

# Working Paper on Intervention Against Child Physical Abuse and Neglect in Germany<sup>1</sup>

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*To cite this paper: Beckmann, Janna & Meysen, Thomas: Working Paper on Intervention Against Child Abuse and Neglect in Germany, from the research project “Cultural Encounters in Intervention Against Violence” (CEINAV), January 2015.*

*<http://tinyurl.com/ceinavworkingpapers>*

## Part 1: The Intervention Sequence and the Response to Core Questions

The working paper is based on two multi-professional workshops in which we examined interventions against child physical abuse and neglect (see background paper). The workshops were held as one day discussions. Participants were presented a case story phased in three sequences. To introduce the discussions the two moderators asked six core questions. The same phased case story was used with minor adaptations in two workshops each in all four countries involved in the study (England/Wales, Germany, Portugal, Slovenia).

For a better understanding of the German national context, we first outline the legal framework the participants work in (1.1). Then we give the information about the empirical data and introduce the case story (1.2) followed by highlighting the intervention pathways from the perspective of professionals (1.3).

### Legal framework

In Germany, the core tasks for the protection of children are traditionally appointed to family courts and the child and youth welfare system; the latter not only includes the youth welfare offices with their social services, but also, for example, multiple advice and counselling services and day-care of which the majority are run by NGOs (§ 8a Code of Social Law, book eight, Child and Youth Welfare SGB VIII). But also physician/s, psychologists, social workers, teachers, pregnancy and drug counselling and advice centres have a legally binding duty to protect in case of child endangerment. The responsibilities were introduced by the Child Protection Act that came into force January 2012 (§ 4 Act on Cooperation and Information in Child Protection, KKG).

The Child Protection Act has led to considerable attentiveness and further vocational education throughout all professional groups. The term “child endangerment” has become a focal point in child protection across all professions and institutions – except the criminal justice system. It describes the

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<sup>1</sup> This project has received funding from the European Union’s Seventh Framework Programme for research, technological development and demonstration under grant agreement no 291827. The project CEINAV is financially supported by the HERA Joint Research Programme ([www.heranet.info](http://www.heranet.info)) which is co-funded by AHRC, AKA, BMBF via PT-DLR, DASTI, ETAG, FCT, FNR, FNRS, FWF, FWO, HAZU, IRC, LMT, MHEST, NWO, NCN, RANNÍS, RCN, VR and The European Community FP7 2007-2013, under the Socio-economic Sciences and Humanities programme.

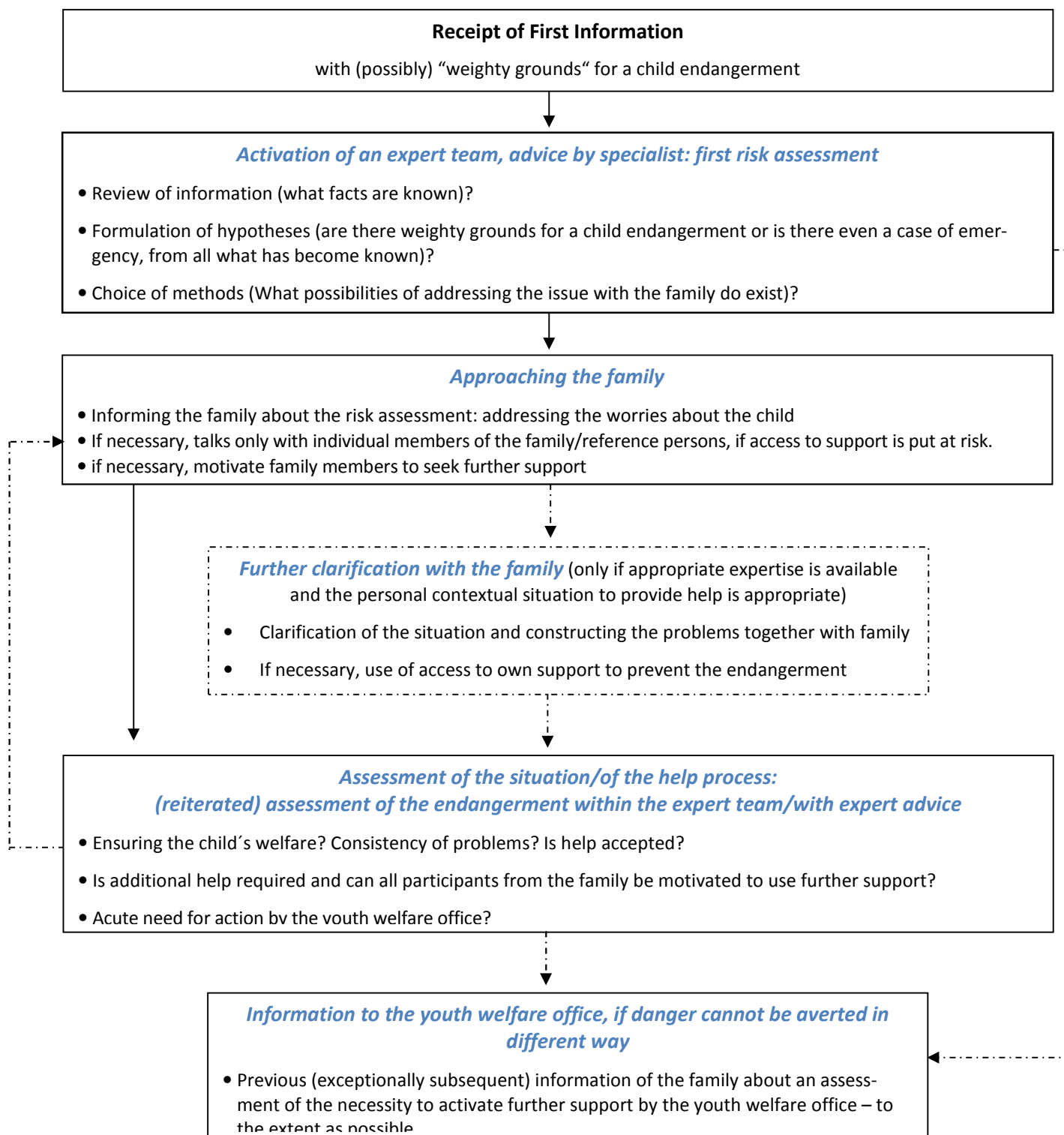
threshold upon which family courts are entitled to intervene in parental rights (sec. 1666(1) Civil Code). However, a duty to take action is set as soon as weighty grounds to assume that child's best interests are in danger come to notice. Contrary to England/Wales, Portugal and Slovenia, there is no obligation to notify the social services at this threshold. In fact, professionals are first of all obliged to use their contact to talk with the parents and/or child about their concerns and to motivate them to call upon further services. This approach is based on a system with highly differentiated and reliably available support for children and their parents in Germany. Therefore, the relationships with professionals are valued and should not be left by making a prompt notification to the youth welfare office in case of indications that a child needs support and/or protection.

To prevent professionals from being left alone with their challenging tasks, they are given the possibility or the duty to take recourse to an experienced expert in child protection issues. For the professionals in the child and youth welfare system seeking consultation with an experienced expert is mandatory. The others are appointed a legal claim to be provided with such a possibility. The legislator has thus made the specialized advisory services in case of suspicions a standard for all professionals working with children and families.

In urgent cases or if the efforts to get the family to seek support have been unsuccessful, the professionals are allowed to inform the youth welfare offices without parental or child's consent. Parental rights may only be restricted by the family court, though. Measures may be taken against the parents' will (1) if the child's best interests are in danger and (2) if the parents are unwilling or unable to avert the danger. A child's best interests are in danger if it can be foreseen with a high degree of certainty that future developments will result in considerable harm to the child (Federal High Court of Justice FamRZ 1956, 351).

The following diagram shows, as an ideal-type, the legally prescribed and, in a Europe-wide comparison, very specific procedure, if physicians, midwives, social workers, psychologists, teachers or professionals in an NGO in the child and youth welfare system become aware of weighty grounds to assume that a child's best interests are in danger (as to the required procedure for youth welfare office and family courts, please refer to Meysen, Hagemann-White 2011, p. 123 et seq.):

**FLOWCHART OF AN APPLIED BASIC CONDUCT OF PROCEDURE UPON DISCLOSURE OF “WEIGHTY GROUNDS TO ASSUME THAT A CHILD’S BEST INTERESTS ARE IN DANGER” (SEC. 8A PAR. 4 SGB VIII, § 4 KKG).**



## 1 Empirical Data and Case Story

Participants in the German workshops on physical child abuse and neglect were eleven professionals each. They came from institutions or professional roles that are part of the intervention system and were front line workers, from an intermediate level in the hierarchy or self-employed. The partici-

pants included 4 social workers from youth welfare offices, 2 family court judges, 2 police officers, 1 prosecutor, 2 social workers from ongoing service (NGO), 2 social workers from emergency residential care (NGO), 2 psychologists from counselling/advice centres (NGO), 1 child care worker, 2 primary school teachers/headmasters, 2 guardians ad litem, 1 paediatrician from a children's hospital, 1 forensic physician.

For both workshops the same story was used. It was split in three phases, each followed by questions of which one was printed on each the sheet with the phase of the story and another one was introduced by the moderators in each phase. In the afternoon interventions in families from minorities were discussed. The story presented in the workshops was as follows:

### **1<sup>st</sup> PHASE OF THE STORY**

*Adam, born on 3 January 2007, lives with his family. He is the first of three children. He has a younger sister (3 years) and brother (15 months, born in Sept. 2012). Adam is a very active child who is longing for the attention of his parents. Both parents find this can be wearying. His constant attempts to be noticed sometimes lead to a heated atmosphere. Quite often, the father rebukes him harshly. The mother sometimes sees the only way to stop Adam is to slap him.*

### **2<sup>nd</sup> PHASE OF THE STORY**

*In school his teacher has concerns that Adam can be clingy and fearful of how adults respond to him when he asks for things or needs attention. She is also concerned about the black and gritty pictures Adam paints. She recognizes that Adam's mother quite often brings him to school late and that Adam is dressed the same for two or three weeks in a row. He often seems hungry and asks other children if he can share their snacks. Adam's teacher notices bruises on his arm and asks him about them. He explains that he was playing boisterously with his younger sister and brother, but the teacher is not convinced by this story.*

*The teacher slowly wins Adam's trust and one day he confides in her that a bruise is from being 'punished'. When she starts to ask further questions he becomes upset and pleads with the teacher not to tell anyone because he is afraid that his mother would be very angry with him and that his father will punish him.*

*Around the same time the sister tells her nursery worker that Adam is naughty at home and that the parents have to show him how to behave.*

*The mother regularly brings the children to the paediatrician. At one visit, when the paediatrician asks the mother about bruises she tells him that she sometimes cannot control herself and, also, asks for strict confidentiality.*

### **3<sup>rd</sup> PHASE OF THE STORY**

*The teacher informs the youth welfare office. They come to the school the next day and see Adam's bruises in the face and welt on his butt. The social services initiate a medical examination and the diagnoses are haematoma caused by adult hands and being struck with objects like a belt or something similar.*

*When confronting the parents with the findings both mother and father deny that they have hit Adam with a belt or anything like a belt. However, the mother admits that her hand slipped once or twice but explains that Adam is such a difficult child. All attempts of the social services to find out who used the belt to chastise Adam fail.*

*The family accepts support services. They cooperate and in May 2014 the social worker reports that the development of the three children made significant progress that the parenting skills of the parents are constantly improving, that the mother controls her temper better, and that the father disciplines the children in a more adequate way. The relationship between Adam and his parents is characterized by increasing trust. Some concerns remain: the family struggles for money, parents fre-*

quently cancel or reschedule the appointments and the apartment is not as tidy or clean as it could or should be.

After a sports lesson the teacher, again, notices bruises on the Adam's back when he is changing clothes. She immediately informs the social services. Confronted with the information the mother concedes that her husband sometimes hits Adam with a belt. The father admits.

Temporary placement in foster care and initiating criminal prosecution are under discussion. The case worker wants to call a case conference and to collect information from all the professionals who are involved with the family. Both parents refuse their consent for the sharing of personal information.

## 2 Intervention pathways from the perspective of professionals

### (1) As a professional what might lead you to try and discover whether this might be a situation of child abuse or neglect? Or, on the other hand, what would keep you from getting involved?

In **phase 1** of the story the information caused concerns with all participants of both workshops and they were all of the opinion that there was reason to approach the family. There was a consensus that action should be taken to end the violence and to get in touch with the family. The way the participants looked at the situation differed. Professionals from the medical area and the criminal justice system addressed the act of violence itself.

*I don't think the wording is particularly apt here. It's not a question. The moment a child is being beaten it is being abused. That's the end of it. No further discussion necessary. (paediatrician, children's hospital)*

In contrast participants from the area of child and youth welfare and family law had a developmental-psychological view on the family and saw the necessity to check whether the child's needs were being met and to assess potential endangerment.

*Which, what's the situation like, is there a child endangerment and if so in what way? (guardian ad litem)*

### (2) How might it come about that your institution or profession is the place to which Adam turns to? Or how else might it happen that someone in your position would be involved?

Professionals considered in what way they would be informed about the case of violence. In one workshop following the path up to the child and/or the parents was preferred by most professionals. But this view was in conflict with other, particularly stated points of view according to which the youth welfare office should always be informed immediately. The second question, what would help to get involved, or what could keep the professionals from being involved, had to be asked twice before the professionals took it up. The teacher evoked personal worries, bad experience and the like whereupon also others could start to talk about obstacles in practice.

In the other workshop, the focus was less on how professionals get in touch with the family but rather on normative approaches to non-violence, the involvement of the criminal justice system, and the cooperation between professionals and institutions. They focused on the access to the family and the establishment of a relationship of trust only upon repeated request. Due to the multiplicity of situations by which, in Germany, helping professionals might get to know about possible child endangerment in practice, the general question about access did not seem to be in the foreground.

### **(3) Would you consider asking the mother, father and/or Adam directly about the suspected?**

The third core question refers to Phase 2 of the story, in which indications of a physical abuse and neglect are revealed at school, in the day-care centre or with the paediatrician. The question asked participants when professionals who get in touch with (potential) maltreatment and neglect would address the children and/or the parents concerning any such indications directly. Some professionals mentioned the fear of the family's reaction as a reason for not addressing them. Regarding the question what could keep the professionals from dealing with the case, the fear of an overreaction of other professionals/authorities, bad experience, insecurity and missing knowledge came up. Barriers for the involvement of parents and talking to them were seen in the lack of expertise but also in fears that Adam might be treated even worse or his trust might be damaged.

*And then I only spoke with the parents (afterwards). Because I was afraid that the parents would inflict even more harm on the child. (family court judge)*

*So, let's assume, I'm the teacher and I had already established a relationship of trust with Adam, so that Adam would have been able to confide in me. That's already quite a lot, I would think, if you manage to do that, as a teacher. [...] I wouldn't immediately go to the parents. (social worker, social services)*

One social worker from the social services in a youth welfare office thought it might be useful that the school talks to the parents first and, if possible, recommends bringing in the youth welfare office to a joint talk. She had experienced such an approach as a good way to get access. Parents would be confronted directly but with the intent of using the existing contact with the family to motivate the parents to call in the youth welfare office voluntarily. The possibility of direct access to the support of an NGO instead of applying for support at the youth welfare office was not considered.

Participation of the parents was on the one hand confirmed as a matter of course, but sometimes only upon request. Without repeated request the participants rather talked about involvement of other institutions and professional cooperation. In one workshop the question of parents' participation came directly from a social worker from emergency residential care, who has to work with parents in her practical professional work per se.

*But that's exactly where the really interesting question you've just mentioned comes up: at what point do we talk to the family or with the children? And how often do they advise us, because first we have to deliberate amongst ourselves to assess the situation. And who, well, just when you started talking about that, I thought, hey, is there anybody talking to Adam or the parents? (NGO, social worker, emergency residential care)*

This suggests that involvement of the family is only partly seen as a matter of course and that in child protection in Germany it is not a given, despite clear legal duties; it seems that professionals sometimes would rather not talk to the parents or children. Reasons could be professional uncertainty or lack of skills and resources for the challenging and time-consuming confrontation of families with difficult issues. But underlying these reasons might also be an attitude that does not attach much importance to participation. In any case, the fact that some participants did not mention involving parents points to the possibility that a commitment to participation may not be accepted among all professionals.

*The question when do and don't we inform the parents. And my experience is that people prefer not to inform the parents. Of course, these conversations are tremendously awkward, because the parents are going to deny it. From the viewpoint of those who intervene directly, we've repeatedly had the experience that even families who didn't want any help in the past, say, yes, now we want help, and if there had been an earlier intervention, I wouldn't have done this or that. And I think it's important to emphasise that here. (NGO, social worker, ongoing service)*

*I also think that it's important to hear the parents out at some point. The only question is at what point. (Family court judge)*

The involvement is especially important for organizing consented referrals and transitions, especially to the youth welfare office. The legal demand that professionals have to address parents and/or children first before they are allowed to turn to the youth welfare office with their concerns was seen as helpful by the youth welfare offices.

*We started to, well, I'll stick to the school example, if the school notices something, [to ask the school] to get in contact with the parents, to be as open as they can be under the given circumstances. And then the school gives us a call and we'll arrange a meeting as soon as possible. For them to say, we are worried, and we noticed this or that, how about we ask the youth welfare office to come in for a talk, maybe they have some ideas on how best to support you. In our experience that's a good way to start out, it makes it easier to get in contact with the family, it's better than this 'we've notified the authorities', and then they're suddenly there to intervene, it's better to look for a solution together. It doesn't always work, of course, but I think it's improved over the years, doing it this way around. (social worker, social services)*

On the part of the other stakeholders involved, however, it becomes apparent that there are quite some inhibition thresholds connected to the challenging task of addressing such complicated issues with the child and/or parents.

*I would like to stress, from the school's perspective, that the student's effective protection has to be guaranteed. [...] if I, as a teacher, do not feel ready or competent to talk to the mother, or if I'm afraid that the child won't come to school afterwards, that the child will suffer even more, that the child will be harmed in even more ways, then I would prefer to inform a professional, in our case the school's psychologist, or somebody else, and discuss the case with the other teachers or within the network. That's an open question. You asked how quickly I would act, in any case it wouldn't be a situation I could just postpone, I would have to say that the parents have to be, as a legal requirement, so, as a rule, to speak with them, because they are the ones who can stop it. But I would want to consult with somebody else first. (headmaster primary school)*

**(4) When could it be right to notify your perceptions and presumptions to the social services? What makes you regard the notification without consent or against the wishes of the child or parent as appropriate or inappropriate?**

Concerning involvement of the youth welfare office (irrespective of the will of the family members) some professionals made this dependent on the parents' reaction to the offer of support.

*To confront the parents with the given information and to work towards the parents' acceptance of support. If that is not the case, if the parents do not share the institution's perception that there is a problem, and under the condition that there is significant information about the possible abuse, then, yes, the youth welfare office should be taken on board. (NGO, psychologist, counselling/advice centre)*

Quite a number of professionals, in particular those who do not build their work directly on a relationship of trust, emphasized that the youth welfare office should be informed. The immediate notification of the youth welfare office was normatively justified by the parents' behavior which should not be accepted. The possibility of further clarification of the situation and change in the parent's behaviour in other ways than by informing the youth welfare office, i.e. by motivating the parents to accept further low-threshold help by NGOs, was not considered by the participants.

*You have to take drastic steps. I can't, well, I know that not all paediatricians think this way, but I'm also a paediatric surgeon and we're always a bit ahead in these matters, but I can't accept that and say, well, let's just forget about it, my dear. (paediatrician, children's hospital)*

This could suggest that in practice, at least certain professions face structural obstacles and inhibitions to realise their own responsibility for further help (helping stimulus) but instead sense a stronger stimulus to get the not tolerated parental behavior out of their hands and into the responsibility of the youth welfare office (sanctioning stimulus). At this point in the discussion other participants referred to the (anonymized) consultancy with an experienced expert as the authority with whom to resolve if and how the youth welfare office should be called upon.

The necessity of consent and the consequences of missing parental consent to the involvement of others were debated controversially. As reasons for acting with consent access to the family and establishment of a relationship were mentioned. Some professionals from NGOs pointed out how difficult a contact to parents can become in cases in which the youth welfare office was notified without consent. The legal threshold for acting without consent was thematised in this context. If the cooperation (in this case with the school) cannot be achieved, threatening to involve the youth welfare office without consent was stated as an instrument to facilitate cooperation.

*But we always assume these roles, we say, on the one hand, we want to work together with the parents [...], but on the other hand, you nonetheless have to make your position clear. We've had the experience that because we do that, word gets around in the local district and the parents either avoid us from the very beginning, or they're more aware of it and say, well, we'd better cooperate with the school, we should be open towards that, otherwise the school is going to act pretty swiftly. (headmaster primary school)*

Other participants mentioned possibilities of acting behind the back of the persons involved, thus circumventing the requirement of transparency, while other emphasized the importance of ensuring appreciation of the families and taking them seriously. Acting against the will or without the knowledge of family members was picked up again and again during the discussion by several participants. It was justified by strong language with hidden normative justifications to paper over the conflicting interests.

*Child protection demands courage. (guardian ad litem)*

*You need to have balls. (social worker, social services)*

*You simply need an arse in your trousers. (guardian ad litem)*

Regarding the involvement of other institutions by paediatricians, participants also referred to the Duisburg model RISKID. Through a confidential databank doctors exchange information about their perceptions of families with problems. This model was partly seen as useful by an officer of the criminal police and a forensic physician but partly also considered as critical because of potential stigmatization.

**(5) When could it be right / appropriate to initiate measures of protection from further abuse and neglect against the wishes of the child and/or parents? What concerns might prevent you from doing this, or cause you to hesitate?**

In **Phase 3**, where reiterated and continued serious violence occurs despite help that has already been organized, an intervention, if necessary against the will of the persons involved, was unquestioned among participants. Participation and transparency had to be questioned repeatedly (by other participants or moderators). They were then presented as being a matter of course and by that the complexity of the issue was disposed of. At the same time, quite a number of reasons were put forward for not involving the parents in particular cases.

As regards a potential removal of the child from his/her family, some of the participants preferred the possibility of safeguarding the child's well-being by taking him/her out of his/her family until it is revealed that suspicions were unfounded. In contrast, some others underlined that the child would be exposed to a particular stress by the placement. The option of an out-of-home placement was partly already addressed at phase 2 of the story. In one workshop there was unanimous agreement that the child should be taken out of the family. Participants then discussed the problems of continu-



ing work with the families even if the child was taken out. A key problem dealt with in the other workshop was that support needs an appropriate period of time, during which it is not unlikely that further violence and neglect occur, and that this is difficult to bear. Detached from the concrete case story the participants stated that a child can only be separated from his or her family if that is the last possibility and there are no other possibilities left.

*If that's not enough, we'll ask the youth welfare office to offer the families support, though we can't order that, of course, we have to rely on the youth welfare office to make sure adequate support is in place. The next thing is proportionality and if nothing else works you have to take the children out of the family. (family court judge)*

But one social worker from a youth welfare office explicitly pointed out that even in the case of a removal of the child the goal would remain to (re)empower the parents to care for the child so that the child can return to his or her family.

*That's not the end of it, of course, the case continues. After all, we want Adam and his family to be happy. We want to help them. [...] the important thing, I think, is that the case continues. It's not a definite break or cut, it's just, this is the situation for now, and then we'll think about how we can work together and move forward from there with the family. And that has turned out to be a very positive thing. (social worker, social services)*

The integration of the criminal justice system was prominently discussed in various phases, partly already addressed in phase 1. Principally, the involvement of prosecuting authorities was not considered necessary or useful in many cases. Participants from the criminal justice system themselves argued for a stronger integration, esp. one prosecutor and one police officer. In one workshop, some participants declared that there is no room for a dilemma in this context. A professional from a youth welfare office stated that the parents had clearly missed their chance, and by that raised a cheer from the officer from the criminal police who pointed out that, after all, the prosecuting authorities were dealing with the cases and children sensitively, so that there was no problem about this.

After these massively stated expectations there was a need to explicitly invite the others to name and discuss reasons not to involve the criminal justice system. How a continuing work with the family could be maintained was discussed in that respect as well as the child's feelings of guilt and pressure by the stakeholders of the criminal justice system. As caveats against a regular involvement, the participants also named their experience that prosecution would be suspended anyway or that it does not contribute to protection. The additional work load for the professionals resulting from a criminal complaint was mentioned as well.

#### **(6) What difference might or should it make if the family belongs to an ethnic minority group, especially one with migration background?**

In the **fourth part**, participants discussed particularities in handling the case if the family belonged to a minority group, especially in case of a migration background. The invitation to look into the aspect of cultural diversity was focused explicitly on the differences so that those stood in the foreground in both workshops.

First of all, participants exchanged personal experience and aspects. The diversity of families was largely considered as normality as was the fact that diversity had effects on the form of the intervention. Strong cultural differences were recognizable between Eastern and Western Germany, primarily in the workshop with more professionals from Eastern Germany. Several professionals from East German said that they had little or no experience in working with families from ethnic minorities.

With respect to the case study, three main aspects were discussed; the difficulty of establishing contact (language, culture, gender), different values and various or similar thresholds for intervention (attitude towards violence in child-rearing, housing situation) as well as reflections on family ties in dealing with the question about a removal of the child from the family. Concerning the establishment

of contact, various approaches were represented regarding the question whether the families should be approached in the same or a different way.

## Part 2: Framing of the Problem and the Intervention

The analysis of the discussions in the workshops will try to decipher the frames and ethical attitudes of the professionals as well as assumptions and conditions which find consideration in their work related to intervention. In practice, some of these frames and basic assumptions may be, in the view of the professionals, hard to fulfil. Moreover, in the attempt to live up to them the professionals may face ethical dilemmas on the decision for or against as well as for the right form of intervention, e.g. because professionals' experience or assumption tells them that one can only be complied with to the disadvantage of the other.

### 3 Framing Child Protection and intervention

#### (1) Child endangerment, maltreatment or right to non-violent upbringing as reason for intervention

Child endangerment has been the key term in German child protection (see 1) since the German Child Protection Act 2012 at the latest. If there are indications of child endangerment, duties to protect will ensue for all professionals (sec. 4 KKG, sec. 8a, 42 SGB VIII, sec. 1666 BGB). This seems to have reached consciousness. In the foreground of reflections of professionals from the child welfare and family law context is less the individual act of physical child abuse or deficits in the satisfaction of needs but rather the effects for the child's development. Within this physical abuse can be the starting point for the assessment of the degree to which a child is in danger of considerable harm for his/her development.

*And once I get the information available in this particular case I have to assess, well, whether I consider the situation as child endangerment. (NGO, psychologist, counselling/advice centre)*

*Which, what's the situation like, is there a child endangerment and if so in what way? (guardian ad litem)*

*For me, it's a question of where the child was beaten, how often, are there injuries, etc. etc.? That's the difficulty with this description, it needs a beginning, it's too open. But in order to decide what I'm going to do, just like you said, Ms. XX, I would need more information. (NGO, social worker, ongoing service)*

This legal orientation towards child endangerment applies to medical professionals as well. Nevertheless, the act of child maltreatment remains in the focus because of these professionals' task to deal with the consequences of the act of violence itself. In the criminal justice system the focus lies qua function still on the violation of a legally protected interest in the past.

*I don't think the wording is particularly apt here. It's not a question. The moment a child is being beaten it is being abused. That's the end of it. No further discussion necessary. (paediatrician, children's hospital)*

*He detects signs of maltreatment, bruises, any, perhaps also badly healed bone fractures or such. The police doesn't know about it. And this, for example, is a problem area. How does this information reach the police or prosecutors so that they can take action? (criminal police officer)*

But partly even those professional groups that work with the term of child endangerment specify the concrete act of violence as being a reason for an intervention, or they raise the term of violence without any further clarification whether an endangerment of the child's best interests has been assessed. The right to non-violent upbringing – legal guide since November 2000 (sec 1631(2) BGB) – is seen as an orientation for their own helping action.

*But I also wanted to stress that it's not just about physical violence, because, in this case, the child's right to an upbringing free of violence is being violated on two accounts. On the one hand, there is probably emotional violence in the form of sharp rebukes, so verbal and physical violence. (NGO, psychologist, counseling/advice centre)*

*But it is made clear from the outset that this is unacceptable, that the child, well, has a right to non-violent upbringing, that's completely clear. (social worker, social services)*

*From the view point of the family court, the parents have clearly violated their parental duties. Section 1631 paragraph 2 BGB states: Children have a right to a non-violent upbringing. Physical or emotional abuse or any other kind of degrading treatment is inadmissible. We managed to establish that in the nineties after an uphill struggle against Bavarian opposition. (family court judge)*

## **(2) Protection by support**

In German law intervention for child protection consistently follows the pathway of a priority of supporting the parents to prevent an imminent or anticipated endangerment (art. 6 (3) German constitution [GG], sec. 1 (3) KKG, sec. 1666a BGB). If child endangerment is ascertained, possibilities have to be checked whether the family can be successfully motivated to participate in and accept support measures, in order to avert the danger. If this is the case, support services are paramount and interventions in parental rights inadmissible. The youth welfare office has to offer support, NGOs and professionals with contact to children and parents have to try to motivate the families to seek support (sec. 4(3) KKG, sec. 8a (4)2 SGB VIII). Because of this consistent principle of access to protection by support (within or outside the family), in Germany, other than in most of EU Member States, there is no duty to notify in case of a suspicion of child endangerment. Instead, professionals have a legally binding duty to move closer to the families.<sup>2</sup>

### **Successful support calls for a relationship of trust**

The relationship of trust (helping relationship) is respected as a particular value and resource in the German child protection system. Participants mention it as an important element of their work with the family members. Relationship work with the parents is therefore seen as a required measure to protect the child in the end. In this context, it is emphasized that the parents are those who can stop the endangerment and that therefore, the success of the collaboration is also a factor for a successful support and protection of the child. This is articulated in the following statement of a social worker from a youth welfare office. A headmaster of a primary school knows the legal duty as well. But when she only talks about trying to cope with it, this gives an impression of how demanding it is to address a possible endangerment and to motivate parents to accept support.

*I think it's important that the parents still have a chance to play a part in the process, since they are the ones who can stop the child endangerment. Since they are the main cause they can also be the remedy – they can be the ones to ensure their children's well-being. That's why, I think, it's so important to get them on board. (social worker, social services)*

*Well, we do try to work with the parents. After all, it's important for us, too. (headmaster primary school)*

### **Excessive demands on parents as reason for child endangerment**

The guidance to support parents, if at all possible, with the aim to enable them and the child to live together free of violence was shared by many participants. They built their actions and decisions on the conviction that child endangerment frequently is a result of parents being overwhelmed by excessive demands. Therefore, reactions to a threatening potential or actually imminent endangerment are participatory support instead of intervention beyond consensus and voluntariness.

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<sup>2</sup> Meysen/Eschelbach, BKiSchG, 2012, Kap. 3 Rn 87 ff.

*Because, not everybody is a perverse spanker who runs along to beat his child, it's often helplessness, too. And excessive demands. Whatever the reasons are. And this balance or as well this enduring, for the families as well as for the helpers, that's always this very stressful process. But this appreciation to approach the family and seeing the resources, that's also a question of attitude. (...) And some parent's say, at the moment I don't know what else to do, he has been like this for half a year, he's seven years old now, he's now in the second grade, and since then he's completely going off the rails, well, oh man, one slap. Well, then you often realise, okay, despair, but willingness is there. (NGO, social worker, ongoing service)*

*And this family-strengthening, it's often, if you read this story, it's despair as well, and there I'd always say counseling, support for the parents, how can I react if my child is balky –in my perception – or, let's say, then the professionals from counseling centres are exactly the right address. (headmaster primary school)*

### **Use of families resources „every family has resources“**

Professionals base their child protection activities on the fact that every family, even a family with major problems, possesses resources which have to be utilized and activated through the granting of support services, in order to finally end the child endangerment and to secure the child's best interests within his/her own family.

*We've had the experience that, even in dramatic situations, you have to look at the resources a family has, because every family has resources, that's just the way it is. [...] And then it's really important; so to speak, parallel to the themes or measures I've already covered, to win over the parents, as you've mentioned, Ms XX. That's something you really learn during your professional training and development, learn, learn, learn, yes, to work out what their resources are in order to see where are their strengths, because very, very often it gets better after a while. (NGO, social worker, ongoing service)*

### **Support needs time**

In one workshop, the professionals who work with families within the child and youth welfare system raised the issue of the time frame of intervention.. The use of support does not –like flipping a switch – lead to the immediate end of problematic child-rearing behavior. Depending on the family circumstances, changes need time.

*Well, what do we expect from the parents who have such a model of child-rearing, who are perhaps permanently overstrained. (...) And I think very much, it's going to fast in my eyes. (social worker, social services)*

*Earlier we've talked about and said that a family needs time to learn a new behaviour until someone can really convert violent-free upbringing in the every-day-life. (NGO, psychologist, counseling/advice centre)*

### **Prerequisite: willingness to collaborate**

With respect to the support offered, the participants address in particular the parents' willingness to collaborate and accept support services when it comes to the question of further action. Such acceptance is relevant before an emergency placement could take place, before the family court or the youth welfare office is called upon.

*If the family is open-minded and says we're aware of the problem, we don't want that, then, of course, you try to support and assist the family, that is to say, well, you have to assess how serious the problem is. (social worker, social services)*

As regards the question about the required scope of willingness to cooperate, the participants partly base their action on whether the parents are committed to (immediately) reveal everything. Most of the professionals rather consider that it was sufficient if a preparedness to avert the danger would be recognizable (in the first instance) at all.

*The question is, do I have to force the parents to come clean at this very moment, completely?" (prosecutor). "No!" (social worker, social services) "Do I have to make sure they put all their cards on the table or say: If you don't do that you have something else coming? (prosecutor)*

Others, in contrast, assume that it would be very important that parents take full responsibility for their behaviour and that, therefore, they would have to admit everything, in particular beating with a belt, before support could be offered and given and more serious measures could be renounced.

*But I think the weak point here is, the parents just deny it, and then we just assume that the help is sufficient to protect the child from further harm, of whatever kind, and I think in that kind of situation I would question the wisdom of that. (NGO, psychologist, counselling/advice centre)*

### **Appreciation and participation of the parents**

To give support a chance to be successful or to be at least accepted by the parents, some professionals, on the one hand, assume as presupposition that parents are given the chance to participate in the help process and are treated with appreciation.

*Well, to meet with the parents and engage them in a respectful and appreciative manner. (child care worker)*

*Well, once again, we have to remind ourselves how important it is to take your clients seriously, and to respect them [...] (social worker, social services)*

*I think it very much depends on the person you encounter, how you connect with them and how you interact with people, that's obviously something you've learned but it's also up to you, how you enter a house you've never been to before, which is quite unfamiliar at first. I usually try to invite myself, to strike up a conversation. If that's possible, I try to be as appreciative as possible. (NGO, social worker, emergency residential care)*

On the other hand the conflicting contact with parents seems to be avoided by some professionals. This might indicate that sustainable helping relationships cannot be built and as a result protection by support has limited chances to succeed. Therefore, a social worker from an ongoing service sees the necessity to approach the parents because they are often willing to accept help even if they are rejecting and denying in the beginning.

*The question when do and don't we inform the parents. And my experience is that people prefer not to inform the parents. Of course, these conversations are tremendously awkward because the parents are going to deny it. From the viewpoint of those who intervene directly, we've repeatedly made the experience that even families who didn't want any help in the past, say, yes, now we want help, and if there had been an earlier intervention, I wouldn't have done this or that. And I think it's important to emphasise that here. (NGO, social worker, ongoing service)*

### **Transparency requirement towards the parents**

The German legal directive in child protection „Possibly against the parents' will but not without their knowledge“ is also part of the understanding that protection is not the opposite of support but an integrative part of support, often even the outcome of it. Professional action, but also any measures taken without consent or against the will of the parents have to be made transparent to them – at least that is what the law prescribes. Professionals are aware of the transparency requirement, determined by the German constitution, and it played a role in the workshops even at the stage of discussion about how to get in touch with the parents.

*I would try to be very transparent. I would visit the family in my professional role. I would, when I call at their home, [...] make very transparent why I am there, in what role I'm there, and for what reason, and what I have to inspect. (NGO, social worker, emergency residential care)*

However, the legal directive has a particular importance for the question of disclosure of information to the youth welfare office without the parents' consent. Some respect this legal requirement, to some others, however, it doesn't seem to play an important role. A controversy between the participants could be recognised, even if it was not carried out in direct confrontation. Transparency stands in opposition to taking action behind the back.

*For me, as the school, it would mean that she informs the youth welfare office immediately, but there's nonetheless an obligation to inform the parents because of the transparency requirement, and that I continue to be in contact with the parents. Well, that I continue to try to get the relevant information, yes, to get the relevant information and to stay in contact [with the parents]. (headmaster primary school)*

*Well, once the family has been consulted, if it hasn't had the desired effect and if we have the impression that the child is endangered, if that is obvious, then we'll get specialist advice on board, we'll write an '8a-report', and the case is referred to the youth welfare office, the family court etc. At that point, the parents will no longer be informed. If the injuries and the abuse are evident, and no other measures have had an effect, in that case the parents will be passed over. (child care worker)*

*But then again about the paediatrician. I mean, that's one possibility, how he can react. To seek out help together with the mother, but I also think that it is important to make it absolutely clear to the mother: I cannot be silent about this. There is an alternative to this, I'll do it behind your back and I'll notify the authorities, I cannot just let this happen. (NGO, social worker, emergency residential care)*

But to talk to parents and to establish a helping relationship can in single cases be problematic for the protection of the child. For example, there can be the fear that the child is even more in danger if the parents get to know that the child has opened up. For this particular constellation, the law makes an exception from the principle of transparency and participation in the assessment of the potential endangerment if an effective protection is at stake (sec 8a(1), (4) SGB VIII, sec 4(1), (3) KKG).

*I would like to stress, from the school's point of view, that the pupil's effective protection has to be guaranteed. [...] if I, as a teacher, do not feel ready or competent to talk to the mother, or if I'm afraid that the child won't come to school afterwards, that the child will suffer even more, that the child will be harmed in even more ways, then I would prefer to inform a professional, in our case the school's psychologist, or somebody else, and discuss the case with the other teachers or within the network. That's an open question. You asked how quickly I would act, in any case it wouldn't be a situation I could just postpone, I would have said that the parents have to be, as a legal requirement, so, as a rule, to speak with them, because they are the ones who can stop it. But I would want to consult with somebody else first. (headmaster primary school)*

### **(3) Appreciation and participation of the child**

For the professionals in both workshops it was important to take the child seriously, to appreciate her/him and to consider the possible consequences of an intervention or of the type of intervention to the child. Thereby, transparency towards the child is considered to be especially important.

*Well, I'd say to Adam, I'd say to him, listen, well, I would try to say it in a way appropriate for children, listen, what you're telling me here matters to me, it's something that I take to heart, and I would like to talk to some people about it without telling them your name, without it becoming public knowledge. That's what I would tell him so that he knows how I will approach this matter. (social worker, social services)*

*As a professional, I can't share secrets I have an obligation to disclose this information. And I also make that clear. I tell the children beforehand: Whatever you tell me, I will have to tell the*

*judge because she needs that information to assess the situation and I cannot keep any secrets. (guardian ad litem)*

Furthermore, especially for professionals with advisory/counselling roles, the foundation of their work is participation, taking seriously the wishes and fears of children as well as appreciating their situation. Interestingly, they are obviously aware that child protection in principle acts over the heads of children. It was mentioned that professionals should at least try to make the child not feel “completely excluded” or should not always decide over his/her head.

*At this point, it would be important that the teacher talks to the boy about his fears and worries again. So that possible interventions don't happen without the involvement of the child, but so that there is a definite basis for the intervention and so that the boy does not feel completely excluded from the whole process [...] I think that would be an important intermediate step, which ought to happen prior to the intervention, because, as you've mentioned earlier, the basic question is the same irrespective of the socio-economic background: the question, how does it pan out in the end, which fears do the children, who are affected, have, are decisions being taken without involving the children, are the solutions real solutions, with which the children can live and live well. And a lot of the time, unfortunately, one has to say that the solutions not ideal but that they are better than letting a problematic and risky situation within the family continue. (NGO, psychologist, counselling/advice centre)*

#### **(4) The right to family: “Children want to stay in their family“**

Another important frame is the child's right and the interest to remain in his/her family and to secure child protection while they continue to live together as a family, if possible. This preservation of family is not only underlined within the CRC (art. 18) but also in the German constitution. This frame was also articulated in the workshops and seen as an important principle of professional action.

*The children don't want to leave [their families], they just want help, but I would say that almost 90% of the children would like to remain with their families, maybe even more. They don't want to go anywhere; they just want support and would like to be happy with their families. And I think that should be our first principle. (prosecutor)*

#### **(5) Commitment to sticking to the rules and to remain true to the rules of procedure**

In some cases, institutions or organisations have binding rules and guidelines for assessment of potential child endangerment and for the procedures on which action will be founded. The professionals make reference to such rules and procedures. On the one hand such rules can provide confidence and orientation as to what action is expected and what is considered right or wrong. On the other hand rules can limit the professional's individual responsibility, i.e. if the professional's gut feeling – which is a result of experience and knowledge – argues for an alternative approach or if the rules do not live up to the individual case.

*There's a procedure [...] a procedure for the family support services, for the so-called 'grey zone', and for endangerment situations, there are a number of very precisely mandated steps according to which we work. It's like a catalogue, a child protection catalogue. [...] It's not based on a feeling but really according to protocol, you just ask, according to catalogue, about this, this and this, and later we discuss the assessment. [...] But it's really the case that we have this standardised procedure, which is very intensive, but also gives us some security, because it's no longer, well, how do you see it. And that's the same if you come into a flat, well, no, in my eyes, it's just some dirty dishes, and the next persons says, yes, and also some left-over pasta from last Saturday, but it's not that bad, I was just the same as a student, these are all things I've heard before. All that's gone because of the standardised procedure, because now the steps are clearly mandated. (NGO, social worker ongoing service)*

## **(6) Importance of the professionals' collaboration**

The collaboration of all stakeholders involved in child protection is an important frame of action. Specific provisions are established in the German Social Code (SGB VIII) and the Act on Cooperation and Information in Child Protection (KKG) and, thus, the framework conditions for binding network structures. On the matter of cooperation one has to differentiate between cross-case collaboration and case-related collaboration in a concrete case. The network is right at the top of the political child protection agenda.<sup>3</sup> Binding agreements between all stakeholders involved in child protection and the youth welfare offices are supposed to be concluded to secure successful child protection. In addition, youth welfare offices and family courts rely on each other and work with shared responsibility.

All professionals think cross-case collaboration is important, esp. in migration-related cases, for which its expansion is demanded.

*I just wanted to lend my support to what Mr. XX just said, namely, that we don't have a migration-related network yet, not at all, that we pay attention to this aspect within cooperative networks, we don't even have that in XX and there's probably even less of it in other places. I think that's a really important aspect. (family court judge)*

Besides, participants talked about case-related collaboration a lot and reckon it as a crucial base for successful child protection. They refer to cooperative work within institutions but in particular highlight that case-related collaboration between institutions is seen as very important.

*It is also important that you discuss cases [with your colleagues] and use your colleagues' insights, that you make use of other people's resources and that you're never solely responsible for a decision. (social worker, social services)*

*If I come back to the way in which support [for these families] is coordinated, the way I see it, for example, the communication and cooperation between different stakeholders is particularly important. (NGO, psychologist, counselling/advice centre)*

*It just doesn't work without a network and if there is nobody who says, well, now I just have to ask the teacher again, and here I should ring up the paediatrician. [...] And then, if you put the different puzzle pieces together you get the complete picture. That's only possible if you have a network. (paediatrician, children's hospital)*

*It would be beneficial if we were even better connected and had closer links to each other. (prosecutor)*

## **(7) "This kind of behaviour has to be punished"**

### **Right of the state to inflict punishment**

Children have a right to non-violent upbringing; physical punishment and other degrading measures are explicitly denounced as inadmissible (sec. 1631(2) BGB). Consequentially, all forms of physical violence against children are punishable under German criminal law, with a differentiated system of criminal offences. Nevertheless, the stakeholders involved in child protection do not have a duty to notify the prosecuting authority of cases of child maltreatment. Participants from the criminal justice system, but also forensic experts underlined the right of the state to inflict punishment consistently, not least because of the fact that the intervention is not supported by law. They criticise that, in practice, criminal complaints are filed only in rare cases, which was confirmed by most of the other participants.

*But child abuse is a criminal offense. (police, detective superintendent)*

*What about reporting the criminal offense? (forensic physician)*

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<sup>3</sup> Meysen/Eschelbach, BKischG, 2012, Kap. 3 Rn. 1 ff.



*To implement criminal law, to actualise it, to obtain a conviction after all, or after an acquittal or a discontinuation of criminal proceedings, that's what the protection of legal rights consists of, that's why the legislator passes laws that protect certain legal rights, that's why the legislator says: those who violate these legal rights have to expect punishment. (police, detective superintendent)*

Nevertheless, most participants who are confronted with cases of child endangerment in a (rather) helping role file a criminal complaint only in rare cases. This seems due to the structural protection of the trust relationship also provided for by the data protection law, which forms the basis for successful provision of support. However, they referred rather to practical reasons, such as lack of time, lack of benefit for the child protection and no realistic chance of success.

*Criminal proceedings can be beneficial if the perpetrator is taken out of the picture, if he's taken off the street, so that he can't beat the child anymore and can't abuse the woman. Normally, however, a criminal charge does not achieve that. (family court judge)*

*And I've made the experience, well, it depends on the person, I don't know which police officer is going to deal with the criminal charge/complaint, how diligent he is and whether he takes also determines the social circumstances and whether he really takes the aggravating and the mitigating circumstances into account. (social worker, social services)*

The right of the state to inflict punishment is partly seen as being particularly important with respect to fathers with a migration background, who invoke their methods of upbringing. There was a one-sided attribution to fathers but not mothers and in particular fathers with a cultural background other than the majority of the society.

*And then they just stare at us, amazed and say, that's our way of life, and I will continue doing that, what do you want from me? And then I have to consider, how do I intervene here? Do I just punish, or should I also try to explain, and that's when you take the youth welfare office on board, but the punishment also has to be severe, so that it hurts and they remember it. (prosecutor)*

#### **Education of children through education of parents**

Pedagogical professionals from schools and child care see another reason for filing a complaint in case of criminal offences because of the educational effects. It would give an example to children. In the professional eyes the state authority should exemplify that such behavior of parents has consequences and children should be given the possibility to make the experience that professionals take their needs seriously.

*To make absolutely clear to the child: nobody is allowed to hurt you, not even your father." (child care worker). „Yes, exactly. And I think the children demand that from us, too, if you talk to them." (headmaster primary school) „Consequences, not being abused. (child care worker)*

*But I would like to stress this other point. You said, the children want to see consequences and that's being discussed in the family. The police was here, and my daddy and my mummy are not allowed to do that. So. And if we teach the kids, how and that they should react differently in conflict situations, if we attach great value to interacting in a certain way, and then they see that their parents just ignore all of that. The grown-ups who are their role models. And that's exactly why it's so important that we take this very seriously. (headmaster primary school)*

## **4 Framing culture and difference**

For the work with families from minority groups some additional frames have to be taken into account in the eyes of the professionals. Because the question was explicitly asked about differences and similarities when working with minority groups, the participants emphasized the distinctions.

### **(1) Other values and notions of upbringing: “lack of understanding for the concerns in child protection“**

In connection with the families’ values and notions, several professionals tell about their experience that (in the beginning) parents sometimes show no understanding for the non-acceptance of violence as a child-rearing method in Germany. The lack of comprehension was attributed to the cultural background.

*I had a number of cases involving African mothers who were absolutely convinced that they were allowed to beat their teenage sons. The boys were around 12, 13. The mothers couldn’t cope with their sons anymore and started using physical violence. One of the women even worked out, she had enough strength to trash the boy. It was completely new to them that there are laws against that in Germany. (family court judge)*

*Well, I think it gets more antagonistic if you apply it to an immigrant family, because, on the one hand, I don’t think that, well, if the father says, I do that, I beat them, it carries a different weight. It’s possible that he says, that’s my right, it’s my responsibility as a father to raise the child. (NGO, psychologist, counselling/advice centre)*

*There was a complete lack of understanding, even though they came from good, educated families. Why do you make such a fuss about physical disciplining? That’s normal. (paediatrician, children’s hospital)*

In some cases, another consideration is that in families from different cultures it is often the father who has the sole authority and who determines how the children are raised. This could be a circumstance to be taken into account when deciding on how intervention should proceed.

*Yes, there are some Islamic laws according to which the father automatically gets sole parental rights when the child turns two. Of course, we don’t approve that but it obviously has become firmly rooted in his [the father’s] mind. [General agreement] (family court judge)*

### **(2) Equal rights: “Non-violent education for everyone“**

Whether or not the family concerned is a family with migration background, the participants unanimously agree that the principle of non-violent upbringing should be applied as a basic rule and should be applicable to everyone in the same way.

*[...] because the same rights have to apply for all children of the world who live here. (paediatrician, children’s hospital)*

*[...] and that the very principle of violence-free education shall apply for all (children). (NGO, psychologist, counselling/advice centre)*

### **(3) Cultural and linguistic barriers: “The way is different.”**

Even if the same right is applicable to all children, many of the participants in the workshops give different descriptions of the way to offer protection and support.

*[...] and there I’d say the procedure is the same but the way is different. The way is more complicated, the way has to be more imaginative. We have to try to understand much, much more the processes and the culture. (social worker, social services)*

*Well, I think, one difference could be, that I would act more carefully, that is when I’m looking on this early beginning that I’d be more careful about how to handle the clients, that I would probably try to seek help in migration-networks. (NGO, psychologist, counselling/advice centre)*

#### **Complications in establishing contact**

The difference in culture and language is seen as a particular barrier. As regards language, the intervention of interpreters is deemed necessary as a general requirement. In some cases, it is found necessary to call upon the intervention of a person with a specific cultural background who might come

from the community of the family concerned. Merely the establishment of contact with those families is seen as a particularly difficult issue in cases with different cultural backgrounds.

*What I think is more difficult, is getting in contact with the parents and to cooperate with the parents which is, somehow, necessary to make things better in the long run. (family court judge)*

*[...] and then it can really happen that all involved persons have a hard nut to crack because there's no, not yet no good approach to really reach the people. Well, it's just not enough, this level of the youth welfare offices, there would have to happen a lot more. For example a district manager, somebody from the community who belongs to the family or other important persons who have influence in the district, they should somehow be in the situation so that the people, this is all about, could be reached better. (NGO, psychologist, counselling/advice centre)*

*I'm in a primary school in the catchment area of the asylum seeker accommodation centre. So we get regularly children all year round who come with their parents, sometimes for the second or third time. The problem here is actually that there's a huge language barrier, that you often don't really know how to reach the mothers or usually fathers who pick up their children from school with certain problems. (headmaster primary school)*

#### **“Closed systems“**

Some professionals also perceive other cultural circles as closed systems impossible to enter. They are perceived not to submit to the German legal system with its responsibilities for institutions but to have their own decision makers. From the viewpoint of these participants it is the families not belonging to the majority society who shut themselves out. There seems to be an expectation that they open up towards the majority in the society – without questioning to what degree the majority is open to them and how far the perceived deviation should be considered as freedom of individuality in shaping one's life or as needing to change.

*Who it is really difficult with is, yes, with Russians, Kasakhs, Bulgarians, Romanians, Sinti, Roma, they are closed systems [...]. Where the youth welfare office sits together with us, different NGOs, management and says: there's this little house [...] there are often very strange living conditions, too. Closed, closed shop, closed system, you can't get in. (NGO, social Worker, on-going service)*

*Well, sometimes they let such a guru, you know what I'm saying, [...], who is responsible for the Roma, they let him come and build such a family council and then they think about what can we do with this situation. And, as I said, they don't care what the institutions do, what the police do, they laugh about it. (police, detective superintendent)*

#### **Women are not recognized as experts**

Initiation of a constructive work process with families with migration background might, from the point of view of the participants, call for taking into account the gender of professionals. In particular the participants have obviously experienced quite frequently or generally attribute that men from other culture groups refuse to accept women as a professional counterpart.

*Or what you can achieve as a woman. Well, that's what I am told by my colleagues, [...] that they aren't taken seriously as conversational partners from the beginning on in many cases with a Muslim background. And then there is really the question if such systems are compatible at all in this point, for I can make five house visits, I can arrange ten help conferences or whatever; if the male family patriarch does not accept a young female social worker to tell him anything about his son, than this visit or conference can as well not be made. And then it should not be made and I should instead think about how I can manage the fact that these people with their family structures, understanding, cultural background live in Germany, how I can communicate with them and how I can make sure they get the information we think is im-*

*portant. But if the door is closed from the beginning on, I can leave my information in front of the door but I can as well not do it. (guardian ad litem)*

#### **Involvement of experts with a specific background**

From the point of view of the participants, it might be advisable to employ staff with a particular qualification such as having the same cultural or religious background (see also [6]).

*I would always try to integrate someone who has a better, different approach to this cultural group, to this religious group, either the same confession or a better understanding. (NGO, psychologist, counselling/advice centre)*

#### **(4) Appreciation of other cultures and perspectives**

From the point of view of the professionals, an attitude of acceptance vis-à-vis the families, their culture and the related different attitudes is of particular importance for interventions to support and protect, as well as a certain open-mindedness to get to know more about the way of life of the family concerned.

*It's always important to once and again have an eye for not approach them with such prejudices and think about how far we can approach the situation, how much do we know and how do we treat the family in such a case. Of course the approach has to be different, of course you have to begin with asking, and accepting that they grew up quite differently. (headmaster primary school)*

*And there are special structures in the family which you have to discover first of all. I ask many questions, too, how is this going and how would it be in your country and so on, to understand it. (guardian ad litem)*

#### **(5) High standing of the family and importance of the family community and loyalty**

Emphasis is put on the particularly high standing of the family and the family community in families with migration background<sup>4</sup> which can have effects on interventions, esp. when a child's out-of-home placement is in question, and which therefore should, in the view of the professionals, be taken into consideration. This requirement can raise ethical dilemmas for the practical work when professionals have to weigh whether or not taking the child into care will cause even more harm.

*But family has such power or has as well such a high standing for this children and young people. Well, you have to bring that to bear. (social worker, social services)*

#### **(6) Respect for culture and language in case of a placement: "Fulfilment of individual needs"**

Professionals believe that the religious and cultural background of the child has to be taken into account in case of an out-of-home placement. This is related to upbringing itself as well as to possibilities to live religious values, such as the prohibition of eating pork. This concerns the right of families to request and choose in what foster family or residential institution their child should be placed (sec. 5 SGB VIII). But this can lead to practical problems if there are not enough appropriate institutions or families because families can only choose between available places.

*And when I have a Muslim family which would like to, which says, okay we deal with, the child shall be placed, then it should be accepted when they say, but we want the child to be brought up Muslim. (social worker, social services)*

*At least institutions or families who are willing and able to meet special needs. (social worker, social services) [...] and there we generally have one dish without pork. (NGO, psychologist, emergency residential care)*

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<sup>4</sup> Jagusch ua, Migrationssensibler Kinderschutz, 2012, S. 213.

Especially in emergency placements, professionals consider it to be extremely important for the child to engage employees with a migration background so that the difficult situation of an out-of-home placement after a family crisis can be disburdened and the work with the family to open up new vistas can be facilitated.

*Well, that's in the end, of course we have an interest referred to taking the child into care, that we have social workers with a migration background. (NGO, social worker, emergency residential care)*

## Part 3: Ethical issues and dilemmas from the perspective of practitioners

### 5 Ethical issues in the workshops

#### 5.1 Practical and professional dilemmas

##### 5.1.1 Shortage of skilled professionals

One difficulty described in practice is the shortage of skilled professionals, especially in the youth welfare offices.

*[...] that the substantial solution for the problem, the beginning of a solution of the problem begins on a too late level that is in the family court because it could not be managed in the youth welfare office. And there I'm not talking about the particular social worker, to criticize the particular worker, but we have a structural problem at the moment, and since years, that's why I'm mentioning it, I wouldn't put up a drama because of a few weeks or months but this is going on since years and probably it's the same in other parts of Germany. (guardian ad litem)*

##### 5.1.2 Placement: family with a particular sensitivity for cultural and religious backgrounds

The youth welfare offices in Germany report difficulties to find foster families with a Muslim background. But it is not always easy in placement facilities as well to appropriately take into account the particular needs of various cultural and religious backgrounds in everyday life. Professionals describe these difficulties.

*Well, I also think it's good that it's a matter of course [consideration of different cultural backgrounds in Emergency Residential Care, see 5 (6)]. But for us, it's not like that, I have to say. Because experience is lacking. (social worker, social services)*

*The problem is, there are almost no foster families who have a migration background or speak two languages. (family court judge)*

*[...] and if now this seven year old has to be taken out of a Muslim family, taken into care, with no clear prospect of how many years, how many months, then of course the question is much more dramatic, in which foster family this Muslim Adam has to live for months, if not years, where these needs, these legitimate demands of his family, his original family can be satisfied. (guardian ad litem)*

##### 5.1.3 Lack of knowledge

Experts see another practical dilemma in their own lack of knowledge about the cultures of the families with whom they have to collaborate. This is especially true for the experts from the *Länder* of Eastern Germany, where there is only little experience with migrant families, but it is also true for experts from the *Länder* of Western Germany where work with a particularly large number of different cultures is sometimes necessary.

*Well, I experience a high degree of uncertainty and a huge need of the colleagues to catch up with regard to experience. Here in XX as well live very few people with a migration background. I experience much ignorance about the Muslim religion and about the values of those families and there are recourses too which those families bring with them. Well, I experience a huge need to catch up. (social worker, social services)*

*In XX we've got a whole district with Turkish inhabitants, about 60,000. (...) Well, I don't do this job as a judge only since yesterday, but I have reached my limits as a German judge. I understand nothing about it, absolutely nothing. (family court judge)*

*Yes, and intercultural competences, when I'm thinking about the children in our quarter [...] think, 50 different nations, where is my knowledge about them? (headmaster primary school)*

*I was coordinating asylum homes in XX for five years, have worked a lot with Sinti and Roma, too, I can only tell you, we know nothing. Yes, what we know are little nuggets of some half-knowledge about a culture, which is highly complex with completely different ethics, with their own moral concepts, their own jurisdiction, own child-rearing rules. (social worker, social services)*

## 5.2 Ethical dilemmas

### 5.2.1 Tightrope walk – too early or too late, too less or too much: “not making things worse by the intervention“

Interventions in child protection not only bear the risk of failure but also of uncertainty that they will have positive effects on a child's development and situation in his/her family. Support services with the aim of protecting the child in the end always contain presumptions about future developments. Protective helping can also be accompanied by burdens, and is not unlikely to involve significant risks for the child and his/her development. Several participants showed an enhanced awareness of that and incorporated the dilemma of not exactly knowing the outcome of their actions in advance into their professional expertise in establishing predictions.

*But, I mean, you've understood this after a short time, [...], the important thing is the degree, with what degree of intensity do I intervene, as police or agency or whatever. And in any case, that you don't spoil even more by intervening than the harm that is already done. (police, detective superintendent)*

#### Uncertainty about the effects of interventions: „don't set everything into operation“

It can already be a dilemma to decide whether one should take action at all because every intervention sets something into operation that cannot be rolled back afterwards. The dilemma rather appears to be a projection area for uncertainties in dealing with the perceptions of the child's situation, causing concerns because they fear the consequences of their actions – for the child, the parents, but also for themselves – and they are not capable of predicting them. The felt urge to act with professional confidence stands in a clearly recognisable tension to the uncertainties that go along with prognosis in child protection.

*Well, we don't want, that a colleague now, who perceives this, to panic and run along and set everything in motion. (headmaster primary school)*

*Yes, at the best one would like 100-percent safety. 100 percent, but you just can't have that. (child care worker)*

*That's starting on a small scale in the Kindergarten. Often it relies on suspicions, the children can't yet express themselves like perhaps school children do. And to follow these suspicions is enormously difficult. And then suddenly something hangs in the air, what's possibly not confirmable and afterwards a process is set in motion which cannot be stopped afterwards. And I*

*believe this is the main point and it often produces a huge respect before actions are taken. (child care worker)*

#### **Protection by removal vs danger due to removal: “interventions with depth”**

In the participants' experience they face a distinct dilemma when interventions connected to a separation of the child from his/her family are in question. The out-of-home placement of a child may represent an endangerment to the child's wellbeing itself and may traumatise him/her. Therefore, in the individual cases the placement of a child is not, or not only a rescue but (also) an event in the child's life that causes harm. Professionals face the challenging task of finding the less harmful alternative for the child.<sup>5</sup> Quite a number of them expressed their awareness for this problem.

*And if that doesn't work out, than look further, because it – we have already been talking about this earlier – it's always about the child's best interests and if you ask them, whatever happened, they want to stay at home [general agreement]. And you just have to watch very, very closely. There's a huge ambivalence. For those, working there, but also for the children it's a huge pressure. (child care worker)*

*And taking the child out of his family has depth, I can only say. [general agreement] And that is exactly our courage or no courage or what, our decision how we sometimes, do we address a problem, do we not address it, the reasons why we delay something, this is really difficult. I can't say it differently. (NGO, social worker, emergency residential care)*

Eventually, the term of courage is introduced at this point of discussion. It might not be useful as a category of professional skills but expresses the feeling and the inner conflict as well as the personal effort to make a decision in one or the other direction. The responsibility for the child seems to be very present in those moments in which a lot is at stake.

#### **Uncertainty about the right time for a removal of the child**

Connected with a possible removal of the child, professionals are confronted with the dilemma of intervening too early or too late. They face the question of whether child protection should follow the rule “safety first”, and remove the children from the family in case of a potential or supposed child endangerment, or whether the principle of avoiding removal of the child from the family (due to the psychological distress caused to the child by a separation from the family) should be applied, until it has been determined for sure that a removal is absolutely necessary. They stress the particular danger that the family court may order the return of the child to the family and that, in the meantime, the child has been exposed to a particular burden due to the removal.

*I actually don't know if that's the right question, but it's often the case that we ask is that enough, yes is that enough and do we take a child into care while having in the back of one's mind, uah, but if the family court says the child has to go back home. Then you have caused emotional violence and then you have to give the child back and there I always ask myself what kind of message is that? But can we wait, can we first apply to family court and not take them into care right away? (social worker, social services)*

Quite a number of professionals are well aware of the risks of their own failure in the protection of the child – also by excessive measures taken to protect the child. They have a self-critical attitude in reflecting upon potential effects of their own action, or they accept a failure with resignation.

*And critically in our profession, I believe, to consider, it's still hard again to really take the steps, because we've had other experiences in other cases, where children were taken into care and then it was decided to give them back, then the kindergarten which reported had to work with the children again. So, that's maybe critical, too, from our point of view. And it's sometimes very, very difficult to do those things, because we ourselves do not know how the case will go*

<sup>5</sup>

Goldstein/Freud/Solnit, *Jenseits des Kindeswohls*, 1974, S. 49 ff.

*on, because we ourselves have experienced how hard it is to take children into care, that's not possible without tears, it's not going without drama, the children are more concerned with being taken into care than with the things that have happened to them in their family for years [...]. I think in this respect, it's sometimes difficult to act, we defer action, because we, not everything lies in our own hands and it can't be sure how the story ends and goes on." (social worker, emergency residential care). "But that doesn't protect us from failure. (guardian ad litem)*

Those professionals who rather look on the child maltreatment from a criminological or medical-diagnostic perspective and less from a developmental psychology perspective are well aware of the dilemma, but at the same time show no understanding why the danger of further maltreatment is not averted in first place. The prophylactic prevention of further potential wrong doing gets explicit priority over the developmental psychological search for a less harmful alternative.

*That happens often to us, too, that we then for the youth welfare office or prosecution, then we give our expert opinion, that takes always about a few weeks of course, and then the conclusion is: nothing has happened. Then we get, of course, then they are devastated. And, oh my god, the child was taken out of the family. And that's just like it is, that's my feeling, that I always think it's better if the child was taken out and afterwards we find out that nothing happened than when exactly that happens, that the child was not taken into care and then some day it's lying in the next room and needs to be autopsied. Well, because, well it's always like that, I don't know how you think about it, well I'm not in your position but I have this double edged sword. (forensic physician)*

#### **Support needs time vs. protection against continued acts of violence**

Especially if the child might be removed from his/her family the professionals have to consider that families with violent behavior cannot improve their situation overnight. Therefore, when providing support to such a family it has to be endured that the parents' behavior will not change immediately, and that maltreatment or neglect might go on for some time. For the professionals it is difficult to decide at this point, in what respects and for how long they will tolerate a continued detrimental situation for the child and how much time they will grant for the provided support.

*Earlier we've talked about and said that a family needs time to learn a new behaviour until someone can really implement violent-free upbringing in every-day-life. And here it's even more complicated because the parents deny. That means, [...] this period of time has to be added in which the parents have to learn something. (NGO, psychologist, counselling/advice centre)*

*[...] well, what do we expect from the parents who have such a model of child-rearing, who are perhaps permanently overstrained, I haven't got a feeling for the parents. That's what makes it so difficult. Where do they come from, what kind of background do they have, what have they experienced in life, how willing are they or would they, there are also advice centres for violent parents or something like that, you know. I just haven't got enough feeling for the parents. And I think very much, it's going too fast in my eyes. (social worker, social services)*

*If I'd be working in this case, I'm installed there, they have already installed me and I possibly also know about violations and I have to bear that up to some point, because of course, nobody with no child-rearing competences or very few, will, from one day to another, just because support is installed, have completely differing mechanisms, but it's going to be a long process and the professionals in the support services have possibly to bear that there are still violations and then there's the question of cooperation between youth welfare office and the NGO. (NGO, social worker, ongoing service)*



### 5.2.2 Helping relationship of trust vs. protection against the will or without knowledge of parents or children

Further ethical dilemmas can come up when professionals on the one hand try to build and keep a helping relationship of trust with the parents and at the same time are forced to act against their will or without their knowledge or rate these actions as necessary. A trustful relationship in support services or in contact allows access to the child's situation and to the family and is often the basis to work on changes with the family members. Straining it or putting it on the line by acting without consent can have influence on the options to help and protect as well as on the effectiveness of such measures. Therefore, acting against the will or knowledge has to be justified. Professionals solve this dilemma in very different ways.

#### Duty to supervise vs. work in relationship of trust with family

Professionals perceive it a difficult task to go into a family with a mission to assess and continuously transmit the gathered information to the youth welfare office, and at the same time to establish a relationship of trust with the family which (often) forms the basis for successful support services. The helpers not only face involuntary clients but become supervising inspectors themselves. Such an assignment is seen as interfering with the advisory role which assumes that the basis of the helping process is generally an equal rank of advisors and the ones to whom advice is given.

*And now an NGO gets an assignment to supervise. Then we are in a role of someone who monitors [...] With very young children this might mean to look into the diapers every day, is the bum sore, is it not sore any more. Do you understand, those kind of things. That is a high burden for the colleagues and also for, I just say, of colleagues who have served long a very challenging internal change from a period of relationship building, getting into the family, to care for the family, building a relationship to the children, to follow what changes [...] That is what I already mentioned in the beginning a high burden for the colleagues. (NGO, social worker, ongoing service)*

#### Involvement of the parents vs. right to protection

Another dilemma related to the relationship work with the parents can manifest itself in the concern that, when taking a decision in favour of involvement and participation of the parents, the protection of the child may be put at risk at the same time. On the one hand only the parents themselves can stop the violence and guarantee a beneficial upbringing in the family, on the other hand confrontation with, for example, details that the child has entrusted to the professional can lead to reactions (sanctions, higher pressure to secrecy) that cause the whole situation to deteriorate.

*Oh, there you've brought me to something, well, about the question which reasons might prevent me: that an independent protection of the child isn't secured. Well, I confront the parents with the question of maltreatment, but I know that this will cause an immediate punishment, then I must have made sure there's enough protection before, then I'd even carry it to extremes. (social worker, social services)*

If there is a risk of punishment of the child who has entrusted himself or herself to a professional, the dilemma will be dissolved by a priority action to implement protective measures, whereby an involvement of the parents may only happen after these protective measures have been taken.

*I would talk to the parents, too. I wouldn't always talk to the parents. It depends on the protection of the child afterwards. If I can learn from the file that, that the child is just about to be taken out or, you know, the parents are very violent, than I'd see if I'd talk to the parents openly or not. (guardian ad litem)*

### 5.2.3 Involving other stakeholders vs. trustful relationship with clients

The professionals can also be pulled into different directions when they have to decide if they involve other institutions or if they should decide against that for the benefit of the trustful relationship. If an

expert deems the involvement of other authorities or organisations necessary on the grounds of the protection of a child concerned, but would at the same time lose the family's trust and would fear for the professional helping relationship and, thus, the possibilities to offer help and protection, this expert will usually have a strong feeling for the ethical dilemma.

### Relationship of trust with the child

Firstly, a dilemma can develop when a child (or parent) has trusted a professional and the latter considers involving other institutions but the child (or parent) begs for confidentiality. If the thin thread of trust is tied which allows the child (or parent) to open up in his/her misery, stepping out of this often still fragile relationship by involving others would not only be experienced as a further loss of autonomy by the child (or parent), but might also mean that the access to the situation in the family is aggravated or even barred.

*Okay, let's suppose I am the teacher and I would have such a relationship with Adam that Adam has made it to entrust himself to me. Well, that is quite something when you manage that as a teacher I would say. I would not turn around straightaway and go to the youth welfare office to notify. I would not straightaway go to the police either. I would also not straightaway go to the parents. Well, this is what I would do. I'd probably try, well this was my first impulse, to encourage Adam so that he gets the feeling, yes, here I am safe, and I would, yes, he is seven years old [...] Well, I would Adam, I would tell him at least, listen, well I would try to explain to him in a child-friendly way, listen, what you have told me touches me, reaches my heart and I would like to talk to others about it without telling your name, without it becoming public. Well, this is, what I would tell him so he knows that I would deal with it in that way. [...]” (social worker, youth welfare office) “And what if Adam says no he does not want this, what do you do then? Do it anyway?” (prosecutor) “Yes indeed. The problem is that teachers in XX have a duty to act. Well, and therefore I can't promise him not to tell anything. I must tell him, make it transparent to the children, the child that I can't just promise it that way, that it doesn't work that way. But that I will take every step with him so that he knows and that he can get himself into it. That is, I forgot to say before, that is probably quite similar to the physician when he gets a request for strict confidentiality in this case. (headmaster primary school)*

The effect on the children generally gets into focus if several professionals cooperate. The superiority of the benevolent professional helpers who group around the children is considered problematic. But this seems to be more a general structural problem than an ethical dilemma in single cases.

*Exactly. And about a child that was taken into care, I always like to, I have such a picture, the child is standing in the middle and those 10,000 systems stand around it. And once there was also a judge from XX who then once said she had had no idea how many people are involved and she said, she cannot see the child anymore who is standing surrounded in the middle. At this point, who is connected, and then to get an agreement, that's a suspense story again. (NGO, social worker, emergency residential care)*

### Relationship of trust with the parents

With respect to the parents, the dilemma becomes particularly clear due to the necessity to continue the work with the families, but at the same time this collaboration and the family's trust will be substantially endangered if other authorities or organisations are informed without consent or knowledge.

*Well, what could be spoken to the contrary would be that working with the parents, if I'm an NGO, afterwards would be very, very complicated. How much access will I have afterwards that enables me to still work with them? (NGO, social worker, emergency residential care)*

*[...] to give them some more understanding that they can always approach the youth welfare office and that there's always this paragraph 34, which gives a necessary excuse and can break that [medical confidentiality] and even if the mother says: Please handle this confidentially! Of*

*course, they're afraid to lose the family as patients. There are many components which play a role, but that is really still a problem, especially, I think, for registered doctors. (forensic physician)*

Dilemmas concerning the involvement of other authorities and organisations are not superseded by reporting duties in Germany but overlaid by other legal provisions, in this case by data protection requirements. For instance, physicians often express their fear of violating their duty to keep medical confidentiality (sec. 203(1) Criminal Code [StGB]). This problem is especially relevant with registered doctors who have few opportunities to share information within their practice, so that improved capacity building and awareness-raising are considered important. The classical projection of the dilemma is the fear of violating rules (regarding dilemmas because of the commitment to stick to the rules see also 6.2.6).

*[...] and we often get to realise that in the forensic medicine and at round tables that there are still physicians who are afraid of breaking medical confidentiality. [...] Well, I think, especially in this legal area, they are still a bit afraid. (forensic physician)*

In regard to expectations to keep confidentiality and necessary establishment of working relationships with the family, some do not see a dilemma, or they dissolve it with professional possibilities of advice/counselling in an intensive continuing relationship with the parents, and by making their actions transparent to the clients. That this partially covers over the immense challenges for the success of the approach might be indicated by the fact that at the same time, other institutions are tasked with duties to act by the advising professional – even though s/he has no right to bind other stakeholders into such an attempt to combine acting against the will of the client with keeping the desired continuity in the helping relationship.

*And if child endangerment is present there are clear procedures to be followed, and then I would actually inform the youth welfare office. All the same I obligate the kindergarten and school to document and I would talk to the parents. Well, I'd say, I stick to the level of communication, I still work there, and at the same time I take a further step and inform the youth welfare office. There's no real hesitation, I think, and no reasons which would have to be said against it, on my behalf, because I communicate with the parents. I mean, I tell the parents as well that I acted that way. (NGO, psychologist, counselling/advice centre)*

Some professionals try to avoid the problem of putting the relationship of trust under stress through acting against the will by not informing the family members. They act knowingly behind the family members back and are sometimes creative in covering up the proceedings and securing secrecy. They justify these procedures by the statement that only by that – at least in this single case – support and protection in the conflict between relationship of trust and acting against the will can be guaranteed.

*And then we thought this way and that way and then we got the idea to, there are such anonymous emails which can't be traced back, and then I told her, I elaborated together with her what she should report and describe so that the responsible office can take it on and no tracking of the informing person is possible. There are always options, yes, to find ways how to handle reports and procedures. (social worker, social services)*

*Sometimes there are also possibilities to take detours. I once had a case, there was one institution working very closely with the family and that was important. And then they got to know that the mother's new partner had abused four daughters of other women, but they didn't want to spoil their own work in the family and then they passed the information through a chain of several intermediaries and then the youth welfare office informed me. So this institution which first had the suspicion stayed anonymous and we just, let's say, handled it then [...] It's not always necessary to know: where does the information come from? (family court judge)*

### 5.2.4 Professionals' fear of being threatened by the family

Many professionals who work with families or children describe that sometimes threats posed by the families cause fears in the child protection work, so that child protection can be affected by the need for self-protection. The demand to support the protection of the child in the best possible way with one's own work gets in conflict with the demand to protect oneself. Fears and worries about the child are mixed with those about oneself.

At the same time professionals point to the practical problems that are connected with this ethical dilemma if, between employer and employee, there is not enough caring and protection on the structural level.

*But there is fear, partly with good cause, related to questions of self-protection against the parents, depending on the case. (NGO, psychologist, counselling/advice centre)*

*We see this in the quarters, where sometimes kindergartens are really afraid to start interventions. They tell us, we live here, they know exactly who might have informed the youth welfare office, we get, we have started the intervention and then fears come up, that their individual safety is in danger in some way. And with that comes along, that the institution does not protect the kindergarten and that's fatal. Well, there are no security guards with the duty to stay in the kindergarten or near it for 14 days to check what's happening, and then comes at best, let's say, the offer: you can take part in a safety training if you want. (NGO, psychologist, counselling/advice centre)*

*And possibly there's also on the table, I think this is a safe setting, so one can say it like this, that really possibly, if I act with these measures, if I inform the youth welfare office or if I go into this situation very actively, I also have to fear that maybe my car is not working anymore or whatever. Well, I say it like this, this might really be something that prevents people from pulling the thing through like they would do otherwise, I think, because I've gotten such hints, well, to be very careful. Where I say I can't act like this because now I have to be afraid. (headmaster primary school)*

This problem is partially presented in the context of families from cultural minorities. Other participants counter that not the cultural but a criminal background was the relevant criteria. Attributing the threat is problematised as a reconfiguration. The question if, and if so how professionals feel more threatened by families from cultural minorities, is not broached.

*Well, but are they, has that something to do with migration or is that an issue of criminal families? Well, I worked with various families from the radical right-wing. We had more anxiety with them and we developed more protection for our case workers as ever for the work with migrant families. (social worker, ongoing service)*

### 5.2.5 Involvement of criminal justice system vs. protection in cooperation with child and parents

#### Right of the state to inflict punishment, expectations and disregarding them because of practical reasons

The issue of a trustful relationship with the child and the parents when transmitting information to the criminal justice system without the consent of the clients goes hand in hand with the question of how criminal investigations and punishment affect the support process in which the (formerly) abusing or neglecting carers are involved on a regular basis in the context of physical child abuse and neglect. In many cases, police and prosecutors only get knowledge of presumed criminal acts committed by the carers against the children entrusted to them if they are informed by other professionals who are in contact with the family. This led, especially in one of the workshops, to normative expectations of representatives of the criminal justice system that professional actions should be oriented towards the right of the state to inflict punishment, sometimes declaimed quite emphatically.

*What about reporting the criminal offence? Well, I am, I think, well everything has gotten a bit better of course, but the father is still beating Adam, and somehow now, as the text says, reporting the criminal offence is discussed. It turns my stomach. To say, that this is still not reported now. And that it's still discussed. Well somewhere there has to be a stop. Well, let's wait and see. How long shall we still just wait and see what happens? (forensic physician)*

*And the police would in the first instance get to know nothing about this case. But I always say, many things aren't reported to us, the dark field is very broad. And every protection of the offender, by trying such things, that, to do something within the family, is also [...] What was I going to say? Well, if one does not report the offenders, one also protects them. That's what I wanted to say. So it's also a protection of offenders not to report them. (police, detective superintendent)*

*In principle, we have come to the conclusion [...] to report to the police more often. So, if you all could think about that, than I'd be very, very glad, and would pass it on. (police, detective superintendent)*

Apart from that, there also is an awareness in the criminal justice system itself not to be involved at a too early a stage or in cases of less severe violence due to the child's development and the happenings in the family. It is acknowledged that prosecution might have an unhelpful influence. However, they obviously sense a threat for themselves to face disciplinary sanctions for not investigating, prosecuting and punishing offences (concerning professionals' fear for themselves, also see 6.2.4).

*And of course I can take this judicially, accuse the woman, she is punished and I have achieved nothing by that. Neither for the mother nor for the family nor for the children, no. And that's why I understand when sometimes initiating prosecution comes very late. Of course, that's a problem for you if eventually something happens afterwards, than you're badly off and not us. And that's the problem that has to be solved somehow. (prosecutor)*

A majority of the participants already seemed to be familiar with the expectations of the criminal justice system to be involved more often. They often left the requests uncommented. Others explained their lack of openness towards the right of the state to inflict punishment with their personal experience of inappropriate actions by the criminal justice system which was perceived as a threat to the child.

*I have a relaxed relationship to the family court. That, for sure, is not always the same with the police. With the family court I know there's this procedure where invasive interventions are at the very end of a chain of interventions. That's not the case here. Here's packed a wallop. (social worker, social services)*

### Relationship of trust with parents

The personnel working with the family in child protection considers it an ethical dilemma that the trustful relationship with the persons involved in the family is affected – partly even substantially and durably – if they, apart from providing support services (with the aim to protect), also initiate sanctions against those they work with. Therefore, the decision to file a complaint can be substantially influenced by the professionals fear that the helping relationship necessary to protect the child is jeopardised by additionally initiating a solely punitive intervention. This is especially true if the child remains in the family or if there is an option that s/he returns to the family.

*And then one social worker said, listen, I'm a social worker, I'm not a spy of the police. Now imagine I have to go into the family, I have to work with them, they need to trust me somehow, somewhere there is a threshold. And I say, actually you're right. We have to find a balance. You have to look at the individual case. (police, detective superintendent)*

*Exactly. That's the problem and it happens very often that the youth welfare office – I don't know, Ms. XX if I'm right there – that they don't have their feet in the door anymore. Then the parents often run off and move. (guardian ad litem)*

*And that's why it is so thorny on the path to the police and judiciary, because if I want to prevent that, say, if I want to work preventively, then I need the access to the family, then I can't leave the impression that I wanted to take them to court – to say it sloppily – but I have to look, where are the family's resources, where is the necessity for changes, how can I work with the family, where can the strains be found in the end? (social worker, social services)*

In some cases, participants try to evade the dilemma of on the one hand being embedded in a relationship of trust and on the other hand involving an institution that members of the family reject by using back doors. Institutions not directly assigned to the criminal justice system are contacted in the knowledge that they are less reluctant to file criminal complaints because of their professional context and their only occasional working relationships with the family members. In other cases they assign the role to involve the criminal justice system to another partner in the network whose work does not depend on the relationship of trust with the family.

*Well, with us it's, well, if there was now this injury on the child's body, if I'd be the paediatrician, the paediatrician would refer to, or I'd go to the ambulance, to the university, ambulance, they would straight ahead refer to the forensic medicine and then the way would lead straight ahead to you [prosecutor]. So, then it's not me who reported the crime but then it's the forensic physician" (social worker, social services)*

*[...] and then you could in such a, if there's a real good network, could say, who takes what role? Who tells them now, scapegoat, criminal complaint, that one I'd take on. And the other one says, no, I want to work with the family members. (headmaster primary school)*

#### Effect of criminal procedures on child

Particular attention is also paid to the effects which an involvement of the criminal justice system has on the child. Prosecution and sanctioning of criminal acts committed against the child may give rise to feelings of guilt in the child. Testifying against one's own (formerly) closest attachment figures may put the child under pressure and lead to moral conflicts. This affects weighing whether or not to involve the criminal justice system. The interest in prosecution can be in conflict with the attempt to avoid negative impact on the child.

*I find this an important aspect. The limit of children's feelings of guilt and shame, you know. They shoulder so much anyway. (guardian ad litem)*

*To not let the child get in the situation that it has to carry all this pressure and feels guilty in the end, because this is always a real big problem, that's handled like this with many, many victims. They get saddled with a huge part of responsibility and burden. (child care worker)*

*The child is under extreme pressure, you know, he's under pressure at home, and he's under pressure to have to bear witness. (child care worker)*

*Well, I think this is also about, what defines this hesitation for yourself. And if you, let's say experience a child and this ambivalence, then I can understand that there is this hesitation. This hesitation to act in a regulating manner, arse in the trousers, and stuff like that. Or to file a complaint, too, because you just, let's say, go along emotionally and can imagine what it means for the child to experience that his father, I don't know, is imprisoned or sentenced, that puts pressure on the child. And, of course, it's possible to see the child through this therapeutically in some way, that's a point of view for sure, but we're a step ahead now and to think about what can make you hesitate to say I'm going to act straight in this and that way now. That this is clear by law, well, I don't want to deny that. (NGO, psychologist, counselling/advice centre)*

In contrast, a few pedagogical-educational professionals even see good reason for a criminal complaint in the impact on the child who could, through the criminal proceedings, experience the condemnation of the parental behavior by professionals. In some cases, how the child comes to terms with the events in a criminal prosecution of his/her parents is mingled with conveying normative

values to the child, thus yielding a learning experience about how his/her parents are allowed to behave and where the state sets limits.

*So: And if you take this early and we as grownups also point out clearly and also with something like that show clearly, there's a criminal complaint, if children grow up like this, they can also understand better, I'm not allowed to do this and my beloved father is also not allowed to do this. So, it's important not to leave the child alone on this point. (headmaster primary school)*

### 5.2.6 Follow binding rules vs. intuitive decisions: "gut feeling"

Action in child protection is subject to numerous legal and official and/or professional rules. Tension may arise between professional certainty based on conformity with the rules and professional assessment and intuition which may in particular cases make it advisable to deviate from the standard. The related ethical dilemmas were very present for some of the participants. The conflicting priorities show not only in the attempts to take detours and doing so secretly (see 6.2.3 and 6.2.5) or the involvement with the data protection provisions (see 6.2.3) but also in general. The professional gut feeling as manifestation of professional experience and theoretical knowledge that concentrates itself intuitively is valued and is confronted with the formal specifications for the actions.

*This certainty, how can I identify child endangerment reliably, well [...] Or this gut feeling that I also know, well I would say such a professional gut feeling that has developed from practice on the job. It is very important always to reassure oneself on ascertained knowledge as well. And there also is something such as professional gut feeling that one certainly, that I also appreciate a lot. [...] But this gut feeling develops out of many years of practice on the job. You can't just deny it. That is why I think it is so important that experienced professionals do that job. So. And you must keep track of that, beyond, well, of course, one appreciates, you have to make the assessment. but the question is when. and sometimes such a gut feeling is a basis for further diagnosing. That is the point then. (guardian ad litem)*

*As well, I find it very important, official lists, questions, etc., they are very important but my opinion is, the other part, what a difference having a feeling can make. This must not disappear. (social worker, social services)*

### 5.2.7 Minority Aspects

In the event any minority aspects should be involved, various other dilemmas may occur.

#### Threshold for interventions depending on life conditions vs. same protection for all

Children, parents and families are individual and it is part of professionalism in advisory or therapeutic contexts to be responsive to the families' individuality as well as to the personal situation of each child. Accordingly, in similar living conditions one child can be endangered while for another child an out-of-home placement would be more harmful than remaining in the current living conditions.

In this light tensions are addressed arising from the frame that universally every child has the same right to be protected against abuse and neglect (art. 19 CRC). But a deduction that every child has to be treated equally would lead to professional mistakes. Differences call for different treatment. Nonetheless, the question needs an answer whether the threshold for interventions affecting the autonomy of parents and families can actually be drawn differently, whether one child can be expected to live under conditions that another would be protected from.

Determining the threshold for intervention was described as a dilemma as well. Differences in the cultural backgrounds and social imprints compared to notions of normality lead, under certain circumstances, to a deviating evaluation of a family's living conditions, and the professionals asked themselves if, by doing so, they are discriminating. In particular, they referred to indications for neglect in families who, after a relocation or flight, are much better off in Germany than before. It is problematised that children would be more burdened by the removal from their family, because they

perceive their housing and living conditions not as burdensome as would members of the majority society. To take children along in interventions, to enable them to process the events involved in interventions can have different presuppositions in case of different cultural backgrounds.

*I would have, how would I have explained to these children bringing them to another place, where nobody speaks their language, where they are basically not cushioned or supported at all, where they don't know what is actually happening, why they are separated from their families? (social worker, social services)*

The increasing detail in the contributions to the discussions on this issue might indicate that professionals consider such a differentiation as being particularly subject to justification. In part they make explicit mention of their unease or they explain this differentiation by a lack of knowledge of the cultural backgrounds.

*Because some of them say, well, here, somehow we have at least a house wall, so we're doing better than before, and that I said, that would have been, so to speak, a too massive intervention for the children. And I thought afterwards if they had been a German family I would have measured to a different scale, because in that moment it was for me, well, I expect more from them because they've got our complete social security system behind them, they have the possibility to live under better, under different living conditions than, well, Romanians, Bulgarians especially, that's as you know the specific problem that they come from somewhere, they have no other choice than to live in such a place for a while, for a while, it wasn't about staying there for long, but for a while to live in such a housing. I know that I was startled about that myself, to realise that, that I had really made a difference there. (social worker, social services)*

*We say on the one hand, in child protection everybody is the same, you know, families, whether with a Muslim or another background, are treated the same. My opinion is, that's not possible in practice. There are differences, which are partly legitimate, with this I'd completely agree with XX. We had a similar case. I can top that by 5 children. We had a house with 20 children. They had no water anymore. [...] Have the children or do they think about that as damage? Would not the intervention to remove the children from their family be a far bigger harm for them? (social worker, social services)*

*In the apartment below was, when looking up, there was no ceiling from the next floor and it was really a disaster. But I decided nonetheless, they all were able to help themselves somehow, they had electricity from somewhere, there were heaters in the room, but I decided, for the moment I leave the children at home. Apart from that it would have been a huge effort to take 15 children into care at the same time. But in that moment I decided against it. And afterwards came, I know, the head of the child welfare office, who was also asking, how, Ms. XX, did you come to this decision? And that I really made this difference, that I was saying, for the moment, no, they knew how to help themselves. (social worker, social services)*

*[...] that's of course for a Roma family who comes from Bulgaria or Rumania to Germany quite recently and then lives in a two-room-apartment with 8 people, would we, we value differently than a German family living with 8 persons in a two-room-apartment. Well, we let them live there, because the family has a completely different understanding about the situation. They would rather say, but that's nice that we have a two-room-apartment. In south Europe we only had one room and that not always. And here we have got even heating, we didn't have that before. And we've got water, which is coming out of the wall, we didn't have that either. So, they come with quite a different perception. And if we confront them with our position which we have according to German families they don't understand us. (NGO, psychologist, counselling/advice centre)*

#### **Principles of professional action vs. involvement in a different culture**

Fundamental principles exist for the procedures in child protection or the actions of representatives of public authorities. These fundamental principles are compromised when getting in contact with



other cultures. On the one hand, the efforts made to understand the dynamics of the family call for the professionals to show an interest for and get involved in the family to this extent.

*I think it's all very much about how we approach people, generally, whatever nation they have. And if one is able to take up with understanding, what's behind. (social worker, social services)*

*In my opinion it's, we need to be more open culturally and we have to work more on ourselves culturally to be able to understand certain things. (social worker, social services)*

On the other hand, tension may also arise from moving closer to the origins of the family, in order to communicate different values by referring to these origins, if underlining the difference to habits of the other culture is (or could be) perceived as rejection; this can impede gathering the information needed to assess the child's situation as well as the willingness to change something in the course of the help process.

*Well, there, if you, well I am currently working with an Afghan family, I always take my shoes off, then I have to, before any talk starts, drink tea, eat. When this case can be closed I will weigh two more kilos, at least. So, there comes everything on the table, and then you have to, you have to try everything, it's a no go not to. And there are special structures in the family which you have to discover first. I also ask a lot of questions, how is this going and how would it be going in your country and stuff like that, to understand. And on the other hand I have the German law, you know? That's a total conflict. Well, that's always a real pendulum movement which you need to swing with. And me, too, once the mother gave me a sari for my daughter. Formally, that was bribery but I had to take it. The mother said, I was just about to say no, she was: Hm-m, and then I had to take it. And thanks God I knew the judge and told him, you know I let myself be corrupted, I just took a sari as a gift. That's a no go, that's, you insult them deeply if you don't take it, because they don't know at all our German juridical system. And on the other hand we have, you know, – you read it out loud earlier – we have the right to violence-free education, that's really, well, I always try to do such pendulum movements and that's a huge challenge for me to find a way how I can do justice to everybody. That's also, it's important to talk with others about that. (guardian ad litem)*

The dilemma may also lead to personal overload and resignation if the professional role does not allow an alternative way within the margin of possible proceedings, e.g. for a family court judge.

*In XX we've got a whole district with Turkish inhabitants, about 60,000. And one single time a man agreed to go to an advice centre. (...) Well, I don't do this job as a judge only since yesterday, but I have reached my limits as a German judge. I understand nothing about it, absolutely nothing. (family court judge)*

### Threshold for out-of-home placement vs. particular family ties

In case of an out-of-home placement the critical point is the struggle for the less harmful alternative for the child (see 6.2.5 above). Placing children from families with a cultural minority background may – when compared to the situation of children in families of the majority population – lead to increased stress. However, professionals are aware that family ties especially in Muslim families can have much more significance for the children compared to the average in the Christian majority population.<sup>6</sup> Therefore, a separation can have particularly serious consequences for the loss or conservation of the previous personal relationships. With juveniles who seek protection themselves a danger is seen that they are expelled from their family and by that lose their relationships to all family members, which are perceived as particularly important as well.

*But a migrant family, that they could refuse their own children, that's not possible, I think. Because there are those extremely strong family ties. (prosecutor)*

<sup>6</sup> Konrad Adenauer Stiftung, Muslimische Kinder und Jugendlichen in Deutschland, [www.kas.de/wf/doc/kas\\_28612-544-1-30.pdf?111201141739](http://www.kas.de/wf/doc/kas_28612-544-1-30.pdf?111201141739), p. 48.

*But family has such power or has as well such a high standing for these children and young people. Well, you have to bring that to bear. (social worker, social services)*

*Namely older girls, about 12, 13, 14, 15 years old, there are serious differences, I believe, because the risk, depending on what sort of family it is, there's the risk that the girl is expelled out of her family if she stays firm in her statement, if she stays in a residential home, if she does not retract that there's violence in the family. And then those young people are confronted with this situation, I am alone, I have no family standing behind me anymore. And that's the situation which causes great fear and which causes in the one or other case that the girl goes back to her family. And that would be an aspect, for example, which one has to consider in any case. And now related to the case here this would be, that's a question, which one had to consider in this case in relation to the personal situation of the boy and what consequence this might be having. Not, that the individual protection should be cancelled but that's definitely an aspect one would have to consider [...] when the possibility to go back to the family is not given under the circumstances, then that causes pressure. Then I think about, I personally, again, if I shouldn't do things differently. (NGO, social worker, emergency residential care)*

*Well, after this description of the case the contact would rather be broken off by the parents. Well, you don't have any more influence on that. If the children are being taken into care and the parents say: I don't want to have anything to do with them anymore. You don't have any influence on that. (social worker, social services)*

## 6 Summary

Professionals across stakeholder groups adopted the term of (potential) child endangerment as predominant reason for taking action instead of the act of violence itself.

Building on the alerting duty to protect, the impulse of supporting parents' rights, and the duty of professionals to offer support to the families seem to be consensus. As long as support was not offered or professionals have not tried to refer the parents and child with their consent to support services, they are not allowed to inform the youth welfare offices or to take a child into care. While it is on the one hand described as a matter of course to act transparently and to try to motivate parents to seek advice and support voluntarily, on the other hand this requirement seems to be a burden for some professionals who would rather quickly inform the youth welfare offices to share or delegate responsibility. When the question of taking the child into care arises, it is generally respected that this is only admissible if other measures were or are likely not to be successful. All professionals stated that the duty to support does not end after taking a child into care because the work with the parents is still necessary after a placement.

A trustful relationship between professionals and families as presupposition for effective support and lastly for the protection of the child is seen as very important. Therefore most professionals describe participation, transparency, and appreciation as crucial frames for their practical work. On the other hand participation of the parents is often only confirmed after moderators or other participants explicitly bring up the issue. This might suggest that participation is not fully accepted and incorporated in practice by all professionals.

Participants in both workshops discussed the right of the state to inflict punishment in case of violence against children. Since there is no duty to inform the criminal justice system some professionals of the medical or criminal area strongly promoted more criminal complaints. Professionals working with children on the other hand named practical and child's best interests related reasons not to involve the criminal justice system.

Regarding minorities important frames are differing values and approaches to child-rearing, within which those families are assumed to accept violence as an important part of parenting and not to understand the aims of child protection in Germany. Aside from that, all professionals had the con-

viction that all children have a right to be protected and live free of violence. Therefore, the participants stated that even though all children must enjoy the same protection the interventions differ. On the practical side getting in contact is already more complicated, language issues have to be considered and fathers are perceived as often not accepting female professionals as counterparts. Concerning the child's best interests the family has a particularly high value, child's bonds and loyalty with his/her family is often even more important than in the majority population. All professionals value the particular cultures and claim to consider it when placing a child out of home.

Of the numerous practical issues mentioned in the workshops the lack of knowledge about the culture and religion of families from minority groups and the problem that sometimes there are no possibilities to include special needs in out-of-home-placement were discussed.

A number of ethical dilemmas refer to the trusting relationship with the families which can be in conflict with the necessities to protect the child or to follow guidelines and legal provisions. For example the duty to supervise the family is described as conflicting with trying to build and maintain a relationship of trust by professionals who have to work with the families. Another conflict is described in the necessity to inform other institutions while working with the families in a helping relationship. This sometimes leads to solutions of information sharing between professionals and institutions behind the back of the family. Others hold transparency high. Regarding the initiation of criminal prosecution the relationship to the families is pointed out as conflicting. Other conflicts in this sphere are the consequences and pressure for the child through criminal proceedings against his/her parents.

Another ethical dilemma is seen by the professionals in the balance between preventing or causing harm to the child by intervening too early or too late. Especially taking into care is seen as a stressful burden. While some professionals follow the rule "safety first" others see the potential consequences for the child as very critical and see the need for a profound weighing before taking the child in care.

The professionals agree that it takes time until support services show their effects. Balancing the necessary time for changes in the parental child-rearing while further maltreatment may occur and intervening protection to secure the prevention of further violence is an issue.

If the family is member of a minority group the conflict between the same protection for every child and the necessity to consider special life circumstances is discussed, for example when a family is already living under much better circumstances than before they came to Germany. When it comes to the question of an out-of-home-placement the potentially higher family bonding and value of the family is considered and related to the burdens for children. Here professionals especially see the danger that older children may be cast out of their family if they seek help by themselves. Another dilemma is seen in the necessity to respect and get involved with the other culture, i.e. when a family requests to eat with them or to take gifts, which can be in conflict with professional procedures.