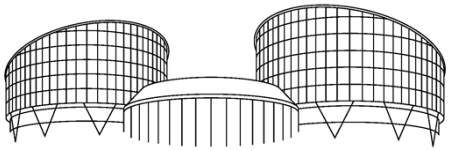

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF WUNDERLICH v. GERMANY

(Application no. 18925/15)

JUDGMENT

STRASBOURG

10 January 2019

FINAL

24/06/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wunderlich v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Yonko Grozev, *President,*
Angelika Nußberger,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 27 November 2018,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 18925/15) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two German nationals, Mr Dirk Wunderlich and Ms Petra Wunderlich ("the applicants"), on 16 April 2015.

2. The applicants were represented by Mr R. Clarke, a lawyer of ADF International based in Vienna. The German Government ("the Government") were represented by their Agent, Ms K. Behr, of the Federal Ministry of Justice and Consumer Protection.

3. The applicants alleged that the German authorities had violated their rights under Article 8 of the Convention by withdrawing parts of parental authority (*Entzug von Teilen des elterlichen Sorgerechts*) – including the right to determine the children's place of residence (*Aufenthaltsbestimmungsrecht*) –, by transferring these parts to the youth office and by executing the withdrawal in the form of forcibly removing the children from the applicants and placing them in a children's home for three weeks.

4. On 30 August 2016 the Government were informed of the complaint under Article 8 of the Convention concerning, firstly, the decision to withdraw parts of parental authority and, secondly, the forced removal of the applicants' children into public care in August 2013. The remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. Written submissions were received from the European Centre for Law and Justice and from Ordo Iuris – Institute for Legal Culture, which had been granted leave by the Vice-President to intervene as third parties in the

proceedings (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. The applicants, Petra Wunderlich, who was born in 1967, and Dirk Wunderlich, who was born in 1966, are married to each other.

7. The applicants are the parents of four children: M. (born in July 1999), J. (born in September 2000), H. (born in April 2002) and S. (born in September 2005).

8. The applicants reject the State school system and compulsory school attendance and wish to homeschool their children themselves. In 2005 their oldest daughter, M., reached school age. The applicants refused to register her in a school. Several regulatory fines and criminal proceedings were conducted against the applicants for failing to comply with rules on compulsory school attendance. The applicants accepted these decisions and paid the fines, but did not change their behaviour.

9. Between 2008 and 2011 the applicants lived with their children abroad. In 2011 they returned to live permanently in Germany, but did not register their children with any school.

B. Proceedings at issue

10. By a letter of 13 July 2012 the State Education Authority (*staatliches Schulamt* – hereinafter "the Education Authority") informed the competent family court that the applicants were deliberately and persistently refusing to send their children to school and provided a chronological list of administrative fines and criminal investigations against the applicants – amongst others for hitting one of the daughters – as well as of other incidents since 2005. The Education Authority concluded that the children were growing up in a "parallel world" without any contact with their peers and that they received no attention of any kind which would enable them to have a part in communal life in Germany. It therefore suggested a court measure under Article 1666 of the German Civil Code (see paragraph 25 below), arguing the children's best interests were endangered owing to their being systematically deprived of the opportunity to participate in "normal" life. The youth office (*Jugendamt* – hereinafter: "the youth office") supported the request of the Education Authority. It considered that the

persistent refusal of the applicants endangered the best interests of the children.

11. The Darmstadt Family Court initiated court proceedings and heard testimony from the applicants, their children and the youth office. It also appointed a guardian *ad litem* for the children. In the oral hearing, on 6 September 2012, the applicants stated that they had paid the administrative fines imposed on them for not sending the children to school and that, despite the State sanctions, they would continue to homeschool their children. Already in a previous written submission the applicants had confirmed their unwillingness to send their children to school and had stated that the authorities would have to remove their children from the family home and take them away from them entirely if the children were ever to go to a State school. The children explained during the hearing that it was primarily their mother who taught all four children and that school normally started at 10 a.m. and lasted until 3 p.m., with a break for lunch, which was prepared by their mother.

12. On 6 September 2012 the Darmstadt Family Court withdrew the applicants' right to determine their children's place of residence, their right to take decisions on school matters and right to apply to the authorities on behalf of their children, and transferred these rights to the youth office. It also ordered the applicants to hand their children over to the youth office for enforcement of the rules on compulsory school attendance and authorised the youth office to use force if necessary. In its reasoning the court stated that the parents' persistent refusal to send their children to a State school or a recognised grant-aided independent school not only violated section 67 of the Hesse School Act (*Hessisches Schulgesetz*) (see paragraph 31 below) but also represented an abuse of parental authority which risked damaging the children's best interests in the long term. Independent from the question of whether it could be ensured that the children were acquiring sufficient knowledge through the applicants' homeschooling, the children's not attending school was preventing them from becoming part of the community and learning social skills such as tolerance, assertiveness and the ability to assert their own convictions against majority-held views. The court found that the children needed to be exposed to influences other than those of their parental home to acquire those skills. Lastly, the court concluded that no less severe measures were available. Owing to the persistent refusal of the applicants to send their children to school, only withdrawing parts of parental authority could ensure the children's continual attendance at school and would prevent them suffering harm on account of them being educated at home.

13. The applicants appealed against that decision.

14. In a letter dated 15 November 2012 the youth office informed the applicants that it intended to assess the children's knowledge on 22 November 2012 and asked the applicants to have their children ready to

be collected on that day. On 22 November 2012 a member of staff of the youth office, acting as the children's guardian, attempted to take the children to the Education Authority's premises to conduct the learning assessment. The children refused to go with him. A second attempt to take the children to the learning assessment on the same day by two members of the public-order office and a police patrol also failed on account of the children's refusal to accompany them. In a letter dated 10 December 2012 the applicants were notified of two dates (19 December 2012 and 17 January 2013) on which the children were to be assessed at home. The applicants submitted statements to the Education Authority in which they informed the latter that the children did not wish to participate in the assessment. In a letter dated 20 December 2012 the Education Authority informed the applicants' lawyer that in order to ensure the children's school attendance the children would, among other things, firstly have to undergo a learning assessment. At the same time the parents were informed that the appointment of 19 December 2012 had been cancelled, but the appointment of 17 January 2013 still stood. However, staff of the Education Authority were not allowed to enter the family home when they arrived for the appointment in January 2013. The father spoke to the members of staff and explained that he believed that the Family Court's decision had been unlawful and that he alone was authorised to decide whether his children attended school or not.

15. On 25 April 2013 the Frankfurt am Main Court of Appeal rejected the parents' appeal, but clarified that the applicants retained the right to determine their children's place of residence during school holidays in Hesse. At the outset the court noted that up to that date the children had not attended school, even though the decision of the Darmstadt Family Court had not been suspended. It also observed that all attempts to conduct a learning assessment had failed on account of the children's and the parents' resistance. As to the law, the court outlined that the decision to withdraw parts of parental authority under Articles 1666 and 1666a of the Civil Code (see paragraphs 25 and 26 below) presupposed a significant endangerment of the best interests of the children, which the parents were unable or unwilling to prevent. To establish such an endangerment, a process of balancing the various interests had to be undertaken, during which the rights and interests of the children and of the parents as well as the interests of society had to be considered. In particular, a withdrawal of parental authority could not be justified to enable children to receive the best possible education but only to prevent any endangerment of children. Applying these principles to the case at hand, the court concluded that the applicants' persistent refusal to ensure that their children attended school risked damaging the best interests of the children. According to the court, the children's best interests were in concrete danger on account of them being kept in a "symbiotic" family system and being denied an education

which met standards which were both well recognised and fundamentally important for growing up in society. The education they were receiving from the applicants could not compensate for not attending school. Five hours of homeschooling – including a lunch break –, which was conducted concurrently for all four children, could not suffice to offer each child a range of schooling appropriate to his or her age. In addition, the children were also not members of any sports club, music school or similar organisation where they could acquire other skills important for their education. The court also noted that the applicants' submissions as a whole showed that their main concern was creating a strong attachment between the children and their parents to the exclusion of others. Moreover, by their persistent refusal they were also teaching the children that they did not need to comply with the rules of community life if they found them disagreeable. Lastly, the Court of Appeal found that there were no less severe measures available, since merely issuing instructions would have been ineffective, as shown by the applicants' previous conduct and submissions. Consequently, the withdrawal of parts of parental authority by the Family Court had been correct.

16. On 9 October 2014 the Federal Constitutional Court refused to accept the applicants' constitutional complaint for adjudication, without providing reasons. The decision was served upon the applicants on 16 October 2014.

17. In later proceedings (see paragraph 23 below) the Frankfurt am Main Court of Appeal transferred the right to determine the children's place of residence back to the applicants on 15 August 2014.

C. Children's Removal from the Family Home

18. On 26 August 2013 the youth office arranged a meeting between the applicants, their lawyer, the youth office and the Education Authority. During the meeting the applicants declared that they refused – on principle – to have their children schooled outside the family. In addition, Mr Wunderlich stated, amongst other things, that he considered children to be the 'property' of their parents.

19. On 29 August 2013 the applicants' children were removed from the parental home and placed in a children's home. The children had to be carried out of the house individually with the help of police officers after they had refused to comply with the court bailiff's requests to come out voluntarily.

20. On 12 September 2013 and on 16 September 2013 the knowledge of the applicants' children was assessed for ninety minutes each during two school appointments with a view to determining the children's appropriate class and schooling requirements.

21. In written submissions dated 10 September 2013 concerning other ongoing proceedings before the Family Court the applicants agreed to the children's attending school. On 19 September 2013 the court heard testimony from the applicants, their children and a member of staff of the Education Authority. The children were subsequently handed back to the applicants that same day, since the applicants were now willing to allow their children to attend school.

D. Further Developments

22. Following the return of the children on 19 September 2013, they attended school for the school year of 2013-14. On 16 May 2014 the Education Authority lodged a criminal complaint against the applicants for failing to comply with rules on compulsory school attendance. On 25 June 2014 the applicants again withdrew their children from school.

23. On 15 August 2014, in parallel proceedings, the Frankfurt am Main Court of Appeal transferred the right to determine the children's place of residence back to the applicants. The court held that, as pointed out in its decision of 25 April 2013 (see paragraph 15 above), the applicants' persistent refusal to send their children to school constituted child endangerment and that neither their temporary schooling nor the learning assessment of the children had changed that conclusion. However, the court continued, the situation had changed in comparison to that of August 2013, at which point – according to the information provided by the youth office – several elements had led to the children's removal from the family home: a risk emanating from the children's father to their physical integrity could not be excluded; failed attempts to bring the children to school by the police had led to the risk of the children internalising the attitude that laws had had no bearing on them; attempts to carry out a learning assessment had failed owing to the resistance of the applicants; and according to the information available at the time, it had been possible to assume that the children had had no contact with anyone outside of the family whatsoever. According to the information gathered since the removal of the children by the youth office, any risk to their physical integrity emanating from the applicants could now be excluded. Moreover, the learning assessment had showed that the knowledge level of the children was not alarming and that the children were not being kept from school against their will. Since permanent removal of the children from their parents would be the only possible way to ensure the continued schooling of the children, this was no longer proportionate as it would have a greater impact on the children than being homeschooled by their parents. The Court of Appeal however emphasised that the present decision should not be understood as permission for the applicants to homeschool their children. In that regard it observed that the Education Authority had already lodged a criminal complaint against the applicants for

failing to comply with the rules on compulsory school attendance, which carried a maximum sentence of six months' imprisonment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. German Basic Law (*Grundgesetz*)

24. Article 6 of the Basic law, in so far as relevant, reads as follows

> "(1) Marriage and the family shall enjoy the special protection of the State.
>
> (2) The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The State shall watch over them in the performance of this duty.
>
> (3) Children may be separated from their families against the will of their parents or guardians only pursuant to a law, and only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect. ..."

B. German Civil Code (*Bürgerliches Gesetzbuch*)

25. 31. Article 1666 of the German Civil Code reads, as far as relevant, as follows:

> "(1) Where the physical, mental or psychological best interests of a child or a child's property are endangered and the parents do not wish, or are not able, to avert the danger, a family court must take the necessary measures to avert the danger.
>
> ...
>
> (3) The court measures in accordance with subsection (1) include in particular
>
> 1. instructions to seek public assistance, such as benefits of child and youth welfare and healthcare,
>
> 2. instructions to ensure that the obligation to attend school is complied with,
>
> 3. prohibitions to use the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home or to visit certain other places where the child regularly spends time,
>
> 4. prohibitions to establish contact with the child or to bring about a meeting with the child,
>
> 5. substitution of declarations of the person with parental authority,
>
> 6. part or complete removal of parental authority [*die teilweise oder vollständige Entziehung der elterlichen Sorge*]."

26. Article 1666a of the German Civil Code, in so far as relevant, reads as follows:

> "(1) Measures which entail separation of the child from his or her parental family are only allowed if other measures, including public support measures, cannot avert the danger ...

(2) The right to care for a child may only be withdrawn if other measures have been unsuccessful or if it is to be assumed that they do not suffice to avert the danger."

27. Article 1696 of the German Civil Code, in so far as relevant, reads:

"(2) A measure under sections 1666 to 1667 or another provision of the Civil Code, which may only be taken if this is necessary to avert a danger to the child's best interests or which is in the child's best interests (measure under the law on child protection) must be cancelled if there is no longer a danger to the best interests of the child or the measure is no longer necessary."

28. According to an earlier decision of the Federal Court of Justice (no. XII ZB 42/07, 17 October 2007), parents' persistent refusal to send their children to a State primary school or an approved grant-aided independent school represents an abuse of parental authority which endangers the best interests of the children concerned and can necessitate that a family court takes measures under Articles 1666, 1666a of the Civil Code. A partial withdrawal of parental authority and the ordering of guardianship are in principle suitable for countering such an abuse of parental authority. The Federal Court of Justice also concluded that it might be appropriate for a guardian to be authorised to enforce the handing over of children, if need be by using force and by means of entering and searching the parents' home, as well as by drawing on the assistance of the bailiff's office or the police.

C. Hesse School Act (*Hessisches Schulgesetz*)

29. Section 56 of the Hesse School Act reads, as far as relevant, as follows:

"(1) All children, juveniles and young adults whose place of residence or habitual place of residence, or whose place of training or of work is in Hesse must comply with [the rules on] compulsory school attendance.

(2) Compliance with [the rules on] compulsory school attendance entails attending a German school. Foreign pupils may also comply with [the rules on] compulsory school attendance by attending a State-approved school run by an independent body (supplementary school) which prepares them for the International Baccalaureate or the qualifications of a Member State of the European Union. The school supervisory authority shall take decisions on exemptions. Such decisions require important grounds.

..."

30. Section 60 of the Hesse School Act, in so far as relevant, reads as follows:

"(1) Compliance with compulsory full-time school attendance entails attending a State primary and lower secondary school.

(2) Alternatively, compliance with full-time school attendance may entail attending a grant aided independent school. Other teaching outside of school may be authorised by the school supervisory authority only for compelling reasons.

...”

31. The relevant part of section 67 of the Hesse School Act reads as follows:

> “(1) Parents are responsible for ensuring that school-age children regularly attend school and participate in educational activities. They are obliged to register and de-register school-age children at the competent school, if necessary to present themselves so that a decision may be taken regarding whether a school-age child is to be enrolled, and to provide school-age children with all they need to attend school.
>
> ...”

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

32. The applicants complained that the German authorities had violated their right to respect for family life as provided in Article 8 of the Convention by withdrawing parts of parental authority (*Entzug von Teilen des elterlichen Sorgerechts*) – including the right to determine the children’s place of residence (*Aufenthaltsbestimmungsrecht*) –, by transferring these parts to the youth office and by executing the withdrawal in the form of forcibly removing the children from the applicants and placing them in a children’s home for three weeks. Article 8 reads as follows:

> “1. Everyone has the right to respect for his ... family life ....
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health or morals, or for the protection of the rights and freedoms of others.”

33. The Government contested that argument.

A. Admissibility

34. The Government submitted that the complaint as far as the decision taken by the youth office – in the exercise of the right to determine the children’s place of residence was transferred to the office – to take the children into care between 29 August and 19 September 2013 was inadmissible. The Government argued that the application received by the Court in April 2015 had been lodged after the expiry of the six-month time-limit set out in Article 35 § 1 of the Convention, which had begun to run from the children’s time in a children’s home between 29 August and 19 September 2013.

35. The applicants contested that argument.

36. The Court reiterates that the six-month time-limit provided for by Article 35 § 1 marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible. The existence of such a time-limit is justified by the wish of the High Contracting Parties to prevent past judgments being constantly called into question and constitutes a legitimate concern for order, stability and peace (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 40, 29 June 2012, with further references). Rule 47 of the Rules of Court closer defines the relevant date of introduction and reads, in so far as relevant:

> "[T]he date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark."

37. The Court observes that the removal of the children constituted the execution of the Darmstadt Family Court's decision of 6 September 2012 and is therefore intrinsically tied to that decision. The applicants appealed against the decision and exhausted the domestic remedies by lodging a constitutional complaint, which was not admitted for adjudication. The decision of the Federal Constitutional Court was served upon the applicants on 16 October 2014 (see paragraph 16 above). The applicants' duly completed application form accompanied by copies of all relevant documents was sent to the Court on 16 April 2015. The Court therefore concludes that the applicants' application was lodged within the six-month time-limit.

38. The Court also notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

39. The applicants submitted that the German authorities had interfered with the applicants' right to respect for family life not only by partially withdrawing parental authority and transferring those rights to the youth office but also by enforcing the decision and placing their children in a children's home for three weeks. Those interferences had not pursued a legitimate aim – in particular they had not aimed at the protection of the health, rights and freedoms of the children – as the children had been schooled and the removal from their parents and their family home had harmed them instead of protecting them. Moreover, the interferences had also not been necessary in a democratic society. Firstly, there had not been sufficient evidence of any risk to the children, let alone relevant and

sufficient reasons to justify the removal and withdrawal of parental authority. Secondly, the authorities had not acted in the best interest of the children but had merely acted to prevent home schooling and to enforce the rules on compulsory school attendance. Thirdly, the authorities had not attempted less intrusive measures, had not worked towards reunification of the family and had not transferred the parental rights back to the applicants as soon as possible. Lastly, the decisions of the authorities had been based on misconceptions of home schooling and the wrong assumption that such schooling would lead to social isolation and a lack of education. These assumptions, however, had not been grounded in facts.

40. The Government accepted that the decision to withdraw, among other things, the applicants' right to determine the children's place of residence and the fact that their children had been subsequently forcibly separated from their parents had constituted interferences with the right to respect for the applicants' family life. The interferences had been, however, in accordance with the law and had pursued the legitimate aim of protecting the health, rights and freedoms of the applicants' children. Moreover, the interferences had been necessary in a democratic society. The German authorities had established, based on the information available at the relevant time, that the best interest of the children had been at risk and that this fact had required the partial withdrawal of parental authority. Despite compulsory school attendance, the children had not attended a State school for years. The schooling by, in particular, their mother had had to be regarded as inadequate, since the children had been taught only for five hours a day, interrupted by a lunch break, and, notwithstanding their different ages, all children had been taught together and the same curriculum. In addition, the children had had no regular contact with society and hardly any opportunity to meet children of their own age, for example during music lessons or in sports clubs, or to acquire social skills. They consequently had grown up isolated within their own family enclave, in which the applicants had ensured that their children had established a strong attachment to them, to the exclusion of others. The courts had therefore correctly assumed that a "symbiotic" family system had emerged. Further information had not been available to the authorities as the applicants had persistently resisted and prevented the children's situation from being examined in detail by the youth office or the Education Authority. The domestic courts, in particular the Frankfurt am Main Court of Appeal, outlined these sufficient and relevant reasons in detail in their decisions. The courts had also assessed whether less severe measures had been available but had correctly concluded that, given the applicants' previous conduct and persistent rejection of schooling outside their own home, which could not even be changed by criminal sanctions, no other measures had been available. Moreover, as soon as the learning assessment had been

undertaken and the applicants had agreed to send their children to a public school, the children had been returned to their parents.

41. The third-party intervener Ordo Iuris submitted that according to the established case-law of the Court any interference with the right to family life and in particular with the mutual enjoyment by parent and child of each other's company had to be oriented to the best interests of the child. On a procedural level, decisions had to be based on sufficient and relevant reasons, parents had to be involved in the proceedings and separation of children and parents should only be a measure of last resort and kept as short as possible. Ordo Iuris further argued that home-schooling as such could not justify removal of children from their parents and made extensive submissions – in particular concerning Article 2 of Protocol No. 1 to the Convention – regarding the protection of a right to home-schooling under the Convention. Similarly, the third party intervener European Centre for Law and Justice argued that home-schooling should be protected by the Convention under Article 2 of Protocol No. 1.

2. The Court's assessment

42. At the outset, and having regard to the submissions of the parties and third parties, the Court finds it necessary to clarify the scope of the application. The Court notes that the application concerns the compatibility of a temporary and partial withdrawal of parental authority and the enforcement of this decision with Article 8 of the Convention. While the prohibition of home-schooling in Germany is an underlying issue of this complaint, the Court observes that it has already decided upon the compatibility of this prohibition with the Convention – in particular Article 8 and Article 2 of Protocol No. 1 - before (see, for example, *Konrad and Others v. Germany* (dec.), no. 35504/03, 11 September 2006; *Dojan and Others v. Germany* (dec.), nos. 319/08, 2455/08, 7908/10, 8152/10 and 8155/10, 13 September 2011; and *Leuffen v. Germany,* no. 19844/92, Commission decision of 9 July 1992) and that the respective part of the application has already been declared inadmissible (see paragraph 4 above).

43. The Court observes that the parties agreed that partially withdrawing parental authority, transferring those rights to the youth office and enforcing the decision by removing the applicants' children from their parents' home and placing them in a children's home for three weeks, constituted interferences with the applicants' right to respect for family life under Article 8 of the Convention. It is further also not in dispute that these interferences were based on Articles 1666, 1666a of the Civil Code (see paragraphs 25 and 26 above). The Court endorses these conclusions.

44. Such interferences constitute a violation of Article 8 unless they pursue a legitimate aim and can be regarded as "necessary in a democratic society". In that context, the applicants argued that the interferences had not pursued legitimate aims, since taking the children into care had harmed

them instead of protecting them. The Government however submitted that the authorities had acted with the aim of protecting the health, rights and freedoms of the applicants' children.

45. The Court notes that Articles 1666, 1666a of the Civil Code (see paragraphs 25 and 26 above) are aimed at protecting the physical, mental or psychological best interests of a child. There is nothing to suggest that it was applied for any other purpose in the present case. Consequently, the Court is satisfied that the authorities acted in pursuit of the legitimate aims of protecting "health or morals" and "rights and freedoms of others".

46. The question of whether the interference was "necessary in a democratic society" requires consideration of whether, in the light of the case as a whole, the reasons adduced to justify the measure were "relevant and sufficient". Article 8 requires that a fair balance must be struck between the interests of the child and those of the parent and, in striking such a balance, particular importance must be attached to the best interests of the child which, depending on their nature and seriousness, may override those of the parent (see *Elsholz v. Germany* [GC], no. 25735/94, §§ 48, 50, ECHR 2000-VIII; *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 70, ECHR 2001-V (extracts); *Hoppe v. Germany*, no. 28422/95, §§ 48, 49, 5 December 2002; and *Wetjen and Others v. Germany*, nos. 68125/14 and 72204/14, § 68, 22 March 2018).

47. In considering the reasons adduced to justify the measures in question the Court will give due account to the margin of appreciation to be accorded to the competent national authorities, which had the benefit of direct contact with all of the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation (see *Kutzner v. Germany*, no. 46544/99, § 66, ECHR 2002-I). The margin of appreciation will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening his or her health or development and, on the other hand, the aim to reunite the family as soon as circumstances permit (*K. and T. v. Finland* [GC], no. 25702/94, § 155, ECHR 2001-VII; *Mohamed Hasan v. Norway*, no. 27496/15, § 145, 26 April 2018). The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (see *K. and T. v. Finland*, cited above, § 155). In addition, the Court will have regard to the fact that perceptions as to the appropriateness of intervention by public authorities in the care of children vary from one Contracting State to another, depending on such factors as traditions relating to the role of the family and to State intervention in family affairs and the availability of resources for public measures in this particular area. However, consideration of what is in the best interest of the child is in any event of crucial importance (see *Kutzner*, cited above, § 66).

48. Turning to the facts of the present case, the Court reiterates that the fact that a child could be placed in a more beneficial environment for his or her upbringing will not on its own justify a compulsory measure of removal from the care of the biological parents; there must exist other circumstances pointing to the "necessity" for such an interference with the parents' right under Article 8 of the Convention to enjoy family life with their child (see *K. and T. v. Finland*, cited above, § 173).

49. It also notes that the German courts justified the partial withdrawal of parental authority by citing the risk of danger to the children. The courts assessed the risk on the persistent refusal of the applicants to send their children to school, where the children would not only acquire knowledge but also learn social skills, such as tolerance or assertiveness, and have contact with persons other than their family, in particular children of their own age. The Court of Appeal further held that the applicants' children were being kept in a "symbiotic" family system.

50. The Court further reiterates that it has already examined cases regarding the German system of imposing compulsory school attendance while excluding home education. It has found it established that the State, in introducing such a system, had aimed at ensuring the integration of children into society with a view to avoiding the emergence of parallel societies, considerations that were in line with the Court's own case-law on the importance of pluralism for democracy and which fell within the Contracting States' margin of appreciation in setting up and interpreting rules for their education systems (see *Konrad and Others*; *Dojan and Others*; and *Leuffen*; all cited above).

51. The Court finds that the enforcement of compulsory school attendance, to prevent social isolation of the applicants' children and ensure their integration into society, was a relevant reason for justifying the partial withdrawal of parental authority. It further finds that the domestic authorities reasonably assumed – based on the information available to them – that children were endangered by the applicants by not sending them to school and keeping them in a "symbiotic" family system.

52. In so far as the applicants submitted that the learning assessment taken by the children had shown that the children had had sufficient knowledge, social skills and a loving relationship with their parents, the Court notes that this information was not available to the youth office and the courts when they decided upon the temporary and partial withdrawal of parental authority and the taking of the children into care. In contrast, having regard to the statements of, in particular, Mr. Wunderlich – for example that he considered children to be the 'property' of their parents – and on the information available at the time, the authorities reasonably assumed that the children were isolated, had no contact with anyone outside of the family and that a risk to their physical integrity existed (see paragraphs 10, 18 and 23 above). The Court also reiterates that even

mistaken judgments or assessments by professionals do not *per se* render childcare measures incompatible with the requirements of Article 8. The authorities – both medical and social – have a duty to protect children and cannot be held liable every time genuine and reasonably-held concerns about the safety of children *vis-à-vis* members of their families are proved, retrospectively, to have been misguided (see *R.K. and A.K. v. the United Kingdom*, no. 38000/05, § 36, 30 September 2008). The Court would also add that the unavailability of this information was based on the applicants' resistance to have the learning assessment conducted prior to the removal of the children.

53. To assess whether the reasons adduced by the domestic courts were also sufficient for the purposes of Article 8 § 2, the Court will have to determine whether the decision-making process, seen as a whole, provided the applicants with the requisite protection of their interests (see, *inter alia*, *T.P. and K.M. v. the United Kingdom*, cited above, § 72, and *Süß v. Germany*, no. 40324/98, § 89, 10 November 2005). The Court observes that the Darmstadt Family Court heard testimony from the applicants, their children and the youth office and appointed a guardian *ad litem* for the children to represent their interests. In addition, the applicants submitted extensive written pleadings to the domestic courts. The Court is therefore satisfied that the applicants, represented by legal counsel, were in a position to put forward all their arguments against the temporary and partial withdrawal of parental authority and that the procedural requirements implicit in Article 8 of the Convention were complied with.

54. Lastly, the Court has to examine whether the decisions to withdraw parts of the parents' authority and to take the children into care were proportionate. The domestic courts gave detailed reasons why less severe measures than taking the children into care were not available. They held, in particular, that the prior conduct of the applicants and their persistent resistance to measures had shown that merely issuing instructions would be ineffective. The Court notes that not even prior administrative fines had changed the applicants' refusal to send their children to school. It therefore finds, in the circumstances of the present case, the conclusion by the domestic courts acceptable.

55. The Court would further reiterate that the seriousness of measures which separate parent and child requires that they should not last any longer than necessary for the pursuit of the child's rights and that the State should take measures to rehabilitate the child and parent, where possible (see *T.P. and K.M. v. the United Kingdom*, cited above, § 78, with further references). In that regard it notes that the children were returned to their parents after the learning assessment had been conducted and the applicants had agreed to send their children to school. The Court therefore concludes that the actual removal of the children did not last any longer than necessary in the children's best interest and was also not implemented in a way which was

particularly harsh or exceptional (see *K. and T. v. Finland*, cited above, § 173). In that regard, the Court also observes that the applicants did not complain about the placement of their children in a particular facility or the treatment of their children while in care.

56. In so far as the applicants complained that the partial withdrawal of parental authority had only been lifted in August 2014, the Court notes that, after the first learning assessment, a further in-depth long-term assessment of the children's development was necessary, which required continuous attendance at school. Furthermore, the Court finds that the existence of the non-enforced decision did not impose any identifiable actual prejudice (compare *R.K. and A.K. v. the United Kingdom*, cited above, § 38).

57. The foregoing considerations are sufficient to enable the Court to conclude that there were "relevant and sufficient" reasons for the withdrawal of some parts of the parents' authority and the temporary removal of the children from their family home. The domestic authorities struck a proportionate balance between the best interests of the children and those of the applicants, which did not fall outside the margin of appreciation granted to the domestic authorities.

58. There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning Article 8 of the Convention admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 10 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Yonko Grozev
Registrar	President