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Thomas Meysen (eds.)

Interventions Against Child Abuse and Violence Against Women

Ethics and culture in practice and policy

Cultural Encounters in
Intervention Against Violence, Vol I

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Chapter 5

Information, Intervention, and Assessment – Frameworks of child physical abuse and neglect interventions in four countries

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1 Introduction

The well-being of children is not only the concern of parents and families. The UN Convention on the Rights of the Child (CRC) is clear about the multiple responsibilities of the state. In case of child abuse and neglect the state has a duty to enter the private sphere of family life, if necessary unconsented (article 19 CRC). The international standards are reflected in the legal and institutional frameworks of national child protection systems. At the same time systems are shaped by socio-cultural norms as well as legal-organisational traditions.¹ The four countries in the study, England and Wales, Germany, Portugal, and Slovenia, come from different, if not contrasting, historical provenances of child protection policy. Comparing the systems we presumed to find expected divergences as well as unexpected similarities.

In the field of international comparison the descriptive portrayal and mapping of systems (e.g. European Commission 2010 and 2010a; Nett & Spratt 2012) leads the way towards a characterisation that catches the essential points of the individual systems and traditions (Hämäläinen et al. 2012; Meysen & Kelly 2018). The four countries in the CEINAV study only partly fit in the classic three-fold classification by Gøsta Esping-Andersen (1990), differentiating between ‘liberal’ welfare states (anglo-american), conservative and ‘corporatist’ welfare states (continental Europe), and social democratic welfare states (Nordic countries). These „three worlds“ leave out the countries in Eastern Europe, like Slovenia, which share similarities in the socio-cultural backgrounds but show different transformational processes with their particular evolvments of law and culture over the last three decades. Child protection systems in several Continental European and Nordic countries recently seem to show convergence, distinctions have become rather inconclusive. Moreover, the differences between Southern and Middle European countries, such as Portugal and Germany, are hardly reflected in these clusters. Therefore grouping has become more complex. The classic approaches partly lost their convincibility in respect to selectivity and justification over time.

Nevertheless, the rough three-tier political-geographic cluster still influences international comparison (Gilbert et al. 2011; Skivenes et al. 2015; Burns et al. 2016). It is com-

¹ This chapter additionally draws on eight country context papers produced in the CEINAV project, a legal-institutional and a socio-cultural country portrait for each country.

plemented by a two-tier differentiation making a distinction between risk oriented and service oriented systems (Gilbert et al, 2011; Gilbert 1997). In combining those two Kenneth Burns et al. (2016) propose to differentiate between investigative and protection oriented systems (mainly in the anglo-american countries) and family support oriented systems, split into the Western countries of continental Europe and the Nordic states. To catch the multi-faceted dimensions of child protection systems matrixes of contrasting characterisations could be applied, enabling also to reflect the degree of their allocation to one or the other. Thomas Meysen & Carol Hagemann-White (2011, pp. 175ff.) suggest to classify the responsibility (family-conservative or child rights oriented) on one tier and the primary orientation (investigative-reactive or support oriented-proactive) on the other. The clustering matrix could evaluate degrees to what extent child protection is primarily seen as a family issue or a shared responsibility of families and the states, and how the systems are taking a reacting and investigative approach towards the prevention of risk and further harm, or are placing proactive provision of child and family support at the foreground. For the comparison of child protection systems Sven Hesse (2013) introduces the children-at-risk model and relates to each other the three dimensions of family policy, culture-specific discourse, and child welfare.

To further characterise the four child protection systems of England and Wales, Germany, Portugal, and Slovenia (see 5 below) the multi-national comparison in the following chapter – only – looks through the lens of legal-organisational structures of three procedural aspects of intervention: information, intervention, and assessment (2 to 4 below). The spotlights concentrate on child physical abuse and neglect. Child sexual abuse was left out in the CEINAV study since often differing legal provisions and organisational procedures apply that lead to additional questions. Emotional/psychological abuse was not included on the assumption that dissimilarities in its acknowledgment might divert attention from the ethical and cultural focus in the study.

2 Sharing of information

By the time professionals become aware of information that indicates (potential) harm or risk of harm to a child, the question of freedom, discretion, and obligations to act comes up. The handling of information, by some, is considered one of the utmost important aspects in the legal-organisational structure of child protection systems (Svevo-Cianci et al. 2010; Mathews 2015). It is directly related to a high priority policy goal in child protection, the increase of the number of abused and/or neglected children brought to the attention of the system so that protective measures can be taken. For policy in most countries with a developed legal-organisational framework on the protection of children the increase of notifications or, as other countries phrase it, referrals or reports of any suspicion of child abuse and neglect to the competent authorities is a goal if not priority (Rauschenbach & Kindler 2016).

Both in Portugal and Slovenia mandatory reporting laws are in place. A failure to notify is a misdemeanour that can be penalised. Administrative child protection authorities are obliged to inform and involve the criminal justice system, in Slovenia only if a felony with a minimum sentence of 3 years is at stake (European Commission 2010). The legally binding responsibilities of professionals begin and at the same time end with the referral. While in Slovenia the criminal justice system in many cases seems to take over or at least is influencing and likely to dominate the further proceeding towards investigations whether a crime has been committed, the Portuguese child protection law demands to call

on an interdisciplinary child protection commission with criminal proceedings only taking place in exceptional cases (see 4 below).

In England and Wales mandatory reporting was recently under discussion but the government decided not to implement such a mechanism (HM Government 2018). Rather contradicting the lively debate with its main focus on whether professionals can be held criminally liable for the failure to report, guidelines in England and Wales strongly expect professionals to assist statutory social services and, in this regard, to notify perceptions of a child being (potentially) at risk to the statutory social services to ensure that early indications of a child being at risk of social exclusion receive appropriate attention (HM Department of Health et al. 2000, p. IX). In addition, professionals are expected to actively participate in the process of assessment and service provision (see 4 below).

The child protection system in Germany swims against the mainstream and, up to date, abstains from notification duties (Meysen 2015). However, the law lays down an obligatory protective mandate for persons in contact with children and families whose professions swears them to secrecy (see 3.1 below). If becoming aware of weighty grounds that a child is at risk of harm they have the duty to evaluate their perceptions, preferably in confidential reflection with an expert in the field, and to communicate their concerns with the family members they are professionally in contact with as well as to motivate them to voluntarily take on further services if esteemed necessary. Exceptions are made if the protection was otherwise at stake. Notification is permitted, not obligatory, if necessary to ensure protection (Meysen & Eschelbach 2012). In cases of child physical abuse and neglect the criminal justice system is involved only in extreme cases.

3 Intervention: service provision and threshold

3.1 Support services and threshold for their provision

Interventions in the CEINAV project were understood in an overarching concept drawing on its etymology: venire – to go, inter – in-between or inside (Kelly & Meysen 2016). In an understanding of support for children, parents, and families, interventions can be carried out by different stakeholders. Support services can be directly accessible or only after a decision of the competent authorities. They can be roughly clustered in early prevention, early intervention, and placement provision. Thresholds also are manifold, differentiating between when professionals are activated or obliged to offer and provide support and when they are entitled to act without consent up to the most intrusive measure of a child's removal (for the latter see 3.2).

All countries in the study except Slovenia give a priority to early intervention, in Germany backed up by a thorough early prevention programme with universal and targeted services secured by the law and fairly reliably provided by health care and child and youth welfare in all communities nationwide (NZFH 2012; NZFH 2014). Service providers are mainly NGOs, privileged by a so called subsidiarity principle placing them prior to support services by state run agencies. Full financing by the competent local authorities, the youth welfare offices, is legally required. Parents have a claim to early intervention support services that stands up in court if they need help to guarantee parenting sufficient for the promotion of the well-being of their child (Kindler 2012; Kindler & Borrmann 2012).

In England and Wales early prevention like the early help programmes are developing but not comprehensively secured across the country. However, early intervention services play an important role. They have been emphatically introduced and significantly strength-

ened under the umbrella of the Every Child Matters programme (2004 to 2008) (HM Government Green Paper 2003) which was continued by a fragmented set of policy initiatives with establishment of the Early Intervention Foundation and the extension of the Troubled Families Programme (2015 to 2020) (HM Department for Communities and Local Government 2017). In each community a set of services is provided, however, financing is increasingly under pressure in times of austerity. The threshold for service provision varies since the authorities have discretion what services they have available in their community and to what extent they finance services. Parents and children in need are not legally entitled to enforce support if not offered.

In Portugal, services for families while the child lives within the family are established, sophisticated concepts are developed and promoted. But availability is lacking and often restricted to certain cities and regions. Overall, support services are not yet sufficiently differentiated, widely and timely available throughout the country and seem mainly to be provided if a removal of the child is the alternative rather than to intervene at an earlier stage (European Commission 2010; Ferreira 2012).

In Slovenia, the main focus concerning support services lies on foster and residential care. At the discretion of the competent administrative authorities, recommended procedures allow a risk assessment with support for parents as an outcome. Service providers are mainly NGOs but rare, not adequate to all needs, and not established nationwide.

3.2 Threshold for unconsented interventions and competent authority

The legitimacy for unconsented interventions is, as mentioned above (1), the state's duty to protect children from all forms of violence, abuse, neglect, maltreatment or exploitation (article 19(1) CRC). However, the threshold has to take into account the proportionality and weigh the protection with the right of the child to live in her/his family (article 9(1) CRC). The legal systems take different approaches, some regulate one, others a stepped threshold. The focus can be on the child development, the child's current situation, the development of the parenting ability, the current parental behaviour, and/or past parental actions. In addition, the competence to order a removal varies between states, either administrative agencies or courts are appointed with the respective right and duty (Meysen & Hagemann-White 2010).

The law in Slovenia authorises the local Centre for Social Work to remove a child from her/his parents if parents neglected the education and care or if the removal is in the best interests of the child because of other, not specified reasons. Maximum duration for the administrative order is three years. In a stepped threshold, the withdrawal of parental rights can only be issued by the court if parents abused their parental rights, abandoned their child, showed that they will not take care of the child, or seriously neglected their duties in another way. All decisions can be appealed. The Slovenian approach stands out in a comparison between European states since it is the only one which solely concentrates on past parental actions towards the child and does not (additionally) focus on the child's development (European Commission 2010; Meysen & Hagemann-White 2011, p. 19).

In contrast, the German law lays down only a single threshold, not differentiating between the measures such as orders to seek support, prohibitions to contact the child, or the withdrawal of parental rights to enable a removal. The presuppositions for unconsented interventions are two-fold, requiring a child endangerment as well as a lacking parental willingness or ability to avert the danger. Child endangerment is defined as a current danger to an extent that without intervention the development would likely lead to future significant harm for the child. Ordering unconsented interventions in parental rights is reserved to family courts. Only in case of an emergency is the administrative youth welfare

office entitled to place a child without parental consent until a court can file an order (Haug & Höynck 2016).

Child endangerment is, as well, the term at the centre of the Portuguese threshold. The legal definition uses a list of situations, including the child being victim of physical, psychological, and sexual abuse, not receiving the affection and care according to her/his age, or directly or indirectly subjected to behaviour seriously affecting their safety, emotional well-being, health, safety, training, education and development. Protective measures under the law are support to the parents or other family members, appointing a guardian with (provisional) custody, or placement. As in Germany or England and Wales the least intrusive measure shall be taken (European Commission 2010a). If an emergency placement is necessary, the local protection commission in its restricted mode (see 4 below) can call on the police or the prosecutor who are the competent authority to order the removal. The decision must be approved by a judge within 48 hours. All other orders that overrule consent are also reserved to courts. Such decisions are made if parents do not fulfil the promotion and protection agreement or if the child opposes the protection measure, decisions and removals (Ferreira 2012).

In England and Wales, the legal threshold for unconsented intervention is, as in Germany, two-fold. Presuppositions are that the child concerned is suffering, or is likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given to him if the order were not made. The orders differentiate between care and supervision orders. Courts are the competent authority to make such orders. With a care order the local authorities are designated with parental responsibility and have the power to determine a person who has parental responsibility for the child. With a supervision order the supervisor has the duties to advise, assist and befriend the child, and inform the court when the order is not fully complied with or no longer necessary (Broadhurst 2016).

4 Assessment

The legal framing of the threshold as well as the availability and accessibility of supportive services are reflected in the orientations and procedures of the assessments.

The sole focus on past parental actions in Slovenia leads to an investigative approach with the aim to find out the truth about a criminal act. In distinction, the assessment in England and Wales, Germany, and Portugal concentrates on individual realities and the need for help of the persons concerned. Professional judgement with a weighing of interests and alternatives is highly valued in Germany and Portugal. In England and Wales professionals are guided by rules and actions of decision-makers are far more narrowed down by procedural prescripts (Munro 2011; Parton & Berridge 2011; Stafford et al. 2012; Barn & Kirton 2015). In the other three countries the decisions of professionals on which measures to take and methods to use are more situationally adaptable, less regulated, and at the same less clear. Especially in Portugal and Slovenia the lack of options and resources sometimes makes the freedom and discretion for professional judgement rather theoretical (Meysen & Kelly 2018). In all countries professionals manoeuvre between the two orientations of preventing the worst and achieving good outcomes, sometimes leaning more to the safe side (England and Wales), sometimes being more risk-friendly (Germany, Portugal) (Meysen & Kelly 2018).

The assessments are conducted with diverging scopes and they involve different professionals. In England and Wales the official assessment framework follows a broad un-

derstanding and contains all phases: initial recognition and referring, gathering information, organising the information available, analysing patterns of harm and protection, predicting the likely outlook for the child, developing a plan of intervention, and identifying outcomes and measures for intervention (HM Department of Health et al. 2000; Ben-tovim et al. 2009; Pizzey et al. 2015). The scope in Germany is similarly holistic but the legal provisions are not as structured (Bundesarbeitsgemeinschaft Landesjugendämter 2015). The Protection Commissions in the restricted mode in Portugal are responsible for planning and providing services, for reaching an agreement with the family members, and for evaluating the outcomes (Ferreira 2012). In Slovenia non-binding professional guidelines for the protection of children from family violence by social work centres include procedures for risk assessment. The procedures follow different paths depending on whether the parents admit the violent behaviour and accept their responsibility for their actions or deny it. Plans for help are not included in the limited understanding of risk assessment.

Multi-disciplinarity is established in the rules for assessment in all four countries. The Protection Commissions in Portugal are divided into two types: the extended and the restricted mode. The extended commissions serve as a forum for discussion and reflection on the problems of childhood and youth in general, are developing actions to promote the rights and prevention of risk situations for children and respective families. The restricted commissions work continuously. Part of the duties of the latter is to assess the child's situation, to initiate a prosecution process, to call for advice and collaboration with other professionals and agencies, and to decide on the implementation, monitoring and review of protective measures. In Slovenia inter-agency teams are regulated in the law and mandatory for more difficult cases. The aim is to exchange information, to develop a joint help plan, and adopt appropriate and coordinated measures. In England and Wales Multi-Agency Safeguarding Hubs (MASH) have been established in most of the local authorities. If the particular threshold to call on MASH is met all professionals in contact with the family share information across stakeholder groups and systems, including the criminal justice system (HM Home Office 2014). The German legal provision on help planning demands including service providers, child and youth psychiatrists/psychotherapists, and labour agencies. A multi-disciplinary assessment of the situation of the child is not regulated but announced by the governing coalition for the legislative period (CDU et al. 2018).

5 Conclusions

England and Wales are counted as 'liberal' welfare states, Germany and Portugal as conservative and 'corporatist' welfare states, and Slovenia as a transformational Eastern European state. Looking through the legal-organisational lens Portugal and Germany are probably the most service oriented system, giving priority to getting in contact with the family members and achieving voluntary acceptance of services (Wolff et al. 2011; Wolff et al. 2016). Policies in England and Germany promote a proactive approach towards supporting children and families, austerity measures contradict and shortfalls of public finances cause flaws in practice. Besides, the system in England and Wales pushes towards service orientation but deflects professional guidance by excessively restricting the scope for individual professional judgement as well as placing a strong focus on information sharing and assessing the needs and likelihood of harm. The Slovenian system aims towards service orientation but with its focus only on past actions and not on the development of the child as well as of the parenting it seems to be hanging lost in-between.

All four countries have clear duties to react to indications that a child is at risk or suffering harm. In Slovenia and Portugal the expectation to act seems to be closely related to abuse and neglect while in Germany, England and Wales the threshold asks institutions and professionals to provide services at an earlier stage in which a child is in need or even to prevent the child from being in need. Of the four countries in the CEINAV study Portugal and Slovenia leave the largest unsupported portion of responsibility for the well-being of children with their parents and families. In England/Wales and to an even higher extent in Germany a broad set of early prevention and early intervention services are provided and financed by the state. England and Wales and particularly Slovenia call for investigations, taking a stance on reacting to signs or notifications, in England and Wales giving priority to assessment and the proactive part to offer support. In Germany and Portugal the high value of consent and confidentiality shifts the focus during assessments more towards participation and engagement.

The legal-organisational lens brings into view only an extract of the full picture of child protection systems. Socio-cultural backgrounds are reflected in the law and organisational structures and the latter influence society and culture. Ethics introduce a third lens that plays out differently between national child protection systems and within them, for example between organisations, professions, and stakeholder groups. The CEINAV project and the following chapters bring the three tiers into communication.

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