



Partial withdrawal of parental authority and removal of children from family home after the refusal to send them to school did not violate article 8

In today's **Chamber judgment**¹ in the case of [Wunderlich v. Germany](#) (application no. 18925/15) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the withdrawal of some aspects of the parents' authority and the removal of the four children from their family home for three weeks, after the applicants persistently refused to send their children to school.

The Court found in particular that the enforcement of compulsory school attendance in order to ensure the children's integration into society was a relevant reason for justifying the partial withdrawal of parental authority.

The Court also found that the authorities had reasonably assumed that the children were isolated, had had no contact with anyone outside of the family and that a risk to their physical integrity had existed. It held that the actual removal of the children had not lasted any longer than was necessary to ensure the children's best interests. The Court concluded 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.

Principal facts

The applicants, Petra Wunderlich and Dirk Wunderlich, are German nationals who were born in 1967 and 1966 respectively. They are parents of four children born between 1999 and 2005.

In 2005 the applicants refused to register their oldest daughter at school. Regulatory fines and criminal proceedings were conducted against them for failing to comply with rules on compulsory school attendance. They paid the fines but did not send her to school. From 2008 to 2011 the applicants lived with their children abroad. They returned to Germany in 2011 but did not register their children at any school.

By a letter of 13 July 2012 the State Education Authority (*staatliches Schulamt*), supported by the youth office, informed the family court that Mr and Mrs Wunderlich were deliberately and persistently refusing to send their children to school, thereby endangering the children's best interests as they were growing up in a "parallel world". Two months later the Darmstadt Family Court withdrew the applicants' right to determine their children's place of residence and their right to take decisions on school matters and transferred these rights to the youth office. It also ordered them to hand their children over to the youth office for enforcement of the rules on compulsory

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

school attendance. It found in particular that the parents' refusal to send their children to school prevented them from becoming part of the community and learning social skills such as tolerance.

Attempts by the youth office to conduct learning assessments of the children failed on several occasions between 2012 and 2013.

In April 2013 the Frankfurt am Main Court of Appeal rejected an appeal by the parents against the family court's decision. It considered that there was a concrete danger to the children's best interests as the education they were receiving from their parents could not be considered as compensating for not attending school. In October 2014 the Federal Constitutional Court refused to accept a constitutional complaint by Mr and Mrs Wunderlich for adjudication.

The children were removed and placed in a children's home for three weeks between August and September 2013. They attended school between 2013 and 2014. In June 2014 Mr and Mrs Wunderlich again withdrew their children from school. Two months later, 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, noting in particular that the learning assessment had shown that the children's level of knowledge was not alarming and that, in contrast to August 2013, a risk from Mr Wunderlich to their physical integrity could now be excluded. The Court of Appeal, however, emphasised that the decision should not be understood as permission to educate the children at home.

Complaints, procedure and composition of the Court

Relying on Article 8, Mr and Mrs Wunderlich complained about the decision by the German authorities to withdraw parts of their parental authority by transferring them to the youth office. In particular, they complained about the forcible removal of their children and their placement in a children's home for three weeks.

The application was lodged with the European Court of Human Rights on 16 April 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,
Angelika **Nußberger** (Germany),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

[Article 8](#)

The Court observed that the parties had 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 had constituted an interference with the applicants' right to respect for family life under Article 8.

It found that the enforcement of compulsory school attendance in order to ensure the children's integration into society was a relevant reason for justifying the partial withdrawal of parental authority. In the Court's view the domestic authorities had reasons to assume that the applicants

had endangered their children by not sending them to school and instead keeping them in a “symbiotic” family system. Based on the information available at the time, the domestic authorities had reasonably assumed that the children were isolated, had had no contact with anyone outside of the family and that a risk to their physical integrity had existed. The Court pointed out that the lack of more substantial information was based on Mr and Mrs Wunderlich’s resistance to have the learning assessment conducted prior to the removal of the children.

Concerning the procedural requirements the Court noted that it was 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.

It further held that the domestic courts had given detailed reasons why less severe measures than taking the children into care were not available. It noted in that regard that not even prior administrative fines had changed Mr and Mrs Wunderlich’s refusal to send their children to school. Since the children were returned to their parents after the learning assessment had been conducted and after they had agreed to send their children to school, the actual removal of the children had not lasted any longer than necessary and had not been implemented in a way which was particularly harsh.

The foregoing considerations were therefore 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 had struck a proportionate balance between the best interests of the children and those of Mr and Mrs Wunderlich, which did not fall outside their margin of appreciation.

There had accordingly been no violation of Article 8.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.