



Colloquium 3(39)/2020
ISSN 2081-3813, e-ISSN 2658-0365
CC BY-NC-ND.4.0
DOI: 10.34813/22coll2020

LEAVING CARE IN GERMANY: LEGAL AND ORGANISATIONAL FRAMEWORK

Usamodzielnianie się w Niemczech: ramy prawne i organizacyjne

Thomas Meysen
SOCLES International Centre for Socio-Legal Studies, Heidelberg, Germany
meysen@socles.de
ORCID: 0000-0003-3904-5030

Abstract

Young people who cannot live with their birth families are provided with care through the child and youth welfare system. They are placed in foster, or residential care. In Germany, children and young people in care, and after leaving care are referred to with the English term “care leaver”. This phrase has become a code name for this group of persons in society. They have increasingly received attention from policy makers, and researchers over the last two decades. The chapter gives an overview to the German situation of children in and leaving care. It introduces the statistics in the field and the organisational, as well as legal framework, describes the path to independence when leaving care, and promising recent developments to empower care leavers, as well as to support self-organisation.

Keywords: young people, foster care, residential care, care leaver.

Streszczenie

Młodzież, która nie może mieszkać ze swoimi rodzinami urodzenia, jest objęta opieką w ramach systemu opieki nad dziećmi i młodzieżą. Są umieszczani w rodzinie zastępczej lub w domu opieki. W Niemczech dzieci i młodzież pozostające pod opieką oraz osoby opuszczające opiekę są nazywane angielskim terminem „wychowawca opieki”. To wyrażenie stało się kryptonimem dla tej grupy osób w społeczeństwie. Od dwudziestu lat przyciągają coraz większą uwagę decydentów i badaczy. Rozdział zawiera przegląd sytuacji dzieci pozostających pod opieką i opuszczających ją w Niemczech. Wprowadza statystyki w tej dziedzinie oraz ramy organizacyjne i prawne, opisuje drogę do niezależności po odejściu z opieki, a także obiecuje ostatnie osiągnięcia w zakresie wzmocnienia pozycji osób opuszczających opiekę zdrowotną, a także wspierania samoorganizacji.

Słowa kluczowe: młodzież, piecza zastępcza, opieka pobytowa, osoba usamodzielniająca się.

Young people in care

Germany currently has a population of approximately 83.2 million (destatis, 2020). In 2016, 236,411 young people under the age of 21 lived in residential, or foster care within the child, and youth welfare system*. Placement concerns 147 out 10,000 young people in Germany. Out of these, 89,731 lived in foster care (37.7%), and 141,704 in residential care (59.9%). The other 4,976 out-of-home placements concern young people with mental disabilities (2.1%). The statistics do not differentiate between the forms of placement, temporary emergency placements are not included. In residential care there was a substantially higher number of male (0.775%) than female young people (0.398%). In foster care the numbers were even (0.467% and 0.452%, respectively). The costs for residential care amounted to 4,870,789 Euro, and for foster care to 1,163,921 Euro (akjStat, 2018). The numbers of placements increased between 2010 and 2016 by 37.0% (48.8% residential care, and 21.8% foster care, respectively) while the numbers of newly initiated placements decreased by 21.9% (Fendrich & Tabel, 2019).

Legal-organisational framework

Germany is a federal state consisting of 16 states (*Länder*). The federal state holds the primary legislative powers for matters of child and youth welfare, as well as child protection. The legal framework for taking young people into care is provisioned in the Social Code Book VIII – Child and Youth Welfare. The competent authorities to implement the provisions for child, and youth welfare operate at the local level. Across the 16 states in Germany the child and youth welfare administration, the youth welfare office (*Jugendamt*), functions in 570 communities. The youth welfare offices are responsible for the provision of support services, including placement services, as well as child protection. The placement of a child is the last resort, and can only be initiated without parental consent, if the risk of harm cannot be addressed with less intrusive measures (sec. 1666a Civil Code). If children are at risk, and measures have to be taken to protect them, there are two paths to placement. One is with parental consent, and the other is via a withdrawal of parental custody by the family court, and appointment of a guardian who then applies for placement services. The threshold for an intervention by the family court is two-fold: that a child is at risk (“endangered”), and parent(s) are unwilling, or unable to avert the danger (sec. 1666 Civil Code). Child endangerment is defined as a current danger which without intervention would likely lead to future significant harm to the child. Such an intervention requires a ruling by a family court. In an emergency situation, the youth welfare office can temporarily re-

* Calculated by all ongoing placements as of 31 December 2016, and all placements that ended in the course of the year 2016.

move a child without parental consent, but this will have to be subsequently endorsed by a court (Meysen, 2019; Haug & Höynck, 2017). An international comparison indicates that Germany displays a high norm of working together with families to protect children, resulting in a high rate of voluntary placements (Knuth, 2008; Witte et al., 2019).

Residential care is traditionally provided almost exclusively by non-governmental organizations (NGOs). They are privileged by the principle of subsidiarity, placing them prior to support services by state run agencies (sec. 4 Social Code VIII). This interplay between public and private child, and youth welfare agencies/organisations, legally framed as partners, is shaped by the principle of subsidiarity, which has its roots in the Catholic social doctrine (Daly, 2000, pp.74–78; Witte et al., 2019). The different forms of residential care are described in frame contracts between the regional umbrella organizations of the counties and cities, as well as the NGOs. These contracts also contain the key parameters for the calculation of the remuneration for the placements, as well as for the process of quality development. At the local level, NGOs, and the youth welfare offices concretise these elements in individual contracts for the particular residence. In addition, an agency at the state level is responsible for issuing operation permits if the minimum standards for structural quality are met, as well as for the surveillance of the residences (for a comparative analysis between the states see Meysen et al., 2020).

Foster Care Services are usually a unit in the youth welfare office. This unit is responsible for assessment and preparation of potential foster parents and supervision, and support of foster families. In a minority of communities such services are also provided by NGOs (Helming et al., 2011). The critique of institutional care during the 1968s movement has led to an ongoing systematic placement of younger children in foster care (Berth, 2019; Ristau-Grzebelko, 2011). Child protection matters remain under the responsibility of separate units, the so called General Social Services (*„Allgemeiner Sozialer Dienst“*; Helming et al., 2011). Cooperation between different services, or units, foster care, and General Social Services varies vastly, and coordination is difficult because after placing a child in out-of-home care, the General Social Services continue working with the family of origin, whereas the foster care services work with the foster family. The latter usually are responsible for the surveillance as to whether the child’s best interests are sufficiently met in the foster family.

Parents, or after a withdrawal of parental responsibility – guardians, have a right to placement services that stands up in court if the services are needed for the promotion of the child’s well-being (sec. 27 (1) Social Code Book VIII). They do not only have the right for services to be provided and funded, but also for their wishes, and choices as to where the child will be placed to be respected. Their right is limited in the event of significantly higher costs, or if the chosen placement does not sufficiently allow for an enhancement of the child’s development (sec. 5 Social Code Book VIII).

The child and youth welfare office makes the decision concerning the placement, and supervises the evaluation and management of the assistance process during the placement. NGOs, or foster parents, carry out the care in all of its facets.

The services during a placement contain full financing of the placement, including maintenance for the child, the costs for operating the residence, or a monthly financial allowance for the foster parents. In addition, the health care for the child is paid for if not covered by health insurance. The pedagogical work is at the core of placement services, backed up by and linked with therapeutic services, if necessary. The services comprise socially, and pedagogically underpinned apprenticeships, trainings, or job creation measure, which fit the young person's skills and developmental status (sec. 27 (3), sec. 13 (2) Social Code Book VIII).

Prior to, and during a placement a help conference is held, a support plan established, and regularly updated, as obligatorily required by law (sec. 36 Social Code Book VIII). If job integration is an issue, the labour administration has to be involved in the service planning process. If the young person has a mental disability a child, and adolescent psychiatrist has to be included as well. The placement has a regular maximum duration until the age of 21. If the particular case allows for an exception, the placement can be prolonged until the age of 27 within the framework of the child, and youth welfare system and its services (sec. 41 Social Code Book VIII). Practice differs vastly (Pothmann, 2012). Some youth welfare offices end most placements around the age of 18, others regularly continue until the young person is ready to live an independent life (Lüders, 2015; Nüsken, 2006).

The law differs between several classifications of the placement services. Foster care and residential care both have their own provisions, but the classification to one, or the other is fluent. In residential care, groups are usually not larger than 2 to 6 young persons with a staffing ratio of 2 youngsters per professional. Another form is called "intensive socio-pedagogical one-to-one care", conducted by professionals. If a child has a mental disability, the services include measures to enable participation and belonging. After the age of majority, the placement is classified as support services for young adults (sec. 41 Social Code Book VIII).

A current reform intends to improve the situation for young persons in care and leaving care. Presently, young people in care have to cede 75 percent of their net income. For example, if they are in apprenticeship, or if they do an occasional job to increase their pocket money (sec. 94 (6) Social Code Book VIII). Care leavers strongly criticize this obligation, and reject the idea that they receive care, and therefore should be held responsible to share costs. They emphasise that they have not asked to grow up in a family they cannot stay with, and they have not chosen such a challenged start to their lives (Careleaver e.V., 2019; Careleaver-Netzwerk Deutschland e.V./Careleaver e.V., 2018; Careleaver e.V. & Landesheimrat Hessen, 2018). Care leavers are supported by influential associations and research groups, who call for

a cancellation of any cost sharing (Universität Hildesheim et al., 2019; AGJ, 2019, S. 8; Der Paritätischer Gesamtverband, 2019). The draft bill by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth for an “Act to Empower Children and Youth” intends to implement a reduction to 25 percent of net income. Another intended change is strengthened right to after-care services. Furthermore, a binding setting and proceeding is outlined for the cooperation between the youth welfare offices, and the administrations responsible for the support of (young) adults.

Path to independence

On average, a young person growing up in family in Germany moves out for the first time at the age of 25 if having none, or a high school qualification, at 24 if having a secondary school qualification, and at 21 if having a qualification for university (Bundesjugendkuratorium 2020, p. 7). In contrast, care leavers on average move out from their foster family, or residential care at ages between 18 and 19 (Sievers, 2015; AGJ, 2014). The time when they have to leave subsidised care often is not self-chosen, but associated with the limited responsibility of the child and youth welfare system, and budgetary interests of the communities (Nüsken, 2006; Lüders, 2015).

The early moving out of care turns the spotlight on the transition to independent living. It is supposed to be prepared in the course of the assistance planning process. As outlined previously, the coordinating youth welfare office has to involve the labour administration, and if necessary, the competent agency responsible for service provision for adult persons with disabilities. Young persons are prioritized by employment agencies. This applies not only to support services, job, and apprenticeship placement offers, but also to sanctions in the case of non-compliance with the employment efforts. The strictest sanctions are provisioned for young persons in the age group under 25, who apply for basic security benefits for job seekers (Meysen et al., 2020). Since the life course is often not straight forward, and affected by the individual challenges faced by young persons who recently left care (Ehlke & Strahl, 2015; Köngeter et al., 2012; Reimer, 2017; Staudinger, 2017), the pressure to conform by the labour administration in many cases is not the appropriate measure for care leavers. The potential for a flexible adaptation of services by the labour administration has increased over the years, though. But in many regions the necessity to meet the needs of the care leaver falls short, and lacks a sufficient resonance with the particular life circumstances of young persons who are mostly without any financial, or social safety net (Deutscher Verein, 2017).

Empowerment and self-organisation

The self-organising process of care leavers has been a promising development in recent years. This has evolved from a series of participatory research, and practice de-

velopment projects in which knowledge concerning leaving care was deepened, and a network was created with significant structures. The University of Hildesheim and the International Society for Educational Support Services have been the driving forces behind the movement (*“Internationale Gesellschaft für erzieherische Hilfen”*). A “care leaver network of competence” has been established, and has reached out to care leavers in regions throughout Germany. Self-organised collaboration, and agenda setting have been facilitated, with care leavers sharing information with each other. The network has reached out to policy makers, practitioners, and academics to raise and increase awareness with respect to the interests of care leavers, also to articulate their demands (Careleaver-Netzwerk Deutschland e.V. & Careleaver e.V., 2018). It has not taken long since the initiative for awareness raising, self-organisation started, and policy makers, such as ministries and parliaments, now regularly include care leavers in the consultancy processes for legislation and policy on issues that concern care leavers. A nationwide operating Care Leaver Association has been founded and professionalised (Doll, 2017; www.careleaver.de). At the level of the states councils, elected young persons in care have been instituted, and partly, provided with a legal base. The reform with the “Act to Empower Children and Youth” intends a specific section on self-organised groups with a call for participation, collaboration, and public funding.

Conclusions

Young persons in care managed to gain attention in the public discourse and policy. The empowerment through self-organized associations motivated many care leavers to reveal their biography of care. Their voices are heard. Nationwide operating platform for discussions on foster care and residential care systematically integrate care leavers. In their recommendations and positioning the perspective of young persons in care are the starting point, and at the core throughout (Zukunftsforum Heimerziehung, 2019; Dialogforum Pflegekinderhilfe & Steinhauer, 2018). There still is a long way to go before care leavers have access to equal opportunities in society. But much has been done so that care leavers are now a visible, and influential part of the child and youth welfare system, as well as in society. Care leavers can be fully proud of their achievements.

REFERENCES

1. Arbeitsgemeinschaft für Kinder- und Jugendhilfe – AGJ (2014). *Junge Volljährige nach der stationären Hilfe zur Erziehung. Leaving Care als eine dringende fach- und sozialpolitische Herausforderung in Deutschland*. Diskussionspapier. Berlin.
2. Arbeitsgemeinschaft für Kinder- und Jugendhilfe – AGJ (2019). *Vorabkommentierung zur 3. AG-Sitzung „SGB VIII: Mitreden - Mitgestalten“ (4. April 2019) „Unterbringung junger Menschen außerhalb der eigenen Familien: Kinderinteressen wahren – Eltern unterstützen – Familien stärken“ der AGJ-Gesamt-AG SGB VIII*. Berlin.

3. Berth, Felix (2019). Zur Geschichte des Säuglingsheims. Eine vergessene Institution des bundesdeutschen Sozialstaats. *Zeitschrift für Pädagogik*, 65(1), 73-93.
4. Bundesjugendkuratorium (2020). *Junge Erwachsene – soziale Teilhabe ermöglichen!. Stellungnahme*. München: Deutsches Jugendinstitut e.V. (DJI).
5. Careleaver e.V. (2019). *Stellungnahme zur Kostenheranziehung nach §§ 92 ff. SGB VIII in Bezug auf den Gesetzentwurf zu § 94 Absatz 6 Aechtes Buch Sozialgesetzbuch im Rahmen der Änderung des Neunten und des Zwölften Buches Sozialgesetzbuch und anderer Rechtsvorschriften*. Hildesheim.
6. Careleaver e.V. & Landesheimrat Hessen (2018). *Stellungnahme zur Empfehlung der Bundesarbeitsgemeinschaft Landesjugendämter zur Kostenbeteiligung*. Hildesheim & Wiesbaden.
7. Careleaver-Netzwerk Deutschland e.V. & Careleaver e.V. (2018). *Unsere Rechte – Unsere Forderungen. Zukunftsorientierung statt Defizitblick*. Hildesheim.destatis (Federal Of-ice of Statistics) (2020). *Pressemitteilung* Nr. 022 vom 17. Januar 2020. Wiesbaden.
https://www.destatis.de/DE/Presse/Pressemitteilungen/2020/01/PD20_022_12411.html;jsessionid=FD068015803DCFBAD7BEBE7473E6E81F.internet8711 (15 June 2020).
8. Daly, M. (2000). *The Gender Division of Welfare. The Impact of the British and German Welfare States*. Cambridge, UK: Cambridge University Press.
9. Der Paritätische Gesamtverband (2019). *Unterbringung außerhalb der eigenen Familie: Kindesinteressen wahren – Eltern unterstützen – Familien stärken. Einschätzungen des Paritätischen Gesamtverbandes*. Berlin.
10. Deutscher Verein (2017). *Empfehlungen zur Umsetzung des §16h SGB II – Förderung schwer zu erreichender junger Menschen*. Berlin.
11. Dialogforum Pflegekinderhilfe & Steinhauer, K. (2018). *Pflegekinder auf ihrem Weg ins Erwachsenenleben begleiten –Empfehlungen für die Fachpraxis*. Frankfurt a.M. (www.dialogforum-pflegekinderhilfe.de).
12. Doll, A. (2017). Raus aus den Hilfen zur Erziehung und rein in ein selbstbestimmtes Leben! Warum Selbstorganisation von Räumen und Diskursen abhängig ist. *Sozial Extra*, 41-2, 30-33.
13. Ehlke, C. Strahl B. (2020, im Druck). Die Lebensbewältigung von Care Leaver*innen. In: G. Stecklina & J. Wienforth (Hrsg.). *Soziale Arbeit und Lebensbewältigung. Grundlagen, Praxis, Kontroversen* (140-148). Weinheim/Basel.
14. Fendrich, S. Tabel, A. (2019). Hilfen zur Erziehung 2018 – Rückgang der UMA, zunehmende Bedeutung des Kinderschutzes? *KOMDAT Kommentierte Daten der Kinder- und Jugendhilfe*, 22(3), 8-13.
15. Haug, M., Höynck T. (2017). Removing children from their families due to child protection in Germany. In: K. Burns, T. Pösö & M. Skivenes (eds.). *Child Welfare Removals by the State. A Cross-country Analysis of Decision-making Systems* (89-116). New York: Oxford University Press.
16. Helming, E., Sanmeir G., Kindler H., Blüml H. (2011). Organisationsstrukturen und Schlüsselzahlen. In: H. Kindler, E. Helming, T. Meysen, K. Jurczyk (eds.) *Handbuch Pflegekinderhilfe* (108-122). Munich & Heidelberg: German Youth Institute and German Institute for Youth Human Services and Family Law.
17. Knuth, N. (2008). *Fremdplatzierungspolitiken. Das System der stationären Jugendhilfe im deutsch-englischen Vergleich*. Weinheim Basel: Juventa.
18. Königeter, S., Schröer W., Zeller M. (2012). Statuspassage „Leaving Care“: Biografische Herausforderungen nach der Heimerziehung. *Diskurs Kindheits- und Jugendforschung*, 7-3, 261-276.
19. Lüders, C. (2015). 25 Jahre § 41 SGB VIII und die jungen Erwachsenen –eine zwiespältige Bilanz. *Zeitschrift für Kindschaftsrecht und Jugendhilfe (ZKJ)*, 10-9/10, 364-369.

20. Meysen, T. (2019). Information, Intervention, and Assessment – Frameworks of child physical abuse and neglect interventions in four countries. Chapter 5. In: C. Hagemann-White, L. Kelly, T. Meysen (eds.). *Interventions Against Child Abuse and Violence Against Women Ethics and culture in practice and policy* (77-86). Opladen, Berlin, Toronto: Verlag Barbara Budrich.
21. Meysen, T., Münder J., Schönecker L. (2020). *Rahmensetzung der Länder bei Hilfen zur Erziehung*. Gütersloh: Bertelsmann Stiftung.
22. Meysen, T., Schönecker L., Wrede N. (2020). *Gesetzliche Altersgrenzen im jungen Erwachsenenalter, erstellt im Auftrag des Deutschen Jugendinstituts e.V. für das Bundesjugendkuratorium*. München: Bundesjugendkuratorium.
23. Mühlmann, T. (2019). *Regionale Unterschiede in der Kinder- und Jugendhilfe. Eine Zusatzanalyse zum „Monitor Hilfen zur Erziehung 2019“ zu erzieherischen Hilfen und Kinderschutzaufgaben der Jugendämter*. akjStat. Dortmund: TU Dortmund.
24. Nüsken, D. (2006). Vom Erfolgs- zum Auslaufmodell? Hilfen für junge Volljährige im Rahmen der Hilfen zur Erziehung: Eine Bestandsaufnahme zehn Jahre nach Einführung des Rechtsanspruchs. *Das Jugendamt (JAmt)*, 79-1, 1-8.
25. Pothmann, J. (2012). Regionale Unterschiede bei der „Fremdunterbringung von Kindern und Jugendlichen“ in Heimen und Pflegefamilien. In: Arbeitsstelle für Kinder- und Jugendhilfestatistik (Hg.): *Datenanalysen der Dortmunder Arbeitsstelle für Kinder- und Jugendhilfestatistik: Bereich Hilfen zur Erziehung*. Dortmund: Arbeitsstelle Kinder- und Jugendhilfestatistik (akjStat).
26. Reimer, D. (2017). *Normalitätskonstruktionen in Biografien ehemaliger Pflegekinder*. Weinheim & Basel: Beltz Juventa.
27. Ristau-Grzebelko, B. (2011). Entwicklungslinien in der DDR: Sorge für elternlose bzw. »familiengelöste« Kinder und Jugendliche, einschließlich Pflegekinder. In: H. Kindler, E. Helming, T. Meysen, K. Jurczyk (eds.). *Handbuch Pflegekinderhilfe* (37-45). Munich & Heidelberg: German Youth Institute and German Institute for Youth Human Services and Family Law.
28. Sievers, B. (2015). Mit 18 ist Schluss: aus der Jugendhilfe in die Selbständigkeit. In: Deutsches Rotes Kreuz e.V. Generalsekretariat (Hrsg.). *Junge Menschen an den Grenzen der Hilfen zur Erziehung. Systemherausforderer – Junge Flüchtlinge – Care Leaver* (48-55). Berlin: DRK e.V.
29. Staudinger, A. (2017). *Mein Übergang aus der Jugendhilfe in die so genannte Verselbstständigung Interview mit einem Careleaver*. Teil 2. Hildesheim: Care leaver Kompetenznetz.
30. Universität Hildesheim, Internationale Gesellschaft für erzieherische Hilfen e.V. (IGfH) & Careleaver e.V. (2019). *Berliner Erklärung. Rechtsanspruch Leaving Care!*. Berlin.
31. Witte, S., Miehlsbradt L.S., van Santen E., Kindler H. (2019). Preventing Child Endangerment: Child Protection in Germany. In: L. Merkel-Holguin, J.D. Fluke & R.D. Krugman (eds.). *National Systems of Child Protection. Understanding the International Variability and Context for Developing Policy and Practice* (93-114). Cham (CH): Springer.
32. Zukunftsforum Heimerziehung (2019). *Thesen zur Weiterentwicklung der Heimerziehung*. Frankfurt a.M. (www.zukunftsforum-heimerziehung.de)