



Institutional violence against women and children in child custody proceedings

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In 2023, Austria was shaken by a particularly egregious case of deadly susceptible institutional violence: A five-year-old boy was found dead after visiting his father, both drowned in the Danube. Although a restraining order against the father had previously been issued due to domestic violence, the boy was ordered by court to unaccompanied visitations with his father.¹ According to Article 31 of the Istanbul Convention which Austria ratified, the court is obliged to take all necessary measures to ensure that the exercise of the visitation rights does not jeopardise the safety of the child. In this case, the judge clearly failed to meet this duty of care and exposed the boy to deadly danger through unaccompanied contact. This case is just the tip of the iceberg of institutional violence against mothers and children in custody proceedings in Austria.

Given that custody proceedings are non-public in Austria, there are no formal statistics on the number of cases of misjudgements that led to institutional violence. However, we remain under the impression that it is a widespread phenomenon rather than an exception in the Austrian court system.

Two years after the German association “Mütterinitiative für Alleinerziehende” [Mothers’ Initiative for Single Parents] launched an awareness campaign about

institutional violence against mothers and children in courtrooms, FEM.A, the Association of Feminist Single Mothers took up the initiative and established it in Austria. The focus of the initiative was the interpersonal, overt and covert violence by agents of institutions involved in custody proceedings, their victims being mothers and children. Since the latest reform in family law in 2013, the number of different actors in custody proceedings has steeply increased. Amongst the agents interfering with the families in custody proceedings, we count judges, judicial officers, family court assistants, children’s assistants, child protection services, expert witnesses, and many others.

While some mothers had previously opened up on social media about the harmful and sexist statements they had to endure by the above agents, they were often not believed, were framed as mentally ill and therefore untrustworthy, and were ultimately silenced. Before FEM.A took the decision to collect testimonies and repost them anonymised on social media, there had never been a structured way of gathering their experiences. The awareness campaign unleashed a torrent of testimonies and troubling experiences of single mothers in Austria. It seems that it not only struck a nerve, but also lifted a prevailing taboo on this topic. For the first time, victims found themselves in a community of women who had gone through similar ordeals.

The high number of testimonials on institutional violence reported to FEM.A has pushed us to delve

¹ Steinmaurer, Tobias; APA: „Nach Hammerangriff weitere Leiche in Neuer Donau entdeckt“; APA, 14.08.2023 <https://apa.at/news/nach-hammerangriff-weitere-leiche-in-neuer-donau-entdeckt-4/>



In December 2022 FEM.A met Austrian justice minister Alma Zadić along with other women's rights organisations in order to raise awareness about institutional violence in custody proceedings in Austria. FEM.A's main call was the full implementation of the Istanbul Convention and the protection of children from violent fathers.

deeper into the issue. Institutional violence is generally not formally recognised as a form of violence. During our research we were surprised to find that there was a lack, if not to say an absence of academic literature and public discourse on the term "institutional violence" in the German language. While some sources in the area of care work for elderly people, people with disabilities, or even pupils in schools could be found (e.g. in standard operating procedures), there seems to be no formal definition of "institutional violence". The only sources available on the subject rather refer to a related concept, namely "structural violence". Structural violence as a form of discrimination seems to be most frequently used, covering but not wholly capturing the concept of institutional violence, as the latter term is understood in English. Structural violence which was first defined by Johan Galtung, founder of the Peace Research Institute Oslo, refers to a form of violence that lacks a particular beginning as well as an actor². In other languages "institutional violence" is a well-established term and concrete definitions can be found. Cersele and Haecht published a study in 1980 in French about institutional violence, where they state:

"Institutional violence is an established form of interpersonal violence resulting from the existence of such institutions as the police and prisons and from the practices of repressive justice."³

Joseph C. Kunkel wrote in 1999 in "Institutional Violence", a book composed mostly of writings from philosophers:

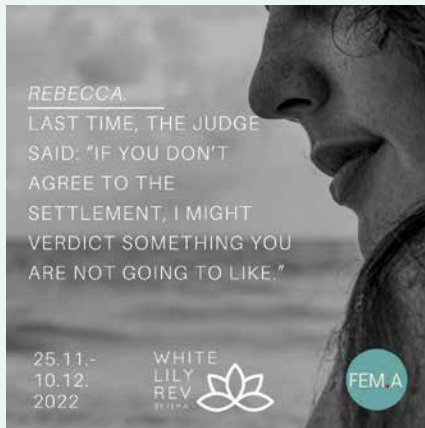
"Institutional violence is violence made possible and facilitated by social organisations having relatively explicit rules and formal status within a culture. Examples are the educational system, the military, the police force and the judicial system."⁴

The lack of sources and academic contributions in German points to a critical death of public discourse, analysis, and policy in German-speaking countries. While the cause of institutional violence against mothers →

2 Galtung, Johan: "The Specific Contribution of Peace Research to the Study of the Causes of Violence: Typologies," UNESCO Interdisciplinary Expert Meeting on the Study of the Causes of Violence, Paris, 1975 <https://www.transcend.org/galtung/papers/The%20Specific%20Contribution%20of%20Peace%20Research%20to%20the%20Study%20of%20the%20Causes%20of%20Violence%20-%20Typologies.pdf>, accessed on 24. August 2023

3 Cersele, S. C.; Haecht, A. V.: "Institutionalized Violence", Center of Sociology of Law and Justice (Institute of Sociology - Free University of Brussels), Canada, 1980 <https://ojp.gov/ncjrs/virtual-library/abstracts/institutionalized-violence#:~:text=Institutional%20violence%20is%20an%20established,the%20practices%20of%20repressive%20justice.,> accessed on 24. August 2023

4 Kunkel, Joseph C. in: "Institutional Violence", ed. Deane Curtin, Robert Litke; Amsterdam, Atlanta, 1999



and children in custody proceedings may be rooted in a deep and engrained misogynistic and patriarchal belief system, the lack of language to label this form of violence maintains and reinforces the problem. What cannot be named, cannot be known. While the true magnitude of the problem remains in the dark, we believe that the reason could be the lack of codification of the concept. We have therefore decided to provide a first definition of institutional violence in German, as well as many examples of this form of violence in custody proceedings. The goal is to empower women not only to recognise the violence they face in diverse institutions during child custody proceedings, but also to speak up about it. Furthermore, we hope to sensitise institutions, politics, and the society about this form of violence. We will publish our findings in form of a free and downloadable brochure during the upcoming 16 Days of Activism against Gender-Based Violence (25 November – 10 December 2023).

Amongst different forms of institutional violence in custody proceedings reported to us, we found the following to be most present:

- Gatekeeping of information,
- Using pressure,
- Gaslighting, and
- Shaming.

Furthermore, we received testimonials of women experiencing different forms of institutional violence in custody proceedings:

| Gatekeeping of information

Child Protection Services maintain records of their supervision of a mother and her children. However, the mother is denied access to records of her own information. This not only violates the right to participation and information, but also denies her the opportunity to comment on any untruthful reports.

| Using pressure

A judge pressures a mother to agree to a disadvantageous settlement: “[...]either you agree to the settlement, or I will issue an order that I have already prepared. And I can tell you: it is extremely disadvantageous for you.”

| Gaslighting

A mother reported to the court that the father of her children had threatened to kill her, which she recorded. The judge decided to not investigate the death threat, but rather ignored it and even defended the father by saying: “The father just wanted to see the children. There should be understanding for his situation.”

| Shaming

When a mother claimed child support for her child, as they were in a precarious financial situation because the child’s father did not pay any child support, the judge told the mother that she should have thought about how she would make ends meet financially before separating. ●



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Austria, she decided to fight against structural discrimination against single mothers in Austria and currently works as an advocacy specialist for FEM.A – Association of Feminist Single Mothers in Vienna.