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## **"A mixture of medical officiousness, stubbornness and witch hunting"**

The State putting children's welfare at risk

Spectacular cases in which the authorities fail to discover children's welfare being put at risk have been commonplace in the media. The question of whether how the authorities and courts act can put children at risk is raised by a case in Bavaria which has gone to the Federal Constitutional Court.

This is how it all began: on 3<sup>rd</sup> August, 2004, twelve people – police officers and youth department staff - took A.H., then aged nine, away from his mother and family. When the child was unwilling to go of his own accord at first, they threatened to bring in tracker dogs. The author of this article is unaware of any case – even with specific, realistic accusations of abuse – in which a child was taken into care in a way which is more like a Hollywood action film or an anti-terror raid. It was carried out following an order by the Bamberg local court the day before, depriving the mother, Petra Heller, of her rights of personal care provisionally without hearing her first and ordering that the child be handed over to the youth department which had been given custody. This in itself must be seen as denying the right to a fair hearing. There was nothing to justify restricting self-evident fundamental procedural guarantees. Nor was the child made a ward of court at the time, as the law requires in such cases: that was not done until ten days later, when facts had been created which could never be reversed.

The child was taken first of all to a children's clinic and then treated for three months in a child psychiatry unit, without there ever being any indication that there was a need for such treatment. It was not until six weeks after the child was taken away, on 17<sup>th</sup> September, 2004, that a court hearing was held, which was incompatible with the rule of law. The child himself was not heard personally until 15<sup>th</sup> November, 2005, over a year after he was taken from his family, which is clearly in breach of Article 103 of the Constitution [GG].

### **The authorities spur one another on**

So what happened here? Both mother and child had been diagnosed with borreliosis (an inflammation caused by tick bites). There are medical certificates to prove this. The diagnosis and treatment of this disease are disputed in medicine. The mother, Frau Heller, was advised to take antibiotics, which were ultimately prescribed for her son as well. This treatment is not only expensive; the medical profession is also divided over it. The mother was assumed, incorrectly and based on rumours, to have got medication from emergency doctors at weekends. Due to illness-related problems at school, which were attributed unilaterally to his mother, the school administration took the unusual step of calling in the local health department. The head of the local health department concluded in an 'expert opinion' at a meeting – without examining the mother or ever seeing the child – that the mother was suffering from 'Münchhausen by proxy syndrome', a diagnosis highly disputed in psychiatry which has since proved untenable.

At the same time as her child being taken away from her, the mother was sectioned by order of the guardianship court, but was released two days later, when it was found that she was not under a delusion that she was ill. Care procedures for alleged mental illness are still pending, even though Swiss psychiatrist and court expert Dr. Mario Gmür has presented a detailed opinion saying she is not ill. He refers to this case as 'a mixture of medical officiousness, stubbornness and witch hunting'.

The child has been shown to have borreliosis, but the mother is being accused of having 'abused' her child by giving him antibiotics – which an expert deemed unnecessary – but which the school

doctor prescribed, thus making her liable for a dispute amongst doctors, a monstrous course of events. Are you putting your child at risk if you take medical advice? After being released from child psychiatry, the child was put with a foster family in 2004 and in an institution in 2006. The child's entire family was isolated from him, i.e. any contact was systematically prohibited. Even letters were censored. He telephoned his mother once a week; until the media and the general public became aware of this case, these calls were limited to 20 minutes and they were monitored and listened in to. He sees his great-aunt once every four weeks, and sees his grandmother only in the presence of a carer. And even these fleeting contacts were and are only possible since his family has been working hard to make the matter public.

Then, on 29<sup>th</sup> May, 2006, the mother was deprived of custody, and not just provisionally. In spite of the facts, the order still assumed that the child was at risk at the time he was taken into care. Anything the doctors said was interpreted unilaterally to the mother's detriment, without any regard for the fact that medical expert opinions varied. The prospects for the future were based on an opinion which, we gather, ignored other assessments by doctors in charge without any objective reasons. The mother is still assumed of wanting to treat her healthy child against a disease which, allegedly, does not exist. The child's relatives are dubious when the order maintains that the child does not allegedly want to go back to his mother. The family believes the child is being manipulated. There are allegations that the child is being traumatised, with no verifiable justification. There is nothing about the child being traumatised by what the authorities are doing.

The extensive account of the case and extensive evidence advanced by the mother's counsel have also been ignored. In its judgment of 6<sup>th</sup> July, 2009, the Higher Regional Court Bamberg – stating that the assessment of the past was open to dispute – dismissed the appeal, thus legitimising what had been done against the family. The mother's counsel has now appealed to the Constitutional Court. The Court refused to hear this appeal, inexplicably, and they are now planning to go to the European Court of Human Rights.

### **Where does that leave the rule of law?**

Without going into the medical disputes, or assessing the individual case in detail, there remain a number of aspects which are open to criticism:

Over-long proceedings are, in themselves, an infringement of rights, as established case law of the Federal Constitutional Court and the European Court of Human Rights confirms. There is no evident reason why it took more than five years until the court of appeal reached its decision, without examining the case comprehensively any further.

Nor is there any evident reason why decisions had to be taken at such short notice throughout without granting a fair hearing. Procedural rights were only granted reluctantly subsequently. Milder remedies could have been used; they were considered formally, but not seriously or objectively. Separation from the mother was totally disproportionate, even if – which is not apparent, objectively – she may have acted wrongly. Less serious remedies could have been considered, such as ordering an objective medical examination, for example, but they were not even considered in the first place. Considering putting the child into care with members of his family, which is a priority, was ignored. Returning the child to his family was never seriously considered, which is grossly unlawful. The rule of law abandoned its protective function here.

### **Literature**

[Chronicle of a nightmare], in *Süddeutsche Zeitung*, 19.04.2009. [www.petra-heller.com](http://www.petra-heller.com)