Expertise:

Care Planning in Youth Welfare in European Comparison

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The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) has initiated a model programme named "Further Development of Care Planning". Developing the care planning process with special attention to the aspect of co-operation between youth welfare offices and voluntary organisations is the main focus of this project.
The main element of the programme is a model project which tests new ideas at four different sites. The model project is located at the University of Koblenz, Pedagogical seminar (Prof. Dr. Christian Schrapper) and is conducted in co-operation with the following institutes: with ISA in Oranienburg, ISM in Mainz and SPI in Munich.
A project situated at the German Youth Institute (DJI) is in charge of the co-ordination and moderation of the programme. The task is to co-ordinate all parties involved and to portray and present the programme into the public.

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1 Introduction

Adoption of the Child and Youth Services Act (KJHG or SGB VIII) in Germany in 1990 has significantly changed the role of youth welfare offices. Thitherto impacting families' living situations primarily as an intervening agency, youth welfare offices then received the legal mandate to involve welfare recipients in decision-making concerning appropriate care and to consider their wishes and ideas.

Preparing care plans according to Sect. 36 of the Child and Youth Services Act is a central element of child and youth welfare in the Federal Republic of Germany. Care planning includes analyzing the children's, youths' or families' situations, determining what care is needed and providing appropriate care in coordination with welfare recipients and other specialized staff. According to Sect. 5 of the KJHG, entitlees have the right to express wishes and choose among institutions and services provided by different operators and to express their wishes with regard to how care should be provided.

2 Describing the Object of Investigation

This expertise seeks to provide an overview of the situation of care planning and legally stipulated involvement of children, youths, and parents in other European countries' child and youth welfare. The selection of countries to be investigated was not narrowed down; the European Community alone currently consists of 15 member countries. This expertise will expound on whether a procedure similar to German care planning exists in other European countries and in which this is the case. Also, the design of care planning procedures will be described and existing general conditions and design elements set forth.

3 Our Approach to Information Gathering

As we gathered information, our first step was researching the web pages of a variety of ministries in the European Union's member countries in order to determine which departments are in charge of child and youth welfare and whether any descriptions of and information on the implementation of the child and youth welfare system are available. In addition, we took advantage of our local contacts to obtain further information on the object of our investigation.

Furthermore, both a national and European literature search was conducted, several national action plans on the subject of „social marginalization" were reviewed and various country reports on the status of implementation according to Sect. 44 of the UN Convention on the Rights of the Child were analyzed.

The „European Forum for Child Welfare" (EFCW) is a European federation of organizations that are active in child and youth welfare. We addressed letters to forty organizations and experts that are EFCW members and/or have been working in child and youth welfare for many years, requesting that they send us information, material and legal texts from their countries.

Due to short duration of our study, information fed back to us was considered to varying degrees of quantity and quality.

Thus, it was impossible to conduct sufficient research on all of the European Community's member countries with respect to how care planning in child and youth welfare has been legally stipulated and what the details are of the specific foundations in law. In addition, legal texts are often available in the national language only so that in some cases lengthy texts would have to be translated in order to understand relevant passages.

Legal texts must be depicted in the context of the corresponding country's legal system in order to be judged in this light. In addition, the various countries do not have a common understanding of terms so that a process of direct explanation and discussion is called for to obtain the required information. This process of clarification is very time-consuming.

Faced with this backdrop, we need to expand the question posed by this expertise: "Which types of involvement of children, parents, and other persons

in care planning exist in the European Union's member countries, and are the planning process and result documented and reviewed at a later point in time?"

4 Narrowing down the Object of Investigation

The information garnered during Internet research and literature searches as well as expert interviews are analyzed with respect to the questions set forth above. As a basic frame of reference, we use the remarks on Sect. 5 and 36 of the Social Code Book (SGB) VIII, to be found in the Frankfurt Commentary.[1]

In our report, we limit ourselves to the European Union's member countries, inasmuch as we can comment based on the available data.

The expertise is not a legal analysis but rather an approximate answer to the question what elements of involving those concerned are intended to be used in the child and youth welfare of the respective country and how those elements are designed.

5 The Child and Youth Services Act SGB VIII

Subsequently we briefly address the major foundations in German law in order to be able to draw comparisons to other European regulations. On October 3, 1990, the Child and Youth Services Act of June 26, 1990, went into effect in the new states of the Federal Republic of Germany, and on January 1, 1991, in the old states. The Child and Youth Services Act's guiding standard reads as follows: „Each young individual is entitled to having his development fostered and to being brought up to be a self-dependent person capable of belonging to a community."[2]

This law is an instrument for preventing, helping and protecting children and youths. The KJHG obligates youth welfare offices to help and creates a

[1] cf. Münder, J. et al. (2003), Frankfurter Kommentar zum SGB VIII, Weinheim
[2] cf. Bergmann C. in: BMFSFJ, Kinder- und Jugendhilfe, Bonn, p.1

framework for supporting mothers and fathers having the care and custody of their children for the benefit of the latter.[3]

For the first time, involving children, youths and parents having the care and custody of children in the decision what care is appropriate was taken into account in this law, and a respective right to express wishes and choose as well as involvement in care planning were legally stipulated. To this extent, the paradigm for the youth welfare office's role shifted in that the latter was no longer defined as a mere intervening agency but rather awarded a legal mandate to inform and involve the children, youths and parents (having the care and custody of children) concerned.

The foundation in law is laid down in Sect. 5 (Right and Option) and Sect. 36 (Involvement, Care Plan) of the Child and Youth Services Act. Below, we expound on the two sections as well as the model of an ideal process of care planning. Our remarks are largely based on Münder et al.'s commentaries on Sect. 5 and Sect. 36 KJHG in the Frankfurt SGB VIII Commentary.

5.1 § 5 „Right to Express Wishes and Choose"

The law's Sect. 5 reads as follows:

(1) „Entitlees have the right to choose among the institutions and services of different operators and to express wishes concerning how care should be provided. They must be made aware of this right.

(2) Their choice and wishes shall be met unless this entails disproportionate additional cost. If the entitlee desires that a service set forth in Sect. 78a be performed in an institution whose operator has not entered into agreements pursuant to Sect. 78b, this choice can only be met if provision of the service in this institution is called for in this particular case or according to the provisions of the care plan (Sect. 36)."[4]

[3] cf. Bergmann C. in: BMFSFJ, Kinder- und Jugendhilfe, Bonn, p. 5
[4] Münder J. et al. (2003), Frankfurter Kommentar zum SGB VIII, Weinheim, p. 109

In the emphasis on the right to express wishes and choose, the underlying principle of youth welfare in terms of social law and social politics becomes apparent. Those affected by acts of the government are not to become mere objects, but rather youth welfare is awarded the mandate to support their self-realization according to their own ideas. The perspective of those affected and involved is to be taken into account during the entire design of benefits, offerings, services, and institutions. Their obligation to make aware set forth in Sect. 5 obligates youth welfare agencies to take active steps of their own accord in order to determine how care should be designed to meet the notions of those concerned. They cannot invoke the fact that an entitlee failed to express a wish. For if entitlees are incapable of a straightforward specific verbalization of their ideas specialized staff has the task of bringing to the fore the wishes and choice of those concerned.

As a premise, Sect. 5 does not assume a confrontation between youth welfare agencies and entitlees; rather, it invokes the fundamental idea that the wishes of those concerned should feed into the youth welfare agency's notions about how to design the service so that there will be no opportunity for a confrontation to arise. This ties into involving entitlees proactively and at an early stage in how care should be provided.[5]

5.2 § 36 „Involvement, Care Plan"

(1) „The individual having the care and custody of the person and the child or youth shall be counseled before they decide upon seeking care and before a required change in the type or extent of their care is made and shall be made aware of possible consequences for the child's or youth's development. Before and during long-term care to be provided outside their own family, there shall be a review whether acceptance as a child can be considered. If care outside their own family is required, the persons mentioned in Clause 1 shall be involved in the selection of the institution or care center. Their choice and wishes shall be met unless this entails disproportionate additional cost. If the persons mentioned in Clause 1 desire that a service set forth in Sect. 78a be performed in an institution whose operator has not entered into agreements pursuant to Sect. 78b, this choice shall only be met if performance of the ser-

vice in this institution is required according to the provisions of the care plan pursuant to Paragraph 2.

(2) Several specialized staff shall collaborate to decide upon what type of care is called for in each individual case if the care is expected to be long-term. As a basis for designing that care, they shall prepare a care plan together with the individual having the care and custody of the person as well as the child or youth, with the plan stating what care is needed, what type of care shall be provided, and what services are required; they shall review regularly whether the type of care chosen continues to be appropriate and required. If other persons, services or institutions become involved in providing the care, they or their staff shall participate in preparing the care plan and its review.

(3) If care according to Sect. 35a appears called for, a physician with special experience in providing care for the handicapped shall be involved in preparing and modifying the care plan as well as in providing the care. If professional integration measures appear to be required, Federal Employment Agency authorities shall be involved as well."[6]

Sect. 36 of the KJHG contains major regulations governing the involvement of children, youths, and individuals having the care and custody of the person in the decision-making on the utilization of educational care. What is required is that the care process be planned and reviewed by several collaborating specialized staff in a qualified manner.[7]

In particular, by involving the young people concerned as well as the individuals having the care and custody of the person, Sect. 36's procedural provisions ensure that the undefined legal terms' content is appropriately interpreted.

If subject status is respected, personal benefits such as educational care are concretized in a negotiating and communicative process in which the interests of all those involved are taken into consideration.

This process also demands that specialized staff be capable of enabling the persons involved in the decision-making to attend to their rights. In this view,

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[5] cf. Münder J. et al. (2003), Frankfurter Kommentar zum SGB VIII, Weinheim, p. 110 et sqq.
[6] cf. Münder, J. et al.(2003), Frankfurter Kommentar zum SGB VIII, Weinheim, p. 344
[7] cf. Münder, J. et al.(2003), Frankfurter Kommentar zum SGB VIII, Weinheim, p. 344 et sqq.

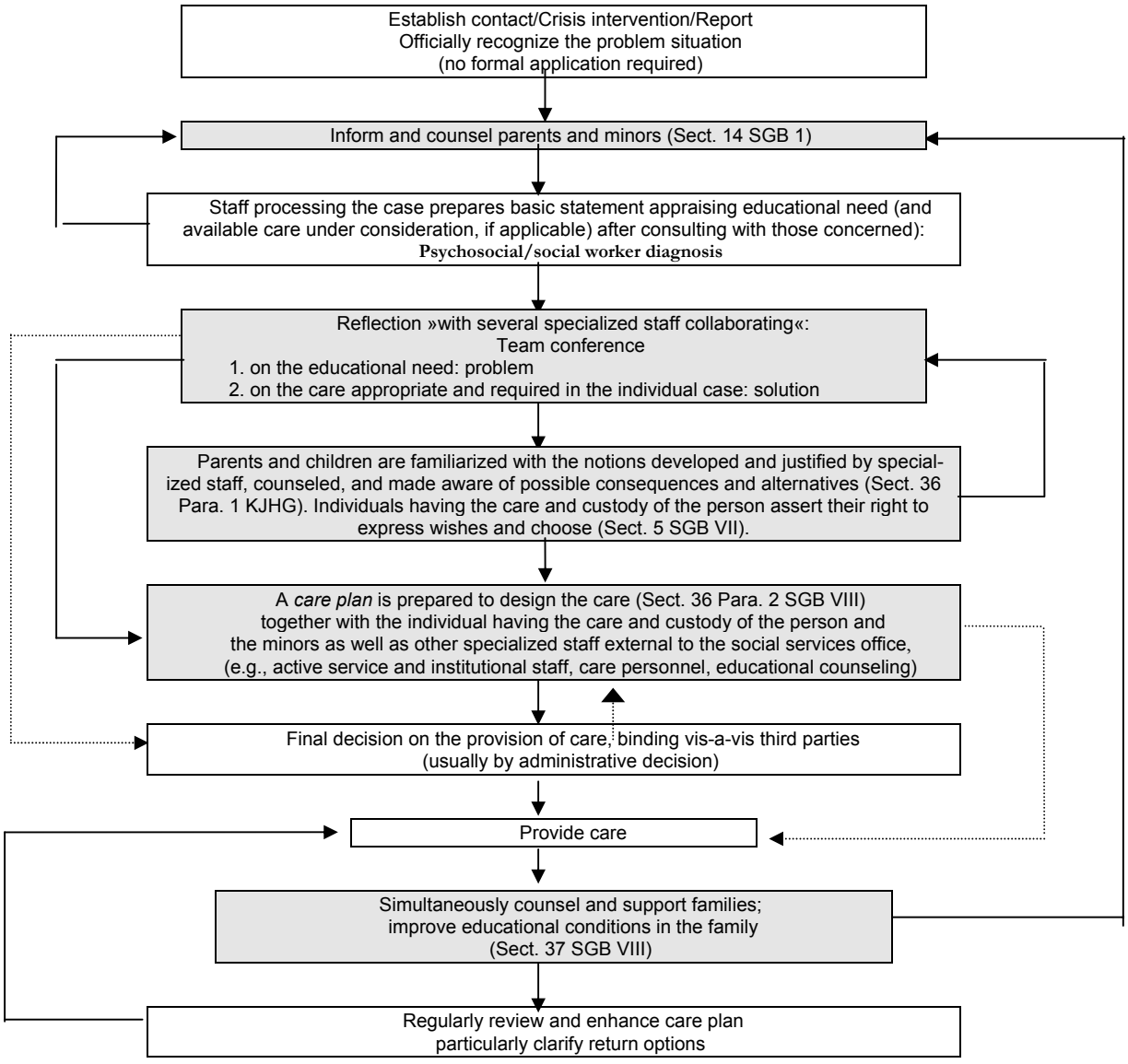
the procedure's design is a major means for involving those concerned in the procedure. It must be the socio-pedagogical effort's objective to choose care in a consensus with those involved. It must, however, be kept in mind that Sect. 36 contains a structural ambivalence resulting from the fact that both care planning and the agreements reached are to be determined by professionalism and expert knowledge as well as the knowledge and wishes of the children, youths, and families involved. This conflict can be aggravated by a failure to provide the planned care benefit and carry out the mandate of protecting children and youths in a consensus with the individual having the care and custody of the person, creating a need for the youth welfare office to step in pursuant to Sect. 50 (Appealing to a Court when the Child's Welfare Is at Stake).[8]

5.3 The Ideal Care Planning Process and Care Plan

During the decision-making process, the choice of the specific care and its design in each individual case is supposed to be concretized in a care plan by collaborating with the individual having the care and custody of the person as well as the child or youth. The process can fundamentally be viewed as consisting of several stages. What follows below is a sketch of an ideal course of this process.

[8] cf. Münder, J. u.a.(2003), Frankfurter Kommentar zum SGB VIII, Weinheim, p. 344 et sqq.

Ideal Course of the Planning Process



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[9] cf. Münder, J. u.a. (2003), Frankfurter Kommentar zum SGB VIII, Weinheim, S. 351

Meanwhile, care planning is part of the professional standard of each care decision/provision. Written documentation in the care plan, however, is only mandatory in the case of anticipated longer-term care in connection with a professional conference. The following aspects should be considered during care planning and documented in the care plan:[10]

- Name those involved and how they are involved, describe how individuals having the care and custody of the person and the child/youth were involved in the counseling process and what ideas they articulated
- Concretize educational need
- Describe care provided thus far
- Elaborate on thoughts and suggestions of appropriate care, taking each time the viewpoint of those involved
- Point out if an appropriate and required type of care was not chosen because it is not available in a way that meets the need at hand
- Objectives and specific tasks
- Start, anticipated duration, and, if applicable, time-intensiveness as well as occasions or times for regular review
- Statement on perspective planning in the case of care outside of their own family

The general conditions for the right to express wishes and choose according to Sect. 5 of the KJHG and the care plan as well as the involvement according to Sect. 36 of the KJHG are the basis for our investigation of the general conditions for the involvement of those concerned as well as care planning in other European countries.

6 Outlining the State of Discussion on Care Planning in Germany

The introduction of Sect. 36 of the KJHG set a precedent for a uniform federal requirement for decision-making in youth welfare. After its introduction in

[10] cf. Münder, J. et al. (2003), Frankfurter Kommentar zum SGB VIII, Weinheim, p. 353 et sqq.

1990, care planning was virtually not contemplated for two years, the regulation was not deemed innovative. In 1992, the debate on the subject of care planning became animated and Sect. 36's innovative approach was increasingly discussed.

„Despite the uniform appreciation of the benefits of this regulation, there has been a major controversy about interpreting those general legal terms since the early 90's. Structurally, this dispute is a continuation of the debates on psychosocial diagnosis (PSD) in the 70's/80's. The root of the matter is a juxtaposition of "diagnosis" and "negotiation" as basic principles of care planning. Both compete in seeking to become a guideline for care planning that is professionally correct and satisfies the requirements of the law."[11]

Care planning according to Sect. 36 of the KJHG is an attempt to solve the problem of decision-making in child and youth welfare. The subject of the decision to be made is the following question: "What care is appropriate in this situation?" The decision-making in this process is socio-pedagogical. A diagnostic approach requires that there be causal relationships between indication and effect and that the former are known and understandable. In socio-pedagogical work, however, there is hardly any knowledge about indications, and in complex everyday situations, youth welfare is scarcely able to name causalities. There is another aspect that must be considered when adopting diagnosis and indication models in social pedagogics. Diagnostics presupposes the existence of professional objectivity. In social pedagogics there is no clear definition of what is normal. Specialized staff will arrive at different conclusions when judging situations.

What appears as the second pole in this discussion is care planning as a negotiating process that must be shaped together with all those involved. In the negotiating process, a solution acceptable to all parties is to be found, which must be tested, reviewed, and modified, if applicable. This model of care planning centers on the beneficiary's changed position. Those concerned are meant to be perceived as self-determined and self-dependent subjects. Voluntariness of those concerned is viewed as a prerequisite for successful care and as a right of those concerned. The structural limits of this model are represented by the youth welfare office's responsibility for attending to its function as a governmental watchdog. The purpose of this watchdog function is guaranteeing the

[11] cf. Urban, U. (2001), in: Neue Praxis, Issue 4, p. 388

existence of an entity that is independent of parents and children, watches over the exercise of parental care and custody, and is entitled to intervene in dangerous situations.

This also requires a professional position. Through negotiation, the professional assessment of the situation does not become obsolete, particularly since care must be appropriate and required, i.e., the providing care also requires professional legitimization.

Both the diagnostic and negotiating model are necessary components of socio-pedagogical decision-making. According to Urban, investigating both positions makes it clear „that the contradiction inherent in care planning is not even resolved within each position but rather lingers. Care planning can be realized neither without the professional assessment provided by specialized staff, and thus without a diagnosis of whatever nature, nor can it be legitimized professionally without any contradictions or do justice to the subjective view of those concerned as well as their demands to be involved. Negotiation and diagnosis both represent an allegedly „correct" model for care planning."[12]

Embedded in care planning according to Sect. 36 of the KJHG there is a structural contradiction that neither of the two models is capable of resolving. Urban elaborates: "Individual care planning is an example of a manifestation of the conflict between self-realization and the requirements for integration into society, between a subjective life situation and professional diagnosis, in youth welfare's everyday practical reality. Neither of the two positions discussed – neither negotiation nor diagnosis – can resolve the contradiction inherent in care planning, for we are dealing with paradoxical structures that cannot be resolved. Action in social professional sphere cannot be consistent, „correct" action. Rather, it must move about consciously in this contradictory area of conflict. Care planning requires that one's own actions be critically reflected upon in the area of conflict surrounding social work and hence in the contradiction between professional diagnosis and the right to self-determination of those concerned."[13]

[12] Urban, U. (2001), in: Neue Praxis, Issue 4, p.399
[13] Urban, U. (2001), in: Neue Praxis, Issue 4, p.400

7 Discourse on Care Planning on a European Level

This expertise can only offer a preliminary overview in answering the question whether involvement, care planning, and the right to express wishes and choose have been implemented in other countries in a manner similar to the way in which they are stipulated in the KJHG of the Federal Republic of Germany. Comparing two systems requires a more profound analysis of the general conditions and the context in which they apply. In Europe, there are different approaches in different countries to ensuring the involvement of children, youths, and parents in how care should be provided. These approaches, however, must be viewed in the respective country's context before comparisons can be drawn to other countries.

Social work in the area of child and youth welfare has taken different historical courses in the various European member countries. Also, the social standing of the family and the perception of children and youths as subjects with a social position of their own is reflected in which cabinet department or ministry they have been assigned to in the field of politics. For instance, is there a self-contained cabinet department or ministry for children and youths or have these matters been assigned to the family department/ministry?

What is the shape of the legal system for child and youth welfare in the respective country and which aspects can be compared to German structures? In an effort to make different countries comparable, these cornerstones must be taken into consideration. The present expertise cannot perform this entire task, particularly since the various systems are analyzed from the outside, which implies that the implementation and design of the foundations in law can only be assessed in a very limited fashion.

However, this expertise can expound on what is pointed out in the literature regarding care planning and involvement in each country, and/or it can elaborate on what aspects can be gleaned from the corresponding legal texts on this topic (provided that the foundation in law was available within this all too brief time frame).

8 The UN Convention on the Rights of the Child

On November 20, the general assembly of the United Nations adopted a convention on the rights of the child. In the meantime, 191 states except Somalia and the U.S. have ratified the document. According to UNICEF, the Convention on the Rights of the Child has caused a worldwide stir in child and youth welfare politics, and many countries have amended their legislation against the background of the Convention on the Rights of the Child.[14]

Under Article 44 of the UN convention, those countries have committed themselves to report every 5 years to the Committee on the Rights of the Child, via the Secretary General of the United Nations, their progress in implementing the UN Convention on the Rights of the Child.

The Convention on the Rights of the Child defines basic rights for children that are binding under international law. Countries that have signed and ratified the convention are obligated to put into effect these basic rights in their national legislation.

The Convention on the Rights of the Child is based on an idea of man that views young individuals as subjects and autonomous persons that, according to their maturity, have a proper right to attend to their interests.

The rights expressed in the convention are based on four fundamental principles:[15]

1. Right to equal treatment
2. Principle of the child's best interest
3. Right to life and personal development
4. Respect for the child's views and will

The fundamental principle of „respect for the child's views and will" has been laid down in Article 12 of the UN Convention on the Rights of the Child:

„(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters af-

[14] cf. Deutsches Kommitee für UNICEF, Kinder haben Rechte!, 2001, p. 6
[15] cf. Deutsches Kommitee für UNICEF, Kinder haben Rechte!, 2001, p.8

fecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."[16]

Based on Article 12, many countries have accorded children and youths the possibility of expressing their own views during child and youth welfare procedures and – if possible - to have these views taken into consideration.

9 Country Reports

Subsequently we report on the different procedures in care planning in child and youth welfare that can be found in the various European countries. We limit ourselves to European Union member countries and will discuss the following questions:

- Is there a care planning procedure and in which law has it been laid down?
- What is the contents of the care planning procedure and what persons/institutions must be involved?
- Are there any written agreements?
- Is there an update of care plans, what is the timeframe, and who is responsible?

In the comments below, legal texts are quoted in English in order to avoid falsifying the facts during the translation, particularly since legal texts e.g. from Finland and the Netherlands have been translated from their respective national tongues into English.

[16] cf. www.boes.org, Die Rechte des Kindes, p. 2

9.1 The Netherlands

In the Netherlands, child and youth welfare is governed by the „Wet op de Jeugdhulpverlening (WJHV)“ Act of August 8, 1989.

WJHV distinguishes between „primary care“ (e.g., youth counseling offices, child line institutions), “secondary care” (e.g., crisis intervention offerings, care institutions, homes, day care centers), and “tertiary care” (e.g., juvenile prisons). For “secondary care”, a care planning procedure has been laid down in the law.

In Article 25, WJHV prescribes that “secondary care” may only be initiated if an authorized placement agency has determined no longer than two months prior that this care is appropriate for the child.

„Secondary care … shall only commence and shall only be continued… if an authorized placement agency, in keeping the provisions of this act has determined that this care is considered appropriate for the child concerned, no longer than two months before.(…)”[17]

The Dutch WJHV bestows a mandate upon the placement agency to determine the care needed, to decide what care ought to be initiated and to organize the care’s provision. All the while it must ensure that problems and disorders on the part of the child concerned are adequately taken into account.

In addition, the law stipulates Article 23 that the care to be provided shall interfere as little as possible and as much as required with the family system. It shall be provided in as close a proximity to the child’s residence as possible, the care’s duration shall be as brief as possible, and the type of care chosen shall be the one most appropriate for the child concerned.

When care begins, a timeframe must be determined for the care’s duration that must not exceed six months. After a maximum of six months the placement agency is responsible for a review of the care provided and a decision whether it is to be continued as before or whether another type of care is to be provided.

The legal text of WJHV’s Article 29 makes the following provisions:

„Art. 29.1 A placement agency:

a. shall ensure, in view of the prescription, (...), that an investigation is carried out into the problems and disorders of the child involved and, taking account of the requirements, mentioned in article 23, shall subsequently determine, which form or forms of care may be considered the most appropriate for the child;

b. shall be responsible, in view of application of article 25 (...) for an evaluation of the care and shall determine if, considering the circumstances, continuation of care is to be considered appropriate;

c. shall each time set the term for which the care is to be considered necessary, which is at most six months.

2. The child, the one who has parental power or guardianship, as well as the provider qualifying for this, shall be involved in the activities referred into the first paragraph.

3. The activities referred to in the first paragraph shall be constantly justified in reports."[18]

The placement agency must involve in care planning the child, the person having care and custody of the child or the guardian as well as a specialized staff member from the institution which may provide the care. Activities and decisions must be set forth in a care plan.

In the child protection and court-ordered child care context, the „Child Care and Protection Board (CPB)" plays a crucial role. The CPB operates under the Ministry of Justice. According to Hesser, the foundation in law for the CPB's work has been laid down in the Protective Supervision Act of 1995.[19] It does not organize any support offerings for children and families on its own but rather refers cases to the juvenile courts and counsels the latter in its decisions. The CPB's responsibilities include child protection, divorce proceedings, visitation rights, and juvenile court proceedings.

Before filing a report, the CPB checks whether there is a situation posing a threat to the child as defined by the law, whether the family can resolve the problem on its own or whether there is a possibility for support on the basis of

[17] cf. van Unen, Alice, New legislation on care for children and young people, 1995, p. 119
[18] ibid., p. 120
[19] cf. Hesser, Karl-Ernst H., Sozialwesen und Sozialarbeit in den Niederlanden, 2000, p. 214

voluntary child care.[20] In these cases, the CPB does not take action on its own but rather refers the case to the corresponding counseling centers. For the CPB's work, too, the literature contains a procedure for involving those concerned.[21] By reviewing second-hand sources only, it is impossible to determine whether this care planning procedure corresponds to the understanding set forth in this expertise. If the CPB arrives at the conclusion that a juvenile court should impose action protecting the child or youth, it retains an expert employed by CPB who gets in touch with the client system and analyzes the situation. The persons involved are informed about the investigation's objectives and methods. Through contacts with third party, other information is gathered and – if required – another external expert is brought in to obtain a better and more comprehensive view of the child and its family.

Upon the investigation's conclusion the expert submits a draft report describing the child's and its family's problem situation. Based on this report, recommendations are developed for the judge making the decision.

The report is discussed with everyone it concerns. The persons concerned must have the opportunity to express their opinions which may then be included in the report. It cannot be gathered from the literature to what extent the interests of those concerned must be taken into consideration.

Before the official report is forwarded to the competent judge, the responsible CPB departmental head must add his own assessment and recommendation. Clients receive an invitation from the CPB to attend the presentation of the official report. They are legally entitled to receiving a copy of the report. The report can serve as a basis for the judge's decision and the continuation of additional care for the child and its family.

In summarizing these findings we may conclude that Dutch legislation stipulates a care planning procedure in the context of foster care and crisis intervention. The placement agency must determine the specific need. The child, the parents having care and custody of the child, and the care providers being considered must be involved in the process. Care planning must be documented in a report and reviewed after a maximum of six months.

[20] ibid., p. 215
[21] cf. van Unen, Alice, New legislation on care for children and young people, 1995, p. 71

Both the children and their parents must be involved in care planning; still, they are not granted a right to express their wishes and choose as can be found in German child and youth services law.

9.2 Finland

In Finland, child and youth welfare is governed by the „Child Welfare Act (CWA)“ of 1983.

The law contains provisions on involving those concerned, care planning, and the general procedure for initiating child care.

Paragraph 10 of the „Child Welfare Act“ ensures that all action is implemented in the child's best interest. To ensure the child's best interest, the paragraph prescribes that its wishes and views should be taken into account. The environment in which it is brought up shall be examined and compared to the likely effects of potential alternative care offerings.

From the age of 15, a child can represent himself or herself in the context of child care decisions. Children that have reached the age of 12 are entitled to being heard on child care issues and to demanding social services and other offerings of support.

Social workers that are responsible for support within the scope of child and youth welfare are legally obligated to act in the best interest of the child, to grant the child their official support, and to counsel it so that it receives sufficient aid when necessary.

Translated into English, Paragraph 10's legal text reads as follows:

"In ascertaining the best interests of a child his wishes and views shall be taken into account, his growing environment shall be studied and due consideration shall be given to the probable effects of alternative child welfare measures applicable to him.

Besides custodians, a child who has attained the age of 15 is entitled to a say in child welfare cases concerning himself. A child who has attained the age of 12 is entitled to be heard in child welfare cases as stipulated in section 15 of the Administrative Procedures Act (598/82). A child who has attained the age of

12 is also entitled to demand social services and other support referred to in section 13.

Social workers responsible for child welfare must see to it that the child's best interests are realized, assist a child in their official capacity and advise him in obtaining sufficient aid when necessary."[22]

For each case of family-oriented or individual child care, the law prescribes a care plan unless the case involves short-term counseling or guidance only. If necessary the care plan must be revised.

In the context of family-oriented or individual child care, health care authorities must make available expert assistance and – if necessary – treatment for the child. Also, there must be service offerings for the special protection of pregnant women.

Paragraph 11 of the „Child Welfare Act" reads as follows:

„A care plan shall be made for each case of family-oriented and individual child welfare, unless it is a question of temporary counselling or guidance. The care plan shall be revised when necessary.

Within the framework of family-oriented and individual child welfare, health care authorities must provide expert assistance and treatment for the child, when necessary, as well as the services needed for the special protection of pregnant women."[23]

In the case of foster care, the Finnish law makes the following provisions: When the child's foster care is being planned, the competent „Social Welfare Board", in principle, must take the child's age and development status into account and ensure whenever possible that the child's wishes and its options in terms of the decision to be made are taken into consideration.

In addition, if the child is more than 12 years of age, its parents, custodians, persons continuously involved in the child's care and upbringing as well as persons with prior responsibility for the case must be given an opportunity to be heard. These persons must also be informed about any decision regarding

[22] cf. Ministry of Social Affairs and Health, Child Welfare Act (683/1983), p. 4

[23] cf. Ministry of Social Affairs and Health, Child Welfare Act (683/1983), p. 4

taking into care, placement in substitute care or the duration of care. If necessary the procedure for appeal must be explained. The "Social Welfare Board" may also hear experts on child development and growth.

Paragraph 17's legal text reads as follows:

„Before taking a child into care, arranging substitute care or terminating care, the local social welfare board must always take the age and development level of the child into account, whenever possible, ascertain the child's own wishes and opinions concerning the decisions to be made, and provide a child who have attained the age of twelve, his parents, custodians and the persons currently in charge of his care and upbringing or who were in charge immediately prior to the case in question, an opportunity to be heard, as stipulated in section 15 of the Administrative Procedures Act. Persons who are entitled to be heard in the manner mentioned above must also be notified of any decisions concerning taking into care, placement in substitute care or termination of care according to the stipulations on special notification of the Act (232/1966) on Notification in Administrative Matters. Wherever necessary, the procedure for appeal must be explained. The board may also hear experts on child growth and development. (…)"[24]

If a child from the age of 12 or its custodian objects to the child's being taken into care or the hearing stipulated in Clause 1 of Paragraph 17 could not be held, the decision must be submitted to the district administrative court no later than 30 days after it was made. Decisions where the persons concerned could not be heard because their whereabouts could not be determined or missing contact between the child and the person to be heard is deemed sufficient justification for not holding a hearing need not be submitted to the administrative court.

The German Child and Youth Services Act prescribes written documentation of the care plan only in the cases of longer-term care in connection with an expert conference. The Finnish "Child Welfare Act", on the contrary, stipulates preparation of a care plan for every case in which family-oriented or individual child care are initiated. Children, parents, and persons involved in the

[24] cf. Ministry of Social Affairs and Health, Child Welfare Act (683/1983), p. 6

children's care must be involved. It is interesting to note that the law requires for experts with prior responsibility for the case to be involved in care planning. There are no provisions for the time period after which the care plan is supposed to be updated. Compared to SGB VIII, which stipulates regular care reviews, the Finnish law provides for reviews on an as-needed basis only.

9.3 Austria

Austrian legislation distinguishes between youth welfare and youth protection. Youth protection is governed by state law in Austria's nine states; its execution is the states' responsibility as well. As for youth welfare, fundamental legislation is the federal government's responsibility. Youth welfare's executory legislation and implementation are the states' responsibility.

In the Youth Welfare Act (JWG) of 1989 there are no stipulations regarding care planning with the involvement of children, youths, and parents. Also, there are no provisions for a right to express wishes and choose as can be found in the KJHG in Germany. However, the Republic of Austria's report to the United Nations on the implementation status of the UN Convention on the Rights of the Child in accordance with Article 44 refers to a care plan involving annual reviews having been introduced in the state of Salzburg's youth welfare system.[25] The question to what extent care planning and involvement have been stipulated in the nine states' executory legislation would merit further study.

The Austrian Youth Welfare Act of 1989 provides that affected children that are at least 10 years of age must be heard personally. Children below the age of 10 shall be heard in an appropriate manner.

The legal text of the JWG's Sect. 29, "Voluntary Child Care"", reads as follows:

„(1) Child care to which the child's guardians agree require a written agreement between the guardian and youth welfare organization.

[25] cf. Bundesministerium für soziale Sicherheit und Generationen, Bericht der Republik Österreich an die Vereinten Nationen, 2002, p. 29

(2) In any case, the youth welfare organization must hear a child at least 10 years of age personally, while a child under the age of 10 must be heard in an appropriate manner."[26]

Within the scope of this expertise, it cannot be assessed to what extent the written agreement between the guardian and youth welfare organization as stipulated in Clause 1 will contain elements of care planning and corresponding documentation in a care plan when implemented in practice.

The JWG's Sect. 31 contains requirements for the implementation of care which make apparent the fact that lawmakers want to see the child's interests taken into consideration when care is implemented. Clause 2 reads: "In each case, action shall be taken that is appropriate for the minor's personality and his or her living conditions. During implementation the minor's talents, abilities, proclivities, and development potential shall be taken into consideration."[27]

9.4 Spain

Unfortunately, it was impossible to obtain Spanish legal texts within the scope of this expertise. When we directed research inquiries to organizations engaged in child and youth welfare in Spain, we were told that since 1996 a general law entitled „Ley de Proteccion Juridica del Menor", which translates into "Legal Child Protection Act", has been in effect. This law states offerings made available to children, particularly to guarantee their rights in the context of implementation of the UN Convention on the Rights of the Child and to create instruments for child protection. The Ministry of Social Affairs is responsible for legislation, while the „Comunidades Autonomas" are in charge of implementation and executory legislation. There are seventeen "Comunidades Autonomas" that are roughly comparable to Germany's states. There are slight differences in their executory legislation pertaining to the federal law.

[26] cf. Östereichisches Jugendwohlfahrtsgesetz, BGBl.No.161/1989, www.ris.bka.gv.at
[27] cf. Östereichisches Jugendwohlfahrtsgesetz, BGBl.No.161/1989, www.ris.bka.gv.at

9.5 England and Wales

The United Kingdom comprises the regions of Scotland, England, Wales, and Northern Ireland, some of which have their own legislation. Subsequently we refer to common legislation for England and Wales.

In the „Children Act" (CA) of 1989 the involvement of children in the proceedings is given much higher priority than in legislation adopted up to 1989. Children and parents shall be involved in decision-making in as comprehensive a manner as possible.

Contrary to the KJHG in Germany, a right to express wishes and choose when it comes to child and youth welfare offerings has not been explicitly laid down in the "Children Act." However, the law stipulates that the children's and parents' wishes shall be clarified and that it shall be ascertained that their views are taken into account, if possible.

The CA's Sect.17 states that the local authority shall support the upbringing of children with a need for care by their families and shall make available various offerings for this purpose. Clause 8, however, requires that the local authority take into consideration the means of the child concerned and each of its parents.

„17 Provisions of services for children in need, their families and others

(1) It shall be the general duty of every local authority(…)
a) to safeguard and promote the welfare of children within their area who are in need; and
b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs. (…)

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents. (…)"[28]

During preparation of a child's being taken into care, the law requires that children, parents, other persons having the care and custody of the child as well as persons whose assessment is deemed relevant be involved in care plan-

ning. These persons' wishes and feelings must be found out during decision-making and taken into consideration when the decision is made. However, the "Children Act" does not stipulate that the decision shall be documented in a written care plan and reviewed regularly.

The original legal text reads as follows:

"22 General duties of local authority in relation to children looked after by them

(1) In this Act, any reference to a child who is looked after by a local authority is a reference to a child who is
a) in their care; or
b) provided with accommodation by the authority in the exercise of any functions (in Particular those under this Act) which stand referred to their social services committee under the Local Authority Social Services Act 1970. (…)

(2) It shall be the duty of a local authority looking after any child
a) to safeguard and promote his welfare; and
b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case

(3) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of
a) the child
b) his parents
c) any person who is not a parent of his but who has parental responsibility for him; and
d) any other persons whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.

(4) In making any such decision a local authority shall give due consideration
a) having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;

[28] cf. Children Act 1989, in: Unen van, A. (1995): New legislation on care, p.168

b) to such wishes and feelings of any person mentioned in subsection (3)(b) to (d) as they have been able to ascertain; and
c) to the child's religious persuasion, racial origin and cultural and linguistic background. (…)"[29]

Besides, when a child is taken into care, its age, understanding, religious, ethnic, cultural, and linguistic background must be given consideration. According to the "European Forum for Child Welfare", procedures to initiate child care are, in their first phase, administrative proceedings. If, however, there is a suspicion of the child's being at risk, the social services must investigate. If it turns out during the preliminary investigation that the child is indeed at risk, an interdisciplinary child protection conference must be called. This conference is primarily attended by experts that are in contact with the child. The conference decides what action must be taken with respect to the child. Children of sufficient age and maturity may be invited to participate in such a conference so that they may represent their views and wishes.[30]

9.6 Ireland

In Ireland, the „Child Care Act 1991" is the legal foundation for children and parents that require support in terms of child care but also for child protection in cases of the child's having been put at risk, neglected, abused, or sexually abused.

Supporting children's guidelines for the protection and welfare of children were developed in 1999 to support people in an effort to recognize and report child abuse. In the same year, a commission working against the backdrop of the UN Convention on the Rights of the Child prepared a „National Children's Strategy to improve children's participation in society and to improve the perception of children in their role as citizens.

In the year 2001, the "Children Act 2001" bill was read in the "Irish Houses of Parliament." Currently, only some sections of the law have been passed and put into effect. The law provides a framework for a new Irish juvenile penal code system, and Part III (Protecting Children in an Emergency) amends the

[29] cf. Children Act 1989, in: Unen van, A. (1995): New legislation on care, p.170
[30] cf. European Forum for Child Welfare (2002), Child Justice: Equal Justice? p. 9

"Child Care Act 1991." Part III of the „Children Act 2001" refers to supporting children that require special protection and support because they put themselves at risk. In juvenile penal law, they are considered „out of control-non offending children," i.e., they are out of control but not culpable.

Health authorities are responsible for implementing the „Child Care Act." In the „Child Care Act" of 1991, Article 3 stipulates that each health authority must promote the welfare of children under its competency if the child does not receive appropriate support and protection.

In carrying out this function, however, the health authority must take into account the parents' rights and obligations and must view the child's welfare as its first and foremost point of consideration. If possible, the child's wishes should be included in its deliberations while giving consideration to the child's age and understanding. In addition, it must give consideration to the principle holding that it is generally to the child's benefit to grow up in its own family.[31]

If a child needs support and protection and is under the health authority's competency, and if further it appears unlikely that the child will receive this support and protection without being taken into appropriate care, the law's Section 4 obliges the authority to take the child into protective custody as provided by the section.

Besides, this legal text stipulates that in the situation described above and when it comes to providing support, the health authority is under the obligation to give consideration to the wishes of the parents having care and custody of the child or other persons acting in loco parentis.[32]

The „Child Care Act" contains no further provisions on parents' and children's involvement. In 1999, National Guidelines for the Protection and Welfare of Children were adopted. It is the objective of these guidelines to improve competencies when it comes to taking action with respect to identifying, reporting, investigating, treating, and managing cases of neglect, child abuse or child sexual abuse.

Implementation of these guidelines lists the following as some basic prerequisites for a good intervention in the context of child protection:

- The child's welfare is of paramount importance.

[31] cf. Child Care Act 1991, section 3, Functions of health board, p. 9
[32] cf. Child Care Act 1991, section 3 Functions of health board, p. 10

- There must be a balance between protecting the child and giving consideration to the parents' rights and needs. Should a conflict arise, the child's welfare must take precedence.
- Children have a right to be heard and to be taken seriously. While their age and understanding should be taken into account, they should be counseled and involved with respect to all matters and decisions that could concern their lives.
- Children are entitled to respect and should be counseled and involved in all matters concerning their families.[33]

The guidelines contain clear definitions and interventive action in cases of neglect, emotional abuse, physical violence and sexual abuse involving children. Also, in the guidelines a detailed care planning process has been laid down that will be described subsequently.

Families in which there is a risk that children may be neglected, abused or sexually abused are offered family-supporting care by the health authority.

This support can be given on three levels:

1. Direct aid for children
2. Support offerings for families
3. Offerings promoting the child's and family's friendships and networks

Before this care is initiated, first a need is determined, then a family care plan is prepared and in certain cases a family care agreement is entered into.

Determination of a need for care should take the following aspects into consideration:

- Each family member's perceived problems and worries
- Problems and worries as perceived by other persons, experts, other dependents
- Assessment of risks for children

[33] cf. Department of Health & Children (1999), Children First – National Guidelines for the Protection and Welfare of Children, Dublin, p. 23

- Solutions for the problem as perceived by the family and professionalism of the care available
- Strengths of the family and protecting factors
- Is there any acceptable informal support available?
- Is there any potential acceptable support available?
- Formal support available
- Formal support that should be made available[34]

Based on the above, the family care plan is prepared, which should consider the following factors:

- To what extent is agreement binding which exists or can be negotiated between the perception of the parents or other persons such as family members, experts, and other persons concerned
- The most pressing part of the problem
- Short and long-term objectives
- Available and potential options
- Connection to necessary resources
- Specialized persons, departments, agencies that should be involved
- Period during which family-supporting care will probably be needed
- Time when care will be reviewed

In the field of family-supporting care, there is an emphasis on dealing with each other as partners, but there are particular situations in which a written agreement between the families and the provider of the care offering is desirable. What was paraphrased as "particular situations" is not specified any more precisely in the guidelines. However, in the agreement the following points should be set forth in writing:

- Family's and care provider's mutual expectations
- Mutual understanding of the type of care to be sought and offered
- The family's responsibilities
- The care provider's responsibilities

[34] cf. Department of Health & Children (1999), Children First – National Guidelines for the Protection and Welfare of Children, Dublin, p. 62

- Objectives to be attained by a certain date
- Contingency plan[35]

To sum up, according to the Irish "Child Care Act" the child's wishes are to be given consideration but a right to express wishes and choose has not been laid down. A care planning procedure is not stipulated by law but rather by the Guidelines for the Protection and Welfare of Children adopted in 1999.

In this care planning procedure, all family members as well as other dependents and experts, if necessary, must be involved. In addition, the guidelines name very specific aspects to be highlighted in the context of care planning and described in the care plan. There is a care plan review, the time of which will be determined when the care plan is being prepared.

9.7 Greece

Seeking to determine whether care planning procedures exist in Greek child and youth welfare, our research yielded that no such procedure has been laid down in the law. According to Greek experts there is no child and youth welfare law; matters concerning children and youths are governed by the Civil Code, among others. In addition, the right to express wishes and choose stipulated in the KJHG in Germany exists neither in legislation nor in the practical reality of child and youth welfare.

In referring to Article 12: "Views of the Child", the 2001 report on Greek implementation of the UN Convention on the Rights of the Child mentions a stipulation of Article 1511 of the Greek Civil Code, which states that in matters of parental custody, the child's views should be determined in accordance with the maturity of the child before a decision concerning parental custody is made, if the child's welfare is affected.[36]

[35] cf. Department of Health & Children (1999), Children First – National Guidelines for the Protection and Welfare of Children, Dublin, p. 63

[36] cf. Committee on the Rights of Child (2001), Consideration of Reports submitted by States Parties under Article 44 of the Convention, Greece, p. 12

9.8 Italy

In 1997, Italy passed a law entitled „Disposizioni per la promozione di diritti e di opportunità per infanzia e l'adolescenza" (Child and Youth Rights and Opportunities Support and Protection Act). Unfortunately, we were unable to research to what extent this law is comparable to the German Child and Youth Services Act. To ensure that more coordinated policies can be implemented in the field of child and youth welfare, this area was moved to the Italian Ministry of Social Affairs. Within the Ministry, the Office of Family Affairs is in charge of child and youth welfare.[37] In 1997 Italy initiated a National Action Plan for the Implementation of the UN Convention on the Rights of the Child.

No references to any implementation of care planning procedures in Italy were found. The Italian report on the implementation of the UN Convention on the Rights of the Child points out that Italian legislation does not explicitly stipulate a right for young people to express their views on matters concerning accommodation in care institutions or foster families. However, reference is made to the fact that some judges more aware of the problem had developed a conviction that it was always required to allow a child to express its views and to explain to it the major steps to be taken before a child is separated from its family.[38]

9.9 Sweden

In Sweden, child and youth welfare is laid down in the "Social Service Act." Unfortunately, we were unable to obtain the legal text. However, the report on the implementation of the UN Convention on the Rights of the Child says support in child and youth welfare should primarily be offered in agreement with parents having the care and custody of the child and the child itself if the child is 15 or more years of age.

In addition, the report states that Sweden began gathering some experience in putting together family conferences in 1995. It is the conferences' objective for families and their networks to encourage and discuss steps to support chil-

[37] cf. Committee on the Rights of the Child (2000), Consideration of Reports submitted by the States Parties under Article 44 of the Convention, Italy, p. 62
[38] cf. Committee on the Rights of the Child (2000), Consideration of Reports submitted by the States Parties under Article 44 of the Convention, Italy, p. 45

dren within their families. It is the family's objective to arrive at easy-to-implement decisions on how to bring up their children and how to support them as they grow up. Apparently, those decisions are documented in a plan because the Social Services are responsible for reviewing the plan and for supporting the family during the plan's implementation.[39]

It would require further study to determine to what extent a type of care planning institutionalized in the law has evolved from this model experiment.

9.10 Flanders

Youth welfare in Belgium is governed by her communities' legislation. Belgium consists of the Flemish, French and German communities. In 1990, Flanders amended its legislation regarding youth protection. The term „youth protection" was replaced by the term „youth welfare." Among other things, the Flemish government's youth welfare policies are characterized by:

- A separation of voluntary and court-ordered youth care: Committees for youth welfare were initiated that are autonomous from court-related organizations and that have obtained an identity as organizations for voluntarily accepted care in difficult situations in a youth's upbringing;
- More rights for youths: Minors below the age of 14 are granted the right to be heard in problem situations. From the age of 14 they must agree to the care offered. Youths are entitled to care. Care is provided for a limited amount of time, and extensions are only possible if objectives were not met during the original timeframe. Based on this, it may be assumed that in practice both the care and ist objectives are documented in writing to have a criterion for reviewing and extending care, if applicable.
- A family-oriented approach is postulated. This follows the conviction that support offered to children and youths in problematic situations during their upbringing requires the children's and parents' consent.

[39] cf. Committee on the Rights of the Child (1997), Consideration of Reports submitted by States Parties under Article 44 of the Convention, Sweden, p. 63

We were unable to clarify to what extent a care planning procedure is stipulated in Flemish law; this would require further research. Also, further research would be necessary to describe child and youth welfare policies in the French and German communities.

10 Summary

German child and youth services law stipulates that an entitlee receiving child care has a right to express wishes and choose unless this entails disproportionate additional cost. According to the laws in effect in other European countries, the children's and sometimes the parents' wishes must be clarified and given consideration, or their consideration must be ensured, but consideration of those wishes has not been codified as a legal right.

In the Netherlands the law stipulates the requirements for providing care – close to the child's residence, if possible, or with as little interference in the family system as possible and with as much as necessary -, but no right to express wishes and choose has been laid down in the law. In Finland, the child's interest shall be taken into account. Social workers are instructed to counsel a child in a manner that will ensure that the child receives the necessary care. Also, the child's wishes shall be given consideration, which is qualified by the words that this should be done if possible.

Thus, Germany has most clearly stipulated the legal right to express wishes and choose.

If longer-term care is concerned, German legislation provides for decisions on the type of care to be made by several collaborating specialized staff. Care is then based on a care plan prepared together with the child and the person having the care and custody of the child, with the plan containing the care needed, the type of care to be provided and the services required. This care plan shall be reviewed regularly to determine if the type of care chosen continues to be appropriate and required.

In the Netherlands, preparing a care plan is always called for in the context of crisis intervention, the child's being taken into care or the child being put in foster or day care institutions.

The care plan is based on the need determined, with the need having been determined no longer than two months prior. The German SGB VIII contains

no provisions on such a time limit for the determination of need. Contrary to German legislation, which refers to regular reviews, Dutch legislation stipulates a clear time frame of six months for care plan reviews.

Among the countries surveyed here, Finland was the first country to lay down care planning in a Child Welfare Act as early as 1983. There is a general requirement for care planning if family-oriented or individual child care are to be provided. German legislation, on the other hand, contains no such fundamental requirement for care planning, but care planning is supposed to be reviewed only if necessary. Children, parents, and custodians must be involved. In addition, it is interesting that the law expressly names persons with prior involvement in the case. One may conclude that lawmakers were concerned about maintaining continuity in the care provided in the respective family.

In England und Wales, a child's being taken into care requires care planning that involves children, parents, other persons having the care and custody of the child, and those persons whose assessment is deemed relevant. What is interesting about this procedure is the fact that, expressing that society's multiculturalism, the law stipulates giving consideration to the religious, ethnic, cultural and linguistic background of the respective children and youths.

In Ireland, care planning is not stipulated in the law, but Guidelines on the Protection and Welfare of Children have been adopted. These guidelines provide for a procedure that makes specific requirements for the content of care planning and thus sets standards for care planning in terms of norms and quality assurance.

During our research it became apparent that specialized staff in other European countries view Germany as holding a preeminent position in terms of involvement and care planning, when compared to many other countries.

Ireland's example shows, however, that to determine how developed care planning procedures are in the respective countries it is not sufficient to answer the question whether care planning procedures have been laid down in the law. In our opinion, it would be very interesting to investigate together with experts from the countries the status of care planning implementation in the respective countries. In this context, countries such as Sweden, Belgium, and Austria should be studied more thoroughly.

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