu stärken, zu lernen, sich an Regeln zu halten und Pflichten zu akzeptieren. Zudem eröffnet der Besuch der Schulen den Kindern die Möglichkeit, neue Wissensfelder kennen zu lernen und eigene Talente zu entdecken.

Da die Kindeselten nicht gewillt sind, diese Gefährdung des Kindeswohls abzuwenden, ist zu prüfen, ob der Entzug der Teilbereiche der elterlichen Sorge mit amtsgerichtlichem Beschluss vom 06.09.2012 und mit dem angefochtenen Beschluss aufrecht zu erhalten ist oder ob dem Antrag der Kindeseltern auf Rückübertragung der entzogenen Teilbereiche auf sie zu entsprechen ist.

Dabei kommt der Prüfung des Grundsatzes der Verhältnismäßigkeit gemäß § 1666a BGB besondere Bedeutung zu.
Vorliegend bleibt in Anbetracht der beharrlichen Weigerung der Kindeseltern, die Beschulung der Kinder sicherzustellen, in sorgerechtlicher Hinsicht lediglich die Möglichkeit, die Kinder von ihren Eltern zu trennen und fremd zu platzieren, wobei die Erwartung, die Eltern würden erneut nach einer kurzen Zeit der Fremdunterbringung der Kinder einlenken, angesichts ihres durch die Verpflichtung zur Teilnahme am Sportunterricht ausgelösten Sinneswandels nicht wahrscheinlich ist. Nach Einschätzung des Jugendamtes, der der Senat folgt, hat sich die Entscheidungsgrundlage für die Frage, ob eine Herausnahme der Kinder aus dem elterlichen Haushalt geboten erscheint, zwischenzeitlich geändert. Wie das Jugendamt in seiner Stellungnahme vom 22.07.2014 ausgeführt und auch bereits mit Schreiben vom 15.10.2013 erklärt hat, waren für die Entscheidung im August 2013, die Kinder zwangsweise aus der Familie herauszunehmen, mehrere Faktoren ent-

scheidend: zum einen war maßgeblich, dass in dem sich zuspitzenden Konflikt mit den Kindeseltern eine Gefährdung der körperlichen Unversehrtheit durch den Kindesvater nicht ausgeschlossen werden konnte, zum anderen waren mehrfache Versuche, die Kinder unter Einbeziehung der Polizei der Schule zuzuführen gescheitert, so dass die Kinder, unterstützt durch ihre Eltern, die Haltung zu verinnerlichen drohten, dass staatliche Gesetze für sie keine Gültigkeit haben. Schließlich war der Versuch einer Lernstandserhebung an dem Widerstand der Kindeseltern gescheitert und es bestand die Befürchtung, dass die Kinder außerhalb der Familie keinerlei Kontakt zu anderen hatten.

Aus den seit der Fremdunterbringung geführten Gesprächen und der Beobachtung des Umgangs zwischen den Kindern und ihren Eltern schließt das Jugendamt jetzt aus, dass den Kindern durch die Eltern eine Gefährdung ihrer körperlichen Unversehrtheit droht. Auch haben die durchgeführten Lernstandserhebungen und die bislang erfolgte Beschulung gezeigt, dass der Bildungsstand der Kinder nicht besorgniserregend ist. Schließlich hat sich gezeigt, dass eine eingeschränkte Sozialkompetenz der Kinder nicht vorliegt. Es gibt auch keine Anhaltspunkte dafür, dass die Kinder gegen ihren Willen vom Schulbesuch abgehalten werden, im Gegenteil, haben sie sich gegenüber dem Amtspfleger anlässlich des Gesprächs nach „Beendigung" des Schulbesuchs eindeutig erneut hinter die Weigerungshaltung ihrer Eltern gestellt, zudem besteht nach den dem Senat vorgelegten persönlichen Erklärungen der Kinder kein Zweifel daran, dass diese den Kampf ihrer Eltern unterstützen.

Unter diesen Aspekten scheint dem Senat eine Fortdauer des Entzugs der elterlichen Teilrechte, die eine Fremdunterbringung der Kinder zur Erzwingung des Schulbesuchs ermöglichen würden, nicht (mehr) verhältnismäßig. Denn der Entzug der Teilrechte der elterlichen Sorge setzt voraus, dass die zu treffenden Maßnahmen auch geeignet sind, der drohenden oder bereits eingetretenen Gefahr zu begegnen (BGH, Beschluss vom 12.03.1986, NJW-RR 1986, 1624; BGH, Beschluss vom 26.10.2011, a.a.O.). An der Eignung fehlt es nicht nur, wenn die Maßnahme die Gefährdung des Kindeswohls nicht beseitigen kann, vielmehr ist sie auch dann ungeeignet, wenn sie mit anderweitigen Beeinträchtigungen des Kindeswohls einhergeht und diese durch die Beseitigung der festgestellten Gefahr nicht aufgewogen werden (vgl. BGH, Beschluss vom 26.10.2011, a.a.O., Beschluss vom 11.07.1984, FamRZ 1985, 169; OLG Hamm, FamRZ 2007, 1677).

Davon ist vorliegend auszugehen. Denn eine dauerhafte Fremdunterbringung der Kinder zur Erzwingung der Schulpflicht, die nach der jüngst eingetretenen Entwicklung zur Überzeugung des Senats die einzige Möglichkeit wäre, eine Beschulung der Kinder sicherzustellen, würde angesichts der guten Bindungen zwischen den Kindern und den Eltern und der im übrigen beanstandungsfreien Betreuung durch die Kindeseltern eine Kindeswohlbeeinträchtigung darstellen, die im Verhältnis zum Vorteil dieser Maßnahme durch die Beschulung der Kinder nicht mehr verhältnismäßig wäre. Dem entsprechend ist auch das Jugendamt inzwischen zu der Auffassung gelangt, dass eine erneute Herausnahme der Kinder aus dem Haushalt ihrer Eltern nicht mehr angestrebt wird.

Die Auffassung, die das staatliche Schulamt mit Schreiben vom 16.07.2014 an das Jugendamt vertritt, verliert dadurch nicht an Bedeutung. Auch der Senat geht davon aus, dass das Abhalten vom Schulbesuch aus weltanschaulichen Gründen bei Erteilung von Hausunterricht eine Kindeswohlgefährdung darstellt. Gleichwohl ist vorliegend eine zwangsweise Herausnahme der Kinder aus der Familie, die einzig geeignet erscheinen würde, erneut eine Änderung in der Weigerungshaltung der Kindeseltern zu bewirken, nicht (mehr) als verhältnismäßig anzusehen.

Danach ist zumindest derzeit eine Einschränkung der elterlichen Sorge für die Kinder nicht (mehr) gerechtfertigt. Die Beschwerden haben daher Erfolg.

Daraus ist indes nicht der Schluss zu ziehen, dass den Kindeseltern nunmehr eine Heimbeschulung der Kinder gestattet ist. Der Senat weist ausdrücklich darauf hin, dass nach § 181 des hessischen Schulgesetzes der Verstoß gegen die Schulpflicht als Ordnungswidrigkeit ausgestaltet ist und nach § 182 des hessischen Schulgesetzes derjenige, der einen anderen der Schulpflicht dauernd oder hartnäckig wiederholt entzieht, sogar eine Straftat begeht, die mit Freiheitstrafe bis zu 6 Monaten oder mit Geldstrafe bis zu 180 Tagessätzen bestraft werden kann. Antragsberechtigt ist die untere Schulaufsichtsbehörde, die von ihrem Recht vorliegend auch schon entsprechend Gebrauch gemacht hat. Da nach der Rechtsprechung des Oberlandesgerichts Frankfurt in Strafsachen die Eltern verpflichtet sind, an jedem einzelnen Tag bei jedem Kind neu zu entscheiden, wie sie der Schul-

pflicht genüge tun, so dass bei mehreren Verstößen grundsätzlich Tatmehrheit anzunehmen ist (vgl. OLG Frankfurt, Beschluss vom 18.03.2011, Az.: 2 Ss 413/10, NSTZ-RR 2011, 287 bis 288), ist abzuwarten, welche strafrechtlichen Konsequenzen das Verhalten der Kindeseltern nach sich ziehen wird.

Hingegen kann der Senat in der Planung der Kindeseltern, mit ihren Kindern ihren Wohnsitz dauerhaft nach Frankreich zu verlegen, keine Kindeswohlgefährdung erkennen. Die Einschränkung der elterlichen Rechte erfolgte mit dem Ziel, den infolge ihres Wohnsitzes in Deutschland der deutschen Schulpflicht unterliegenden Kindern einen Schulbesuch zu ermöglichen. Unterliegen die Kinder aber durch eine Verlegung ihres Wohnsitzes nicht mehr der deutschen Schulpflicht, ist eine Einschränkung der elterlichen Rechte unter keinem Gesichtspunkt gerechtfertigt. Das zulässige System der Heimbeschulung in anderen europäischen Ländern ermöglicht Vorgaben hinsichtlich des Lernstoffs, Lernstandskontrollen und regelmäßige Überprüfungen der Qualität des Heimunterrichtes, so dass ein Vergleich zu der rechtlichen Situation in Deutschland nicht möglich ist. Die Wertung des Amtsgerichts, dass die Erteilung von Heimunterricht im vorliegenden Fall stets eine Kindeswohlgefährdung darstellt, auch wenn sie in Frankreich stattfindet, ist nicht gerechtfertigt.

Von einer persönlichen Anhörung der Beteiligten hat der Senat abgesehen. Die Beteiligten wurden bereits in der ersten Instanz umfassend angehört, von einer erneuten Anhörung sind keine neuen Erkenntnisse zu erwarten.

Dem Antrag auf Entlassung des Verfahrensbeistandes war nicht zu entsprechen. Der Senat teilt die Auffassung des Amtsgerichts, dass abweichend von § 158 Abs. 5 FamFG vorliegend trotz der Vertretung der Minderjährigen durch einen Rechtsanwalt die Verfahrensbeistandsbestellung nicht aufzuheben war, da der Bevollmächtigte der Kinder die Interessen der Kinder in einer den Interessen der Eltern entsprechenden Weise wahrgenommen hat, so dass eine unabhängige Wahrnehmung der Interessen der Kinder unter Beachtung ihres Rechts auf schulische Bildung und Teilnahme am schulischen Gemeinschaftsleben nicht gewahrt war. Im Übrigen unterliegt der Verfahrensbeistand nicht der Aufsicht des Gerichts, so dass

dieses keine Möglichkeit hat, auf die Wahrnehmung der Aufgaben durch den Verfahrensbeistand Einfluss zu nehmen – die insoweit geäußerte Kritik der Beschwerdeführer, die vom Senat im Übrigen nicht geteilt wird, bietet daher keine Veranlassung ihn zu entpflichten (vgl. Keidel/Engelhardt, FamFG, 18. Aufl., § 158 Rdz. 41, 42).

Die Kostenentscheidung beruht auf § 81 Abs. 1 S. 2 FamFG. Die Entscheidung über den Gegenstandswert gründet sich auf §§ 40, 45 FamGKG.

Schwamb
Vorsitzender Richter am Oberlandesgericht

Herrrmann
Richter am Amtsgericht

Schuschke
Richterin am Oberlandesgericht

EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

APPLICATION NO: 18925/15

Dirk Wunderlich and Petra Wunderlich

Applicants

v.

Germany

Respondent

APPLICANTS' CLAIM FOR JUST SATISFACTION

Filed on 12 April 2017

(a) Introduction

1. Pursuant to Article 41 of the Convention and Rule 60 of the Rules of Court the Applicants herein respectfully submit the following Claim for Just Satisfaction against the Respondent Government in Application 18925/15.

2. Where the Court finds a violation of a Convention right, the Respondent is required to end the breach and to restore the situation existing before the violation so far as is possible – *restitutio in integrum*. This restitution can take the form of monetary compensation, but this Court has also concluded that an alternative form of redress is most appropriate. For example, the Court has ordered the release of detainees, prevented refoulement, and granted a re-trial.[1]

(b) Particulars of the interference with the Applicants' Convention Rights occasioning harm to the Applicants

3. The German Youth Welfare Office visited the Applicants at home on 26 March 2012 and found that the children were developed according to their ages and reported that there was no need for intervention. Despite this conclusion, on 15 July 2012 an application was made to the Darmstadt Family Court, and on 6 September 2012 that court gave custody of children to the State for purpose of school attendance as well as other parental rights. Physical custody, at this time, remained with the parents. Partial custody remained with the State until as late as 15 August 2014, some two years later.

4. In an ex Parte hearing on 27 August 2013, the Youth Welfare Office requested interim orders to take immediate physical custody of the Applicants' children. Without any notice to the Applicants, the authorities arrived at the Applicants family home with 7 Youth Welfare Officers and 33 police officers. They used force to carry the children, crying, out of the house.

5. Over the course of the next week from 12 – 19 September the children were subjected to examinations of their academic abilities and allowed only one family visit for the birthday of the Applicants' youngest daughter. The children were finally 'released' from the foster home after 3 weeks of physical separation, and only on the condition that they attend the local public school.

[1] *Ükünç and Güneş v. Turkey*, no. 42775/98, §32, 18 December 2003; *Assanidze v. Georgia* [GC], no. 71503/01, § 203, ECHR 2004-II; *N. v. Finland*, no. 38885/02, § 177 26 July 2005.

6. These two interferences gave rise to a litany of court appearances, consultations with lawyers, and significant uncertainty about the future – indeed the family contemplated moving to another country to escape the risk of violations, but were prevented by order of the German courts.

7. These protracted proceedings severely interfered with the family life of the Applicants and caused them great stress. Coupled with the lack of legal aid and the refusal of the authorities to make clear the full basis for the court applications by turning over their files, the Applicants suffered years of uncertainty and stress wondering when the next court order interfering with their family life would arrive. Even today, the family live under the possibility of further action by the authorities who have proved themselves willing to use force to separate the family.

8. The harsh and intrusive measures against the Applicants, used solely to undermine their efforts to educate their children at home, were unquestionably disproportionate, caused unnecessary stress, embarrassment and discomfort to the Applicants and constituted an egregious interference with their family life which requires a finding of a violation of Article 8 of the Convention as well as just satisfaction pursuant to Article 41.

(c) General measures required

9. In responding to a violation of the Convention, this Court has a number of tools at its disposal. In *Assanidze v. Georgia*, the Grand Chamber recognized that while:

> its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention… by its very nature, the violation found in the instant case does not leave any real choice as to the measures required to remedy it.[2]

10. In the instant case, it is submitted that such measures are required to remedy the continuing violation (the children could again be taken into care at any time), and to address the underlying cause of the violation. Absent legislative or institutional reform, the violations made out in this case will be repeated, either in the case of these Applicants, or others.

[2] *Assanidze v. Georgia*, above, § 202.

11. It is respectfully submitted that the Respondent Government must recognize that it is inherently disproportionate to separate children and their parents for the sole reason of their choosing to educate at home. More so than any financial just satisfaction, such general (or individual measures) as would permit this family to quietly enjoy their family life – including choosing to homeschool – would provide the relief sought by this Application.

(d) Non-pecuniary Damage

12. In the alternative, it is respectfully submitted that Article 41 of the Convention enables this Court to "afford just satisfaction" in the form of non-pecuniary damages to an injured party in addition to a finding and declaration of a Convention violation by a Respondent State. The Court has specified in its Practice Direction of 19 September 2016 that claims for non-pecuniary damage are intended to provide financial compensation for non-material harm, including mental suffering.

13. This complaint involves a more than 3-year-long campaign of interference, harassment and oppression of the Applicants' family by the Respondent State authorities. The actions of the authorities have had a serious impact on the Applicants' quiet enjoyment of their family life. In the course of over 20 separate court applications and appearances the authorities were unable to show any ill treatment or neglect of the Applicants' children which would warrant the disproportionate interferences visited on the Applicants family life.

The Court's jurisprudence on non-pecuniary damage

14. The Court's practice direction specifies that an award for non-pecuniary damage will be made on an equitable basis, having regard to the standards which emerge from the Court's case-law.[3] To assist the Court in this regard, the following analysis of non-pecuniary damage in a number of cases regarding child deprivation is respectfully submitted for consideration. The cases considered below involve cases where the Court found for the parents in respect of a violation of the Convention where ultimately the children were returned to the care of the parents.

[3] Practice Directions, Rules of Court – 19 September 2016, p 61 § 14.

15. In the case of *K. and T. v*. *Finland*,[4] the applicant mother had been hospitalized on several occasions for paranoid schizophrenia. As she was expecting her third child, the Social Welfare Board decided to place her second child in a children's home as a short-term support measure. As soon as the baby was born, the third child was placed in public care in the children's ward of the hospital on an emergency care order. An access restriction was later ordered and the children were placed in a foster home.

16. The Court held that there had been a violation of Article 8 in respect of the decisions to take the children into public care and the refusal to terminate the care. The Court considers that the applicants must, as a result, have suffered some non-pecuniary damage which had not been compensated solely by the findings of violation. Deciding on an equitable basis, it awarded FIM 40,000 each, a total of FIM 80,000 to the applicants jointly under this head.[5] This equates to approximately EUR 13,500.

17. In the case of *Görgülü v. Germany*,[6] there was a refusal by German authorities to grant custody to the father of a child born out of wedlock and given up by the mother for adoption. There was also a suspension of his right of access.

18. The Court found a violation of Article 8 concerning the refusal to give the applicant custody and access rights. The Court considered that the applicants must, as a result, have suffered some non-pecuniary damage which had not been compensated solely by the findings of violation. Deciding on an equitable basis, it awarded EUR 15,000[7].

19. In the case of *Vojnity v.* Hungary[8] a father saw his access rights removed to his son because of his religion. The Court held a violation of Article 14 read in conjunction with Article 8 of the Convention; and awarded EUR 12,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

20. In the case of *T.P. and K.M. v. the United Kingdom*[9] the applicant, T.P., was suspected of sexually abusing her daughter K.M. The child was removed from

[4] *K. and T. v. Finland* [GC], no. 25702/94, ECHR 2001.
[5] Ibid § 203.
[6] *Görgülü v. Germany,* no. 74969/01, 26 February 2004.
[7] Ibid § 65.
[8] *Vojnity v. Hungary*, no. 29617/07, 12 February 2013.
[9] *T.P. and K.M. v. the United Kingdom*, App No. 28945/95, 10 May 2001.

the care of her mother, and the local authority was awarded custody, thereafter T.P. was granted limited access. The local authority's failure to submit the issue to the court for determination meant T.P. was not adequately involved in the decision-making process concerning the care of her daughter, and the Court found a violation of Article 8. The Court held that the respondent State was to pay the applicants each GBP 10,000 in respect of non-pecuniary damage, amounting to GBP 20,000. This equates to approximately EUR 23,300.

21. *R.M.S. v. Spain*[10] concerned the placement of a child with a foster family on account of her mother's financial situation where the authorities failed to take into account a subsequent change in circumstances. The Court held that there had been a violation of Article 8 of the Convention. It found that the authorities had failed to make adequate and effective efforts to secure the applicant's right to live with her child. The Court considered that the applicants must, as a result, have suffered some non-pecuniary damage which had not been compensated solely by the findings of a violation. Deciding on an equitable basis, it awarded 30,000 EUR.

22. In *Andersson v.* Sweden[11] a mother applied to the Court in circumstances where the Swedish authorities had taken the decision to severely curtail her right to see and communicate with her son over an 18 month period. The Swedish authorities claimed the restriction was necessary and justified as there was a danger that the applicant mother would help her son abscond from the secure facility where he was receiving medical treatment. Finding for the Applicant, the Court awarded, on an equitable basis, each applicant the sum of SEK 50,000 for non-pecuniary damage, amounting to SEK 100,000. This equates to approximately EUR 10,500.

23. The foregoing cases illustrate that this Court has consistently awarded a sum in respect of non-pecuniary damage in cases where the domestic authorities interfere in an applicant's private family life by taking children into care on an unwarranted basis. In the instant case there is a catalog of unwarranted and disproportionate interference in the Applicants' private family life. It is respectfully submitted that taking the factual background to this case and applying the

[10] *R.M.S. v. Spain*, no. 28775/12, 18 June 2013.
[11] *Margareta and Roger Andersson v. Sweden*, 25 February 1992, Series A no. 226-A.

Court's jurisprudence regarding non-pecuniary damage in similar cases invites a well-founded basis for an award of non-pecuniary damage to the Applicants.

24. The Applicants submit that a joint sum in the amount of 35,000 EUR is equitable in the circumstances of the case. The said sum is a single lump sum for non-pecuniary damage covering all interferences complained of in this application. The Applicants nominate the following bank account for the payment of compensation under this heading by way of electronic funds transfer to the Applicants' account:

Beneficiary:	Dirk & Petra Wunderlich
Beneficiary Bank:	Stadt- und Kreis-Sparkasse Darmstadt
BIC:	HELADEF1DAS
IBAN:	DE94508501500100034069

(e) Costs and Expenses

25. This Court's approach to legal costs and expenses is set out in its Practice Direction of 19 September 2016: "The Court can order the reimbursement to the applicant of costs and expenses which he or she has incurred." This is subject to the caveat that costs must have been necessarily and reasonably incurred.

26. The costs which have been necessarily and reasonably incurred in this case are broken down as follows:

a.	Domestic litigation legal costs:[12]	41,221.56	EUR
b.	ECHR litigation legal costs:[13]	14,837.50	EUR
c.	ECHR litigation disbursements:[14]	1,873.11	EUR
	TOTAL	**57,932.17**	**EUR**

27. In this case, the Applicants were subjected by the Respondent to protracted child custody proceedings which did in fact result in physical custody being removed for a period. Efforts to challenge this required attendance at numerous court hearings and appeals through three levels of Germany's court system. The sum claimed in domestic litigation legal costs is therefore both reasonable particularly when considering the high stakes involved, and necessary insofar as legal aid

[12] Pp. 1-15 of the Costs Bundle.
[13] P. 16 of the Costs Bundle.
[14] Pp. 17-19 of the Costs Bundle.

was repeatedly refused by the Respondent despite the importance of the proceedings.

28. In respect of the application to this Court, the Applicants engaged the assistance of ADF International which specializes in human rights law. ADF International reviewed the domestic proceedings and provided specialist advice throughout the application process to the ECHR, including drafting the original application and this subsequent response. The hours expended, recorded in the annexed timesheet, are relatively modest compared with the complexity of the case, involving more than 600 pages of exhibits.

29. The Applicants nominate the following bank account for the payment of costs by way of electronic funds transfer to ADF International:

    ADF International Austria gemeinnützige GmbH
    IBAN: AT452011182912086402
    SWIFT: GIBAATWW

For the Applicants:

Robert Clarke
Director of European Advocacy
ADF International

EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

APPLICATION NO: 18925/15

Dirk Wunderlich and Petra Wunderlich

Applicants

v.

Germany

Respondent

APPLICANTS' COSTS BUNDLE

Filed on 12 April 2017

Dr. Andreas Vogt
RECHTSANWALT

RA Dr. Andreas Vogt · Niederhoner Str. 20 · 37269 Eschwege

Eheleute
Dirk und Petra Wunderlich
Im Höhlchen 13

64372 Ober-Ramstadt

Bei Schreiben und Zahlung bitte angeben:
Wunderlich Az.: 173/13VO01

Eschwege, 16.01.2014

Vorschussrechnung Nr. 1400004
Leistungszeit: 02.05.2013 bis 16.01.2014
berechnet nach § 2 RVG

Vorschuss gemäß § 9 RVG	5.000,00 €
Zwischensumme netto	5.000,00 €
19 % Mehrwertsteuer Nr. 7008 VV RVG	950,00 €
zu zahlender Betrag	**5.950,00 €**

Ich bitte um Überweisung des Rechnungsbetrages innerhalb von 14 Tagen ohne Abzug.

Mit freundlichen Grüßen

Dr. Vogt
Rechtsanwalt

The note of aquired payment covers the following **period of time (pot)**:

1.) Oberlandesgericht – OLG - Frankfurt (reference: 6 UF 254/13), custody, appeal against the decision of the Amtsgericht – AG – Darmstadt from September 6th 2012 (reference: 53 F 1440/12 SO), decision from April 25th 2013, my reference: 210/12 – advance: € 500,00
pot: September 19 2012 - May 2nd 2013

2.) Bundesverfassungsgericht - BVerfG - (reference: 1 BvR 1631/13), appeal - constitutional law - against **1.)**, my reference: 173/13 – advance: € 2.500,00 (paid – my invoice number 1300134 from September 11th 2013)
pot: since May 2nd 2013

3.) AG Darmstadt (reference: 53 F 1216/13 SO), custody, decision from December 18th 2013, my reference: 179/13
pot: June 25th 2013 - December 24th 2013

4.) AG Darmstadt (reference: 53 F 1698/13 EAHK), carry off the children, decision in the interim from August 28th 2013, my reference: 203/13 – advance: 500,00
pot: August 30th 2013 - September 27th 2013

5.) AG Darmstadt (reference: 53 F 1697/13 EASO), custody, decision in the interim from August 28th 2013, my reference: 204/13 – advance: € 500,00
pot: August 30th 2013 - September 27th 2013

6.) AG Darmstadt (reference: 53 F 2124/13 EASO), custody, decision in the interim from October 29th 2013, my reference: 219/13 – advance: € 500,00
pot: October 23th 2013 - November 4th 2013

7.) OLG Frankfurt (reference: 6 UF 273/13), appeal against **4.)**, my reference: 203/13 – advance: € 500,00
pot: since October 23th 2013

8.) OLG Frankfurt (reference: 6 UF 274/13), appeal against **5.)**, my reference: 204/13 – advance: € 500,00
pot: since October 23th 2013

9.) OLG Frankfurt (reference: 6 UF 30/14), appeal against **3.)**, my reference: 179/13 – advance: € 500,00
pot: since January 16th 2014

10.) letters before action to Darmstädter Echo (newspaper), right to correct article, my reference: 205/13 – advance: € 250,00
pot: September 5th 2013 - September 12th 2013

11.) Jugendamt (JA) Darmstadt requires costs (the children´s carry off and placement/accommodation, children´s home), my reference: 207/13 – advance: € 500,00
pot: since September 23th 2013

12.) four complaints against Jugendamt (JA) and Unknown, my references: 240/13, 241/13, 242/13, 247/13 – advance: € 250,00
pot: since November 26th 2013

13.) correspondence with Jugendamt (JA), Schulamt (SA), breefings and meetings in Darmstadt, journeys to Darmstadt, my reference: 210/12 – advance: € 500,00
pot: since September 2012

Dr. Andreas Vogt

RECHTSANWALT

RA Dr. Andreas Vogt · Niederhoner Str. 20 · 37269 Eschwege

Eheleute
Dirk und Petra Wunderlich
Im Höhlchen 13

64372 Ober-Ramstadt

Bei Schreiben und Zahlung bitte angeben:
Wunderlich Az.: 173/13VO01

Eschwege, 11.09.2013

Vorschussrechnung Nr. 1300134
berechnet nach § 2 RVG

Vorschuss gemäß § 9 RVG	2.500,00 €
Zwischensumme netto	2.500,00 €
19 % Mehrwertsteuer Nr. 7008 VV RVG	475,00 €
zu zahlender Betrag	**2.975,00 €**

Ich bitte um Überweisung des Rechnungsbetrages innerhalb von 14 Tagen ohne Abzug.

Mit freundlichen Grüßen

Dr. Vogt
Rechtsanwalt

Dr. Andreas Vogt
RECHTSANWALT

RA Dr. Andreas Vogt · Niederhoner Str. 20 · 37269 Eschwege

Eheleute
Dirk und Petra Wunderlich
Im Höhlchen 13

64372 Ober-Ramstadt

Bei Schreiben und Zahlung bitte angeben:
Wunderlich Az.: 209/14VO01

Eschwege, 01.12.2014

Verfassungsbeschwerde gegen die Beschlüsse des OLG Frankfurt am Main vom 15.08.2014, 15.09.2014, 24.09.20.2014, 14.10.2014 in den Fortsetzungs-feststellungsverfahren 6 UF 274/13, 6 UF 273/13, 6 WF 173/14

Kostenrechnung Nr. 1400100
Leistungszeit: 16.09.2014 bis 01.12.2014
berechnet nach § 2 RVG

Vorschuss	10.000,00 €
Zwischensumme netto	10.000,00 €
19 % Mehrwertsteuer Nr. 7008 VV RVG	1.900,00 €
zu zahlender Betrag	**11.900,00 €**

Mit freundlichen Grüßen

Dr. Vogt
Rechtsanwalt

Dr. Andreas Vogt
RECHTSANWALT

RA Dr. Andreas Vogt · Niederhoner Str. 20 · 37269 Eschwege

Eheleute
Dirk und Petra Wunderlich
Im Höhlchen 13

64372 Ober-Ramstadt

Bei Schreiben und Zahlung bitte angeben:
Wunderlich Az.: 173/13VO01

Eschwege, 06.08.2014

Vorschussrechnung Nr. 1400068
Leistungszeit: 02.05.2013 bis 06.08.2014
berechnet nach § 2 RVG

Vorschuss gemäß § 9 RVG	5.000,00 €
Pauschale für Post und Telekommunikation Nr. 7002 VV RVG	20,00 €
Zwischensumme netto	5.020,00 €
19 % Mehrwertsteuer Nr. 7008 VV RVG	953,80 €
zu zahlender Betrag	**5.973,80 €**

Ich bitte um Überweisung des Rechnungsbetrages innerhalb von 14 Tagen ohne Abzug.

Mit freundlichen Grüßen

Dr. Vogt
Rechtsanwalt

Hefele · Gruss · Zander · Hildebrandt

RECHTSANWÄLTE

RAe Hefele • Gruss • Zander • Hildebrandt
Wittelsbacherstraße 6 – 91126 Schwabach

Home School Legal Defense Association

Gerhard Hefele
Rechtsanwalt

Franz Gruss
Rechtsanwalt
Fachanwalt für Arbeitsrecht

Evelyn Zander
Rechtsanwältin
Fachanwältin für Arbeitsrecht

Johannes Hildebrandt
Dipl. Pädagoge Univ.
Rechtsanwalt
Fachanwalt für Familienrecht

Datum : 13.03.2014

AZ: 13/8468 sc

Per E-Mail: **brittanyp@hslda.org**
mikeD@hslda.org

Wunderlich u. a. ./. Kreisjugendamt Darmstadt-Dieburg
elterlicher Sorge und Verbleibensanordnung

Dear Brittany,

In the attachment you will find our new bill, including our tabulation of our activities. Your last payments are considered, also the exchange rate fluctuations.

A new retainer is also included.

Warmly,

Johannes Hildebrandt
attorney at law

Hefele · Gruss · Zander · Hildebrandt

RECHTSANWÄLTE

RAe Hefele • Gruss • Zander • Hildebrandt
Wittelsbacherstraße 6 – 91126 Schwabach

Ehegatten
Petra und Dirk Wunderlich
Im Höhlchen 13
64372 Ober-Ramstadt

Gerhard Hefele
Rechtsanwalt

Franz Gruss
Rechtsanwalt
Fachanwalt für Arbeitsrecht

Evelyn Zander
Rechtsanwältin
Fachanwältin für Arbeitsrecht

Johannes Hildebrandt
Dipl. Pädagoge Univ.
Rechtsanwalt
Fachanwalt für Familienrecht

Wunderlich u. a. ./. Kreisjugendamt Darmstadt-Dieburg
elterlicher Sorge und Verbleibensanordnung

Datum : 13.03.2014

Rechnungs-Nr.: 14/000250

AZ: 13/8468 sc

Kostennote

Abrechnung nach RVG gemäß § 13

Bezeichnung	**Wert**	**Gebühr**
Abrechnung gem. anliegendem Zeitkonto		7.916,33 €
Reisekosten Nr. 7004 VV (Fahrkosten 12.12.2013)		65,55 €
Zwischensumme netto		7.981,88 €
Mehrwertsteuer 19,00 % Nr. 7008 VV		1.516,56 €
Summe Gebühren brutto		9.498,44 €
erhaltene Zahlung vom 29.10.2013	./.	1.157,25 €
erhaltene Zahlung vom 13.12.2013	./.	2.698,29 €
erhaltene Zahlung vom 16.01.2014	./.	2.200,29 €
zu zahlender Betrag		**3.442,61 €**

Johannes Hildebrandt
Rechtsanwalt

Der Rechnungsbetrag ist sofort zur Zahlung fällig.

13.03.2014 Zeitkonto zu 13/008468 Wunderlich u. a. ./. Kreisjugendamt Darmstadt-Dieburg

Rechtsanwälte Hefele Gruss Zander - Wittelsbacherstraße 6 - 91126 Schwabach

Datum	Tätigkeit	Dauer	Preis/h	Betrag	abgerechnet
01.10.2013	Telefonat mit Hrn. u. Fr. Wunderlich (weiteres Vorgehen)	00:01	165,00	2,75	07.11.2013
02.10.2013	Literaturrecherche + SS- Entwürfe AG Darmstadt (Festellungsanträge)	01:33	165,00	255,75	07.11.2013
07.10.2013	SS nach Diktat	02:30	45,00	112,50	07.11.2013
07.10.2013	Lektüre E- Mail des Mandanten	00:07	165,00	19,25	07.11.2013
08.10.2013	SS nach Diktat	01:00	45,00	45,00	07.11.2013
09.10.2013	Telefonat Herr u. Frau Wunderlich	01:15	165,00	206,25	07.11.2013
09.10.2013	schriftliche Beratung, Fertigstellung zweier Anträge zum Familiengericht	03:14	165,00	533,50	07.11.2013
10.10.2013	SS nach Diktat	01:00	45,00	45,00	07.11.2013
10.10.2013	Ausfertigen Schriftsätze 13/82525 u. 13/8526	00:45	45,00	33,75	07.11.2013
14.10.2013	Lektüre E- Mails Mdt. + Mike Donelli, Telefonat Dr. Voigt	00:18	165,00	49,50	07.11.2013
15.10.2013	Telefonat Dr. Vogt, Telefonat Machseja Wunderlich und Elte Schreiben an Amtspfleger	00:33	165,00	90,75	07.11.2013
17.10.2013	Bürotätigkeit	00:13	45,00	9,75	07.11.2013
22.10.2013	Telefonat Dr. Vogt; Dr. Vogt u. Mdt; Telefonat Mdt.	01:02	165,00	170,50	07.11.2013
23.10.2013	Telefonat RA Vogt; Eilantrag AG Darmstadt	01:57	165,00	321,75	07.11.2013
24.10.2013	Telefonat Dr. Vogt; Überarbeitung und Korrektur Eilantrag	00:46	165,00	126,50	07.11.2013
30.10.2013	Schreiben Roland Wiebe	00:05	165,00	13,75	07.11.2013
31.10.2013	Schreiben nach Diktat Roland Wiebe	00:05	45,00	3,75	07.11.2013
31.10.2013	Telefonat Dr. Vogt	00:13	165,00	35,75	07.11.2013
04.11.2013	Telefonat m. Ehel. Wunderlich/Dr. Vogt	00:24	165,00	66,00	07.11.2013
05.11.2013	Entwurf Schriftsatz; Telefonat Dr. Vogt	00:43	165,00	118,25	07.11.2013
06.11.2013	Schreiben nach Diktat	01:00	45,00	45,00	07.11.2013
07.11.2013	Vorschusskostennote, Schreiben an HSLDA	00:22	45,00	16,50	28.11.2013
07.11.2013	Telefonat Hr. Wunderlich (Strafanzeige; Akteneinsicht; Schadensersatzklage)	00:43	165,00	118,25	28.11.2013
12.11.2013	Telefonat Herr Wunderlich (wegen Verfahrenspfelger Wiebe)	00:05	165,00	13,75	28.11.2013
13.11.2013	Telefonat Frau Hajdu, Schulamtsdirektorin, E- Mail an Mdt	00:30	165,00	82,50	28.11.2013
18.11.2013	Telefonat mit Herrn Wunderlich (grundsätzliche Fragen des weiteren Vorgehens)	00:25	165,00	68,75	28.11.2013
22.11.2013	Strafantrag	01:08	165,00	187,00	28.11.2013
22.11.2013	Schreiben nach Diktat	00:45	45,00	33,75	28.11.2013
26.11.2013	Fahrt- und Wartezeit Jugendamt Darmstadt, höhere Gewalt, deswegen Reise vergeblich, daher wurde nur die Hälfte der angesetzt	02:30	80,00	200,00	28.11.2013
05.12.2013	Telefonat Dr. Vogt; Telefonat Hr. Wunderlich (wegen Anhörungstermin am 12.12.), Lektüre diverser Schriftsätze; Schreiben an Herrn Wiebe	00:55	165,00	151,25	16.12.2013
09.12.2013	2 Schreiben an Mandant, Schreiben an Herrn Wiebe	00:10	45,00	7,50	16.12.2013
09.12.2013	Telefonat mit Herrn Wiebe	01:19	165,00	217,25	16.12.2013
10.12.2013	Schriftsatz AG Darmstadt (Teil 1), Telefonat H. Wunderlich RA Dr. Vogt	01:39	165,00	272,25	16.12.2013
11.12.2013	Schreiben nach Diktat	00:30	45,00	22,50	16.12.2013
12.12.2013	Fahrt- und Wartezeit Gerichtstermin	07:25	80,00	593,33	16.12.2013
12.12.2013	Gerichtstermin und Nachbesprechung	02:20	165,00	385,00	16.12.2013
13.12.2013	Schriftsätze OLG Frankfurt und AG Darmstadt	00:49	165,00	134,75	16.12.2013
16.12.2013	Schriftsätze OLG Frankfurt und AG Darmstadt + Abschriften Mdt.	01:11	45,00	53,25	16.12.2013
19.12.2013	Schreiben an Mandant	00:03	165,00	8,25	07.01.2014
23.12.2013	Schreiben an Mandatn	00:02	45,00	1,50	07.01.2014
22.01.2014	Telefonat Hr. Wunderlich	00:20	165,00	55,00	13.03.2014
24.01.2014	Beschwerdebegründung Teil 1 diktiert	03:30	165,00	577,50	13.03.2014
30.01.2014	E- Mail- Korrespondenz mit Mike Donelli; Lektüre englischsprachige Texte (umfangreich); Recherche in Daten EUR- Lex; Beschwerdebegründung Teil 2	04:30	165,00	742,50	13.03.2014
03.02.2014	Beschwerdebegründung Teil 1 + 2 geschrieben	02:10	45,00	97,50	13.03.2014
03.02.2014	Korrektur Schriftsatzentwurf; Email an Mdt u. Dr. Vogt	00:15	165,00	41,25	13.03.2014
05.02.2014	Lektüre übersetzter E- Mails	00:12	165,00	33,00	13.03.2014
11.02.2014	Beschwerde gegen Einstellungsverfügung der Staatsanwalts	00:35	165,00	96,25	13.03.2014
12.02.2014	Beschwerde gegen Einstellungsverfügung, Schreiben an Mandant	00:33	45,00	24,75	13.03.2014
17.02.2014	Beschwerdebegründung Teil 3; Telefonat H. Wunderlich	05:08	165,00	847,00	13.03.2014

Rechtsanwälte Hefele Gruss Zander - Wittelsbacherstraße 6 - 91126 Schwabach

Datum	Tätigkeit	Dauer	Preis/h	Betrag	abgerechnet
19.02.2014	Schreiben nach Diktat	04:00	45,00	180,00	13.03.2014
20.02.2014	Telefonat Hr. Wunderlich	00:07	165,00	19,25	13.03.2014
28.02.2014	Beschwerdebegründung nächster Abschnitt	02:00	165,00	330,00	13.03.2014
gesamt		64:55		7916,33	
		noch abzurechnen		0,00	

Hausmann & Sandreuther

RECHTSANWÄLTE

RAe HAUSMANN • SANDREUTHER • ZERNER • HILDEBRANDT • STÄRZL • Dr. RUPPEL
POSTFACH 1509 • 91105 SCHWABACH ☎ 09122/8375-0, 17971

Siegfried Hausmann
Fachanwalt für Erbrecht
Fachanwalt für Familienrecht
Erbrecht, Familienrecht, Bankrecht

Hermann Sandreuther
Fachanwalt für Arbeitsrecht
Fachanwalt für Miet- u. Wohnungseigentumsrecht
Arbeitsrecht, Mietrecht, Verkehrsunfälle

Reinhardt Zerner
Fachanwalt für Arbeitsrecht
Fachanwalt für Familienrecht
Fachanwalt für Erbrecht
Arbeitsrecht, Familienrecht, Erbrecht

Johannes Hildebrandt
Dipl.-Pädagoge Univ.
Fachanwalt für Familienrecht
Familienrecht, Betreuungsrecht, Strafrecht

Stephan Stärzl
Fachanwalt für Erbrecht
Erbrecht, Wettbewerbsrecht, Strafrecht

Dr. Nadine Ruppel
Theoretische Ausbildung „Fachanwältin für Bank- und Kapitalmarktrecht", „Fachanwältin für Insolvenzrecht" und „Fachanwältin für Handels- und Gesellschaftsrecht" erfolgreich absolviert
Bank- u. Kapitalmarktrecht, Gesellschaftsrecht, Insolvenzrecht

[redacted]
Telefax 09122/83 75 38
E-Mail: recht@hausmann-sandreuther.de
Homepage: www.hausmann-sandreuther.de

Per E-Mail: Brittanyp@hslda.org

Az: 13/1054/601 SB: RA Hildebrandt Datum: 24.09.2013Hl/km

Wunderlich Machsejah, Wunderlich Joshua, Wunderlich Hannajah u. Wunderlich Serajah ./. Kreisjugendam
wegen elterlicher Sorge und Verbleibensanordnung

Dear Brittany,

in the attachment you find our actual bill; the bill attached to our E-Mail from 11. September 2013 is canceld. The IBAN and SWIFT-[redacted]

Yours sincerely

attorney at law
Johannes Hildebrandt

Hausmann & Sandreuther

RECHTSANWÄLTE

RAe HAUSMANN • SANDREUTHER • ZERNER • HILDEBRANDT • STÄRZL • Dr. RUPPEL
POSTFACH 1309 • 91103 SCHWABACH ☎ 09122/8375-0, 17971

Eheleute
Petra und Dirk Wunderlich
Im Höhlchen 13

64372 Ober-Ramstadt

Siegfried Hausmann
Fachanwalt für Erbrecht
Fachanwalt für Familienrecht
Erbrecht, Familienrecht, Bankrecht
Hermann Sandreuther
Fachanwalt für Arbeitsrecht
Fachanwalt für Miet- u. Wohnungseigentumsrecht
Arbeitsrecht, Mietrecht, Verkehrsunfälle
Reinhardt Zerner
Fachanwalt für Arbeitsrecht
Fachanwalt für Familienrecht
Fachanwalt für Erbrecht
Arbeitsrecht, Familienrecht, Erbrecht
Johannes Hildebrandt
Dipl.-Pädagoge Univ.
Fachanwalt für Familienrecht
Familienrecht, Betreuungsrecht, Strafrecht
Stephan Stärzl
Fachanwalt für Erbrecht
Erbrecht, Wettbewerbsrecht, Strafrecht
Dr. Nadine Ruppel
Theoretische Ausbildung „Fachanwältin für Bank- und Kapitalmarktrecht", „Fachanwältin für Insolvenzrecht" und „Fachanwältin für Handels- und Gesellschaftsrecht" erfolgreich absolviert
Bank- u. Kapitalmarktrecht, Gesellschaftsrecht, Insolvenzrecht
Bahnhofstr. 31
91126 Schwabach
Telefon 09122/83 75-0, 17971
Telefax 09122/83 75 38
E-Mail: recht@hausmann-sandreuther.de
Homepage: www.hausmann-sandreuther.de

Az: 13/1054/601 SB: RA Hildebrandt Datum: 24.09.2013HI/km
St.-Nr.: 247/162/05009
Rechnungs-Nr.: 13/1054/601-3

Wunderlich Machsejah, Wunderlich Joshua, Wunderlich Hannajah u. Wunderlich Serajah ./. Kreisjugendam
wegen elterlicher Sorge und Verbleibensanordnung

Kostenrechnung

17 ¾ Anwaltsstunden à 165,00 €	2.928,75 €
6 ½ ermäßigte Anwaltsstunden (Fahrzeit) à 80,00 €	520,00 €
5 ¾ Bürostunden à 45,00 €	258,75 €
Fahrkosten	80,25 €
Zwischensumme	3.787,75 €
19 % Mehrwertsteuer Nr. 7008 VV-RVG	719,67 €
Summe	4.507,42 €

Johannes Hildebrandt
Rechtsanwalt

Zeittabelle Anwalttätigkeit

In Sachen: Wunderlich Machsejah, Wunderlich Joshua, Wunderlich Hannajah u. Wunderlich Serajah ./. Kreisjugendamt Darmstadt-Dieburg

wegen: elterlicher Sorge und Verbleibensanordnung

Aktenzeichen: 13/1054/6

Datum	Art der Tätigkeit	Zeitaufwand (¼, ½, ¾, 1 Std.)
29.08.2013	Telefonat Herr Wunderlich; Schreiben ans Jugendamt Darmstadt-Dieburg	¾
30.08.2013	Telefonat Hr. Wiebe (ca. 20. min) gegenseitiges Vorstellen, austauschen vorläufiger Meinungen zum Fall); Hr. Wunderlich (Finanzierungsmöglichkeiten; Besonderheiten des Falles) und Dr. Vogt (gegenseitiger Austausch der jeweiligen Zielsetzung) 2 Schriftsätze zum AG Darmstadt;	1 ¾
03.09.2013	Studium der von den Auftraggebern hereingereichten E-Mails	1/4
04.09.2013	Anruf bei Herrn Harms und Herrn Behnis (Sekretariat); Telefonat Herr Wunderlich;	1/4
05.09.2013	Telefonversuche Herrn Harms, Herr Behnis; Telefonat Herr Behnis (Modalitäten des Umgangs und der Kontakte mit den Kindern u. a.; Telefonat Herr Wunderlich (Umgang mit den Kindern etc.)	1 ¾
06.09.2013	Telefonate Herr Wunderlich, Herr Dr. Vogt, Herr Behnis; Terminsverlegungsgesuch, Betreuungsperson Kinder	2 ½
09.09.2013	Gespräch mit Kindern und Einrichtung, 7 Stunden Fahrtzeit	3 1/4 (7 Std) Fahrtzeit
10.09.2013	SS AG Darmstadt (Teil I); Telefonat Hr. und Fr. Wunderlich	1 ½
11.09.2013	SS AG Darmstadt (Teil II), Telefonat Dr. Vogt (weitere Vorgehensweise; Austausch rechtlicher Argumente)	2 ¾
16.09.2013	Telefonat mit Machsejah Wunderlich	¼
17.09.2013	Lektüre diverser gerichtlicher Schreiben, Telefonat mit Verfahrensbeistand Wiebe (Möglichkeiten der Rückführung der Kinder); Telefonat Dr. Vogt	1 ¼

19.09.2013	Fahrtzeit	6 ½
	Verhandlung AG Darmstadt	2
	Fahrkosten 80,25 €	
Gesamt	**Anwaltstunden**	**17 ¾**
	ermäßigte Stunden	**6 ½**

Zeittabelle Bürotätigkeit

In Sachen: Wunderlich Machsejah, Wunderlich Joshua, Wunderlich Hannajah u. Wunderlich Serajah ./. Kreisjugendamt Darmstadt-Dieburg

wegen: elterlicher Sorge und Verbleibensanordnung

Aktenzeichen: 13/1054/6

Datum	Art der Tätigkeit	Zeitaufwand (¼, ½, ¾, 1 Std.)
29.08.2013	Anlage Akte, Erstellen Vergütungsvereinbarung, Schreiben an Jugendamt Darmstadt-Dieburg, Schreiben an Mdt.	¾
02.09.2013	2 Schriftsätze ans AG Darmstadt, Schreiben an Kinder, Schreiben an JA Darmstadt, Schreiben an Dr. Roth, Schreiben an Fam. Wunderlich	1 ¼
06.09.2013	Unterlagen einsortiert, zk an Mdt	¼
06.09.2013	Terminsverlegungsgesuch	¼
10.09.2013	SS-Entwurf an AG Darmstadt	1 ¼
11.09.2013	SS an AG Darmstadt (Teil II), Rechnung, Brief an Mike Donelly, Brief an Fr. und Hr. Wunderlich, Brief an Kinder, Brief an RA Dr. Vogt, Akte sortiert, Unterlagen abgeheftet, Beiakte angelegt	1 ½
20.09.2013	Schriftsatz an AG Darmstadt, Schr. an RA Vogt, Schr. an Mdt.	½
Gesamt		**5 ¼**

Note d'honoraires / Rechnung N° 991 du / vom 20 février 2014

Bureau de traductions / Interprétariat Übersetzer- und Dolmetscherbüro
Ruth Dieckmann
"Je pense, donc j'y suis."

2, rue des Creuses, F-88240 Bains-les-Bains ☎ 00 33 / (0)329 363 071
http://Je-pense-also.com Mwst-Ident Nr.: FR36.384669222

Herr und Frau Wunderlich
Im Höhlchen 13, D-64372 Ober-Ramstadt doit pour:

Prestations / Dienstleistungen		
Traductions / Übersetzungen:	6 beglaubigte Übersetzungen	348,08 € h.t.
□ Interprétations / Dolmetschen	5 Zeugenaussagen, 1 Urteil	€ h.t.
- en simultané /Simultandolmetschen	Nummern 326/21 bis 31/21	€ h.t.
- en consécutif / Konsekutivdolmetschen		€ h.t.
□ Permanence téléphonique / Telephondienst		€ h.t.
- service messages, commissions / Frage & Antwort		€ h.t.
- service téléphone interprète / Telephonkonferenz		€ h.t.
Autres services / Weiteres		
□ Relecture /Korrekturlesen		€ h.t.
□ Urgences / Sofortdienst		€ h.t.
□ Service de portage /Zustelldienst		€ h.t.
□ Agent Commercial / Werksvertreterin		€ h.t.
Frais, fournitures / Nebenkosten und Aufwand		
□ Frais de déplacement et de séjour /Reisekosten u. Zeitaufwand		€ h.t.
□ Frais de téléphonie / Telephongebühren		€ h.t.
□ Ringbinden / Plastifizieren / Etikettendruck / Photokopien		€ h.t.
Date limite de paiement: Zu zahlen bis spätestens: 20.03.14	= *Total hors taxes / Gesamt o. MwSt.*	€
	+ TVA 20,0 %	69,62 €
IBAN: FR 39 2004 1010 1002 5954 6T03 117, BIC: PSSTFRPPNCY	Frais de port (prix coûtant) / Porto	
	Total T.T.C. / Gesamt zu zahlen	417,70 €

Sämtliche Dienstleistungen u. Aufwand, die nicht innerhalb einer Frist von 5 (fünf) Tagen reklamiert werden, gelten als akzeptiert und sind innerhalb der vorgegebenen Frist zu zahlen. Zahlungsbedingungen: innerhalb von 30 Tagen ab Rechnungsdatum, es sei denn dies sei eindeutig auf der Rechnung anders angegeben. Skonto: 0 %. Bei Nichteingang der Zahlung sind ab dieser Frist der legale Zinssatz, eventuell anfallende Bearbeitungskosten u. ein Schadensersatz in Höhe von 15 % der geschuldeten Summe o. MwSt. (Minimum 07,00 €) zu begleichen. Bis zu ihrer vollständigen Betahlungen bleiben sämtliche Leistungen das uneingeschränkte Eigentum des Übersetzers und dürfen vom Kunden nicht verwendet werden. Die übersetzten Texte geben nicht die Meinung des Übersetzers wieder, sondern die ihres jeweiligen Autors. Der Dolmetscher kann nicht für das, was er in der Ausübung seines Berufes wiedergibt als Zeuge auftreten. Es obliegt den jeweiligen Gesprächspartnern, das Gesagte in geeigneter Form festzuhalten. Meinungsverschiedenheiten über für eine Übersetzung gewählten Ausdrücke stellen nicht die Gesamtheit der geleisteten Arbeit in Frage. Der Übersetzer behält sich das Recht vor, so schnell wie möglich anfallende Veränderungen gratis auszuführen. Zur Veröffentlichung bestimmte Texte müssen vom Übersetzer nach Drucklegung gegengelesen werden. Er kann nur unter dieser Bedingung zur Verantwortung gezogen werden, und dies in allen Fällen nur bis zu einer Höhe des Netto-Übersetzungspreises. Rechtsort ist Épinal.

As at: 11/4/17

ADF INTERNATIONAL

TIMESHEET
Case: Wunderlich v. Germany, no. 18925/15

Date	Description	Lawyer	Hours	Rate	Total
06-07-15	Document review	RK	6.25	€ 250.00	€ 1,562.50
07-04-15	Drafting of ECHR application	RK	8	€ 250.00	€ 2,000.00
08-04-15	Editing ECHR application	RC	5.5	€ 200.00	€ 1,100.00
08-04-15	Review/edit application	PC	6	€ 250.00	€ 1,500.00
15-04-15	Preparing ECHR annex (600 pp)	PC	3.5	€ 250.00	€ 875.00
21-09-16	Reviewing communication from ECHR	PC	1.5	€ 250.00	€ 375.00
22-02-17	Reviewing Respondent's Observations	RC	6	€ 200.00	€ 1,200.00
13-03-17	Drafting Applicant's Framework Response	RC	5	€ 200.00	€ 1,000.00
14-03-17	Legal research for response	RC	2.5	€ 200.00	€ 500.00
14-03-17	Drafting Applicant's Response	RC	5.5	€ 200.00	€ 1,100.00
15-03-17	Consultation at home of Applicants	RC	5	€ 200.00	€ 1,000.00
29-03-17	Finalizing Applicant's Response	RC	7.5	€ 200.00	€ 1,500.00
10-04-17	Reviewing Applicant's Response	PC	4.5	€ 250.00	€ 1,125.00

	TOTAL	€ 14,837.50

NOT CHARGED

Counsel of record has a digital correspondance file containing 1,348 pieces of correspondance sent or received pertaining this case.

SCHEDULE OF COUNSEL

RK: Roger Kiska (Deputy Director of ADF International)
PC: Paul Coleman (Deputy Director of ADF International)
RC: Robert Clarke (Director of European Advocacy of ADF International)

As at: 11/4/17

ADF INTERNATIONAL

DISBURSEMENTS
Case: Wunderlich v. Germany, no. 18925/15

Date	Description	Total
10-04-17	Translation of lower court decisions (Ms Hoffman-Klein) (18 hrs @ 25 EUR p/h)	€ 450.00
10-04-17	Translation of Applicant's Observations (Ms. Riemenschneider) (37 hrs @ 25 EUR p/h)	€ 925.00
15-03-17	Travel to meet with Wunderlich family to review Respondent's Observations	€ 498.11
	TOTAL	€ 1,873.11

Robert Clarke

From: [redacted]
[redacted]
Monday, April 10, 2017 10:47 PM
To: Robert Clarke
Subject: AW: Hours to invoice

Categories: Sent personally to me

Dear Rob,

I accrued 18 hours for the translation. I have not written my invoice yet.

Kind regards

Friederike

-----Original-Nachricht-----
Betreff: Hours to invoice
Datum: 2017-04-10T19:27:45+0200
Von: "Robert Clarke" <rclarke@adfinternational.org>

[redacted]

Could I kindly ask you for the total number of hours (at 25EUR per hour) you have accrued in translation work on the Wunderlich v. Germany case? I look forward to hearing from you soon.

Kind regards,

Rob

Address: Jasmin Riemenschneide
[redacted]
Bank: [redacted]
IBAN: [redacted]
BIC: [redacted]
Phone: [redacted]
E-mail: [redacted]

Invoice for ADF International
Mr Robert Clarke
Postfach 0001
1082 Vienna

INVOICE

Reference: Translation of German court decisions
Date: 10 April 2017
Invoice No: 04101701

DESCRIPTION	TOTAL HOUR	HOURLY RATE	AMOUNT
Translation of German court decisions into English (23 February – 6 March 2017)	37	€ 25,00	€ 925,00
		TOTAL	**€ 925,00**

Payment details:

Money transfer to the account below:

Bank: [redacted]
BIC: [redacted]
IBAN: [redacted]
Payment Reference: ADF International

EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

APPLICATION NO: 18925/15

Dirk Wunderlich and Petra Wunderlich

Applicants

v.

Germany

Respondent

APPLICANTS' PROPOSAL FOR FRIENDLY SETTLEMENT

Filed on 12 April 2017

Terms of Friendly Settlement

Without prejudice to the continuation of the Applicants' Complaint, and pursuant to Article 39 of the Convention and Rule 62 of the Rules of Court, the Applicants herein respectfully submit the following Terms of Friendly Settlement of Application 18925/15 against the Respondent Government:

1. The Respondent Government shall, at all times, respect and formally recognize the right of the Applicants to educate their children in conformity with their religious and philosophical beliefs, either at their family home or such other place as they so choose. The Respondent Government shall refrain from taking any action or initiating any legal or administrative proceedings which would limit, abridge or interfere in any manner whatsoever with this right.

2. The Respondent Government is to take all necessary steps to ensure that the Applicants and their children are free to leave the jurisdiction of the Respondent State without interference should the Applicants elect to do so, furthermore the Respondent Government undertakes not to prohibit, injunct or interfere in any manner whatsoever with the right of the Applicants and their children to leave the jurisdiction of the Respondent State.

3. The Respondent Government undertakes to compensate the Applicants for non-pecuniary damage jointly in the sum of 35,000 EUR to be lodged by way of wire funds transfer to a bank account to be nominated by the Applicants and notified to the Respondent Government. The said sum shall be paid within 3 months from the date of delivery of the judgment by the Court pursuant to Article 39 of the Convention.

4. The Respondent Government undertakes unreservedly to discharge the Applicants legal costs and fees associated with the making of this complaint, as follows:

a.	Domestic litigation legal costs:	41,221.56	EUR
b.	ECHR litigation legal costs:	14,837.50	EUR
c.	ECHR litigation disbursements:	1,873.11	EUR
	TOTAL	**57,932.17**	**EUR**

5. Such legal costs and fees are to be lodged by way of wire funds transfer to a bank account to be nominated by Counsel for the Applicants and notified to the Respondent Government. The said sum shall be paid within 3 months from the date of delivery of the judgment by the Court pursuant to Article 39 of the Convention.

6. The Respondent Government undertakes to waive all liability as against the Applicants for all legal costs, foster home costs and or any other costs, fees or charges howsoever incurred in connection with the matters complained of in Application 18925/15. In addition to the foregoing, the Respondent Government agrees to discontinue any and all domestic legal proceedings against the Applicants seeking the recovery of any legal costs, foster home costs an or any other costs, fees or charges howsoever incurred, in connection with the matters complained of in this Application. Furthermore, the Respondent Government shall hold the Applicants innocent and free from liability in respect of any extant court judgement or order either in force or which may come into force after the Judgement of the European Court of Human Rights in this application, seeking recovery of legal costs, foster home costs and or any other costs, fees or charges howsoever incurred in connection with the matters complained of in Application 18925/15.

7. The Respondent Government apologises to the Applicants and accepts liability in respect of the following Convention violations:

   I. That the Respondent Government, contrary to Article 8, violated the Applicants' rights by forcefully removing the Applicants children, keeping them for three weeks, subjecting them to unwanted evaluations, not providing education or adequate visitation, without adequate or proportionate reason.

   II. That the Respondent Government, contrary to Article 8, violated the Applicants' rights by retaining legal custody of the Applicants' children between 6 September 2012 and 15 August 2014.

   III. That the Respondent Government, contrary to Article 8, violated the Applicants' rights by refusing to permit home education. In refusing the Applicants the right to educate their children at home, the Respondent

Government exceeded the margin of appreciation afforded to it by the Convention in imposing a disproportionate blanket prohibition on home education which has had the effect of undermining the Applicants rights under Article 8 of the Convention to enjoy family life together.

8. On receipt of a formal acceptance and agreement by the Respondent Government to all the foregoing Terms of Friendly Settlement, the Applicants will declare that the agreement of the Respondent Government to the foregoing Terms of Friendly Settlement shall constitute the final resolution of the complaints in this case and the Applicants will waive any further claims in respect of the Respondent Government relating to the facts of this application. Furthermore the Applicants will waive any right to refer this complaint to the Grand Chamber under Article 43 § 1 of the Convention.

For the Applicants:

Robert Clarke
Director of European Advocacy
ADF International