



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

FIFTH SECTION

**CASE OF WETJEN AND OTHERS v. GERMANY**

*(Applications nos. 68125/14 and 72204/14)*

JUDGMENT

STRASBOURG

22 March 2018

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Wetjen and Others v. Germany,**

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

Erik Møse, *President*,

Angelika Nußberger,

André Potocki,

Yonko Grozev,

Síofra O’Leary,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseyinov, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 20 February 2018,

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

**PROCEDURE**

1. The case originated in two applications (nos. 68125/14 and 72204/14) 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 eight applicants (“the applicants”), whose names, dates of birth and nationalities are shown on the list appended to this judgment. The applications were lodged on 17 October and 14 November 2014 respectively.

2. The applicants were represented by Mr H. Forkel, a lawyer practising in Dresden, and Mr A. Garay, a lawyer practising in Paris. The German Government (“the Government”) were represented by their Agents, Mr H.-J. Behrens and Mrs K. Behr, of the Federal Ministry of Justice and Consumer Protection.

3. Relying on Article 8 of the Convention, the applicants alleged that the withdrawal of parts of their parental authority and the subsequent separation of the parents and their children had been disproportionate. Invoking Articles 6 and 8 of the Convention they further complained that the underlying proceedings before the family courts had been excessively long, unfair and that the decisions had not been based on a sufficient factual basis, but on general considerations about their religious community. Under Article 9 and 14 in conjunction with Article 8 of the Convention and under Article 2 of Protocol No. 1 the applicants complained that they had been prevented from raising their children in compliance with their religious beliefs; that their religious beliefs were the reason for the withdrawal of parts of their parental authority and that the court proceedings had led to the stigmatisation of their religious community.

4. On 16 January 2016 the applications were communicated to the Government in respect to Article 8 of the Convention.

5. Written submissions were received from ADF (Alliance Defending Freedom) International, which had been granted leave by the Vice-President to intervene as a third party in both cases (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants in application no. 68125/14 (Wetjen) are a mother and father and their son, born in 2011. The applicants in application no. 72204/15 (Schott) are a mother and father and their three daughters, born in 1999, 2002 and 2004 respectively. All the applicants are members of the Twelve Tribes Church (*Zwölf Stämme*) who lived in a community of around 100 members of the church in Klosterzimmern. A second community with around 20 members was located in the nearby village of Wörnitz.

#### A. Background to the case

7. In 2012 the press reported about the Twelve Tribes Church and its position on the right of parents to apply corporal punishment, especially caning. Furthermore, statements by a former member of the community were published, confirming that children had been punished with rods.

8. In 2012 and 2013 the local youth office (*Jugendamt*) visited the community, and its spokespersons were invited to a meeting at the Bavarian Ministry of Education. Corporal punishment and the issue of compulsory schooling were discussed at the meeting.

9. On 16 August 2013 the local youth office and the Nördlingen Family Court received video footage from a television reporter showing ten different instances of corporal punishment in the community. The footage, filmed with a hidden camera, showed the caning of various children between the ages of three and twelve. None of the applicants was shown in the video footage. According to the television reporter, the person who carried out the punishment was not, in most cases, a parent of the child being punished.

## **B. Taking the children into care**

10. After receiving the video footage, the Family Court initiated a preliminary investigation and on 21 August 2013 heard six witnesses, all former members of the Twelve Tribes community. The witnesses confirmed that various forms of corporal punishment were used in the upbringing of children in the community. These included swaddling (*pucken*) a child from birth until the age of around three, involving wrapping the child up very tightly to suppress any urge to move. Starting from the age of about three, children would be disciplined by caning, which lasted until about the age of twelve. The witnesses further stated that children were punished by whichever adult was supervising the children at the time and that parents were pressured by the community to conform to the rules of upbringing.

11. On 1 September 2013 the Nördlingen Family Court, upon an application by the competent youth office, made an interlocutory order regarding all children in the Twelve Tribes community, including the applicant children. The court withdrew the applicant parents' rights to decide where their children should live (*Aufenthaltsbestimmungsrecht*), and to take decisions regarding the children's health (*Gesundheitsfürsorge*), schooling and professional training, and transferred those rights to the youth office. The court based its decision on its finding that there was a reasonable likelihood that the children would be subjected to corporal punishment. The court also ordered that the youth office, when taking the children into care, could have recourse to compulsion, request support from the police and be permitted to enter the premises of the Twelve Tribes community in Klosterzimmern.

12. On 5 September 2013 the youth office took the community's children into care. They were supported by around 100 police officers, who, at the same time, searched the community's premises under an order from the Augsburg public prosecutor's office and seized seven wooden rods.

13. The applicant children were subsequently examined but no physical signs of abuse or beating were revealed.

14. The applicants B., C. and I. Schott were moved to a children's home. Since the applicant J. Wetjen was then only two years and five months old and was still being breastfed, he and his mother were housed together temporarily in a home under supervision. On 9 December 2013 J. Wetjen was taken from his mother and placed in a foster family. The mother had been ordered to wean her son two months beforehand. However, since she refused, the son was taken from her by force.

### C. Review of the interlocutory order

#### 1. Application no. 68125/14 (*Wetjen*)

15. The Family Court examined the applicant parents on 10 October 2013. The parents stated that they had restrained their son by swaddling, but denied that this amounted in any way to child abuse. They refused to answer any questions about caning, but quoted passages from the Bible, which justified such a practice.

16. On 29 November 2013 the Family Court upheld its interlocutory order of 1 September 2013. On the basis of Articles 1631, 1666 and 1666a of the German Civil Code (see paragraphs 30–32 below), the court stated in its reasoning that there was a high probability that leaving the son in the community or returning him there would lead to him being subjected to corporal punishment, thus infringing his personal dignity and integrity, values protected by the German Basic Law (see paragraphs 26 and 27 below). It further found that the use of corporal punishment from such an early age would prevent the free development of his personality and instead teach unconditional obedience. The court based its assessment on the submissions of the parents, in which they had confirmed that they had disciplined their son. The court found that the statements by other children in parallel proceedings, the video footage and the statements of other witnesses confirmed that the disciplining of children in the community would include corporal punishment. Therefore, it was necessary to take the son out of the community as the option which least infringed the family's rights, but which ensured that he would not be caned or harmed in any other way. It held that even if the parents might be able to resist pressure from the community, they would not be able to ensure that other community members would not cane the child when supervising him. The court also initiated the main custody proceedings and commissioned a psychologist's expert opinion on the family.

17. On 28 January 2014 the applicant parents were examined by the Munich Court of Appeal. The father stated that, in his opinion, a mild caning constituted neither violence nor child abuse. Both parents also continued to refuse to answer any questions about whether their son had been caned previously. The court decided against examining the applicant child owing to his age and the mental stress that a hearing would cause and instead heard the guardian *ad litem* (*Verfahrensbeistand*).

18. On 5 March 2014 the Munich Court of Appeal upheld the Family Court's decision in essence. It overturned the decision on the withdrawal of the parents' right to take decisions regarding their son's schooling and professional training, because, owing to his age, there was no need for the withdrawal of such a right in an interim decision. The Court of Appeal found it established that the parents considered caning to be part of their son's upbringing and that the son would be caned if returned to his parents

and the community. It based its finding on the statements of the parents and witnesses, and the guidelines in a leaflet entitled *Our teachings on child training*. The court further noted that bringing up children in this way was not justified by the parents' freedom of religion. It also found that there had been no other option entailing less of an infringement of the family's rights because up to that point the parents had not shown any willingness to refrain from disciplining their son, and greater assistance from the youth office would not ensure the safety of the son at all times. It further observed that only the opinion of the expert, expected in the main proceedings, would be able to determine the potential consequences of degrading educational methods aimed at unconditional obedience.

19. On 5 May 2014 the Federal Constitutional Court refused to accept a constitutional complaint by the applicant for adjudication, without providing reasons (1 BvR 770/14).

2. *Application no. 72204/14 (Schott)*

20. The Family Court examined the applicant children on 9 October 2013. All three daughters stated that they would like to return to their parents and the community. The two younger daughters refused to answer any questions regarding being disciplined or caned, or about the schooling and health-care system in the community. The oldest daughter confirmed that her two sisters had been caned and that she herself had been caned when she was younger. However, she also stated that this had stopped after her Bat Mitzvah. The applicant parents were examined on 15 November 2013.

21. On 30 November 2013 the Family Court revoked its interlocutory order of 1 September 2013 concerning the parents' right to decide on the oldest daughter's place of residence and health, but upheld the rest of the decision. The court considered that it was very likely that the other two girls, if left in the community or returned to it, would be subjected to corporal punishment. The court based its assessment on written submissions from the parents, in which they confirmed that they had disciplined their children but denied beating or abusing them. The court observed that statements by the daughters and other children in parallel proceedings, the video footage and the statements of other witnesses had confirmed that the disciplining of children in the community might include corporal punishment. As in its decision in application no. 68125/14 (see paragraph 16 above), the court held that it had been necessary to take the children out of the community and that there had been no other less infringing measure. Regarding the oldest daughter, the court found that owing to her age there was no longer a risk that she would be caned. The court also initiated the main custody proceedings and commissioned a psychologist's expert opinion on the family's situation.

22. In the beginning of December 2013 the oldest daughter was returned to her parents. She has been living with them in the community of the Twelve Tribes Church in Klosterzimmern since.

23. On 5 March 2014 the Munich Court of Appeal upheld the Family Court's decision in essence. It overturned the decision on the withdrawal of the parents' right to take decisions regarding professional training for the two younger daughters because there was no need for the withdrawal of such a right in an interim decision. The Court of Appeal found it established that all three children had been caned and that there was a high probability that the two younger children would be caned again if returned to their parents and the community. It based its finding on the statements of the oldest daughter, which had been confirmed by the statements of the former members of the community and the guidelines in the leaflet *Our teachings on child training*. As in its decision in application no. 68125/14 (see paragraph 18 above) the court also noted that caning was not justified by the parent's freedom of religion and that there had been no other option entailing less of an infringement of the family's rights. It further observed that the wishes of the two girls (nine and twelve years old) did not prevent the taking of such a decision because only the expert opinion expected in the main custody proceedings would clarify how relevant the wishes of the girls were and the extent to which they had formed those wishes themselves.

24. On 5 May 2014 the Federal Constitutional Court refused to accept a constitutional complaint by the applicants for adjudication, without providing reasons (1 BvR 959/14).

#### **D. Review of the execution of the interlocutory order**

25. The applicants also appealed the form of execution ordered in the interlocutory order (see paragraph 11 above). The Court of Appeal detached that part of the appeal from the part concerning parental authority (see paragraphs 18 and 23 above), since both parts had to be challenged by distinct remedies and different procedural provisions were applicable. The appeal by the applicants in application no. 68125/14 was declared inadmissible by the Court of Appeal on 4 June 2014 for being belated. The appeal by the applicants in application no. 72204/14 was declared partly inadmissible and partly unfounded by the Court of Appeal on 13 August 2014.

## **II. RELEVANT DOMESTIC LAW**

### **A. German Basic Law (*Grundgesetz*)**

26. Article 1 of the Basic Law reads as follows:



“(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

(3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.”

27. Article 2 of the Basic Law, in so far as relevant, reads as follows:

“(1) Every person shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the constitutional order or the moral law.

(2) Every person shall have the right to life and physical integrity. ...”

28. Article 4 of the Basic Law, in so far as relevant, reads as follows:

“(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.

(2) The undisturbed practice of religion shall be guaranteed. ...”

29. 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*)**

30. Article 1631 § 2 of the German Civil Code reads as follows:

“Children have the right to a non-violent upbringing. Physical punishment, psychological injury and other degrading measures are prohibited.”

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.”

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

“(1) Measures which entail a 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.”

**C. Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (*Gesetz über das Verfahren in Familiensachen and in den Angelegenheiten der freiwilligen Gerichtsbarkeit* – hereinafter “the Family Matters Act”)**

33. Section 54 of the Family Matters Act, concerning the revocation or modification of previous decisions, reads, as far as relevant, as follows:

“(1) The court may revoke or modify the decision in an interlocutory order. Revocation or modification shall only take place upon the lodging of an application, if the corresponding main action can only be initiated upon an application. The preceding sentence shall not apply if the decision was issued without conducting a prior hearing necessary in accordance with the law.

(2) If the decision in a family matter was made without oral argument, it shall upon application be decided a second time on the basis of oral argument. ...”

34. Section 56 of the Family Matter Acts sets out how long an interlocutory order stays in force. The provision, as far as relevant, reads:

“(1) Unless otherwise previously determined by the court, the interlocutory order shall expire upon a different decision taking effect. ...”

**D. Courts Constitution Act (*Gerichtsverfassungsgesetz*)**

35. According to section 198 of the Courts Constitution Act, a party to proceedings who suffers a disadvantage from protracted proceedings is entitled to adequate monetary compensation. In so far as relevant, section 198 reads:

“(1) Whoever, as the result of the unreasonable length of a set of court proceedings, experiences a disadvantage as a participant in those proceedings shall be given reasonable compensation. The reasonableness of the length of proceedings shall be

assessed in the light of the circumstances of the particular case concerned, in particular the complexity thereof, the importance of what was at stake in the case, and the conduct of the participants and of third persons therein.

(2) A disadvantage not constituting a pecuniary disadvantage shall be presumed to have occurred in a case where a set of court proceedings has been of unreasonably long duration. Compensation can be claimed therefore only in so far as redress by other means, having regard to the circumstances of the particular case, is not sufficient in accordance with subsection (4). Compensation pursuant to the second sentence shall amount to EUR 1,200 for every year of the delay. Where, having regard to the circumstances of the particular case, the sum under the third sentence is inequitable, the court can assess a higher or lower sum. ...

(5) A court action to enforce a claim under subsection (1) can be brought at the earliest six months after the filing of the notice of delay. ...”

### III. RELEVANT INTERNATIONAL LAW AND PRACTICE

#### A. United Nations Convention on the Rights of the Child of 26 January 1990

36. The United Nations Convention on the Rights of the Child entered into force for Germany on 5 April 1992. The relevant parts read as follows:

##### “Article 3

(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. ...

##### Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known. ...

##### Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. ...

**Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. ...”

37. The Committee on the Rights of the Child of the United Nations provided in its general comment no. 13 (2011) (The right of the child to freedom from all forms of violence (CRC/C/GC/13); published on 18 April 2011) guidance on the interpretation of Article 19 of the Convention on the Rights of the Child. The relevant parts read:

**“IV. Legal analysis of article 19****A. Article 19, paragraph 1**

1. ‘... all forms of ...’

No exceptions. The Committee has consistently maintained the position that all forms of violence against children, however light, are unacceptable. “All forms of physical or mental violence” does not leave room for any level of legalized violence against children. Frequency, severity of harm and intent to harm are not prerequisites for the definitions of violence. States parties may refer to such factors in intervention strategies in order to allow proportional responses in the best interests of the child, but definitions must in no way erode the child’s absolute right to human dignity and physical and psychological integrity by describing some forms of violence as legally and/or socially acceptable.

...

**Physical violence.** This includes fatal and non-fatal physical violence. The Committee is of the opinion that physical violence includes:

(a) All corporal punishment and all other forms of torture, cruel, inhuman or degrading treatment or punishment;

...

**Corporal punishment.** In general comment No. 8 (para. 11), the Committee defined “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, caning, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion. In the view of the Committee, corporal punishment is invariably degrading.

...

**Harmful practices.** These include, but are not limited to:

(a) Corporal punishment and other cruel or degrading forms of punishment;

...”

38. In its general comment no. 14 (2013) (The right of the child to have his or her best interests taken as a primary consideration (CRC/C/GC/14);

published on 29 May 2013) the Committee provided guidance on the interpretation of Article 3 § 1 of the Convention and the factors that should be taken into account when making a best interests assessment. The relevant parts read:

**“A. Best interests assessment and determination**

...

**1. Elements to be taken into account when assessing the child’s best interests**

52. Based on these preliminary considerations, the Committee considers that the elements to be taken into account when assessing and determining the child’s best interests, as relevant to the situation in question, are as follows:

**(a) The child’s views**

...

**(b) The child’s identity**

...

**(c) Preservation of the family environment and maintaining relations**

...

60. Preventing family separation and preserving family unity are important components of the child protection system, and are based on the right provided for in article 9, paragraph 1, which requires “that a child shall not be separated from his or her parents against their will, except when [...] such separation is necessary for the best interests of the child”. ...

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family’s capacity to take care of the child, unless separation is necessary to protect the child.

...

**(d) Care, protection and safety of the child**

...

73. Assessment of the child’s best interests must also include consideration of the child’s safety, that is, the right of the child to protection against all forms of physical or mental violence, injury or abuse (art. 19), sexual harassment, peer pressure, bullying, degrading treatment, etc., as well as protection against sexual, economic and other exploitation, drugs, labour, armed conflict, etc. (arts. 32-39).

74. Applying a best-interests approach to decision-making means assessing the safety and integrity of the child at the current time; however, the precautionary principle also requires assessing the possibility of future risk and harm and other consequences of the decision for the child’s safety.

**(e) Situation of vulnerability**

...

**(f) The child's right to health**

...

**(g) The child's right to education**

..."

## **B. European Social Charter of 18 October 1961**

39. The European Social Charter entered into force *vis-à-vis* Germany on 27 January 1965. Its Article 17 reads as follows:

**“Article 17 – The right of mothers and children to social and economic protection**

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.”

40. In a Resolution adopted on 17 June 2015 (CM/ResChS(2015)12), the Committee of Ministers of the Council of Europe stated the following regarding the interpretation of this provision:

“There is now a wide consensus at both the European and international level among human rights bodies that the corporal punishment of children should be expressly and comprehensively prohibited in law. The Committee refers, in particular, in this respect to the General Comment Nos. 8 and 13 of the Committee on the Rights of the Child. Most recently, the following interpretation of Article 17 of the Charter has been given as regards the corporal punishment of children was made in the decision *World Organisation against Torture (OMCT) v. Portugal*, Complaint No. 34/2006, decision on the merits of 5 December 2006, sections 19-21: ‘To comply with Article 17, States’ domestic law must prohibit and penalise all forms of violence against children that is acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children. The relevant provisions must be sufficiently clear, binding and precise, so as to preclude the courts from refusing to apply them to violence against children. Moreover, States must act with due diligence to ensure that such violence is eliminated in practice.’”

## **THE LAW**

### **I. JOINDER OF THE APPLICATIONS**

41. Given their similar factual and legal background, the Court decides that the two applications shall be joined by virtue of Rule 42 § 1 of the Rules of Court.

## II. SCOPE OF THE APPLICATIONS

42. At the outset the Court finds it necessary to clarify the scope of the applications. It notes that the applicants, in their original applications, made factual statements concerning the interlocutory order, its execution and the limitations on access and contact between the parents and their children. After the Government had submitted their unilateral declarations (see paragraphs 45-48 below) together with information that the Court of Appeal had decided on the applicants' appeals concerning the execution of the interlocutory order of 1 September 2013 (see paragraph 25 above) and that these decisions had not been further appealed before the Federal Court of Justice, the applicants clarified the scope of their applications, when commenting on the Government's unilateral declarations. They submitted that subject matter of their applications was only the part of the interlocutory orders concerning the withdrawal of parts of their parental authority, not that regarding execution or the issue of access and contact.

43. The Court considers that the individual applicant is responsible for specifying the subject matter of his or her application and thereby the scope of the Court's assessment. Consequently, it regards the applications as being limited to the domestic decisions concerning the withdrawal of parts of the parents' parental authority.

## III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. The applicants complained that the withdrawal of parts of their parental authority and the subsequent separation of the children and their parents had been disproportionate and not grounded on a sufficient factual basis, but on general considerations about the Twelve Tribes Church and their religious beliefs. They further complained that they had been prevented from raising their children in compliance with their religious beliefs and that the court proceedings had led to the stigmatisation of their religious community. As far as the underlying proceedings before the family courts were concerned, the applicants complained that they had not been heard before the interlocutory order of 1 September 2013 was issued. They also alleged that the duration of the interim proceedings before the family courts and the length of time the interlocutory order had been in place had been excessively long. The applicants relied on their right to respect for their family life, as provided for in Article 8 of the Convention. In addition, they also invoked Articles 9 and 14 in conjunction with Article 8 of the Convention, Article 2 of Protocol No. 1 and Article 6 § 1 of the Convention. However, the Court, as master of the characterisation to be given in law to the facts of the case (see *Kutzner v. Germany*, no. 46544/99, § 56, ECHR 2002-I), finds it appropriate to examine all complaints solely under Article 8 of the Convention, which reads, as far as relevant, 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 prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

### **A. Length of proceedings**

45. By a letter dated 9 June 2016, the Government informed the Court that friendly settlement negotiations with the applicants had failed and that they proposed to make unilateral declarations with a view to resolving the issue raised by the application under Article 8 of the Convention. They further requested the Court to strike out the part of the applications that concerned the duration of the interim proceedings, lasting from 1 September 2013 until 5 May 2014, in accordance with Article 37 of the Convention.

46. The declarations provided as follows:

“The Federal Government therefore wishes to acknowledge – by way of a unilateral declaration – that the applicants’ right to respect for their family life under Article 8 of the Convention was violated in the present case by the duration of the interlocutory order to withdraw parts of the parental custody.”

47. The declaration concerning application no. 68125/14 continued:

“If the Court strikes this case from its list, the Federal Government is willing to accept a claim for compensation in the amount of € 9,000.00. This sum of € 9,000.00 would be deemed to settle all claims on the part of the applicants in connection with the above-mentioned application against the Federal Republic of Germany, including in particular compensation for the damage suffered (including non-pecuniary damage), as well as costs and expenses.”

48. The declaration concerning application no. 72204/14 continued:

“If the Court strikes this case from its list, the Federal Government is willing to accept a claim for compensation in the amount of € 8,000.00. This sum of € 8,000.00 would be deemed to settle all claims on the part of the applicants in connection with the above-mentioned application against the Federal Republic of Germany, including in particular compensation for the damage suffered (including non-pecuniary damage), as well as costs and expenses.”

49. In a letter of 8 July 2016 the applicants expressed the view that the sums mentioned in the Government’s declarations were unacceptably low and that the unilateral declarations did not constitute sufficient redress for the violations of Article 8 they had suffered.

50. The Court notes that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:



“for any other reason established by the Court, it is no longer justified to continue the examination of the application”.

51. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

52. To this end, the Court will carefully examine the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

53. The Court has established in a number of cases, including some brought against Germany, its practice concerning complaints about violations of the right to respect for family life and the issue of ineffective, and in particular delayed, conduct of custody proceedings (see, for example, *Moog v. Germany*, nos. 23280/08 and 2334/10, 6 October 2016; *Z. v. Slovenia*, no. 43155/05, 30 November 2010; and *V.A.M. v. Serbia*, no. 39177/05, 13 March 2007).

54. The Court has noted the nature of the admissions contained in the Government’s declarations, as well as the amounts of compensation proposed. It considers that the amounts should be paid within three months of the date of the notification of the Court’s decision issued in accordance with Article 37 § 1 of the Convention. In the event of a failure to pay the amounts within this period, simple interest should be payable thereon at a rate equal to the marginal lending rate of the European Central Bank, plus three percentage points. In such circumstances, the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1(c)).

55. Moreover, in the light of the above considerations, and in particular given the clear case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of these parts of the applications (Article 37 § 1 *in fine*).

## **B. Withdrawal of parental authority**

### *1. Admissibility*

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

## 2. *Merits*

### (a) **The parties' submissions**

#### (i) *The applicants*

57. The applicants argued that from the beginning there had been no reason to withdraw parts of their parental authority. The domestic courts had, in an arbitrary fashion, equated corporal punishment with child abuse, even though none of the applicant children had shown any physical signs of abuse or injuries. The applicants submitted that their parenting method of “corporal discipline” did not constitute violence or child abuse, or harm their children in any way. In addition it was based on their religious convictions and their understanding of the Bible.

58. The applicants further alleged that separating the children from their parents had harmed the children more than any corporal punishment could have done. Consequently, the decisions had not been based on the best interests of the children, who throughout the proceedings had expressed a wish to be reunited with their parents. The decisions had been highly disproportionate as the courts had not considered less severe measures, but had expected the applicant parents to abandon their parenting practices and therefore their religious beliefs.

59. With regard to the factual foundation of the relevant decisions, and in particular the order of 1 September 2013, the applicants argued that the decision had merely been based on general assumptions concerning the Twelve Tribes community stemming from former members of the community and illegally obtained video material, which had not shown any of the applicants being punished or them punishing someone else. There had been no evidence concerning the applicants themselves and the applicants had not been heard by the courts before the children had been taken into care.

#### (ii) *The Government*

60. The Government submitted that the decisions of the courts had aimed at protecting the health, morals, rights and freedoms of the applicant children. The decisions had also been “necessary in a democratic society” as there had been “relevant and sufficient” reasons to withdraw some parental rights and transfer them to the youth office. The applicants had lived in a community that considered caning as a practice of corporal discipline used for corrective and instructive purposes that was authorised by the Bible. Since the applicant parents, based on their religious convictions, had also endorsed the practice of the systematic use of the corporal punishment of their children with a rod, the domestic courts had been forced to withdraw the necessary parts of their parental authority in the best interests of the children, which in the instant cases had overridden the interests of the

parents. The relevant court decisions had been as limited as possible with regards to the age when the applicant children were at risk and as regards which parental rights could remain with the parents. Additionally, since the applicants had neither been willing to cooperate with the competent authorities nor refrain from their parenting practices, no other, more lenient measure had been capable of protecting the applicant children.

61. The relevant decisions had been based on fair proceedings, which had fully involved the applicants. Given the nature of summary proceedings, with their particular emphasis on speed, the family courts had established a sufficient factual basis for their decisions and had legitimately postponed obtaining expert opinions to the main proceedings. Similarly, it had been legitimate to only hear the applicants after the initial interlocutory in order to counter a risk of absconding.

*(iii) The third party intervener*

62. The third party, ADF International, submitted that it was generally in a child's best interests to be raised by his or her parents and that removing a child from parental care was a traumatic and harmful experience. The intervener further argued that the Court had acknowledged this by emphasising the importance of upholding family ties and aiming at family reunification in its case-law. Additionally the Court had continually requested sufficiently sound and weighty reasons to justify taking children into care and held that the mere fact that a child would be better off if placed in care was not sufficient (see *Olsson v. Sweden (no. 1)*, 24 March 1988, § 71, Series A no. 130).

**(b) The Court's assessment**

*(i) Interference*

63. The parties agreed that the interlocutory order and the withdrawal of some parental rights from 1 September 2013 until 30 November 2013 for the oldest Schott daughter and until 5 May 2014 for the other applicant children had constituted an interference with the applicants' right to respect for their family life. The Court endorses this conclusion and observes that such interference constitutes a violation of Article 8 unless it is "in accordance with the law", pursues an aim or aims that are legitimate under paragraph 2 of this provision and can be regarded as "necessary in a democratic society".

*(ii) Legal basis*

64. The Court notes that while complaining about the application of the relevant provisions in the present case, the applicants did not dispute that the relevant decisions had had a basis in national law, namely Articles 1631, 1666 and 1666a of the Civil Code (see paragraphs 30-32 above).

(iii) *Legitimate aim*

65. The applicants alleged that the domestic court decisions had had no legitimate aim and that the withdrawal of parts of their parental authority had not been based on considerations concerning corporal punishment, but on the fact that the applicants were members of the Twelve Tribes Church and raised the children in accordance with their faith. They argued that the decisions in essence constituted discrimination on the grounds of religion.

66. The Court reiterates that the right to respect for family life and to religious freedom, as enshrined in Articles 8 and 9 of the Convention, together with the right to respect for parents' philosophical and religious convictions in education, as provided for in Article 2 of Protocol No. 1 to the Convention, convey to parents the right to communicate and promote their religious convictions in bringing up their children (*Vojnity v. Hungary*, no. 29617/07, § 37, 12 February 2013). While the Court has accepted that this might even occur in an insistent and overbearing manner, it has stressed that it may not expose children to dangerous practices or to physical or psychological harm (*ibid.*). This protection of minors from harm has also been affirmed in other international treaties, such as the United Nations Convention on the Rights of the Child, which obliges states to take appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (see paragraph 36 above).

67. The Court notes that even though the domestic court decisions discussed the applicants' church membership and their religious views, they based their decisions on the possibility that the children risked being caned. It further observes that the connection between religious views and caning was established by the applicants themselves by justifying the treatment of children with quotes from the Bible and the applicant parents' religious views. The Court therefore concludes that the decisions of which the applicant complained were aimed at protecting the "health or morals" and the "rights and freedoms" of the children. Accordingly, they pursued legitimate aims within the meaning of paragraph 2 of Article 8.

(iv) *Necessary in a democratic society*

(a) General principles

68. The Court reiterates that the question of whether an 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 measures 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); and *Hoppe v. Germany*, no. 28422/95, §§ 48, 49, 5 December 2002).

69. In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and second, it is in the child's best interests to ensure his development in a safe and secure environment, and a parent cannot be entitled under Article 8 to have such measures taken as would harm the child's health and development (*Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 136, ECHR 2010). It is not enough to show that a child could be placed in a more beneficial environment for his or her upbringing (see *K. and T. v. Finland* [GC], no. 25702/94, § 173, ECHR 2001-VII).

70. The Court further notes that while Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8. The Court cannot satisfactorily assess whether the reasons adduced by the national courts to justify these measures were "sufficient" for the purposes of Article 8 § 2 without at the same time determining whether the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them 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).

71. In considering the reasons adduced to justify the measures, and in assessing the decision-making process, the Court will give due account to the fact that the national authorities had the benefit of direct contact with all of the persons concerned. It is not the Court's task to substitute itself for the domestic authorities in the exercise of their responsibilities regarding custody issues (compare, among many other authorities, *Elsholz*, cited above, § 48). The Court reiterates that the authorities enjoy a wide margin of appreciation when assessing the necessity of taking a child into care (*ibid.*, § 49).

72. Lastly, the Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI). A positive obligation on the State to provide protection against inhuman or degrading treatment has been found to arise under Article 3 in a

number of cases: see, for example, *A. v. the United Kingdom* (cited above), where the child applicant had been caned by his stepfather; and *Z and Others v. the United Kingdom* ([GC], no. 29392/95, ECHR 2001-V), where four child applicants were severely abused and neglected by their parents.

73. Moreover, even though ill-treatment in violation of Article 3 usually involves actual bodily injury or intense physical or mental suffering, in the absence of those aspects, treatment may still be characterised as degrading and fall within the prohibition set forth in Article 3, if it humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance (*Bouyid v. Belgium* [GC], no. 23380/09, § 87, ECHR 2015, with further references). In that context the Court also notes that the Committee on the Rights of the Child of the United Nations defined corporal punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light, and emphasised that all forms of violence against children, however light, are unacceptable (see paragraph 37 above).

74. Lastly, in cases relating to both Articles 3 and 8 the Court has stressed the relevance of the age of the minors concerned and the need, where their physical and moral welfare is threatened, for children and other vulnerable members of society to benefit from State protection (see, for example, *K.U. v. Finland*, no. 2872/02, § 46, ECHR 2008; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 53, ECHR 2006-XI and *Ioan Pop and Others v. Romania*, no. 52924/09, 6 December 2016). The need to take account of the vulnerability of minors has also been affirmed at international level (see the references to international law in *Bouyid*, cited above, §§ 52-53 and 109).

(β) Application to the present case

75. Turning to the circumstances of the present case, the Court notes that at the core of the applicants' complaint lies the question of whether a parental practice of caning constitutes a sufficiently weighty reason to withdraw parts of parental authority and to take children into care.

76. The Court acknowledges that the applicants argued that their practice of caning did not cross the threshold of Article 3 of the Convention and that no physical signs of abuse were found on the children when they were examined after being taken into care. While the Court does not have to decide in the present case whether the applicants' treatment of their children, either actual or anticipated, went beyond the threshold of severity to fall within the ambit of Article 3 of the Convention, it observes, nonetheless, that treatment of this kind could fall within the scope of Article 3 of the Convention (see *A. v. the United Kingdom*, cited above, § 21).

77. In order to avoid any risk of ill-treatment and degrading treatment of children, the Court considers it commendable if member States prohibit in law all forms of corporal punishment of children. In that regard it notes that Germany has already established a right for children to have a non-violent upbringing and has prohibited physical punishment, psychological injury and other degrading measures.

78. The Court notes that member States should enforce legal provisions prohibiting corporal punishment of minors by proportionate measures in order to make such prohibitions practical and effective and not to remain theoretical. Therefore, the Court finds that the risk of systematic and regular caning constituted a relevant reason to withdraw parts of the parents' authority and to take the children into care.

79. In assessing 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 and whether the measures chosen were proportionate.

80. As far as the applicants' complaints of not being heard before the interlocutory order of 1 September 2013 are concerned, the Court notes that the order was reviewed by the Family Court on 29 and 30 November 2013 respectively, including testimony by the applicants. The Court therefore finds that, in the circumstances of the present case, the applicants, assisted by counsel, were in a position to put forward all their arguments against the withdrawal of parental authority.

81. As regards the evidential basis for the decisions, the Court observes that the Family Court and the Court of Appeal heard the parents, the children – except the applicant son in application no. 68125/14 owing to his age – the children's guardians *ad litem* and representatives of the youth office. Having had the benefit of direct contact with all of the persons concerned, the courts established, mainly on the testimony of former members of the Twelve Tribes community, that a general parenting practice of caning existed. Based on the applicant parents' submissions and statements in the proceedings and the statements of some of the children, the courts concluded that caning was or could be used by the applicant parents and that the applicant children would be at risk of being caned. The Court finds that those conclusions were based on a sufficient factual foundation and do not appear arbitrary or unreasonable.

82. Regarding the issue of the courts not obtaining expert opinions regarding the question of how relevant the wishes of the applicant children were, the extent to which they had formed those wishes themselves and the consequences of caning on the children, the Court reiterates that domestic courts are not always required to involve an expert in psychology, but that the issue depends on the specific circumstances of each case (see, *mutatis mutandis*, *Sommerfeld v. Germany* [GC], no. 31871/96, § 71,

ECHR 2003-VIII (extracts)). In the present case, the Family Court initiated main custody proceedings and commissioned expert opinions after the applicant children had been taken into care. Given the nature of summary proceedings and the need for particular speediness in interim matters, the Court finds it acceptable that the family courts did not await the conclusions of an expert in the interim proceedings, but deferred them to the main proceedings.

83. Having regard to the above, the Court is satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with.

84. Lastly, the Court has to assess whether the decisions to withdraw parts of the parents' authority and to take the children into care were proportionate. Taking children into care and thereby splitting up a family constitutes a very serious interference with the right to respect to family life protected under Article 8 of the Convention and should only be applied as a measure of last resort (see *Neulinger and Shuruk*, cited above, § 136). However, the decisions by the domestic courts were based on a risk of inhuman or degrading punishment, as prohibited by Article 3 of the Convention. The Court has previously held that even in the most difficult circumstances the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. The Court observes that the domestic courts did not assess the risk for the children in the abstract – based on the applicants' view on parenting – but followed a differentiated approach. The Family Court and the Court of Appeal limited the withdrawal of parental authority to those areas that were strictly necessary and to those applicant children that were of an age where corporal punishment could be expected and were therefore in a real and imminent risk of degrading punishment. Given the right of children to a non-violent upbringing in German law and the conflicting but strict conviction of the applicants, the domestic courts concluded that taking the children into care was justifiable.

85. In addition, the domestic courts gave detailed reasons why there was no other option available to protect the children and which entailed less of an infringement of each family's rights. The courts found that the parents had not shown any willingness to refrain from disciplining the children and that greater assistance from the youth office would not ensure the safety of the children at all times. Moreover, the courts found that even if the parents were willing to refrain from corporal punishment and able to resist pressure from the community, they would not be able to ensure that other community members would not cane the children when supervising them. In the circumstances of the present case the Court agrees with these conclusions. It notes that the proceedings concerned a form of institutionalized violence against minors, which was considered by the applicant parents as an element of the children's upbringing. Consequently, any assistance by the youth office, such as training of the parents, could not have effectively protected



the children, as corporally disciplining the children was based on their unshakeable dogma.

86. 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. Based on fair proceedings, the domestic courts struck a balance between the interests of the applicant children and those of the applicant parents that aimed at protecting the best interests of the children and did not fall outside the margin of appreciation granted to the domestic authorities.

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

### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Takes note* of the terms of the respondent Government’s declarations under Article 8 of the Convention relating to the duration of the interim proceedings and of the modalities for ensuring compliance with the undertakings referred to therein, and *directs* in consequence:
  - (a) that the respondent State is to pay the applicants in application no. 68125/14 (Wetjen) EUR 9,000 (nine thousand euros), within three months of the date of the notification of the Court’s decision issued in accordance with Article 37 § 1 of the Convention, in respect of pecuniary and non-pecuniary damage as well as costs and expenses;
  - (b) that the respondent State is to pay the applicants in application no. 72204/15 (Schott) EUR 8,000 (eight thousand euros), within three months from the date of the notification of the Court’s decision issued in accordance with Article 37 § 1 of the Convention, in respect of pecuniary and non-pecuniary damage as well as costs and expenses;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Decides* to strike that part of the applications out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

4. *Declares* the remainder of the applications admissible;
5. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 22 March 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Deputy Registrar

Erik Møse  
President

**APPENDIX**

<b>Application no.</b>	<b>Applicant</b>	<b>Date of birth</b>	<b>Nationality</b>
68125/14	<b>Peter WETJEN</b>	09/01/1966	German
	<b>Christiane WETJEN</b>	27/10/1970	German
	<b>J. WETJEN</b>	03/04/2011	German
72204/14	<b>Andreas SCHOTT</b>	20/05/1963	German
	<b>Regina SCHOTT</b>	23/09/1961	Austrian
	<b>B. SCHOTT</b>	17/05/1999	German and Austrian
	<b>C. SCHOTT</b>	14/02/2002	German and Austrian
	<b>I. SCHOTT</b>	03/09/2004	German and Austrian