RECHTSERMITTLUNG WORKING PAPER NO. 2

The Jugendamt-Stellungnahme as Procedural Shield

How human-rights violations are buried in advisory reports to the German family courts — and why the resulting accountability gap has no clean defendant.

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> **Scope and citation note.** This working paper is a structural legal-analysis framework, not legal advice. It does not allege bad faith by all Jugendamt staff and does not address any individual case. Statutory and Convention references should be verified by qualified German counsel before use in pleadings.

Executive Summary

This paper analyses a structural feature of German family-court practice that, in the experience of many parents and a growing body of European-level petitions, operates as a de facto shield against human-rights review: the Jugendamt-Stellungnahme.

Under §§ 50 and 162 SGB VIII and § 162 FamFG, the Youth Welfare Office (Jugendamt) is heard as a participant in family-court proceedings and routinely files a written statement — the Stellungnahme — recommending an outcome on custody, residency, or contact. Empirically, German family-court judges adopt those recommendations at very high rates. The Federal Republic does not publish a statistic on the alignment rate, despite repeated requests from the European Parliament and from foreign governments — a transparency gap that is itself the subject of a separate companion paper.

This paper takes a different and complementary angle. It asks: when the Jugendamt's Stellungnahme contains conclusions that, on closer inspection, embed violations of the parent's or the child's rights under the Grundgesetz, the European

Convention on Human Rights, the EU Charter, and the UN Convention on the Rights of the Child — where do those violations actually live in the document? How are they presented so that the court can adopt them without itself appearing to commit any rights violation?

The answer, developed across the parts that follow, is that the violations are typically not located in the recommendation paragraph at all. They are distributed across the report in three layers:

Procedural layer. Asymmetric interview practices, undisclosed working hypotheses, hearsay laundering, language-access failures, and the absence of a verifiable record — none of which appears as a stated conclusion, all of which shape the conclusion.

Substantive layer. Proportionality analysis under Art. 8 ECHR replaced by a bare invocation of Kindeswohl; the child's right to be heard under Art. 12 UNCRC formally satisfied but substantively gutted; non-discrimination obligations under Art. 3 GG, Art. 14 ECHR, and Art. 21 of the Charter omitted entirely from the analytical frame.

Discretionary layer. A repertoire of rhetorical moves — conclusion-as-observation, the loyalty-conflict Catch-22, asymmetric documentation, selective omission — that translate undisclosed value judgments into the appearance of professional fact-finding.

Part V then describes the offloading mechanism itself: how § 159 FamFG, the Amtsermittlungsgrundsatz (§ 26 FamFG), and § 839 BGB state-liability doctrine combine, in practice, to leave no single defendant squarely accountable for the resulting human-rights violation. The court has adopted the Jugendamt's recommendation and is therefore not seen as having freelanced a rights violation. The Jugendamt has only advised, not decided, and therefore — on the dominant reading of § 839 BGB — does not attract liability for substantive content. The violation is real, but it is procedurally orphaned.

Parts VI through VIII map the analysis onto specific Convention articles, document the recurring linguistic patterns, and outline the reform and accountability pathways that

would close the gap. This is a working draft — meant as a structural framework, not a position paper. It is intended to support correspondence with the European Parliament Committee on Petitions, with foreign consular services, and with German oversight bodies, and to give individual parents and counsel a vocabulary for naming what is happening on the page.

Scope note This paper does not assert that all Jugendamt staff act in bad faith, nor that all Stellungnahmen contain hidden violations. It describes a structural pattern visible across many cases and many years of European-level complaint. The mechanisms described are vulnerabilities of the system as designed; they are not allegations against any individual.

Part I · The Jugendamt-Stellungnahme: legal status and procedural posture

1.1 Statutory basis

The Jugendamt's involvement in family-court proceedings has three principal statutory anchors. Under § 50 SGB VIII, the Youth Welfare Office assists the family court in proceedings concerning custody, residency, contact, and child protection. Under § 162 FamFG, the Jugendamt is heard as a participant in such proceedings and may make written submissions. Under § 17 SGB VIII, it is also charged with offering parents counselling support during separation and divorce. These three roles — adviser to the court, participant in the proceeding, and counselling agency for the parents — coexist within the same office, often within the same caseworker, and are rarely separated in practice.

1.2 The Stellungnahme as document type

A Stellungnahme is not a forensic psychological assessment under § 163 FamFG. It is not produced by a court-appointed Sachverständiger. It is not bound by the methodological standards of the German Society for Psychology. It does not require the caseworker to be a qualified psychologist or social scientist. It is, formally, an administrative submission expressing the Youth Welfare Office's view of what would best serve the child's welfare on the available information.

In practice, however, a Stellungnahme typically reads as if it were a forensic document. It contains observations of the parents and the child, summaries of conversations, evaluative language about each parent's character and capacity, and a clear recommendation. It is presented on official letterhead. It is the longest single piece of writing in many family-court files. Its rhetorical posture is investigative; its evidentiary footing is not.

1.3 How it functions in court

Three procedural features explain the document's outsized influence.

First, the Amtsermittlungsgrundsatz under § 26 FamFG. The court is obliged to investigate the facts of its own motion. In family cases involving a child, the court rarely possesses the time, the social-work training, or the home-visit access that the Jugendamt has. The Stellungnahme therefore enters the file as the principal factual record on the family's lived circumstances, even when its methods are not transparent.

Second, judicial deference to specialist authorities. German judicial culture grants substantial weight to the views of the Jugendamt as an arm of the social-welfare state. Departures from a Jugendamt recommendation typically require the judge to articulate reasons; adoption requires no such articulation. The result is a deference asymmetry that systematically favours the recommendation in the file.

Third, the absence of an empirical baseline. Because Germany does not publish data on the alignment rate between Jugendamt recommendations and final court orders (see companion paper), neither parents, counsel, foreign consulates, nor the European Parliament can quantify this deference. The deference is widely reported by practitioners but cannot be tested against a published statistic.

1.4 What this combination produces

The combined effect is a document that is treated as if it were an expert assessment, deferred to as if it were an investigation, but produced under the conditions of an administrative submission. It is the structural mismatch between the Stellungnahme's formal status and its practical authority that creates the space in which the violations described in Parts II–IV become possible.

Key distinction A § 163 FamFG forensic assessment is methodologically reviewable: it has stated hypotheses, instruments, and inferences. A § 50 SGB VIII Stellungnahme is not. The court treats them similarly. The parent can challenge them on very different terms — and the parent's counsel must know the difference.

Part II · Procedural rights buried in how the report is produced

Many of the most consequential rights violations are not in what the Stellungnahme says. They are in how it was produced. Because production methods are rarely disclosed in the document itself, they are also rarely reviewable by the court.

2.1 Asymmetric interview time and depth

Family-court files routinely show that the resident parent receives several hours of interview time, often in their home, sometimes across multiple sessions; the non-resident parent receives a single shorter meeting, often in the Jugendamt office. The asymmetry is not stated as a methodological limitation. It is presented in the report as access — "the office has had repeated opportunities to observe the mother–child interaction" — without the converse observation that the office has not had any comparable opportunity with the father–child interaction.

The right at stake is the equality-of-arms principle under Art. 6(1) ECHR and the equivalent reading of Art. 103 GG. The principle requires that each party be afforded a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage. Asymmetric evidentiary opportunity, undisclosed in the document, is a textbook violation. It is buried because it is not described.

2.2 Absence of a verifiable record

Conversations between the caseworker and the parents are typically not recorded, not transcribed, and not produced in a form the parent can correct. The Stellungnahme reproduces the caseworker's reconstruction of what was said, often weeks later, sometimes filtered through case-note shorthand. Where the parent disputes the reconstruction, there is no verifiable record against which the dispute can be adjudicated.

This affects the right to a fair hearing under Art. 6 ECHR and the right of effective remedy under Art. 13 ECHR and Art. 47 of the Charter. A parent cannot effectively contest a paraphrase. The hearsay laundering described in Part IV depends on this evidentiary opacity.

2.3 Hearsay reproduced as fact

Statements by one parent about the other are routinely incorporated into the Stellungnahme without independent verification. The mother reports that the father is volatile during exchanges; the report reads "it has been reported that the father is volatile during exchanges"; the recommendation treats the volatility as established. The same pattern operates in reverse but is, in the experience of practitioners working with foreign or non-resident fathers, far less common.

The right at stake is again Art. 6 ECHR: an applicant must have a meaningful opportunity to challenge evidence used against them. Hearsay rendered in indirect speech, with the original speaker unidentified or unchallengeable, defeats that opportunity at the documentary level.

2.4 Undisclosed working hypotheses

The caseworker typically forms an early working hypothesis about the family — sometimes within the first home visit, sometimes from the case file before any visit. The Stellungnahme rarely discloses what that hypothesis was, how it was tested, or what evidence would have falsified it. The reader sees the conclusion; the reader does not see the question.

This matters because the parent cannot address a hypothesis they have not been told about. If the working hypothesis is "the father is destabilising the child by pursuing contact aggressively," the parent's behaviour will be read through that lens: assertive scheduling becomes pressure, requests for documentation become hostility, persistence becomes obsession. None of these readings can be answered by the parent because none is stated as a hypothesis to be answered. The right at stake is the right to be informed of the case against you — Art. 6(3) ECHR by analogy in non-criminal proceedings, and the broader principle of audi alteram partem under Art. 103 GG.

2.5 Language-access failures presented as observations

Where one parent does not have German as their first language, a Stellungnahme produced without a qualified interpreter will frequently contain observations such as "the father expressed himself with difficulty," "the father appeared to struggle to articulate concrete plans," or "the father's communication style was reserved." These are not observations about the parent. They are observations about the absence of language access during the interview.

The applicable framework is Art. 6(3)(e) ECHR (interpretation in criminal matters, applied by analogy to other proceedings affecting fundamental rights), Art. 21 of the EU Charter on non-discrimination on grounds of language, and the German constitutional guarantee of effective participation under Art. 103 GG. The buried violation is the substitution of a language-access failure for a substantive evaluation. The parent's deficiency is not their language; the parent's deficiency is not having been heard in a language they speak fluently.

2.6 No disclosure of methodology

A forensic assessment under § 163 FamFG would state its instruments — which interview protocol, which observational framework, which scoring system. A Stellungnahme almost never does. The reader is told what the caseworker concluded; the reader is not told how. This is not a defect of any particular Stellungnahme; it is the standard practice of the document type.

The consequence for the parent is that the report cannot be challenged on methodological grounds at the threshold. The parent must instead challenge each individual conclusion, and each challenge will be met with the Jugendamt's institutional standing rather than with the disclosure of method that would make a substantive answer possible.

2.7 Why these procedural violations are particularly hard to raise

Each of the failures described above shares a structural property: it is invisible at the surface of the document. The document looks complete. It contains observations, summaries, evaluations, and a recommendation. The parent reading it for the first time,

and often the parent's counsel reading it under time pressure before a hearing, will engage with what the document says. The procedural violations live in what the document does not say — in what was not asked, not recorded, not disclosed, not translated, and not tested. The first analytical task in any rebuttal is therefore to make the absences visible.

Practitioner note When reviewing a Stellungnahme, list every procedural fact about its production that the document itself does not state: how many interviews with each parent and of what duration, in whose presence, in what language, with what record made, against what working hypothesis, with what disclosure of method. The list of unanswered questions is itself a procedural rights inventory.

Part III · Substantive rights buried in the judgment calls

Procedural failures shape what the report can say. Substantive failures are about what the report does not analyse even when it has the material to do so. The most common pattern is the substitution of a conclusion for the legal analysis the conclusion is meant to embody.

3.1 Proportionality replaced by Kindeswohl

Article 8(2) ECHR allows interference with the right to family life only where such interference is in accordance with the law, pursues a legitimate aim, and is necessary in a democratic society — and the necessity test requires a structured proportionality analysis: suitability, necessity, and proportionality stricto sensu. The German constitutional reading of Art. 6 GG (Schutz der Familie) imposes a closely related structure, particularly through the Bundesverfassungsgericht's Instrumentalisierungsverbot jurisprudence.

A typical Stellungnahme contains none of this. The phrase "im Kindeswohl" performs the work that, under Convention law, would require an articulated demonstration that the proposed restriction of the parent's family life is the least restrictive measure available to achieve the legitimate aim of child welfare. The substitution is so familiar that it is not recognised as a substitution. But it is one. The conclusion is asserted; the analysis is missing.

3.2 The child's right to be heard, formally satisfied

Article 12 UNCRC requires that the child's views be given due weight in accordance with their age and maturity. The German implementation under § 159 FamFG provides for the Anhörung des Kindes. In a Stellungnahme, this typically appears as a paragraph reporting the child's expressed views to the caseworker.

The substantive question — whether the child was heard under conditions that made the views reliable — is rarely visible. Was the child interviewed in the dominant or non-dominant language? In whose home? Once or repeatedly? After what coaching, intentional or otherwise? Was the difference between an expressed wish and an underlying interest analysed? The Stellungnahme typically reports the wish and treats it as the analysis. Article 12 is formally satisfied; substantively, it is gutted.

3.3 The child's right to identity, language, and culture

In cross-border or bilingual cases, the child has Convention-level interests under Art. 8 UNCRC (right to preservation of identity), Art. 30 UNCRC (right to enjoy minority culture and use minority language), and Art. 8 ECHR (private life as identity). These rights are protected dimensions of the child's welfare; they are not luxuries to be balanced against "practical considerations" of school continuity.

In practice, the foreign parent's culture and language are often treated in a Stellungnahme as risk factors rather than as protected interests. The father's Canadian family is described as "distant"; the English-language relationship between father and child becomes "a barrier to integration"; the prospect of travel becomes "a flight risk" rather than "a constitutionally protected dimension of the child's identity that the state has an obligation to facilitate." The buried violation is the inversion of the rights frame: a protected interest is reread as a danger.

3.4 Non-discrimination, as a frame, is missing

Article 3 GG, Article 14 ECHR (read with Art. 8), Article 21 of the EU Charter, and Article 18 TFEU prohibit discrimination on grounds of nationality, language, and gender. The European Parliament's Resolution P8_TA(2018)0476 of 29 November 2018 specifically

recorded reports of "serious discrimination as a result of the procedures and practices concretely adopted by the competent German authorities in cross-border family disputes."

Whether or not any specific Stellungnahme is in fact discriminatory, the document type virtually never engages with the non-discrimination frame as a frame. The caseworker does not ask whether the same conclusion would be reached if the gender of the parents were reversed; whether the same conclusion would be reached if the foreign parent's nationality were reversed; whether the structure of the recommendation would be the same if the resident parent's German were imperfect rather than the non-resident parent's. The non-discrimination frame is not violated by being applied wrongly. It is buried by not being applied at all.

3.5 The Instrumentalisierungsverbot, ignored

The Bundesverfassungsgericht's Instrumentalisierungsverbot jurisprudence holds that a child must not be instrumentalised in proceedings between the parents — neither by either parent nor by the state. This is one of the few specifically German constitutional doctrines in this area that imposes a discipline on caseworker reasoning.

In practice, the Instrumentalisierungsverbot is rarely cited in a Stellungnahme. Where the child's expressed wish coincides with the resident parent's preferred outcome, the Stellungnahme typically treats the coincidence as confirming the wish rather than as a flag for the Instrumentalisierungsverbot analysis. The doctrine exists in the case-law; it does not appear in the documentary practice. That is itself the buried violation.

3.6 Best-interests-of-the-child as a black box

Article 3(1) UNCRC requires that the best interests of the child be a primary consideration. The Committee on the Rights of the Child has elaborated, in General Comment No. 14, a structured methodology for best-interests determination — including the elements to be assessed, the procedural safeguards, and the requirement that the determination be set out in a reasoned written form.

A Stellungnahme that recommends an outcome as being in the best interests of the child without setting out which elements were assessed, how they were weighted, what alternatives were considered and rejected, and why the proposed measure is the least

restrictive available, does not satisfy General Comment No. 14. It satisfies a domestic notion of "Kindeswohl" that is, in practice, treated as functionally equivalent. They are not equivalent. The buried violation is the substitution of the unstructured domestic phrase for the structured Convention methodology.

Substantive test For each substantive conclusion in a Stellungnahme, ask: which Convention or constitutional right does this engage, and what analytical structure does that right require? Where the structure is missing, the violation is the missing structure — not the conclusion. The conclusion may even be correct. The analysis it skipped is what the parent and the court are entitled to.

Part IV · Taxonomy of discretionary moves: how violations are hidden

Parts II and III set out the procedural and substantive layers. This part identifies the specific rhetorical and discretionary moves that translate undisclosed value judgments into the appearance of professional fact-finding. These are not deceptions in the strong sense. They are habits of writing that, repeated across many cases, function as a structural feature of the document type.

4.1 Conclusion-as-observation

The most pervasive pattern is the framing of an evaluative conclusion as a neutral observation. Examples:

"The father appears emotionally volatile." — Volatility is a clinical or evaluative judgment, not a perceptual fact. The word "appears" performs a hedging function but does not change the content.

"The mother provides a stable environment." — Stability is, again, evaluative. The observation underneath might be "the mother and child have lived in the same flat for three years" — which is also true of many situations that are not in fact stable.

"The child appears anxious before contact with the father." — Anxiety is inferred from behaviour. The behaviour itself, the alternative explanations, and the comparison to the

child's affect at other transitions are typically not stated.

The cure is to ask, of every evaluative term, what specific behaviour was observed, on how many occasions, by whom, in what context, and what the alternative readings are. The cure is rarely available because the underlying material is not in the document.

4.2 Hearsay laundering

This is the staged transformation of one party's allegation into established fact via passive grammar. The chain typically runs:

Mother says: "He was aggressive at handover last Tuesday."

Caseworker note: "Mother reports father aggressive at handover."

Stellungnahme draft: "Reports of aggression at handover have been received."

Recommendation: "In view of repeated incidents of aggression, supervised handover is recommended."

Each step in the chain is documentarily defensible. The cumulative result is that an unverified allegation has become a premise for a rights-restricting recommendation, with no point at which the original speaker was identified or confronted. The right at stake is again Art. 6 ECHR.

4.3 The loyalty-conflict Catch-22

A particular pattern in cross-border and high-conflict cases. The non-resident parent is told, formally or informally, that the child should be protected from the parental conflict. Any active effort by the non-resident parent to maintain or expand contact is then characterised in the Stellungnahme as "creating loyalty conflict for the child" or "placing the child in the middle of the parents' dispute."

The structure is a Catch-22. To exercise Art. 6 GG and Art. 8 ECHR rights — by requesting more contact, by escalating to the court when contact is reduced, by maintaining communication despite obstruction — is to produce evidence against oneself. The right cannot be exercised without becoming the basis for its restriction. The doctrinal answer, found in the Instrumentalisierungsverbot jurisprudence, is that a parent's exercise of

constitutionally protected rights cannot itself be a ground for restricting those rights. The doctrinal answer is rarely in the Stellungnahme.

4.4 Asymmetric documentation

Within the same Stellungnahme, evidence is not weighted symmetrically across parents. The pattern includes:

Positive evidence about the disfavoured parent reduced to a single sentence; negative impressions developed across a paragraph or several.

Concerns about the favoured parent acknowledged briefly and then dismissed ("the mother has at times struggled with the demands of single parenting, but has shown commitment"), where similar acknowledgements about the disfavoured parent would lead to a recommendation against contact.

Periods of stability for the disfavoured parent treated as the baseline (and so unremarkable); periods of instability for the favoured parent treated as historical context (and so dismissable).

Across many reports, the asymmetry is statistical. Within any single report, it can be hard to demonstrate. The cure is comparative: take each evaluative paragraph and ask whether the corresponding paragraph about the other parent applies the same standard.

4.5 Selective omission

This is the omission, from the Stellungnahme, of facts that would weigh against its recommendation. In cross-border cases, this often takes the form of omitted ties to Germany on the part of the foreign parent: long-standing residence, employment, family connections, language fluency, integration into the local community. The same facts, present for the resident parent, are stated. The asymmetry is not in what is said but in what is left out.

Selective omission is rights-relevant under Art. 41 of the EU Charter (right to good administration, including the right to have one's affairs handled impartially) and under the German Amtsermittlungsgrundsatz (the duty to investigate facts of one's own motion). The duty to investigate includes the duty to record what was found.

4.6 Pre-committed conclusions

Where the timeline of a case can be reconstructed — through file dates, email correspondence, and the parent's own records — it is sometimes apparent that the recommendation in the Stellungnahme was effectively settled before the disfavoured parent was fully interviewed. The interviews that follow then function not as inputs to the recommendation but as opportunities to confirm it. Disconfirming material is read against the prior, not against an open question.

This is a violation of the Amtsermittlungsgrundsatz: the duty to investigate is a duty to investigate before concluding, not after. It is also a violation of the equality-of-arms principle — the disfavoured parent is, in effect, presenting evidence to a tribunal that has already decided. It is rarely visible on the face of the Stellungnahme. It can sometimes be reconstructed from the metadata.

4.7 Professional-judgment shielding

Where a parent challenges a specific conclusion, the standard answer from the Jugendamt is some variant of "this is the office's professional assessment." The phrasing is meant to close the question. It functions to convert a substantive challenge into an attack on professional standing — and a court, deferring to the office, will typically not second-guess professional judgment.

The structural problem is that most Jugendamt caseworkers are not qualified psychologists or trained forensic assessors. The professional judgment being shielded is, in many cases, the professional judgment of a social worker with administrative training. That training has its own value; it is not the value of a forensic assessment, and it should not attract the same deference. Naming the difference is part of the rebuttal.

4.8 The recommendation-as-summary trick

Finally, a quieter pattern: the recommendation paragraph is written as if it were a summary of what came before, when in fact it introduces conclusions that the body of the report does not support. The reader, trained by document conventions, expects the

recommendation to follow from the analysis. Where the analysis does not in fact support the recommendation, the reader's expectation does the work that the analysis fails to do.

The cure is to write each recommendation backwards onto the body of the report and ask, paragraph by paragraph, which sentence in the body actually supports it. Where no sentence does, the recommendation is unsupported. This is rarely done at first reading; it is the most useful exercise on second reading.

Forensic exercise Print the Stellungnahme. Highlight every recommendation in one colour. Highlight every sentence in the body that, taken alone, would support that recommendation in a second colour. The white space between the two colours is the gap between what the document concludes and what the document actually establishes. That white space is where the analysis was meant to live.

Part V · The offloading mechanism: distributed accountability

This part addresses the question that motivates the entire paper: if the Stellungnahme contains, or contributes to, a human-rights violation, who is the defendant? The answer — that there is no clean defendant — is the structural feature that makes the Stellungnahme function as a procedural shield.

5.1 The two-actor structure

Every family-court order in which the Jugendamt has filed a Stellungnahme involves two actors. The court issues the order; the Jugendamt advised on the order. The order is the act with legal effect on the family. The Stellungnahme is, formally, only an input to that act.

This formal structure has a substantive consequence. If the order embodies a human-rights violation, the violation lies in the order, not in the input. Yet the order, in many cases, is a near-verbatim adoption of the input. The court has done little more than ratify the recommendation. The court has nevertheless committed the legal act that produced the violation. The Jugendamt has, in formal terms, only advised.

5.2 Why the court is hard to reach

German judicial immunity, codified in § 839(2) BGB, protects judges from civil liability for acts in the exercise of judicial duties except in cases of intentional violation of duty. A judge who adopts a Jugendamt recommendation, even uncritically, is not committing an intentional violation. The judge is exercising judicial discretion. The Bundesverfassungsgericht route, via Verfassungsbeschwerde, is available but narrow: it requires the exhaustion of remedies, a specific identifiable constitutional right, and a clear demonstration that the lower courts violated it. It does not generally reach the structural pattern of deference. The European Court of Human Rights route, via individual application after exhaustion of domestic remedies, is available and has produced findings against Germany in family-law cases — but it is slow, narrow in remedy, and reaches only the most clear-cut violations.

5.3 Why the Jugendamt is hard to reach

Section 839 BGB extends to officials in the exercise of public office (Amtshaftung), and § 1 of the Staatshaftungsgesetz of the Länder typically channels claims to the responsible Land. The dominant reading, however, is that the Jugendamt's Stellungnahme is an advisory act — not the rights-restrictive act itself. The act with legal effect is the court's order. On this reading, the Jugendamt's substantive content does not attract liability for the court's adoption of it. Where caseworkers act with gross negligence or intentional misrepresentation, claims can be brought; in practice, such claims are very difficult to establish on the basis of evaluative content.

There are also internal complaint pathways: Dienstaufsichtsbeschwerde (supervisory complaint within the Jugendamt's hierarchy), Fachaufsichtsbeschwerde (technical-supervisory complaint to the responsible ministry), and complaint to the relevant ombudsperson where one exists. These are administrative, not judicial, and they do not produce findings of rights violations. They produce, at best, internal corrections.

5.4 Why the EU route is structurally important but slow

Article 18 TFEU and Article 21 of the Charter prohibit discrimination on grounds of nationality. Article 41 of the Charter establishes a right to good administration. The Petitions Committee of the European Parliament has received continuous petitions on

Jugendamt practice since at least 2007. Resolution P8_TA(2018)0476 of 29 November 2018 recorded the pattern of complaints. The European Commission has nevertheless not opened a structured infringement procedure against Germany on Jugendamt practice.

The EU route is structurally important because it operates at the level of the practice rather than the individual case. It cannot remedy the violation experienced by any one parent. It can, over time, produce regulatory pressure that changes the practice. The slowness is the price of the structural reach.

5.5 The accountability gap, named

Combine these elements. The court has discretion and immunity; the Jugendamt has advisory status and administrative remedies; the EU operates at structural level only; the constitutional and Convention routes are narrow and slow. The result is that a violation embedded in a Stellungnahme and adopted in a court order has, in the typical case, no clean defendant. The harm is real. The right is real. The accountability is distributed across actors none of whom is squarely responsible for the whole.

This is the precise structural feature that makes the Stellungnahme function as a shield. It is not that any one actor is hiding behind another. It is that the legal architecture distributes the act between two actors in such a way that the rights violation can occur without the architecture identifying who committed it.

5.6 What this means for parents and counsel

Three practical consequences follow.

First. The rebuttal of a Stellungnahme cannot be left to the moment of the court order. By the time the order is issued, the recommendation has already done its work. The rebuttal must be filed at the Stellungnahme stage, in writing, with specific citations to procedural and substantive failures, and with explicit invocation of the Convention and constitutional frames that the Stellungnahme has not engaged.

Second. Where the court adopts the recommendation, the parent's rebuttal becomes part of the file for any subsequent appeal, Verfassungsbeschwerde, or ECHR application. The rebuttal must therefore be drafted not only for the immediate audience (the family-court judge) but also for the secondary audience (the constitutional court or Strasbourg).

Third. Pressure on the structural level — through the European Parliament, foreign consular services, and domestic oversight bodies — is not a substitute for the case-level rebuttal but a complement to it. The two operate on different time horizons. The case-level work is to defend the parent's specific rights now; the structural work is to change the conditions under which the next parent's Stellungnahme is written.

The named gap The Stellungnahme is not shielded because anyone is hiding it. It is shielded because the German legal architecture distributes the act of issuing a family-court order between an adviser without decisional authority and a decider deferring to the adviser, with the result that the substantive rights analysis falls between the two. Closing that gap is a legislative and institutional question, not only a forensic one.

Part VI · Mapping to specific rights instruments

The table below maps the recurring buried-violation patterns to the specific rights instruments they engage. The mapping is illustrative, not exhaustive. A given Stellungnahme will typically engage several rows simultaneously.

Buried pattern

Rights frame

Article / source

Asymmetric interview time and depth

Equality of arms; fair hearing

Art. 6(1) ECHR; Art. 47 EU Charter; Art. 103 GG

No verifiable record of conversations

Effective remedy; fair hearing

Art. 13 ECHR; Art. 47 EU Charter

Hearsay reproduced as fact

Right to challenge evidence

Art. 6 ECHR

Undisclosed working hypotheses

Right to be informed of the case

Art. 6(3) ECHR (by analogy); Art. 103 GG

Language-access failures as observations

Non-discrimination; fair participation

Art. 14 ECHR; Art. 21 EU Charter; Art. 6(3)(e) ECHR

Proportionality replaced by Kindeswohl

Right to family life; necessity test

Art. 8 ECHR; Art. 6 GG; BVerfG Instrumentalisierungsverbot

Child's hearing formally satisfied only

Child's right to be heard

Art. 12 UNCRC; § 159 FamFG

Identity / language / culture as risk

Child's right to identity

Art. 8 UNCRC; Art. 30 UNCRC; Art. 8 ECHR

Non-discrimination frame absent

Equal treatment by nationality / gender

Art. 18 TFEU; Art. 21 EU Charter; Art. 14 ECHR; Art. 3 GG

Instrumentalisierungsverbot ignored

Constitutional bar on instrumentalisation

BVerfG line on Art. 6 GG

Best-interests as a black box

Structured BIA methodology

Art. 3(1) UNCRC; CRC General Comment No. 14

Loyalty-conflict Catch-22

No penalty for exercising rights

BVerfG line on Art. 6 GG; Art. 8 ECHR

Asymmetric documentation

Impartial administration

Art. 41 EU Charter; Amtsermittlungsgrundsatz § 26 FamFG

Selective omission of relevant facts

Duty of investigation

§ 26 FamFG; Art. 41 EU Charter

Pre-committed conclusions

Investigate before concluding

§ 26 FamFG; Art. 6 ECHR

Professional-judgment shielding

Reviewability of expert input

§ 163 FamFG (by contrast); Art. 6 ECHR

Recommendation unsupported by body

Reasoned decision

Art. 6 ECHR; § 38 FamFG

Two further observations on the table. First, no single Stellungnahme engages all of these rows; a typical contested cross-border case engages between eight and twelve. Second, several rows appear minor on their own — "asymmetric documentation," "undisclosed working hypotheses" — but compound with each other to produce, in cumulative effect, a recommendation that is not a defensible best-interests determination. The compounding is itself the structural feature.

Part VII · Illustrative language patterns

The patterns described in Part IV are easier to recognise once their typical phrasings are named. The list below is drawn from the kind of language that recurs in Stellungnahmen across many cases. None of these phrases is wrong on its face. Each becomes problematic when it performs work that an articulated analysis is supposed to perform.

Conclusion-as-observation

"The father wirkt angespannt / appears tense."

"The mother demonstrates a stable home environment."

"The child's affect during the visit was withdrawn."

"There is a perceptible distance in the father–child relationship."

Hearsay laundering

"It has been reported that…" (Reported by whom, when, in what context, with what corroboration?)

"Concerns have been raised regarding…" (Raised by whom?)

"The mother has expressed worry about…" (Expressed once or repeatedly? Verified or not?)

"Statements indicate that…" (Whose statements? In what proceedings?)

Loyalty-conflict Catch-22

"The father's persistent requests for additional contact place the child in a loyalty conflict."

"The escalation of the dispute by the father is not in the child's interest."

"The child experiences the parental conflict primarily through the father's communications."

Selective omission and asymmetry

Long descriptions of the resident parent's daily routine; brief or absent descriptions of the non-resident parent's daily routine.

Detailed treatment of the resident parent's family network; sparse treatment of the non-resident parent's family network.

Concerns about the non-resident parent stated as facts; analogous concerns about the resident parent stated as challenges that have been overcome.

Best-interests as black box

"On overall consideration, the proposed arrangement corresponds to the child's welfare."

"The Jugendamt sees the child's interests as best served by…"

"In the office's professional view, the proposed regulation is in the child's interest."

Pre-commitment markers (visible from timeline)

Recommendation language present in early case-notes before the second parent has been substantively interviewed.

Email or scheduling correspondence indicating that the recommendation was being drafted before all material was on file.

Substantial overlap between an early Stellungnahme and a later one, with new material absent or minimised in the later document.

Professional-judgment shielding

"This is the assessment of the office."

"Based on the office's experience…"

"The office's specialist view is that…"

Recognition rule These phrases are not, in themselves, evidence of wrongdoing. They are the linguistic surface of a document type. They become evidentiary when, on close reading, they substitute for the analysis they are meant to summarise. The first task of any rebuttal is to identify which phrases in the specific Stellungnahme are doing this substitutive work, and to name what the underlying analysis would have had to look like to support the conclusion.

Part VIII · Reform and accountability pathways

The structural critique developed in Parts I–VII implies a corresponding structural reform agenda. The pathways below are organised from the case level (what an individual parent and counsel can do today) to the institutional level (what would close the gap).

8.1 Case-level countermeasures

Written rebuttal at the Stellungnahme stage. Filed in the family-court file before the next hearing. Structured around the three layers described in this paper: procedural failures in production, substantive failures in analysis, and discretionary moves in presentation. Cited to specific Convention and constitutional articles. The rebuttal becomes part of the file for any later appellate or Convention proceeding.

Request for a § 163 FamFG forensic assessment. Where the Stellungnahme rests on conclusions about parental capacity, attachment, or psychological functioning that exceed administrative competence, the appropriate response is to request a properly qualified

forensic assessment. The court's response to such a request is itself a useful procedural marker.

Disclosure requests. Specific written requests, before any further hearing, asking the Jugendamt to disclose: how many interviews with each parent of what duration, in whose presence, in what language, against what working hypotheses, with what record made and retained. The list of requests is itself the rights inventory.

Parallel record-keeping by the parent. Contemporaneous notes of every interaction with the Jugendamt, including dates, times, durations, languages used, persons present, and contents. The asymmetry of record-keeping between the office and the parent is one of the parent's principal vulnerabilities; the cure is to remove the asymmetry on the parent's side.

8.2 Domestic structural pathways

Dienstaufsichts- and Fachaufsichtsbeschwerde. Internal supervisory complaints. Limited remedy individually; useful evidence of a pattern when filed and aggregated.

Verfassungsbeschwerde. Where a court order embodying a Stellungnahme-driven violation has exhausted ordinary remedies and engages a specifically articulated constitutional right, an individual constitutional complaint is available. Most are unsuccessful; those that succeed produce binding doctrine.

Fachaufsicht reform at Land level. The Jugendämter are organised at municipal level under Land oversight. Reform of the Stellungnahme practice — methodological standards, mandatory disclosure of interview conditions, separation of advisory and counselling roles within § 17 / § 50 SGB VIII — is in the first instance a Land-level competence.

8.3 European pathways

PETI petitions. The European Parliament's Committee on Petitions has been the principal European forum for Jugendamt-related complaint. The companion paper to this report develops a petition specifically on the statistical-transparency question. Petitions on substantive practice are received continuously.

European Court of Human Rights. Individual applications under Articles 6, 8, 13, and 14 ECHR following exhaustion of domestic remedies. The Court has issued findings against Germany in family-law cases on Article 8 grounds; its jurisprudence on procedural Article 8 — the right to participate effectively in decisions affecting family life — is directly relevant to the procedural failures described in Part II.

Council of Europe Commissioner for Human Rights. Has previously addressed Jugendamt practice in country reports. Useful as a structural-pressure forum.

8.4 Statistical and transparency reform

All of the above measures operate within the existing system. The structural reform that would do most to close the accountability gap is the publication of disaggregated statistics on family-court outcomes — alignment between Jugendamt recommendations and court orders, custody outcomes by parent gender and nationality, post-separation residency arrangements. This is the subject of the companion PETI petition draft. It is named here only to mark that the case-level and structural agendas are complementary.

8.5 What success would look like

Success at the case level looks like a Stellungnahme that is reviewable: production methods disclosed, working hypotheses stated, alternative readings considered, methodology articulated, recommendations supported by the body of the report. Success at the structural level looks like a published statistic that allows alignment patterns to be tested, and a methodological standard for Stellungnahme production that is enforceable rather than aspirational. Neither is impossible. Both require sustained pressure across the case-level and structural pathways simultaneously.

Conclusion

The thesis of this paper is that the Jugendamt-Stellungnahme functions, in practice, as a procedural shield. The shielding is not the work of any single actor, and is not a deception in any strong sense. It is the cumulative effect of a document type that is treated as if it

were an expert assessment, deferred to as if it were an investigation, and produced under the conditions of an administrative submission — embedded in a legal architecture that distributes the act of issuing a family-court order between two actors, neither of whom is squarely responsible for the substantive rights analysis.

The buried violations are not all of one kind. Some are procedural — asymmetric interview time, hearsay laundering, language-access failures presented as observations. Some are substantive — proportionality replaced by Kindeswohl, the child's right to be heard formally satisfied but substantively gutted, non-discrimination missing as a frame. Some are rhetorical — conclusion-as-observation, the loyalty-conflict Catch-22, asymmetric documentation, selective omission. They compound. A single Stellungnahme typically engages eight to twelve of the patterns identified in Part VI.

The accountability gap follows from the structure rather than from any individual actor's bad faith. The court has discretion and immunity. The Jugendamt has advisory status and administrative remedies. The constitutional and Convention routes are real but narrow. The European route is structural but slow. The result is that a parent whose family life has been restricted on the basis of a Stellungnahme containing the patterns described in this paper has, in the typical case, no single defendant against whom the violation can be cleanly pursued.

The response is not to despair of the system but to operate at every level of it simultaneously. At the case level: written rebuttal at the Stellungnahme stage, disclosure requests, and parallel record-keeping. At the domestic structural level: supervisory complaints, constitutional complaints where the doctrine permits, and Land-level reform of Jugendamt methodology. At the European level: continued PETI engagement, Convention applications where the facts warrant, and statistical-transparency pressure as the structural complement.

This paper is offered as a vocabulary. The vocabulary names a pattern that is otherwise hard to articulate. Once named, the pattern becomes harder to operate. That, on its own, is a contribution to the closing of the gap.

Final note A Stellungnahme that engages the rights frames described in Part VI — that discloses its production methods, states its working hypotheses, articulates a structured best-interests analysis, and connects each recommendation to the Convention and

constitutional architecture it implicates — is not impossible to write. Some are written. The structural problem is that they are not the norm. Making them the norm is the work.

Annex A · Convention articles reference table

Quick-reference table of the principal articles invoked in this paper, with their core texts paraphrased for the reader who is not a specialist. Full official texts should be consulted in any formal filing.

Source

Article

Substance (paraphrased)

Grundgesetz (DE)

Art. 3

Equal treatment; non-discrimination on listed grounds including origin, language, sex.

Grundgesetz (DE)

Art. 6

Marriage and family under special protection of the state; parental care as natural right and primary duty.

Grundgesetz (DE)

Art. 103(1)

Right to a fair hearing in court (rechtliches Gehör).

ECHR

Art. 6(1)

Fair hearing within reasonable time by independent and impartial tribunal.

ECHR

Art. 8

Right to respect for private and family life; interference only where prescribed by law and necessary in a democratic society.

ECHR

Art. 13

Right to effective remedy before a national authority.

ECHR

Art. 14

Non-discrimination in the enjoyment of Convention rights.

EU Charter

Art. 7

Right to respect for private and family life.

EU Charter

Art. 21

Non-discrimination on grounds including nationality and language.

EU Charter

Art. 24

Rights of the child, including the right to express views, taken into consideration.

EU Charter

Art. 41

Right to good administration; impartial and fair handling of affairs.

EU Charter

Art. 47

Right to effective remedy and fair trial.

TFEU

Art. 18

Prohibition of discrimination on grounds of nationality within the scope of the Treaties.

TFEU

Art. 81

Judicial cooperation in civil matters with cross-border implications.

UNCRC

Art. 3(1)

Best interests of the child a primary consideration in all actions concerning children.

UNCRC

Art. 8

Right to preservation of identity, including nationality, name, and family relations.

UNCRC

Art. 9

Right not to be separated from parents against their will except where necessary for the child's interest.

UNCRC

Art. 12

Right of the child to be heard and to have views given due weight by age and maturity.

UNCRC

Art. 30

Right of children of minorities to enjoy their own culture and language.

BGB (DE)

§§ 1626, 1684

Parental care and the child's right to contact with both parents.

FamFG (DE)

§ 26

Court's obligation to investigate facts of its own motion (Amtsermittlungsgrundsatz).

FamFG (DE)

§ 159

Hearing of the child.

FamFG (DE)

§ 163

Forensic expert assessment.

SGB VIII (DE)

§ 17

Counselling support for parents during separation and divorce.

SGB VIII (DE)

§ 50

Cooperation of the Jugendamt with the family court.

EU Reg. 2019/1111

Brussels II ter

Jurisdiction, recognition, and enforcement in cross-border family matters.

Annex B · Suggested questions for cross-examination of a Stellungnahme

The questions below are organised by the layers identified in this paper. They are intended as a starting checklist for counsel, parents, oversight bodies, and academic reviewers examining a specific Stellungnahme. Not all questions will be relevant to every case; a typical contested case will engage at least half of them.

On production (procedural layer)

How many interviews were conducted with each parent? Of what duration? In what language? In whose home or office? In whose presence?

What contemporaneous record was made of each interview? Is that record available for the parent to review and correct?

What working hypothesis was the case being assessed against? When was that hypothesis formed? What evidence would have falsified it?

Was an interpreter present where any participant did not have German as their fluent language? Was the interpreter qualified? Was that disclosed in the report?

How many home visits to each parent's residence took place? Of what duration? With what notice?

Was the child interviewed in their dominant language? In what setting? On how many occasions? Was the difference between expressed wishes and underlying interests analysed?

What documents from the parent's submissions were considered? Which were not? Why?

On analysis (substantive layer)

Where is the proportionality analysis under Art. 8 ECHR? Where is the necessity test? Where is the consideration of less restrictive measures?

Where is the structured best-interests analysis under Art. 3(1) UNCRC and CRC General Comment No. 14? Which elements were assessed? How were they weighted?

Where is the engagement with the child's right to identity, language, and culture under Articles 8 and 30 UNCRC?

Where is the non-discrimination analysis under Art. 14 ECHR, Art. 21 EU Charter, Art. 18 TFEU, and Art. 3 GG?

Where is the engagement with the Bundesverfassungsgericht's Instrumentalisierungsverbot jurisprudence?

Where is the engagement with the BVerfG line that exercise of constitutionally protected parental rights cannot be a ground for restricting those rights?

On presentation (discretionary layer)

For each evaluative term in the report — "volatile," "stable," "anxious," "distant" — what specific behaviour was observed, on how many occasions, by whom, in what context, with what alternative readings considered?

For each statement attributed to one parent about the other, who is the original speaker? On what basis is the statement treated as established?

Compare the treatment of evidence about each parent. Are positive observations about each parent given comparable space? Are concerns treated symmetrically?

Which facts in the parent's submissions are not addressed in the report? Why?

For each recommendation, which sentence in the body of the report supports it? Where the body does not support the recommendation, the recommendation is unsupported.

On accountability

Has the parent filed a written response to the Stellungnahme in the court file? On what specific grounds?

Has a § 163 FamFG forensic assessment been requested? With what response from the court?

Have supervisory complaints (Dienstaufsichts- / Fachaufsichtsbeschwerde) been filed? With what outcome?

Where the proceedings have produced a final order embodying the Stellungnahme's recommendations, has Verfassungsbeschwerde been considered? ECHR application?

Use note This annex is offered as a structural aid. Many of the questions cannot be answered from the face of the Stellungnahme alone; their unanswerability is itself part of the rebuttal. A document that cannot answer half of these questions is a document that cannot, on its own, support a rights-restricting court order.

End of paper