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Reference:	L4/0110/650
Date:	29.03.2010

COMPLAINT TO THE DIRECTOR GENERAL OF JUSTICE FREEDOM AND SECURITY ABOUT THE RECOGNITION OF THE JUDGEMENTS OF GERMAN FAMILY COURTS IN EC REGULATION 2201/2003

Copy to:

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Contents

1. Introduction

1.1. The purpose

1.1.1. The purpose of this complaint is to highlight the major formal deficiencies of the German family court system, and to make recommendations. Here the impact on the EC Regulation 2201/2003, which provides for the mutual recognition in the EU of the judgments of family courts, is especially considered.

1.2. The Principles observed in this Complaint

1.2.1. Only the deficiencies of the German Justice System, mostly missing regulations, are analyzed in this complaint, together with their impact on the family courts. There is no discussion of either in-depth legal aspects or other specialist topics. The scope of the report is thus generally confined to management level.

1.2.2. Where this is helpful, mainly the British and to some extent the American system, are used as references. It is not being suggested, that the regulations of these two countries should be taken over by Germany. They simply indicate, how the care taken by other Justice systems is missing in the German Family Justice.

1.3. The List of Defects and Deficiencies

1.3.1. The list of deficiencies is shown below:

i. No adequate control over the tasking of experts.
ii. There is no adequate regulation governing hearsay evidence.
iii. German judiciaries are allowed to belong to political parties and actively participate in political activities.
iv. The judgments of the European Court of Human Rights are not recognized as binding in Germany, effectively abrogating the European Convention for Human Rights.
v. No equivalent legislation for "*habeas corpus*".
vi. There are no fully implemented "*Freedom of Information*" laws in Germany.

In the main paper, detailed explanations are included together with references to the American, British and, as necessary, other international systems, with the aim of showing the care being taken in other countries, which is missing in the German system.

1.3.2. There has been a reform of family law since September 2009: The reform transfers some changed procedures out of civil law and introduces them into a new Family Law, FamFG [12]. Together with some restructuring, it is a packet that does not impact the list in Para 1.3.1, with the exception of the points addressed in 2.1.

2. Analysis of the Defects and Deficiencies

2.1. Expert Evidence (1.3.1.i)

2.1.1. In German family courts, experts are tasked as a rule, by the courts themselves, and, sometimes by the Jugendhilfe. In both cases, the expert will probably be an old friend or acquaintance of the person issuing the task. For the sake of brevity, this method of selection is known as the “chummy list” method. For this reason, there is no independence from the tasking authority, which is, for example, a requirement of the British regulation [1] and [2]. There are additional guidelines laid down in GB for medical doctors [3]. Vetted lists in GB are also available, for example [4].

2.1.2. There is no method of determining the qualifications and experience of an expert in German family courts. He is not asked this question and is not obliged to give details in the reports. For that reason, the “chummy list” method of selection in Germany is likely to produce some bogus experts, or experts with insufficient or no experience in the field required. Indeed, the appalling work quality of the experts (reported in [5] and Annex B), would lead one to think that the “chummy lists” must contain many bogus experts.

2.1.3. In the table below, the British Civil Evidence Act [2] is compared to the German Civil Proceedings[6] as well as the Family Court Procedures (FamFG) [12] in the matter of the production of expert reports:

British Civil Evidence Act [2]. Chapter and Paragraph.	**German Civil Procedures (the ZPO)[6]**	**The German Family Courts Procedures (FamFG)[12]**
3.1. An expert's report should be addressed to the court and not to the party from whom the expert has received instructions.	Not addressed.	Not addressed.
3.2. An expert's report must:		
3.2 (1) give details of the expert's qualifications;	Not addressed.	Not addressed.
3.2 (2) give details of any literature or other material which has been relied on in making the	Not addressed.	Not addressed.

report;		
3.2(3) contain a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;	Not addressed.	Not addressed.
3.2(4) make clear which of the facts stated in the report are within the expert's own knowledge;	Not addressed.	Not addressed.
3.2(5) say who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;	Not addressed.	Not addressed.
3.2(6) where there is a range of opinion on the matters dealt with in the report – (a) summarise the range of opinions; and (b) give reasons for the expert's own opinion;	Not addressed.	Not addressed.
3.2(7) contain a summary of the conclusions reached;	Not addressed	Not addressed.
3.2(8) if the expert is not able to give an opinion without qualification, state the qualification; and	Not addressed	Not addressed.
3.2(9) contain a statement that the		

expert – (a) understands their duty to the court, and has complied with that duty; and	Not addressed.	Not addressed.
(b) is aware of the requirements of Part 35, this practice direction and the Protocol for Instruction of Experts to give Evidence in Civil Claims.	Not addressed.	Not addressed.
3.3. An expert's report must be verified by a statement of truth in the following form – I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. (Part 22 deals with statements of truth. Rule 32.14 sets out the consequences of verifying a document containing a false statement without an honest belief in its truth.)	This is, in Principle, covered in §410 as the expert is sworn either before or after the rendering of the report. It does not, however, call for this to be certified in the report.	Not addressed.

The German Civil Procedures ZPO [6] do have paragraphs (§ 402-414) covering experts, but are certainly not sufficient for the administration of an expert's task. Of interest is perhaps § 404 and § 404a. These paragraphs are supposed to cover the selection of the expert as well as the control of his task. Just how much they cover, is reflected above.

For the purpose of tasking the experts § 171 of the new Family Law orders courts to set a deadline for any expertise ordered. If any of the family courts would do that, then they would be immediately awarded 5% of the marks in the evaluation procedure, as per F2010P Part-B [14] & [16]. The fact that so little of these points of elementary task management is covered by the law reflects on the abysmally low knowledge of both the

law makers and the courts. The absence of such paragraphs leads to the “junk”, purporting to be expert reports, that is generally delivered to the family courts.

There is no disciplined way of challenging an expert's report either before a hearing or during it in Germany. The procedure in GB [1] allows questioning both before (in writing) and during a hearing, which are subject to special procedures. Written questions, together with their answers are documented in the final report. Such questioning is not provided for in Germany, probably because, the reports are generally so bad, that they would not be able to stand up to scrutiny.

2.1.4. The family courts in Germany using their version of expert evidence rules is a pernicious system, which is wide open to abuse. The “chummy lists” in use are an open invitation to slovenly workmanship and corruption in a system, which itself, is highly susceptible to corrupt practices. There are none of the checks and balances in place, which would ensure the necessary quality of expert reports and evidence.

2.1.5. The analysis contained in Annex B, revealed that the experts could only achieve an average of 26% against the F2010P Part A ([13] and [15]) tests, with only 2 from 23 that could be classified as satisfactory. The courts could only achieve an average of 17% with none being satisfactory against the F2010P Part B ([14] and [16]) evaluation of their task management. There is no good reason, why a court and its expert could not achieve 100% of the marks: That should be easy enough, with only elementary tasking and report writing being assessed.

2.2. Hearsay Evidence(1.1.1.ii)

2.2.1. There are no civil rules in Germany on how to deal with hearsay evidence. This means that anything goes in German family courts from denunciation, falsehoods through to malicious gossip and perjury.

2.2.2. Whether to admit hearsay evidence per law or not, is a decision of the legislative in each sovereign country. In the USA this type of evidence is prohibited except under certain circumstances. GB allows it but, in accordance with a carefully considered set of regulations. The following applies:

Detailed Rules for GB are contained in the Civil Evidence Act 1995 Pt 38 [7].

The GB regulations move some of the focus of hearsay evidence to weight, rather than admissibility, setting out considerations in assessing the evidence (set out in summary form):

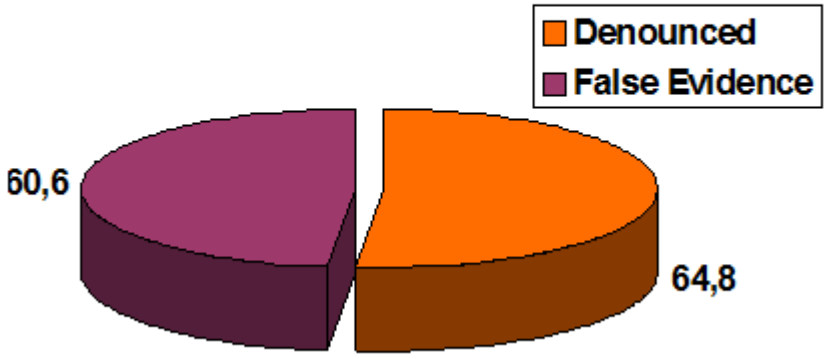
- Reasonableness of the party calling the evidence to have produced the original maker
- Whether the original statement was made at or near the same time as the evidence it mentions

- Whether the evidence involves multiple hearsay
- Whether any person involved had any motive to conceal or misrepresent matters
- Whether the original statement was an edited account, or was made in collaboration with another, or for a particular purpose
- Whether the circumstances of the hearsay evidence suggest an attempt to prevent proper evaluation of its weight
- The credibility and competence of hearsay witnesses must meet certain criteria, which are to be carefully considered.

2.2.3. Six children of a large German family were recently taken into care, on the basis of worthless hearsay evidence made by neighbors, people with a vested interest in falsifying or distorting evidence as well as the “Jugendamt”. A conscientious judge should have been able to see through the falsehoods. However, it took nearly a year to demonstrate that the court had been misled and an order was forced through to release the children. The uncertainty and vulnerabilities of the family situation, however, led to it applying for political asylum in the USA.

2.2.4. A survey carried out in 2009 of victims of the German Family Courts revealed that about 65% of them had been denounced and 61% subjected to the effects of false evidence before court. The pie chart in Fig. 1 shows these results. Only the victims were asked, so that we are not suggesting that the statistics would have a nationwide application. For the purpose of establishing a distribution of the parameters, however, the statistics are good.

Fig. 1 Denunciation and false Evidence before Family Courts



2.3. Political Activities of German Judiciaries (1.3.1.iii)

2.3.1. In a country where there is no separation of powers, it is not at all surprising that judiciaries should be appointed on the basis of their party affiliations divided up into quota systems. These judiciaries are also allowed to take an active roll in politics and many are compulsive publicity seekers, as their frequent press statements show. Participation in commercial enterprise is also permitted.

2.3.2. In the UK, political activities are forbidden as the "Guide to Judicial Conduct" [8] states. More specifically:

> *"Each Justice will refrain from any kind of party political activity and from attendance at political gatherings or political fundraising events, or contributing to a political party, in such as way as to give the appearance of belonging to a particular political party. They will also refrain from taking part in public demonstrations which might diminish their authority as a judge or create a perception of bias in subsequent cases. They will bear in mind that political activity by a close member of a Justice's family might raise concern in a particular case about the judge's own impartiality and detachment from the political process."*

2.3.3. The Consultative Council of European Judges (CCJE) says:

> *"Judges' participation in political activities poses some major problems. Of course, judges remain citizens and should be allowed to exercise the political rights enjoyed by all citizens. However, in view of the right to a fair trial and legitimate public expectations, judges should show restraint in the exercise of public political activity. Some States have included this principle in their disciplinary rules and sanction any conduct which conflicts with the obligation of judges to exercise reserve. They have also expressly stated that a judge's duties are incompatible with certain political mandates (in the national parliament, European Parliament or local council), sometimes even prohibiting judges' spouses from taking up such positions."*

2.3.4. This form of abuse of privilege is very widespread in Germany. For example, the retiring president of the Regional Court Hans Georgii (CDU) in Ravensburg was described by the district administrator as a "thoroughbred politician" [18], at his farewell party in March 2002, and after a long career of mixing justice with politics. His successor, Dr. Franz Steinle, not to be outdone, served on the Supervisory Board of a commercial foundation in the area. He is now the president of the District Court in Stuttgart, still in the influence area of the same commercial foundation, and still on the Supervisory Board. This particular commercial foundation has a long history of recruiting its own judges.

Dr. Christian Bäumler (CDU) has been a chairman judge at the local court in Villingen-Schwenningen since 1997. Since 1998 he has been a member of the state executive board of the CDU Party in Baden-Württemberg. He also occupies several party offices up to Federal level.

In April 2002 Professor Günter Pottschmid (SPD), then the president of the State Court of Bremen and most senior judge in the state, retired. At the farewell ceremony the President of the Bremen Senate Henning Scherf praised Pottschmidt for his rulings in

favor of the city. Later Pottschmit described the role of a judge as a “Political Co-Constructor”.

Judge Dirk Vogt (SPD) had more than 15 public political functions in his time as a judge in the local court in Recklinghausen until his retirement last year. He is known for controversial decisions in his world of mixed political, commercial and judicial influences.

At least three judges of the Federal Constitutional Court are politically active. Last year Justice Udo di Fabio (CDU) was quoted as saying, at an event hosted by the Chamber of Commerce, Hochrhein-Bodensee, at which he was guest speaker,

> “*If a country (USA) finances its growth for years with the loaned billions of another country (China), then this house of cards is bound to collapse sometime.”*

The most politically active was Prof. Dr. Hans-Jürgen Papier, (CSU) who left the FCC in Feb. 2010 after 8 years of service as its President. Papier was, during his period of office, a compulsive publicity seeker, which presumably took a lot of his time. The result is the performance of the FCC, as reported in the statistics of Annex A.

2.3.5. The German Jugendhilfe is an industry, with an annual budget of 21 Billion Euros and is both a political and commercial organization, which is demand-cycle controlled within the bounds of its financing [5]. It is the top player in German family courts. The political factor in a German judiciary's make-up completes the picture of the extreme vulnerability of the German family courts. Where corruption is made possible, it will certainly flourish somewhere.

2.4. ***European Convention for Human Rights (1.3.1.iv)***

2.4.1. Germany unilaterally abrogated the European Convention for Human Rights. In a judgment of the Federal Constitutional Court of the 14.10.2004 2 BvR 1481/04 [9] she said (under bookmark 18) that the rulings of the European Court of Human Rights are not binding on any German Courts.(Incidentally one of the signatories was the politically active Udo di Fabio, see 2.3.4). This was merely an "outing" because Germany has never observed the Convention anyway. Looking at the arguments put forward to justify the huge non-compliance with international treaties, the offending statement, in the FCC judgment,

> *“As a result of the status of the European Convention on Human Rights as ordinary statutory law below the level of the constitution, the ECHR was not functionally a higher-ranking court in relation to the courts of the States parties. For this reason, neither in interpreting the European Convention on Human Rights nor in interpreting national fundamental rights could domestic courts be bound by the decisions of the EctHR”,*

contains much verisimilitude: Art 46 of the convention does not apply any ranking to the decisions of the European Court of Human Rights, it simply says that

they are to be obeyed, as is laid down in Art. 46 as follows:

Article 46 – Binding force and execution of judgments

1. *The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.*

Sub-Para 2 of Article 46 goes on to say:

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

The situation could not be clearer: Germany is in breach of the international treaties, to which she signed up. Germany also puts into practice what she said on the 14.10.2004 and there are plenty of examples of this. This does not appear to have bothered anybody, least of all the European Court of Human Rights. It is significant that the applicant, in the case, was complaining about the non-implementation of a decision by this court, in the main matter.

In GB die rights defined in the European Convention for Human Rights can be contested formally at the first instance, under the Human Rights Act 1998 [5]. In particular, § 6(1) says, "*It is unlawful for a public authority to act in a way which is incompatible with a Convention right*." Challenges on this basis in Germany are always met with silence.

Every sovereign nation can, of course, rescind the European Human Rights Convention at any time, but this should attract sanctions from the OSCE, such as expulsion from the organization. However, to perpetuate the facade of compliance, is quite another matter, which should set alarm bells ringing for all organizations, who adhere to international treaties and expect others to do so.

2.4.2. It is often said by German judiciaries "we do not need the ECHR, because we have a constitution, which adequately protects human rights". An analysis of the statistics of the FCC, however, tells an entirely different story. Annex A contains such an analysis. What substitute rights are defined in the German Constitution are impeded currently by an 86,4% denial of due process by this court. The FCC confines its activities in the remaining 13,6% to cases where political impact can be optimized. Otherwise the cases actually dealt with are simply showroom windows, mere propaganda. This makes Human Rights in Germany a set of hypothetical and unattainable privileges.

2.4.3. The other variant of such a "defense of the indefensible" by German judiciaries is the falsehood. When asked by a correspondent of CBN News, whether Germany adheres to the European Convention for Human Rights, the German Embassy, in the USA, replied "Yes". It remains to be seen, how often yet , the German government is going to repeat this same falsehood, and get away with it.

2.5. Habeas Corpus (1.3.1.v)

2.5.1. A writ of *habeas corpus* is a summons with the force of a court order addressed to the custodian (such as a prison official or head of a psychiatric clinic) demanding that a prisoner be brought before a court, allowing the court to determine whether that custodian has lawful authority to hold that person. The writ can be issued in cases of the method of detention being “cruel or unusual”. The writ can be issued by any person.

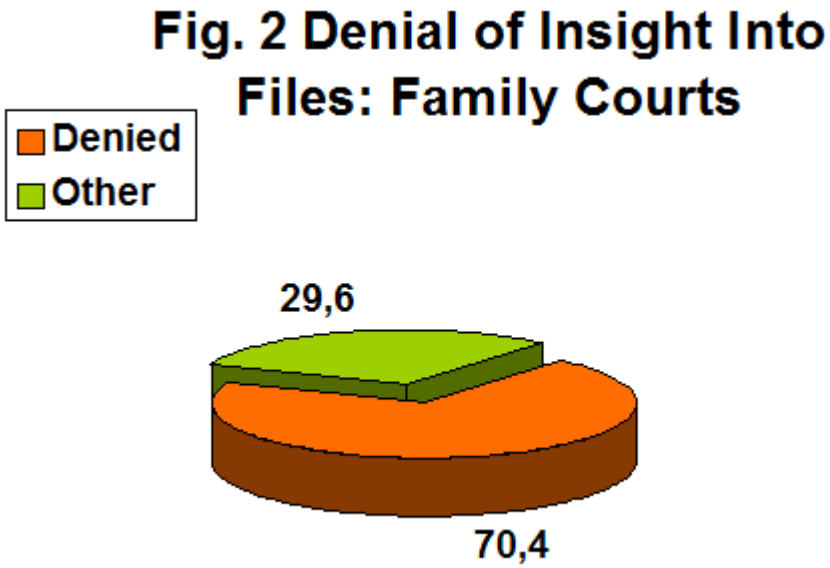
In German family courts, the urgent need for a “Habeas Corpus”[11] legislation goes hand in hand with the extremely poor work quality of both the experts and the courts. In Germany, children are being locked up in psychiatric clinics simply for running away from school and on the strength of an expert's report to a court and, in most cases, the unshakable belief of a judge in his “old chum” (see Para 2.1.1)..

The mother of a large family was locked up in a psychiatric clinic after suffering hallucinations following the development of pregnancy diabetes, which was misdiagnosed. In another case the mother of a child in a psychiatric clinic wanted to know, on what authority her daughter was being treated with new drugs. The psychiatrists answer was, “Show me the law preventing me from doing what I like. You do not have custody of the child”. These would be further examples of situations where a writ of *habeas corpus* would be desperately needed.

2.6. Freedom of Information(1.2.1.vi)

2.6.1. The Freedom of information Laws have not been fully implemented in Germany. It is the only country in the EU in this remiss state, as far as FOI is concerned. The UK has a Freedom of Information Act since the year 2000. Ten years later, Germany is still thinking about it.

2.6.2. The results of a survey conducted in 2009 (Fig. 2), revealed that just over 70% of the applications for insight into files were refused. “Other” means that an application had not been submitted or that insight had been granted. Cases of denial have been recorded in states, which have allegedly implemented FOI. A logical explanation for this would be, that there are cases of denunciation and falsification of evidence (see Fig.1), which the authorities want to hide.



2.6.3. More information on Freedom of Information can be obtained on Walter Keim's website under [17].

3. Conclusion

3.1. Defective or missing Procedures

3.1.1. The lack of regulation of experts, as reported in Para 2.1 is a highly pernicious practice leading to corruptibility and otherwise generally weighted expert reports. It also furthers bogus experts as well as poor workmanship, which was reported in Annex B.

3.1.2. The lack of a regulation for hearsay evidence is equally dangerous. This practice opens the door to all kinds of perversions. Calumny, malicious gossip and false testimony are legitimate weapons for a German family court as long as such iniquities be employed in support of the official view.

3.1.3. The lack of directives in the German system produces the degree of vagueness that many German judiciaries welcome for their arbitrariness. The hearings before a family court are generally undisciplined affairs, where only the loudest participants are likely to be acoustically heard, but only legally registered, if the judge wants it that way.

3.2. The political Factor

3.2.1. It is regrettable that German Judiciaries, at all levels, should know and think so little of the ethics of their profession, that they are prepared to join political parties and become actively engaged in politics, as discussed in Para 2.3. It is particularly regrettable that the most senior judge in the land, until recently, Prof. Hans-Jürgen Papier should be

one of the worst offenders.

3.2.2. It is particularly important that the German Government should find some way of ending this pernicious tradition, which predates the German Reich. The “Jugendhilfe” is, after all, politically powerful, backed with an annual budget of 21 billion Euros and is the major player in the family courts - effectively the judge, at present. Whilst prohibition, as in Great Britain will not solve the problem entirely, it will limit the corrupt recruiting opportunities and perhaps make the younger judiciaries aware of their responsibilities.

3.3. The Work Standards

3.3.1. The unbelievably slovenly work quality of the family courts and their experts (Annex B) as well as a general ignorance of the rules of evidence, including hearsay, is symptomatic of a deeper malaise which pervades the family courts. The judiciaries, who preside over these courts may be subject to political or other nefarious influences. They could also be driven by a general lack of *savoir faire* which causes them to set themselves low standards, which they subsequently even fail to maintain. In any case the end results are asymmetric processes, weighted against parents and their families.

3.4. The lack of Remedies for Malfeasance

3.4.1. The remedial elements are defined in Para 1.3.1 (iv to vi). Whilst they do not have any immediate effects, they are designed as safeguards against the malfeasance of German family courts and higher instances. The highest remedial instance, the FCC , only compounds the human rights abuses committed by the lower courts (Annex A).

3.4.1. The issue of Human Rights in Germany is tied to the innate lack of integrity, with which this is treated. Human Rights are to German judiciaries as “garlic or holy water to the vampire”, as the extract from the judgment of the FCC (Para 2.4), as the fundamental dishonesty of its supporting argumentation shows. The alternative argument, that Human Rights are protected by the constitution, have been demonstrated to be false in the analysis contained in Annex A.

3.4.2. The lack of any equivalent legislation for *habeas corpus* has serious implications for family members subjected to abuse of psychiatry in Germany. Here the family courts act on the recommendation of unprofessional and highly dubious experts. The use of centralized rota lists, which are properly supervised may help with this situation, but would certainly not be enough.

3.4.3. The identification of irregularities is a necessary part of any remedy. Germany's lack of respect for its international partners is manifest in its contempt for “Freedom of Information” (FOI). GB introduced such laws 10 years ago and all other EU countries, except Germany have implemented such laws. Family courts, held in secret, do not

have any transparency at all. The 70% rate of refusal of insight into files (see Fig. 2), heralds a state of affairs approaching that of China.

3.5. Additional Remarks

3.5.1. The family courts as well as those remedial instances, aiding and abetting them, including the German Constitutional Court, is out of place the modern German society. In particular the abominable quality of the work output is inconsistent with the concept “German Thoroughness”, an attribute, which is noticeably lacking in the German Justice system.

3.5.2. A survey based on 420.000 interviews conducted since 1990 by the Institute for Demographics, in Allensbach showed that German citizens have developed a positive, outward-looking mentality, which is adding to their popularity abroad. On the other hand, the mentality to be found in the structures surrounding the German family courts is a fossil of past regimes, which is foreign to modern Germany. It is, in particular, a huge contradiction, that Germany should be represented in EU circles by some of the worst examples of the inhumanity of family courts.

3.5.3. Although this paper deals only with the German family courts, there is a great deal more to be said about the Justice generally. The paper, “Germany's flawed Justice” [19], gives an overview of other areas of concern.

4. Recommendation

4.1. Suspension

4.1.1. For a member nation, whose family courts produce, with all their deficiencies, at best, unsafe and unsound judgments, there is only one recommendation possible: Suspension from the relevant agreements, notably EC Regulation 2201/2003, covering the mutual recognition of judgments in family matters, until such time as her family justice can be rendered “fit for European cooperation”.

List of Abbreviations and Definitions

Item	Meaning	Translation	Remarks
CDU	Christlich Demokrtische Union	Christian Democrats	
CSU	Christlich-Soziale Union	Christian Social Union in Bavaria	
FamFG	Familienverfahrensgesetz	Reformed Family Law	The Reform took place in September 2009
FCC	Federal Constitutional Court	Federal Constitutional Court	
FDP	Freie Demokratische Partei	Liberals	
GB	Great Britain	Great Britain	
Jugendamt	Jugendamt	Not translated	This term is not translated due to its misnomer status. It is a central youth agency, which acquires children, probably for commercial reasons.
Jugendhilfe	Jugendhilfe	Not translated	This term is not translated due to its misnomer status. A generic term for the all-powerful NGO-organization up to federal level. The Jugendamt only renders support to this structure.
.SPD	Sozialistische Partei Deutschland	Social Democrats	

Bibliography:

Author	Work	Location
1. UK Ministry of Justice	Civil Evidence Act 1995 Pt .35	http://www.justice.gov.uk/civil/procrules_fin/pdf/parts/part35.pdf
2. UK Ministry of Justice	Civil Evidence Act 1995 Practice Direction Pt .35	http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part35.htm
3. General Medical Council	Acting as an Expert Witness – Guidance for Doctors	http://www.gmc-uk.org/guidance/ethical_guidance/expert_witness_guidance.asp?view=print
4 UK Register of Expert Witnesses	List	http://www.jspubs.com/
5. Protesters	"Protest Note against Human Rights violations in Germany"	http://www.eucars.de/joomla/images/stories/090202_DEMO/090202_ProtestNote_Eng_sig.pdf
6. Justiz- Ministerium	Civil Rules of Procedure for German Courts (ZPO)	http://www.gesetze-im-internet.de/zpo/index.html
7. UK Ministry of Justice	Civil Evidence Act 1995 Practice Direction Pt .38	http://www.opsi.gov.uk/acts/acts1995/ukpga_19950038_en_1
8. UK Supreme Court	Guide to Judicial Conduct	http://www.supremecourt.gov.uk/docs/guide_to_judicial_conduct.pdf
9. The German Federal Constitutional Court	Decision 2 BvR 1481/04 14.10.2004	http://www.bundesverfassungsgericht.de/entscheidungen/rs20041014_2bvr148104en.html
10. UK Ministry of Justice	The Human Rights Act 1998	http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1

11. UK Ministry of Justice	Habeas Corpus Act 1679	http://www.constitution.org/eng/habcorpa.htm
12. Justiz- Ministerium	FamFG Rules of Procedure for Family Courts	http://www.gesetze-im-internet.de/famfg/
13. “institutvoigt”	F2010P Part A Assessment of Experts	http://www.eucars.de/hilfsmit/images/F2010/F2010P_TeilA.pdf
14 “institutvoigt”	F2010P Part B Assessment of Courts Tasking	http://www.eucars.de/hilfsmit/images/F2010/F2010P_TeilB.pdf
15. “institutvoigt”	F2010P Part A Translation	http://www.eucars.de/download/family-courts/F2010P_a_translation.pdf
16. “institutvoigt”	F2010P Part B Translation	http://www.eucars.de/download/family-courts/F2010P_b_translation.pdf
17. Walter Keim	Website “Freedom of Information”	http://home.broadpark.no/~wkeim/foi.htm
18. “Suedkurier” a South German daily newspaper.	“Ein Meister des verbalen Bayonetts”	http://www.eucars.de/download/family-courts/abschiedsfeier.png
19. Peter Briody	“The flawed German Justice”	http://www.eucars.de/

Annexes:

A The Performance of the Federal Constitutional Court
B The Performance of Experts of the Family Courts
B1 Live Case1 (Confidential: Insight restricted)
B2 Live Case2 (Confidential: Insight restricted)
C Freedom of Information in Germany
D About the Author (Confidential: Insight restricted)

Signatures:

Peter Briody

Digitally signed by Peter Briody
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Reason: I am the author of this document
Location: Immenstaad
Date: 04/08/10 22:09:07

Annex A

The Performance of the Federal Constitutional Court

1. The Performance of the Federal Constitutional Court (FCC)

1.1. Performance Definition

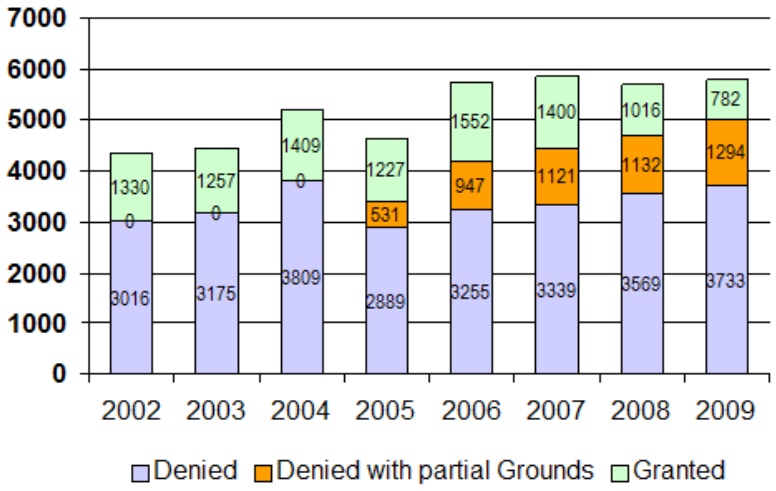
1.1.1. The performance of the FCC cannot be measured in terms of the success of a Constitutional Complaint, because to decide independently, whether the decision to sustain or reject any given complaint had been right or wrong wound mean “second guessing” the court. Instead, the formalities of the court procedure in granting or denying due process are used. A suitable source is provided by Table A. III.2 of the published yearly statistics.

1.2. The Statistics

1.2.1. The statistics in Fig.1. were compiled from data published by the FCC itself. The complaints in the plots are those which have been categorized “Denied”, “Denied with partial grounds(since 2005)” and “Granted”. The “Denial” takes the form “Not accepted for a judicial decision”.

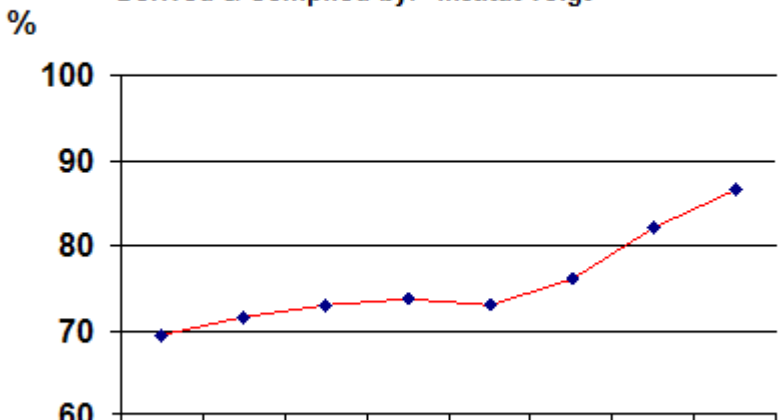
Since there is no such thing, outside Germany, as “*nearly a hearing*” the classification “Denied” has been extended to include the area “Denied with partial grounds”.

Fig.1 Denial vs Grant of due Process
by the Federal Constitutional Court
Data: Bundesverfassungsgericht Tab III.2
Compiled by: "institut voigt"



The plot in Fig.2 is derived from Fig. 1:

Fig. 2. Denial of due Process
by the Federal Constitutional Court (FCC)
Data: Bundesverfassungsbericht Tab. III.2
Derived & Compiled by: "institut voigt"



	2002	2003	2004	2005	2006	2007	2008	2009
Denial %	69,4	71,6	73	73,6	73	76,1	82,2	86,5

This curve shows that, apart from a slight improvement in 2006, there has been a steady climb, in denial of due process by the FCC, from 70% in 2002 to 86,5% in 2009.

The utilization of the 13,5% correctly heard cases of 2009, for example, is an unknown factor. To deal with these would be a game of “second guessing” and a trap for the unwary. Otherwise, the topic will not be addressed, leaving the statistics on denial of due process to speak for themselves. Due process is a fundamental right which is even defined in the German Constitution. To find that the FCC is, itself, a major violator of human rights, is indicative just how much capriciousness is in the system, as a whole.

Fig. 3. Frivolous Complaints per Year FCC.
Data Source: FCC Tab A. VIII.1
Compiled by: "institut voigt"

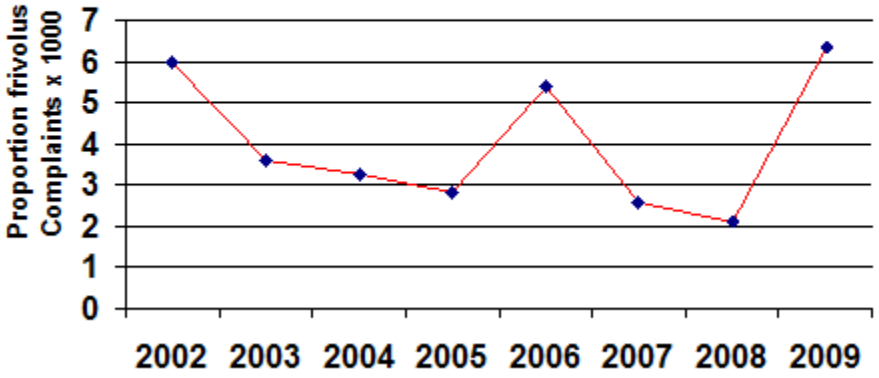
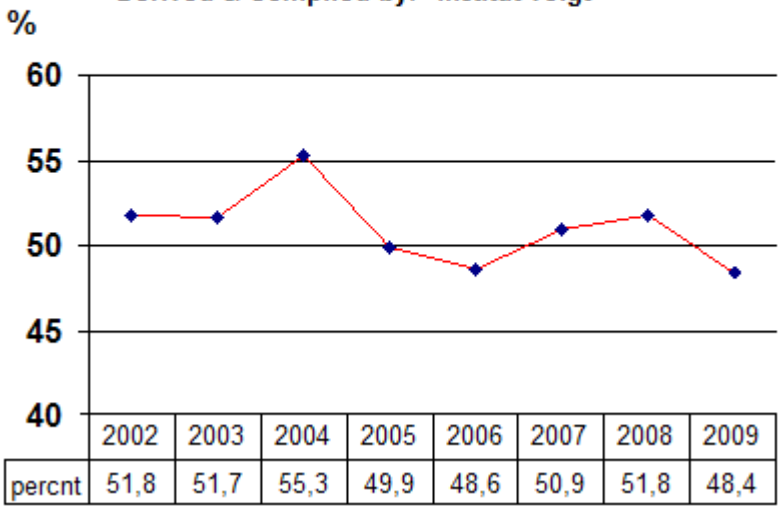


Fig. 3 shows the statistics for those complaints classed as frivolous. Although the trend shows an increase for 2009, this is still only 0,00637 %. As a result this cannot be used to explain away the 86,5 % denial of due process – not even a percentage point.

Fig. 4. Representation at the
Bundesverfassungsgericht
Data: FCC Tab. B.II.2 & C.II.2
Derived & Compiled by: "institut voigt"



	2002	2003	2004	2005	2006	2007	2008	2009
percnt	51,8	51,7	55,3	49,9	48,6	50,9	51,8	48,4

Fig. 4 Shows how many complainants are professionally represented at the FCC expressed in terms of percent. Whilst there has been a slight drop for 2009, representation remains at about the 50% mark. Thus unprofessional representation cannot be used to explain the high degree (86,5%) of denial of due process by the FCC.

1.3. Concluding Remarks

1.3.1. The performance of the Federal Constitutional Court cannot be described as anything short of disgraceful. With an 86,5% denial of due process, this court is compounding the human rights violations by the lower courts.

1.3.2. Anybody wishing for a remedy for the arbitrariness of the lower courts is headed for a big disappointment before the FCC. After a wait of about 5 years, the complainant is likely to experience the same arbitrary justice, with which gave rise to the complaint in the fist place. It exposes the set of rights written into the German Constitution as hypothetical and unattainable.

Annex B
to L5/0118/650
dated 29.03.2010.

Annex B

The Performance of Experts of the Family Courts

1. The Performances relating to Expert Evidence

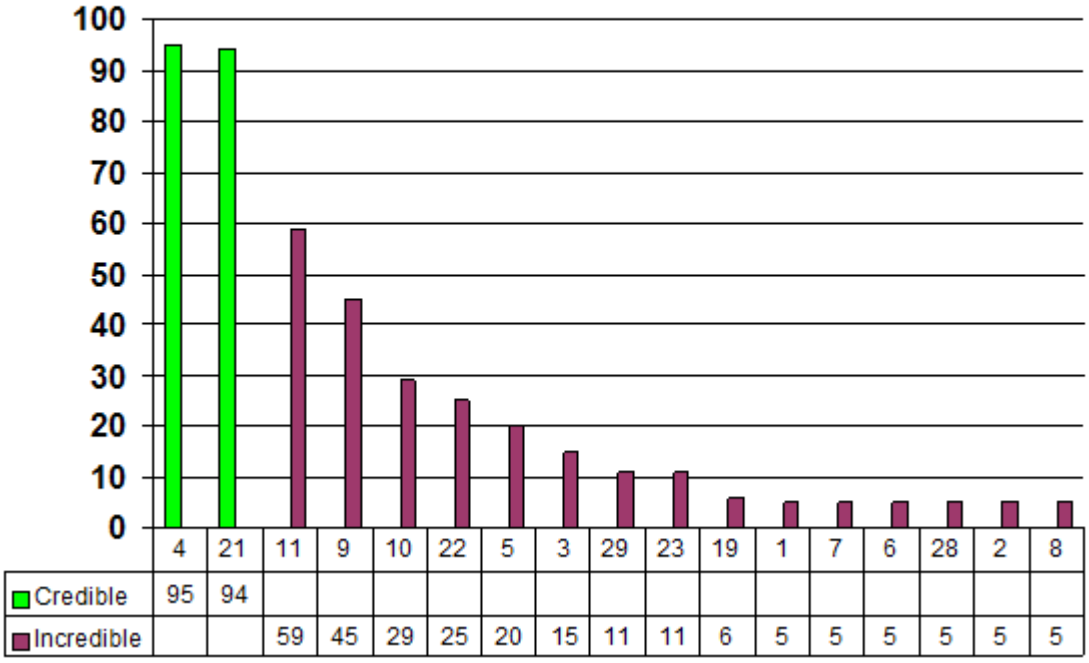
1.1. Performance Definition

1.1.1. Two forms F2010P Part A and F2010P Part B were conceived, which test both the court's and the expert's ability to hold to essential formalities, including the preparation of readable and transparent reports. These forms accord closely with the British system defined in the British “Civil Evidence Act 1995” [1]. The method of adducing expert evidence does not address specialist topics: It simply ensures the such evidence is presented in an understandable way and follows certain rules. A Translation of F2010P Part A and F2010P Part B is available in [2] and [3]

2.1. Practical Results of Tests

2.1.1. Fig. 1 shows the results of the assessment of experts. Whilst about 40 expert reports have been examined, only 17 are shown because of space and correlation issues. The total achievable marks are 100. Only 2 reports were adjudged to be credible (95% and 94% shown in green) and they stood out as being of excellent quality with some minor defects. The only real message here is that the quality norm set here is achievable. The questionnaire consists of the elements of good management and report writing. Unfortunately the bulk of the unsatisfactory reports tend to bottom out at about 5-15% of the total marks, which reflects the abominable quality of the overwhelming majority of expert reports.

Fig. 1. Quality of Specialist Reports
Class Psychiatry/Psychology

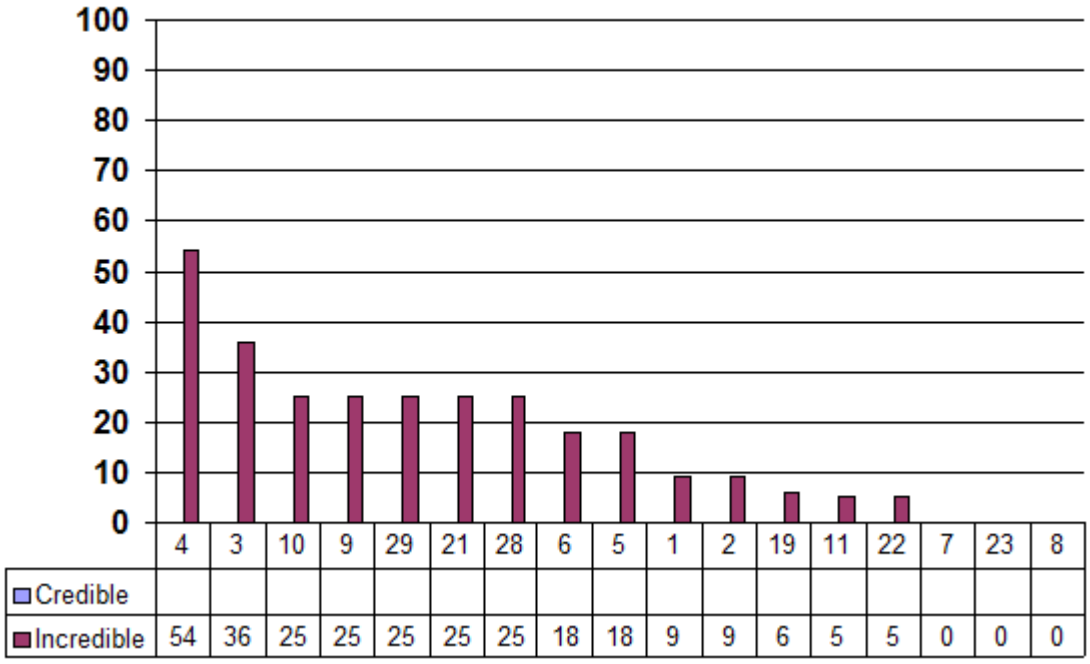


	4	21	11	9	10	22	5	3	29	23	19	1	7	6	28	2	8
Credible	95	94															
Incredible			59	45	29	25	20	15	11	11	6	5	5	5	5	5	5

The most common defect in the unsatisfactory reports is that the conclusion is not based on foregoing work. Even where the work in the main section of the reports is quite good, the conclusion consists mostly of pure unsupported assertions. The fact that such reports are regularly accepted by the family courts, is a sad reflection on the quality of their judges.

An even more drastic reflection on the quality of the family courts are the assessments under F2010P Part B, the results of which are shown in Fig. 2. These can be correlated with the file nos. on the abscissa of Fig. 1. These assessments show no credible reports, whatsoever, emphasizing further the generally poor standards of the family courts, in one case, the Jugendamt.

Fig. 2 Quality of Tasking of Specialist Reports



	4	3	10	9	29	21	28	6	5	1	2	19	11	22	7	23	8
Credible																	
Incredible	54	36	25	25	25	25	25	18	18	9	9	6	5	5	0	0	0

Interesting is, that the value of 54% (4) correlates to the first position (4) of Fig. 1. This indicates perhaps that the better values may influence the quality of the expert's reports. All in all, there is nothing at all to celebrate in these results. Three of them even managed to achieve 0%.

3.1. Concluding Statement

3.1.1. There is no excuse, whatsoever for producing work to the appalling standard reflected in Fig. 1 (with the exception of the fist 2 entries) and Fig. 2. The respective averages are 26% and 17%. The management principles and the questions are after all standard and not at all complicated – 100% should be easily achievable, if the courts and their experts would carry out take their jobs properly.

Bibliography:

Author	Work	Location
1. UK Ministry of Justice	Civil Evidence Act 1995 Practice Direction Pt .35	http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part35.htm
2. “institutvoigt”	F2010P Part A Translation	http://www.eucars.de/download/family-courts/F2010P_a_translation.pdf
3. “institutvoigt”	F2010P Part B Translation	http://www.eucars.de/download/family-courts/F2010P_b_translation.pdf

Annex C
to L5/0118/650
dated 29.03.2010

Annex C

Freedom of Information in Germany

1. The Situation on Freedom of Information in Germany

1.1. The Status Today

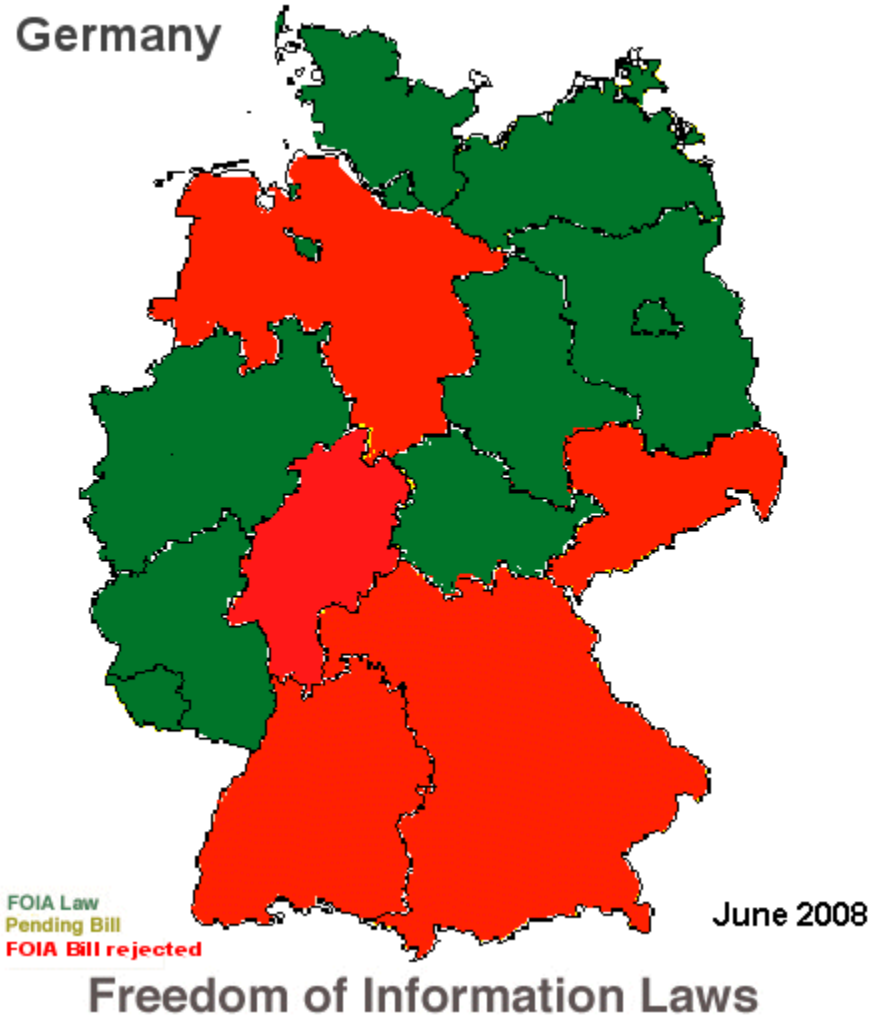


Fig 1. Implementation of FOI in Germany (by courtesy of Walter Keim [1]).

1.1.1. The Federal Republic of Germany is the only country in the EU without complete FOI. But 11 of 16 federal states (Bundesländer) Brandenburg, Berlin, Schleswig Holstein, North Rhine-Westphalia, Bremen, Mecklenburg-Western Pomerania, Saarland, Hamburg, Thuringia and Rhineland-Pfalz have adopted FOI. Opposition parties in the states of Bavaria, Hesse, Lower Saxony, Saxony and Saxony-Anhalt are supporting suggested FOI laws. Unfortunately parliaments in Baden-Württemberg, Bavaria, Hesse and Saxony have voted against FOI legislation.

Fig.2 The Situation in the EU (by courtesy of David Banisar Privacy International [2])

1.2. Concluding Remarks

1.2.1. The backward status of the implementation of the "Freedom of Information" in Germany is attributable partly to the federal system. International agreements signed by the Federal Government cannot be taken at their face value.

1.2.2. A quote from the website of Privacy International,

> "*A new era of government transparency has arrived. Laws opening government records and processes are now commonplace among democratic countries. It is now widely recognized that the culture of secrecy that has been the modus operandi of many governments for centuries is no longer feasible in a global age of information and not compatible with modern government.*"

Germany has a long way to go achieve the status of a democratic country.

Bibliography:

Author	Work	Location
1 Walter Keim	Website “Freedom of Information”	http://home.broadpark.no/~wkeim/foi.htm
2. David Banisar	Website “Freedom of Information”	http://www.privacyinternational.org/index.shtml?cmd[342][]=c-1-Freedom+of+Information&als[theme]=Freedom%20of%20Information&conds[1][category.....]=Freedom%20of%20Information