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Advocacy for Family Justice & Human Rights

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Structural Pattern of Systematic Neutralization of Children’s Expressed Will in German Family Court Practice With Indicators of Potential Structural Gender Asymmetry

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Submitted to:

- UN High Commissioner for Human Rights
- UN Special Rapporteur on the Independence of Judges and Lawyers
- UN Special Rapporteur on Violence Against Women and Girls
- UN Special Rapporteur on the Sale and Sexual Exploitation of Children
- UN Special Rapporteur on Minority Issues

I. Executive Summary

This report examines two independent custody proceedings conducted within the jurisdiction of the Local Family Court of Kusel, Germany, one of which was subsequently reviewed by the Higher Regional Court (Zweibrücken).

Although the two cases involve different families, different factual constellations, different procedural guardians, and different residence configurations, both proceedings display a recurring structural feature:

Children were formally heard.

Their statements were documented.

Their preferences were acknowledged.

Yet their expressed will did not produce a determinative legal consequence.

This report does not challenge judicial discretion as such. Rather, it examines whether the practical weighting of children’s views complies with:

- Article 12 CRC (right to be heard and given due weight)
- Article 8 ECHR (right to respect for family life)
- Article 6 GG (constitutional protection of family)
- Article 3 GG and Article 14 ECHR (equality and non-discrimination)

The central concern is whether child participation is procedurally fulfilled but substantively neutralized in high-conflict custody contexts.

II. Methodological Framework

This report relies exclusively on:

- Official court protocols
- Documented child hearings
- Recorded institutional recommendations

No speculative assertions or unverified allegations are included.

The analysis proceeds in three stages:

1. Factual reconstruction
2. Comparative structural assessment
3. Normative compliance analysis

This report does not claim nationwide statistical conclusiveness. It identifies structural indicators warranting independent examination.

III. Institutional Continuity

Both Family Homos and Family Howyshan proceedings were initially conducted before:

- The same Local Family Court (Amtsgericht – Familiengericht – Kusel)
- The same presiding judge at local level
- The same Jugendamt (Kreisverwaltung Kusel)

In the Homos case:

- The structural custody configuration originated at the Local Court level.
- The Higher Regional Court (Zweibrücken) later maintained that structural configuration.

In the Howyshan case:

- The Local Court under the same judicial authority adopted an identical structural orientation.

Importantly:

- The procedural guardians differed in each case.
- The children's residence configurations differed.
- The family constellations differed.
- The conflict histories differed.

Despite these differences, the structural custody outcome remained materially consistent.

This continuity forms the analytical foundation of this report.

IV. Case I – Family Homos

Higher Regional Court Zweibrücken – 10 January 2025

In the appellate proceeding:

- Four older siblings were heard individually.
- The children were interviewed separately.
- A procedural guardian was present.
- Three appellate judges participated.

Documented statements included:

- A clear wish that Sugud live with her siblings.
- Expressed refusal of contact with the mother due to stress and conflict.

Outcome:

- Sole custody of Sugud remained with the mother.
- Sibling unity was not restored.
- The children's expressed refusal of contact was not determinative.

Legal Observation

Article 12 CRC requires that children capable of forming their own views be given due weight according to age and maturity.

The record confirms:

- Capacity
- Consistency
- Independent hearing

However, the reasoning does not demonstrate how the children's expressed will was concretely balanced against competing considerations.

The issue is not whether courts must automatically implement children's wishes.

The issue is whether their views had measurable influence on the final determination.

V. Case II – Family Howyshan

Local Family Court Kusel – 4 February 2026

In this case:

- The children were residing primarily with the mother at the time of hearing.
- Each child was heard individually.
- Statements included:
 - Desire for both parents to decide jointly.
 - Preference for alternating residence.
 - Emotional attachment to both parents.
 - No expressed fear of the father.

One child explicitly articulated preference for shared parental decision-making.

Despite this:

- The Jugendamt recommended sole custody to the mother.
- The procedural guardian recommended continuation of sole maternal custody.
- The court indicated confirmation of the prior custody structure.

Again, the expressed will of the children did not alter the structural custody configuration.

VI. Comparative Structural Analysis

Structural Variable	Family Homos	Family Howyshan
Local Court	Kusel	Kusel
Presiding Judge	Same	Same
Jugendamt	Kusel	Kusel
Procedural Guardian	Different	Different
Children Residing With	Father	Mother
Children Heard Individually	Yes	Yes
Clear Expressed Preference	Yes	Yes
Sole Maternal Custody Maintained	Yes	Yes
Outcome Changed on Appeal	No	—

Refined Structural Conclusion

In Case I:

Children were residing with the father → sole custody of Sugud remained with the mother, despite the clear and repeated expression by the older siblings of their wish to maintain sibling unity. This raises serious concerns regarding the extent to which their right to preserve family bonds was effectively considered, as well as Sugud's own interest in growing up within the unity of her siblings, in light of constitutional and international principles protecting family integrity.

In Case II:

Children were residing with the mother → maternal sole custody was maintained despite expressed preferences for shared parental decision-making.

Across divergent residence configurations, the structural custody outcome remained invariant.

This reduces the plausibility that paternal influence alone explains the result.

VII. Applicable German Procedural and Constitutional Standards

Under German family procedure law:

- § 159 FamFG requires personal hearing of the child in custody matters.
- § 26 FamFG establishes the principle of ex officio investigation (Amtsermittlungsgrundsatz).
- The proportionality principle (Verhältnismäßigkeit) applies to any restriction of parental rights.
- Article 6 GG requires heightened constitutional scrutiny when family unity is affected.

German Federal Constitutional Court jurisprudence has consistently emphasized that:

The child's will must be seriously examined and may not be dismissed without concrete, age-appropriate and proportionate reasoning.

In the examined proceedings:

- The formal requirement of child hearing under §159 FamFG was fulfilled.
- However, no transparent structured proportionality analysis appears regarding sibling separation.

- The reasoning does not visibly demonstrate balancing under §26 FamFG in relation to the child's articulated will.

The issue, therefore, concerns not absence of hearing, but absence of demonstrable structured constitutional balancing.

VIII. European Court of Human Rights Jurisprudence

The ECtHR has consistently held that:

- Article 8 ECHR requires authorities to take measures facilitating family reunification where possible.
- Sibling relationships fall within the scope of protected family life.
- Effective participation must be meaningful, not merely formal.

The Court emphasizes:

- Explicit proportionality assessment
- Individualized reasoning
- Consideration of less restrictive alternatives

Where child participation is acknowledged but demonstrably lacks influence, the Court has examined whether procedural safeguards were merely formal.

The pattern identified in this report raises comparable structural concerns warranting review.

This report does not assert a judicial violation determination.

It identifies structural parallels requiring independent examination.

IX. Indicators of Potential Structural Gender Asymmetry

Across both proceedings:

- Sole maternal custody was preserved.
- Children's expressed will did not alter that structural configuration.
- Institutional recommendations aligned in one direction.

This report does not claim statistical proof of systemic discrimination.

However:

When identical custody outcomes persist across divergent factual constellations under the same institutional actors, the possibility of a de facto maternal-custody presumption warrants objective examination.

If confirmed through broader review, such a pattern may constitute indirect structural asymmetry under:

- Article 3 GG
- Article 14 ECHR
- Article 2 CRC

The concern relates to systemic effect, not personal intent.

X. Institutional Review Gap

Legal remedies were pursued.

No structural clarification regarding weighting standards has been publicly articulated.

Absence of corrective engagement across hierarchical levels may indicate the need for independent external examination.

XI. Request for Thematic and Structural Review

SUGUD respectfully submits that the identified pattern may reflect more than isolated judicial discretion.

Accordingly, SUGUD requests:

1. Independent preliminary assessment of compliance with Article 12 CRC in the examined proceedings.
2. Thematic review of whether conflict-stabilization logic functions as a structural override mechanism limiting child agency.
3. Examination of protection standards for sibling unity under Article 8 ECHR.
4. Evaluation of the effectiveness of appellate review mechanisms.
5. Consideration whether repeated maternal sole custody outcomes under divergent factual constellations warrant examination for potential indirect structural asymmetry.

The request is not for condemnation.

It is for structural clarification.

XII. Final Observation

Two families.

Same local court.

Same presiding judicial authority.

Same Jugendamt.

Different guardians.

Different residence configurations.

Identical structural custody stability.

When outcomes remain structurally invariant despite opposing factual dynamics, structural examination becomes necessary.

This report does not pronounce guilt.

It requests independent review.

Respectfully submitted,

Ahmed Homos

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Member of the ver.di Trade Union

Member of BVF & AWU

Founder of SUGUD

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