



GRAND NATIONAL ASSEMBLY OF TURKEY

THE HUMAN RIGHTS INQUIRY COMMITTEE

**INQUIRY REPORT REGARDING THE
IMPLEMENTATIONS OF THE GERMANY,
NETHERLANDS, AND BELGIUM YOUTH CARE
AGENCIES TOWARDS TURKISH ORIGIN CHILDREN**

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**INQUIRY REPORT REGARDING THE IMPLEMENTATIONS OF THE
GERMANY, NETHERLANDS, AND BELGIUM YOUTH CARE AGENCIES
TOWARDS THE TURKISH ORIGIN CHILDREN**

I. PROLOGUE

The Chairmanship of the Human Rights Inquiry Committee of the Grand National Assembly of Turkey has opened a monitoring file at the beginning of the 3rd legislation year upon claims that were surfaced regarding youth care agencies in the various European countries unjustly taking away thousands of Turkish origin children from their families and giving them to culturally different families. Within the context of the monitoring file, bills of complaints regarding the issue had been received from the European countries such as Germany, Belgium and the Netherlands, Austria, France and Sweden, and this issue has long stayed among the monitoring and inquiry topics of the Committee within the scope of human rights.

Information retrieved from public institutions and organizations regarding claims that are specifically intensified on countries such as Germany, the Netherlands, Belgium, France and Austria, the news in the press have been examined along with the applications submitted to the Committee; and later on the monitoring file was presented to the Committee in February 13, 2013 Wednesday. Following the discussion of the monitoring file, the Committee concluded on “*the execution of Europe-wide Committee based works on the problems of immigrant children in Europe and the parental rights*”.

Within this framework the Human Rights Inquiry Committee has conducted visits in committees regarding the issue in Germany between April 15-19 2013, in the Netherlands between June 19-22 2013, and in Belgium in June 17-19 2013.

1. The Topic and the Objective of the Inquiry

The topic of the work to be done as per the decision is to enquire the process of Turkish origin children being taken away from their families by the youth care agencies and the problems experienced throughout this process on the basis of human rights, to determine what needs to be done in order to avoid the violations of rights in this matter, putting forth the precautions to be taken in the national and international levels, to establish sensitivity in order to avoid similar incidents and to maintain this sensitivity through making formal visits in Germany, Belgium, and the Netherlands where complaints regarding the matter are intensified for the purpose of enabling a Europe-



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wide Committee work regarding the problems of the immigrant children in Europe and the parental rights.

2. The Method Used in the Inquiry

The Committee found it necessary to conduct inquiries in Germany, Belgium and the Netherlands where claims seem to have concentrated in order to examine the problems experienced during and after the process of taking away Turkish origin children from their families on a human right basis; and it adopted it as a method to consult with the families whose children had been taken away or who had been face to face with the implementations of the youth care agencies, the relevant ministries, parliamentarians or commissions and committees of the parliament, mayors due to the fact that some youth care agencies are affiliated to municipalities, and nongovernmental organizations.

During the aforementioned visits, official talks were held with the relevant ministers, parliament commission presidents, parliamentarians, state ministers, metropolitan mayors, mayors, the presidents and authorities of youth care agencies of the countries under inquiry, representatives of Turkish society and Turkish origin non-governmental organizations, our citizens whose child has been taken away by the youth care agency and their attorneys.

The abovementioned interviews, information provided by the relevant ministries as well as the public institutions and organizations, news from the media organs, information provided by the non-governmental organizations in Europe founded by the Turkish society and international organizations, and articles and books were benefited from during the preparation of the commission report.

II. GERMANY, NETHERLANDS, AND BELGIUM INQUIRIES

As per the Human Rights Inquiry Committee's "decision for the execution of Europe-wide Committee based works on the problems of immigrant children in Europe and the parental rights", official visits have been made in the German cities of Stuttgart, Munich, and Berlin in April 15-19, 2013; the Dutch cities of Rotterdam and Hague in June 19-22, 2013; and Belgic cities of French speaking Valon Region and the Flemish speaking Flemish Region in June 17-19, 2013.

The visiting delegation to Germany is comprised of the Chairperson of the Committee and the Deputy of Sakarya, Ayhan Sefer ÜSTÜN; the Deputy of Ankara, Mustafa ERDEM; the Deputy of Ankara, Levent GÖK; the Committee's Legislative Expert, Fazlı PEHLİVAN; and the experts from the Ministry of Family and Social Policies and the Directorate of Turkish People and Relative Communities Overseas.



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The visiting delegation to Netherlands and Belgium, on the other hand, is comprised of the Chairperson of the Committee and the Deputy of Sakarya, Ayhan Sefer ÜSTÜN; the Deputy of Izmir, Hamza DAĞ; the Deputy of Ankara, Mustafa ERDEM; the Legislative Expert, Abdussamed SIĞIRTMAÇ; and the experts from the Ministry of Family and Social Policies and the Presidency for Turks Abroad and Related Communities.

1. GERMANY

1.1. Formally Visited Offices and the People Regarding the Matter

Within the scope of the aforesaid inquiry visit, the Deputy Minister of Federal Family, Dr. KUES; the President of the Federal Parliament Commission for Family, Sibylle LAURISCHK; The Minister of the State of Baden-Wurtenberg Federal Commission, Europe and International Relations, Peter FRIEDRICH; the Minister of State Adjustment, Bilkay ONEY; the Green Party Deputy of the State of Baden-Wurtenberg, Muhterem ARAS; the Munich Metropolitan Mayor, Christian UDE; the Mayor of Backnang, Dr. Frank NOPPER; the Metropolitan Deputy Mayor of Stuttgart, Werner WOLFLE; the President of Youth Care Agency of the Metropolitan Municipality of Stuttgart, Bruno PFEIFLE; the Deputy President of the Youth Care Agency of Rems-Murr Region, Wilfried HAGELE; the Undersecretary of the Berlin Education Senate, Sigrid KLEBBA; the authorities of the Berlin-Neukolln Youth Care Agency; representatives of the Backnang Turkish Society and the State of Baden-Wurtenberg Turkish origin non-governmental organizations; our citizens whose children were intervened with and seized by the Youth Care Agency, as well as their attorneys were interviewed.

1.2. Parental Rights in the German Constitution and Legislation

The rights and responsibilities of the parental guardians over a child have been defined in the German Constitution primarily as a basic right. According to the 6th paragraph of the clause no.6 of the German Constitution, “*The caring and raising of children are natural rights and the primary responsibilities (duties) of the parental guardians. The State monitors the use of these rights and responsibilities.*” This provision includes especially the responsibilities of the parental guardians towards children as well as their rights over them. This relationship that is defined in the Constitution as a principle, has been elaborated on in the German Civil Code (Bürgerliches Gesetzbuch / BGB) with more details.

The definition of child custody and the details of facilitating child custody are explained in the clauses no. 1626 and 1698 of the German Civil Code. In addition to this, the judicial opinion of the German Court of Appeal (Budesgerichtshof) is also taken into account by the courts.



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According to the German Civil Code, the parental right (and responsibilities) of parental guardians are regulated under four main titles: 1-The right to determine child's place of residence, 2- The right and responsibility of determining financial issues regarding the child (such as the allowance of the child, child care money, etc.), 3- The right and responsibility of making health-related decision for the child, 4- The right and responsibility for representing the child in administrative procedures.

In addition to this, other significant authorities within the scope of parental right are 1- The right and responsibility of caring, raising and monitoring the child, 2- The authority to monitor and determine over the selection of school of vocation, 3- The authority to monitor and determine meeting other people, 4- The right to monitor and determine the choice of religion, and practicing the necessities of this religion.

The parental guardians who have the custody shall carry out these rights and responsibilities jointly. However, while carrying out these rights and responsibilities "the child's sake" (Kindeswohl) shall be pursued (Clause no. 1627 of the German Civil Code). In the event that the parental guardians could not jointly exercise their rights and responsibilities within the scope of custody for "the child's sake", the full or partial custody could be singly given to the mother or the father (even during a marriage) by the court's decision (Clause no. 1628). In the event that the mother or the father could not or did not execute their rights and responsibilities emanating from the right of custody for "the child's sake" and consequently "the child's sake" is in danger, the custody can be transferred to the authorized Youth Center by the court's decision (Clause no. 1666).

There is no definition in the law regarding the scopes of the concept of "child's sake" and what its limits are. The court determines the definition and the practical implementation of this open-ended concept, depending on the characteristics of each case. In the jurisprudence, behaviors and situations that jeopardize the child's physical, psychological, and material development are specified as circumstances against "the child's sake". In determining this, the child can be appealed to for a testimony, depending on the age and cognitive skills.

Custody lawsuits can be filed in the family courts of the region where the child is living in. The court process can be initiated by one of the parents or the youth care agency. In the event of an application, the court primarily gets written statements from the parties (mother, father, the youth care agency). For the lawsuits that continue between only the mother and father, the court may request the participation of the authorized youth care agency to the lawsuit. In cases like this, the officials of the youth care agency might be asked to submit written reports or to make oral statements to the court following their interviews with the mother, father, and the child. In these reports, youth care agencies are able to state their opinion on the sharing of right of custody by taking into consideration "the child's sake". While these opinions obligate the court, it is observed that in practice courts attach great importance to such "expert" opinions. In



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addition to this, the authorized family judge is obliged to hear the parties, their attorneys, and the child during the court meetings. Only in the case of a child's young age and a cognitive problem would the child be not listened to.

In extremely complicated and comprehensive cases, the court would allow a "child's attorney" (Verfahrenspfleger) to be included in the case. These attorneys are generally individuals who practice the law as attorneys and who are experienced in family cases. As per the court's request, these attorneys are responsible for hearing all parties that are involved in the case, conduct interviews regarding the issue, and submit a written report of his/her opinions as a result of these meetings to the court. These attorneys are supposed to defend the child's point of view and his/her approach to the issue rather than the point of view of the mother, father and the youth care agency. They are expected to protect "the child's sake" within this particular duty.

The parties have the right to appeal to a custody decision delivered by the family court within a month following the issuing of the decision. The Appeal Courts are the State Supreme Courts (Oberlandesgericht).

1.3. Youth Care Agencies and Their Authority over Parental Rights

The Youth Care Agency in Germany, named as the "Jugendamt" maintains its operations within the scope of the Law on Helping Children and Youth (Kinder- und Jugendhilfegesetz). As a self-contained law, it consists of 24 sections. However, in essence the youth care agencies operate according to the provisions of the 8th Book of Social Law (Sozialgesetzbuch VIII). According to this, municipalities are obliged to found a youth care agency in all cities and districts that are under its responsibility. In smaller units, the responsibility for founding a youth care agency is conferred to the district governorship.

As per the Constitution, the State has an audit mandate over the responsibilities and rights of the parents regarding the caring and raising of children. By this mandate of the State, the clause no. 8-A has been added to the 8th Book of Social Law in 2005. According to the clause no. 8-A, the state institution, especially the youth care agencies, has to take action, and obliged to conduct situation assessment if it receives a tip or notification regarding the child. When the youth care agency hears that a child is subjected to violence, this is the law that it is based on. Prior to this change of law, when the youth care agency took action to be involved, it would have based its conducts to the provisions of Criminal Code. Because when the official of the youth care agency wanted to take the child away, the parents had the right to object to it by saying "you cannot interfere in my business". With the change of law, the authority of the youth care agency has been extended and it is allowed to seize the child in the event of determining situations that puts the child's sake in danger.

The principal duties of the youth care agency are 1- To bring the behaviors of parents over their children under state control, 2- To protect children and youth from all



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kinds of danger (even from their own mothers and fathers if necessary), 3-To assist parents in the child's education, to provide counseling to them in adoption, in alimony cases, and in custody and visiting rights cases, 4- To attend court hearing regarding children and assist family courts in the decision making process. These issues are explained in the 1st and the 8th clauses of the 8th Book of Social Law.

The Clause no. 42 of the 8th Book of Social Law entitles the youth care agency with major authorities with regards to imposing significant sanctions on the family and children.

Within the framework of the provisions of the clauses of the aforesaid law, in the event of situations that require immediate intervention and due to the fact that a court decision would take longer to be issued, the youth care agency is able to take a child or all children of the family away from the family by using police force when necessary, despite objections of the parents, and give the child or children to a foster family or a children's home. If the child or the teenager applies to the youth care agency with his/her own will and claims that there are situations and circumstances within the family that puts him/her in danger, and requests his/her removal from the family with his/her own consent, and again if a teacher, a doctor, a police officer, or neighbors notices the youth care agency that a child is in danger within the family (neglecting the child or subjecting the child to violence, etc.); in situations like this the child can be removed from the family by police force, and given to another foster family or a children's home. The youth care agency does not require a court decision while executing these authorities that would significantly influence the future and welfare of the child.

The Youth Care Agency exercises its right to seize the child under the abovementioned circumstances. When the youth care agency executes its right to seize the child and the mother and father who have the parental right request their child back from the youth care agency, the youth care agency is able to prevent the return of the child to the mother or father by applying to the authorized family court within 24 hours, that is filing a suit against the mother or father. If the court thinks that the mother-father are insufficient in the child's education or guaranteeing the child's future, and that they subject the child to violence, it can conclude to deny the return of the child to the mother-father, and even to take away the right of custody from the parents and give it to the youth care agency.

According to the narrated experiences up until now, it is understood that in the Family court cases the judges pay more attention to the reports and statements of the youth care agency experts, that they do not take the parents' statements seriously enough, and that their decisions seem to be always against the parents.

At times, it has been witnessed that due to complaints and denouncements of third



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parties such as teachers, doctors, police officers or neighbors that do not reflect reality, the families are mistreated and lost their children. Third parties who do not know anything about the structure of the Turkish society and culture tend to give notifications concerning that some of the attitudes and behaviors that families subject their children to may put a child's wellbeing in jeopardy, and these notifications are taken seriously by youth care agencies that again have no idea about the structure of the Turkish society and culture, resulting with the initiations of inquiries on the families and children, where these complaints and notifications are proven to be groundless. However this situation causes our families to perceive the youth care agencies and their implementations as negative, useless and detrimental to the family unity and integrity, as well as the peace in the family. In this respect, the youth care agencies are seen as negative organizations that are ready to seize kids at any moment instead of organizations that are useful for the families and helpful and facilitating in finding solutions for certain problems.

According to the clause no.9 of the 8th Book of Social Law that regulates the responsibilities of the Youth Care Agencies, both the foster family and the youth care agencies are primarily obliged to prepare for the child the environment for all his/her cultural and social living conditions including religion that his/she has been experiencing within his real family, and to provide the child with all the values that are important to his/her family. Even though the provisions of the law clearly states under which religious, cultural and social values the child shall be raised and how the child's intellectual horizon should be broadened, as a result of inquiries and the complaints that are submitted to our Committee, it is seen that the foster families and the youth care agencies have not been providing the necessary opportunities and facilitations regarding the provision of the children's development and care as per these provisions, and it is as if they have been neglecting this issue knowingly and willingly.

The clause no.37 of the 8th Book of Social Law emphasizes that the youth care agency is supposed to try to resolve the problems between the child and his/her parents instead of taking the child away from his/her family. Additionally, in order to prevent the youth care agency from acting independent from the child's family, even though the child is given to a foster family, it is mandatory that the real family and the foster family act jointly for the sake of the child.

1.4. Statistics of the Implementations of Youth Care Agencies Towards the Turkish and Foreign Origin Children and Youth

According to the 2011 statistical data from the Federal Statistics Agency, a total of 38.456 children Germany-wide have been interfered with by the Youth Care Agencies.

In light of the data retrieved from the German Statistics Agency, the numbers



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of children who were subjected to the implementations of youth care agencies are:

YEARS	1995	2005	2006	2007	2008	2009	2010	2011
Number of Children	23 432	25 664	25 998	28 192	32 253	33 710	36 343	38 456

More than half of the 38.456 children who were interfered with by the German Youth Care Agencies were withheld from their families. In 2011, while 10.448 children and teenagers about whom an official custody decision was issued were not given back to their families, and they were placed with foster families or children's homes; 4.697 children were checked in to hospitals or psychiatric clinics. 15.783 children and teenagers are given back to their families after the intervention of the youth care agencies.

Of the 38.456 children interfered with by the German Youth Care Agencies, 29.247 of them were German citizens, and 9.209 of them were the citizens of foreign countries. Since the ethnic background is not defined in the statistics, it is not possible to determine a definitive number of Turkish origin children and teenagers who were subjected to the interventions of youth care agencies.

Our Embassy and our Consulates have not been notified about the Turkish origin children who were placed under guardianship in their places of duty by the German authorities, as per the provisions registered in the clauses no. 5/h and 37 of the Vienna Convention on Consulate Relations. In this respect, only when the Turkish origin families who experienced problems with the Youth Care Agencies apply to our Embassies were we informed about these families. Because such a notification has not been made automatically by the German authorities that performs this intervention. The basic reason for that is the fact that most of our children who were born after the year 2000 in Germany were subjected to the option model, and became both German and Turkish citizens. Although they have the obligation to pick one afterwards, these children have dual citizenship until at least 18 years old, and therefore they are recognized as German citizens according to German laws. In this case, the German authorities predicate their actions upon these children's German citizenship and not notify our Embassies. However, if our families have applied to our Embassies, these families are being helped immediately.

In order to be informed about the situations of the Turkish origin children who were taken under custody, it is crucially important for the German authorities to take the necessary precautions regarding making the essential notifications to our Embassy and Consulates about our children as per the provisions of Vienna Convention on Consulate Relations.



1.5. Complaints that are reflected on the Decisions of the European Parliament Petition Committee and the European Court of Human Rights (ECHR)

Complaints regarding the implementations of the youth care agencies both by German and Turkish origin citizens have been taken to the European Parliament Petition Committee and the European Court of Human Rights.

In the report published by the European Parliament Petition Committee in the beginning of 2009, it is said that, “*the right of custody of the children who were taken away from immigrant families are rapidly taken away from their families and given to a German family. Precautions are taken for the prevention of taking these children outside of the country. These children who were given to a German family or put in to the Youth Care Agency Home are prevented from practicing their own language and culture*”.

The European Parliament Petition Committee reports suggest that there aren't sufficient control mechanisms over Youth Care Agencies. Within the German society, experts have stated that the Youth Care Agencies are not monitored adequately, and even though they were complained about, the rights of parents have been violated.

On the other hand, victim families that included a Turkish citizen have managed to take their children back by winning a lawsuit at the ECHR. Among them Kazim Gorgulu, a Turkish citizen, has taken the court process that started in 2000, to the ECHR in the year of 2004, and the ECHR built its verdict against Germany. The court has concluded that it is a violation of human rights to divorce a child from his/her roots by giving his/her up for adoption to a German family, and that it could be possible only under extraordinary situations.

Similarly in March 14, 2013, the ECHR has finalized the plea of two Turkish citizens regarding the taking away of the right of custody of a girl and a boy from them, against Germany. The applicants have complained that the Family Court has decided to remove the custody in the concrete case based on the children's abstract statements that were not supported by any real facts. Following its evaluation, the ECHR has concluded that the sole evidence that was used by the Family Court in its decision were the statements of the children, that the inquiry by the Court of Appeal has been conducted solely through the file case, and at that stage the children were not heard again, likewise no signs of maltreatment of the children by the applicants could be found, therefore the Clause no.8 of the European Convention on Human Rights has been violated due to the insufficiency of the examination and inquiry.¹

¹ For more information go to: <http://www.inhak.adalet.gov.tr/ara/karar/bbfbgermany.pdf>.
Retrieved in: 09.09.2013



1.6. Assessments on Germany Youth Care Agency System and its Implementations

Children are torn away from their families based on very simply reasons. Such an implementation should be applied to only as a last resort and possibility based on realistic reasons.

Custody right is sacred, and it is a extremely effective right that allows the parents to build close relationships with their children. To take away the right of custody from both parents and to give it to someone else should be done through court decision.

The clause no. 8 “Right to respect private and family life” of the European Convention on Human Rights regulates the right to respect everybody’s private and family life. An intervention by a public office to the execution of this right can only occur in the event that it is a necessary precaution in order to preserve the public safety, the economic prosperity of the country, the order, the prevention of crime, health and morality or the rights and freedoms of others in a legally prescribed and democratic society. In that sense, taking away the child from the mother and father through the Youth Care Agency decision without basing it on a court decision creates a situation that violates the personal rights that are recognized within untouchable, non-attributable and absolute rights, as it is against the principle of the immunity of private life, and equality.

It is seen that the youth care agencies fail to provide immigrant families with sufficient legal and financial support in the resolution of the problems between the parents and children, due to having a very small number of immigrant origin experts among the ones hired by youth care agencies. Lack of communication being in the first place, the youth care agency experts negatively evaluate certain attitudes and behaviors that occur between parents and children due to the fact that the youth care agency expert lacks the knowledge on the culture of immigrant family or is distant to that culture, and cause some attitudes and behaviors that are only meant as jokes to be assessed as sexual harassment.

It has been understood that the youth care agency authorities have evaluated attitudes and behaviors such as a grandmother dominantly offering things to eat or insistently wanting a hug as attitudes and behaviors that they do not see fit to their own social and cultural values, and therefore did not put the children under the grandmother’s custody based on the “child’s sake”. Even though it was expressed by the Turkish authorities that the authorities should make their evaluations by taking into consideration the cultural and social differences, and that it would not be appropriate to misinterpret the grandmother’s behaviors which are seen in our culture as expression of love and devotion, it is understood that due to the arbitrary interpretation of the “child’s sake” principle by youth care agencies caused our children to be taken away from their families.

Although the families, whose children were seized by the youth care agencies, were guided by those Turkish origin people around them, this guidance is not enough, and they



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absolutely need the consultation of experts. In this context, it is observed that families did not act deliberately, they did not apply to Turkish origin attorneys immediately, they did not ask help from our Consulates, and they cut all their communication with youth care agencies.

Courts rely on youth care agency reports while making their decisions. The fact that youth care agency expert reports constitute the basis of court decisions makes youth care agencies both the prosecutor and the judge.

It is understood that at the family court cases, the judges pay more attention to the reports that are prepared by the youth care agency experts, that they do not take into consideration the statements of the parents enough, and that the decisions are constantly made against the parents. Considering the structure of German and Turkish families, it is observed that the German courts and youth care agencies have insufficient knowledge and awareness regarding cultural differences in raising a child, and that this has a very negative influence on the case procedures. Furthermore, it is obvious that psychologists or pedagogues who are appointed by the court as experts to enquire the issues do sometimes lack the knowledge to be able to evaluate the aforementioned cultural differences.

The family attorneys have complained about the German judicial authorities on the incidents where the courts did not provide them with the information requested, they were not allowed to examine the content of the file, and they were not even allowed make a copy of a document in the file.

Although our citizens have applied to the youth care agencies to become the foster families for the minors who were taken under custody by the youth care agencies, it is stated that the Turkish origin families were rejected or the Turkish origin applicant families were not given Turkish origin children. Additionally, the tediousness of the required qualifications and training process to become a foster family is very discouraging for the Turkish origin families.

The insufficient German knowledge of the families who have lost their children's custody hampers their communication to the youth care agencies, and it may cause the following processes to operate against the families, and the issuing of unfavorable court decisions.

As a result of the German Citizenship Law, majority of our children with Turkish origin who were born after the year 2000 in Germany are subjected to the option model, and they can be both German and Turkish citizens, these children are recognized as German citizens in Germany as per the German laws, and therefore the German authorities predicate on their German citizenship regarding the custody of these dual citizen children, and not notify our Consulates. The situation of the Turkish origin children who were taken under custody can only be known through complaints of their families.

It is significantly important to monitor the implementations of youth care agencies administratively by the local administrations, and legally by the judicial authorities.



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However, it is understood that there hasn't been any mechanisms or systems for the local administrations execution of the monitoring duty. Additionally, it is necessary to establish a monitoring and coordination mechanism or system for the purpose of ensuring coordination and unity among the youth care agency implementations at the level of German Federal State.

Youth care agencies are monitored by two organizations. One of them is the judicial authority, and the other is the political offices. It is expected from the political offices and their monitoring duty to be as a moderator position. Because there is no doubt that positive consequences will be beneficial for the political offices as well.

There are complaints regarding the Youth Care Agencies not only from the Turkish society but also from the German society. The primary complaint matter is the youth care agencies that unjustly break apart families and separate children from their parents.

Although the inquiry mostly handled problems that originate from placing children, who were taken under custody by the youth care agencies, with foster families, a significant amount of the problems that are encountered were experienced at the shelters affiliated to youth care agencies. Even though there hasn't been sufficient information and documents provided by the authorities regarding the problems that were experienced in such shelters that displays an image of an enclosed box, it is understood that more than half of the seized children are staying in these shelters and that they are facing very serious problems and dangers.²

² During a meeting conducted in Berlin Turkish House in 19.04.2013 with the families who suffered from the youth care agency implementations and their attorneys, the couple V and G stated that they have two daughters and one son, and in May 2012 when their daughters did not come home, the Youth Care Agency officials have called them and said that their daughters are not coming back home due to the violence they were subjected to at home, and that they had to stay under their custody for a while, and two weeks later they were notified by a court decision stating that their children were seized. They stated that seven months after this incident the youth care agency officials have called them and notified them of the operation their child have to go under due to ingrown hair, and a short while after this the youth care agency officials called them a second time to let them know that their daughter were operated on one more time, and at that time residing at a hospital for treatment, that when they visited their daughter at the hospital they found out that she was operated on because of an ingrown hair and she was at the hospital not for treatment but because she was a heroine addict, and she was mandatorily checked into the hospital because she went into a coma because of her addiction. When they tried to speak to the youth care agency officials, no agency officials talked to them and they could not find the opportunity to talk to someone responsible and authorized.



2. NETHERLANDS

2.1. Formally Visited Offices and the People Regarding the Matter

Throughout the inquiry visit, interviews were conducted with the Netherlands Kingdom House of Representatives Security and Justice Commission President, Tanja JADNANSING; senior officials from the Ministries of Health Welfare and Sports, and Security and Justice; authorities from the health services units of the Rotterdam-Rijmond Region municipalities; semi-private Flexus Association officials that does family-child matching; the Deventer Mayor; Turkish origin families who suffered through youth care agency practices; officials from the Turks and Relative Communities Abroad the Netherlands Working Group; and other Turkish origin non-governmental organizations.

2.2. General Information

It is impossible to talk about a basic law in Netherlands that encompasses all topics about children and teenagers. The Netherlands Kingdom Constitution does not regulate such topics either. However, the Youth Care Act (2005) and the Social Support Act (2007) have partial regulations in this respect.

In the current system, Ministry of Health Welfare and Sports is responsible for the youth policies, as well as specialized services that are provided for children and families. In addition to this, the 15 large cities and 415 local administrations have obligations regarding youth policies and services provided for children and families.

The Netherlands youth care system is comprised of three basic units: 1- General services: The purpose of these services is to help children maintain their normal development and prevent little problems that may be seen in families from becoming anything serious. 2- Preventive services: It hosts services that focus on identifying problems at an earlier stage and therefore early intervention. 3- Specialized services: The Youth Care Agencies, which are basically the entrance door to the youth care services in larger cities, continue to operate within this scope. These agencies are enquiring the situation of children and families and identify the necessary needs. This agency is also responsible for the coordination of cares regarding youth, as well as the protection of youth.

2.3. System Regarding the Protection of Children and Youth

If experts and citizens have a suspicion about a child being abused or neglected, they can apply the Center for Child Abuse Recommendation and Report, which is unit of the youth agencies. After enquiring the suspicious cases, if the Center comes across an unfavorable situation, it cooperates with the family and the child for an appropriate resolution. For very serious cases or cases where families do not want to cooperate, the



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youth agencies apply to the Child Care and Protection Board that operate under the Ministry of Security and Justice. The basic mission of this Board is to provide protection, provide information to the court regarding the custody of the child, and to follow the judicial case processes that the children are mixed up with. The Board oversees the cases it receives with regards to whether they have negative effects on the child's development and if it detects an unfavorable effect, it then moves on to enquire to what extent this unfavorable effect is influencing the child's life. According to the Board's opinion, the child courts may conclude for a child's welfare order or monitoring order (restricting the right to custody and appointment of an official guardian) about the parents, or the removal of custody.

2.4. Statistics Regarding Youth Care Agencies and Turkish Society

Throughout Netherlands, the situation of 30,973 families has been monitored. In total, 19,180 children were taken away from their families, and the custody of 7,202 of them was taken away from their families. 11,978 children were taken away from their families, provided that their custody stays with their parents. According to the information provided by the youth agency officials, a small portion of these children is hosted in children's homes, and most are with foster families.

According to the information received from external resources, by 2012 throughout Netherlands approximately 671 children at least one of whose parents is Turkish origin were taken away from their families and 167 of these children were given to foster families. Other than those that are given to foster families, 504 children most of who are between the ages of 12-18 are known to be living in children's homes. It is important to highlight that this number does not include the third generation whose mothers and fathers were born in the Netherlands. When the third generation is added, approximately 1000 Turkish origin children were estimated to have taken away from their families. It was impossible to confirm these numbers with the Netherlands offices. Because the senior level bureaucrats that were interviewed stated that they do not hold statistical information based on the ethnicity or birthplace of their citizens.

According to the official data provided to our Committee by the officials in the Rijnmond Region, one of the 10 regions where youth agencies are organized in, which includes the city of Rotterdam, there are 1390 children who were taken away from their families by January 1, 2013 in the Rijnmond Region. 41 of them (2,5%) have parents who were born in Turkey. 17 out of 41 children are with foster families. 5 of these foster families are Turkish origin.



2.5. Interviews with Victim Families and their Attorneys

1- Fatma KAYADELEN and her Attorney Adem KOTAN

Taking Kayadelen family's child back from the appointed guardian is an example of a successful case. According to the information provided by the family attorney, the unskillfulness of the guardian played a great role in the success of this case. The judge overruled the objection of the guardian to the court-approved IQ tests of Fatma Kayadelen, and the presentation of Kayadelen's failure to stay in the recommended house due to high rent as negative evidence. Finally, even though the Kayadelen family was monitored for a particular period of time, the child was given back to the mother.

2- Esref YENIASCI, the Attorney of the Ferhat Mete Case

Due to the divorce of his parents, the custody of Ferhat Mete was given to his grandfather Hasan Ozturk. His grandfather and grandmother temporarily left Ferhat to the Netherlands Youth Agency for a month while they were going to a pilgrimage to Mecca. On their return when they ask for the child, their request was denied on the grounds that they are not sufficient to take care of a child. The legal process that was initiated immediately after has resulted with unfavorable verdicts and Ferhat was not given back to the family. The case went to a superior court. However, the grandmother and grandfather who dreaded the process did not attend the court in 06.06.2013.

3- Nur YORUKSEVEN

Nur Yorukseven has been putting in effort to take back her son Kaan who was taken away by the youth agency for the past 2 years. During that time, according to the testimony of the mother Nur Yorukseven, the child has changed 6 foster families. Although the mother still has the custody, she claims that Kaan's name was changed.

4- Nurgul AZEROGLU and her Attorney Mehtap COLGECEN

The Turkish and Dutch media largely covered this incident. After Nurgul Azeroglu dropped her youngest son from the stairs when he was 6 months old, the custody of her children was given to a (homosexual) Dutch family in 24.12.2004. The mother has applied to the Hague Court of Appeal in October 22, 2008 in order to take back the custody of her children. While court process was continuing, and following Nurgul Azeroglu's taking her children Arif and Halil to Turkey beyond the knowledge and permission of the Netherlands Youth Care Center, the aforementioned center has requested the return of the children to Netherlands within the scope of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. According to the verdict of Hague Court of Appeal in December 17, 2008 the custody of the children were given to the same family. Hereupon Nurgul Azeroglu has filed two lawsuits, one to the Hague Court of Appeal for the custody of her two elder children, and the other to the Hague Family Court for more frequent visits to her younger child. As a result of the first lawsuit, the custody of the older children was given back to the mother. On the



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other hand, the younger child, Yunus Emre Azeroglu, is still with the foster family. According to the information obtained, the mother is allowed to see Yunus every two months. The duration of the meeting is one hour. Our Rotterdam Consulate is in close contact with Nurgul Azeroglu, and they have been working on filing a lawsuit at the Hague Family Court in the following period.

2.6. Assessments on Netherlands Youth Care Agency System and its Implementations

The Netherlands is found remarkable regarding the extent of areas of religious freedom. Individuals with different religions are free to organize. Compared to several European countries, it is understood that the Muslims in the Netherlands are more comfortable in expressing their religions in their daily lives, and they do not have any problems regarding Islamic symbols. Within this framework, it was witnessed that mosques with minarets can be constructed including the entrance of the cities, and the sound of the prayer can be given out of the mosque as well.

Therefore, it has been evaluated as a contradiction to have troublesome implementations of the child care system against the nationwide extensive rights and freedoms in the area of freedom of religion and expression. The most basic problem of the childcare system, which includes the youth agencies, is the excessive privilege given to the child's sake principle compared to the right to custody. As a solid negative consequence of this situation, the family is completely marginalized during the process of problem resolution. In addition to this, the complexity of applications and the lack of a framework legislation regulation that encompass all applications is another troublesome area. This system that has been a matter of complaint throughout Netherlands is becoming a multiplied problem for the Turkish origin families who have different cultural and linguistic practices.

As a matter of fact, 671 Turkish origin children are identified to be taken away from their families in the Netherlands. When the third generation is added, approximately 1000 Turkish origin children were estimated to have taken away from their families. It is found out that 167 of these children were given to foster families, and 504 remaining children, most of who are between the ages of 12-18, are living in children's homes.

As a result of the study, it appears that the number of children who are placed in the children homes is 3 times larger than those given to foster families. Although the Turkish origin children who were taken away from their families are brought to the agenda through foster families, it seems to be merely the tip of the iceberg. Therefore, there is an immediate necessity to conduct a study regarding the children who are staying at the children's homes.

In light of the interviews conducted, a conclusion has been reached that the Netherlands offices are not adequately taking into consideration the children's cultural



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and religious statuses while determining foster families, and generally they are not showing sensitivity towards the children of Muslim families. Even in situations where there are close relatives who could take the custody of the children, there have been cases where such points are not pursued.

It is possible for the families to take legal actions in order to take back the custody of their children. However, it is observed that our citizens do not fully know their rights, at times due to their lack of Flemish, they wrongly express themselves, and therefore they cannot claim their rights at the relevant office, and that they are late in their legal applications, turning them into an injured party as a result.

The agencies of the Federal Government are observed to be not up for cooperation and not showing the necessary sincerity in terms of problem resolving. For instance, the Federal officials have stated that they did not have statistics for the Turkish origin children. However, almost contrary to this claim, the Regional authorities in the Rijnmond Region have shared official statistics regarding Turkish origin children with our Committee.

By the year 2015, all youth care services will be transferred to local administrations.³ Also, the 2005 Youth Care Act is planned to be reviewed, and a singly legal framework will be formed on all topics regarding children and teenagers. In this respect, it will be appropriate to improve communication with the local administrations that are already open to constructive relations. On the other hand, in case a monitoring body is not anticipated following the transfer to the local administrations, it is possible to see several implementations that are very different from each other, similar to Germany. It is important to be ready for the problems that this atmosphere may bring along.

The Turkish society has responsibilities in making sure the children who should be taken away from their families are given to their relatives, or sent to environments that are at peace with the cultural atmosphere his/she are raised in. In this framework, maintaining the struggle through right-based associations in Turkey has been appreciated. Another great news is the increased number of applications from the Turkish families in Turkey to the Netherlands offices to become foster families.

³ *In this new system that gives authority to the Municipalities, it is aimed at pursuing the principles of efficiency, consistency, and proper cost. Nynke Bosscher, The Decentralisation and Transformation of the Dutch Youth Care System, June 2012.*



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During the interviews, the fact that it was only mothers who were attending the meetings is considered a shortcoming. Such a phenomenon is considered to be reflecting some negativity regarding the Turkish family structure in Netherlands, and it brings to the agenda the need for an attaché who would carry out the overseas works of the Ministry of Family and Social Policies.

3. BELGIUM

3.1. Formally Visited Offices and the People Regarding the Matter

Throughout the inquiry visit, interviews were conducted with the President of the Justice Commission of the Kingdom of Belgium House of Representatives, Kristien Van VAERENBERGH and the Commission member parliamentarians; European Network Against Racism (ENAR) officials; Foster Family Institutions of Flemish and Valon Region officials; Turkish origin non-governmental organizations; and the Center of Equality of Opportunities and Fight Against Racism which is autonomous but financed by the Belgian Government.

3.2. Foster Family Institution

Belgium is comprised of two separate administrative structuring as the French-speaking Valon Region, and the Flemish-speaking Flemish Region. In this respect, it was a necessity to conduct inquiries in both administrative structures in order to get valuable information about the countrywide implementations of the youth care agencies.

3.2.1. Valon Region Foster Family Institution

The Valon Region Foster Family Institution is organized in the region as the second largest unit after the organization of the education unit. The unit has 1500 public officials, and those that work in other units related to children who are drifted into crime are not included in this number. Previously the sole decision making authority on the status and rights of children were the juvenile courts, with the law amendments in 1991, people with the title of inspector and consultant who work in this unit were also given the decision making authority.

As an administrative institution, the Foster Family Institution is conducting collaborative works with some other units (non-governmental organizations) other than public offices and institutions. Because the Foster Family Institution provides resources to the non-governmental organizations that it collaborates with out of its own budget. 4500 people are working in the 360 non-governmental organizations other than the public offices and institutions.



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The basic objective of the implementations of the youth care agencies that are affiliated to the Foster Family Institution is to provide the opportunity for children to stay with their families to be able to develop and grow up in their natural environment. In that sense, the youth care agencies have adopted as a primary goal to resolve and improve the problems encountered regarding children within the family. On the other hand, as per the conventions on children's rights, it is significantly important for the youth care agencies to foresee the performance of the necessary formal procedures without delay.

While sometimes it is hard to protect the rights of children while keeping them with their family, the togetherness of the children with their families is considered very important. Because of that, the youth care agencies are criticized for overlooking the abuse of children within their families, whenever a single negative news story appears in the public opinion.

The Valon Region Youth Care Agencies have no statistical data regarding the Turkish origin children. On the other hand, it is known that the Youth Care Agency in the city of Liege have been performing collaborative work with the Turkish origin non-governmental organizations.

3.2.2. Flemish Region Foster Family Institution

While operating only in the Flemish region towards the youth and children, generally it deals with problematic children or children who committed a crime.

The institution officials, while admitting that it is the natural habitat of a child to grow up with his/her biological mother and father, they also state that the number of foster families is not sufficient. Furthermore, they indicate that when a child is taken away from the family, this is always a temporary situation, and that they act with the preconception that the child will eventually reunite with his/her family.

Judicial authorities decide whether the relationship between a child and the family will be broken off and whether children would return to their families. Therefore, families whose children are taken away from them at least twice in a year are subjected to evaluations to enquire whether the reasons for taking away the child have been improved or not.

The foster family center, OpVang that operates in the Flemish region conducts the "World Project" that aims at giving children who need foster families to the proper families. Within this project, immigrants are also employed.



3.3. Assessments on Belgium Youth Care Agency System and its Implementations

The most problematic implementation among the countries enquired in Europe has been Belgium. It is seen that the institution officials who were met agree with our Committee's opinions.

It was pleasing to find out that the institution officials believe that the natural habitat for children is where their parents are, and that they aim at resolving problems while children are still with their families. In Belgium, we haven't determined a problem that was mentioned by the Turkish community regarding the youth care agencies and foster family institution. There are no problems reflected by the Turkish community to our Embassy records either. On the other hand, it is concluded that works need to be done in order to improve the number of Turkish origin foster families, and more statistical studies can be done regarding the status of the Turkish origin families.

III. CONCLUSION AND EVALUATION

It is every child's most basic right to grow up in a healthy environment with his/her real families, with his/her parents. The clause 8 of the European Convention on Human Rights that guarantees the right of respect to family life recognizes the right to provide a child the opportunity to grow up according to his/her own culture and religion as a right, and as an obligation to the mother and father. Implementations that limit and inhibit these rights and obligations of parents over their children have the characteristic of limiting the basic rights and freedoms of children and their parents.

The implementation of the youth care agencies where the child is taken away from his/her family is an implementation that directly limits and inhibits the use of the basic right of every child to be with their real families, and to grow up with their parents in a healthy environment. In that sense, a need for a human-right-based inquiry has arisen regarding the Youth Care Agency implementations in the European Union countries of Germany, Netherlands, and Belgium.

When the German, Belgian and Dutch legislations were analyzed in terms of the youth care agencies and their implementations, it was seen that these regulations are sufficient in the sense that they satisfy the needs in terms of positive law. It is seen in these legislations that the relationship between the family and the child is regulated in a way that fulfills the needs, and that the Youth Care Agencies were founded in order to resolve the malfunctions and problems within this relationship for the child's sake.

Within the German, Belgian and Dutch legislations, it is stated that the youth care



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agency shall resort to fixing the problems between the child and the parents, rather than taking the child away from his/her family. In that sense, the youth care agencies are supposed to resort to a resolution along with the parents, before taking away the custody of the child. As a rule, in the event of a suspicion, the child stays with his/her own family, and not separated from his/her siblings. In spite of these, thousands of Turkish origin children in Germany, Netherlands, and Belgium are confirmed to have subjected to the unjust practices of the youth care agencies, and especially in Germany and Netherlands several children are taken away from their parents, and given to children's homes or to families with no similar cultural backgrounds. While it is known that these agencies are established due to a need, it is observed that some of the implementations of some of the youth care agencies especially in Germany and Netherlands have resulted in unfavorable consequences for both the family and the child.

As a result of the studies and inquiries conducted by our Committee, the below mentioned problematic areas have been determined:

1- The right of custody is an extremely superior and a sacred basic human right that gives right to parents to have a close relationship with their children. In that sense, the decision to take away the right of custody from parents and give it to another agency or a family, should be through a court order, not the decisions of the youth care agency whose decisions are at an administrative level. Additionally, any decision that would physically or legally limit or inhibit the execution of the right of custody by the family should be made by the courts.

2- Children are taken away from their families for very simple reasons. While the legislation anticipates the taking away of children from their families as a last resort, some youth care agencies have been applying to this method as the first solution and possibility. At this stage there is no detailed and meticulous research and inquiry being conducted.

3- The main goal of the youth care agencies should be towards preserving the unity of the family. It is understood that some youth care agencies have been focused on the goal of taking the child away from the family, and therefore use all negative situations and incidents that occur between the child and the parents as a possibility and opportunity to take the child away from the family, rather than prioritizing the unity of family and pursuing the resolution and rehabilitation of the problems between the child and the family. Even though the right of custody is one of the basic human rights and a



constitutional right, the condition of a court decision as the sole way of removing it has been violated, and even though allowing the seizure of the child away from the family by the youth care agencies should have been an exceptional rule, due to the implementations of some youth care agencies, what is exceptional has become the norm.

4- In the event of taking the child away from the family, he/she must be given to the closest relatives or families whose culture and life style is closer to the child. During the process of taking away the child from the family by the youth care agencies, it is necessary to make a research whether conditions are appropriate to give the child to his/her relatives or family friends, and at the end of this research and in the event of not being able to find a family relative who would raise child, the child should be given to other appropriate families by the youth care agency. The intense foster family requirements in the legislation should not be imposed on close relatives, and once a conclusion is reached that they can take care of the child; the child should be given to these relatives.

5- Opportunities should be enabled for the maintenance of the relationship between the seized children and their families. Even if the child is entrusted to a foster family or children's home by the youth care agencies, a continuous personal relationship between the children and the biological families should be enabled. Sometimes children are not allowed to meet their families for more than 6 months, and this prepares the ground for the transition of a process that is perceived as temporary into something that is permanent.

6- Seizure application is a temporary precaution. Since the seizure practice is a temporary and precautionary situation, the child should eventually be returned to the family if the negative situations and attitudes that the family is in are resolved, by frequently monitoring the status of the family.

Just like in Belgium, families whose children are taken away from them at least two times a year should be studied and enquired, and when the negative situations and attitudes that the family is in are resolved, the children should immediately be returned to their families.

Furthermore, it is important to explain to the foster families by the youth care agency officials that the foster family mechanism means that a child's care and needs are provided temporarily with the family, in other words this mechanism is not a child adoption mechanism. Because many foster families act with the temptation of adopting a child, and they get emotionally attached to his/her. This situation greatly damages the foster family, the child, and the biological family.

7- The seized child should be given the opportunity to speak in his/her native



language in terms of his/her culture and identity. It has been confirmed that some youth care agency officials have not been allowing the child and his/her family to speak in Turkish during the meetings conducted in order to maintain the personal relations, and by preventing the child from using his/her own native language, they have been attempting to make the child forget about his/her native language, and therefore his/her own culture and identity.

8- Major biases have emerged within the families against the decisions and implementations of the youth care agencies. The negative opinions and emotions that emerged within the families against these institutions are reflections of the major disappointments and desperations that were caused by the decisions and implementations of these institutions such as taking away the child from the family and those that happens afterwards. This is why the families whose children were taken away from them do not trust these institutions, and furthermore due to the fact that these Institutions are not willing or helpful to the families with regards to returning the children back to the families, there has been contestable and hostile situations that emerged between the youth care agencies and families.

9- There are big differences between the implementations of the youth care agencies. Each youth care agency might have been interpreting and implementing the laws on the right of custody. Some youth care agencies base their operations on the preservation of family unity, while others prioritize the taking away of the child from the family in their implementations. In order to establish coordination and uniformity in the implementations and decisions of all the youth agencies worldwide, **it is significantly important to found and operate an independent federal or national level administrative monitoring organ.**

Since the Netherlands Youth Care Agencies who are organized as being dependent to the central government are planned to be transferred to the authority of local administrations by the year of 2015, it is necessary to found a national level independent administrative monitoring organ in order to obtain coordination and uniformity in the implementations and decisions of the local administration youth care agencies.

Families are forced to go through a long and tedious judicial process in order to be able to take their children back. Following the seizure application of the youth agency, the families are forced apply to the court, and go through a long and tedious judicial process in order to undo that implementation.

10- The fact that the courts are predicating on the reports prepared by the youth agencies while making a decision, renders the youth agencies as both the prosecutor and the judge. The fact that the reports prepared by the youth care agencies constitute the basis for the court decisions makes the youth care agencies both the prosecutor and the judge. It is important that the reports that will constitute a basis for



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the court decisions should be prepared by experts or surveyors other than the experts that work for the youth agencies.

Initially the youth care agencies are having the parents sign a document with the aim of helping the children and the family. This document includes the item that allows the youth care agency to seize the child from the family and give his/her to a children's home or a foster family. When the families whose children are seized apply to the court, the documents that were signed by them are presented to the court by the youth care agencies. At that stage, the families finally realize that through this document that they signed they show consent to the seizure of their children and giving them up to children's home or a foster family. This creates a deep disappointment within these families. In that sense this document that is signed by the families should be in Turkish, and both the family and their attorney should read it.

11- Courts are usually concluded against the parents. Especially considering the German, Dutch and Turkish family structures, the lack of knowledge and awareness in terms of cultural differences in raising a child has been observed in the German and Dutch courts as well as the youth care agency officials, and this has negative effects on the course of the lawsuits. It is understood that the psychologists and pedagogues that are appointed by the court as experts in some cases lack the knowledge to evaluate the cultural differences.

12- It is necessary to resolve the prejudices against the Turkish family structure in the German and Dutch societies. When it comes to the children of the Turkish origin families, the Youth Care Agency officials have been seen to conclude against the families without making sufficient incident-based inquiry, under the influence of the widespread prejudices against the Turkish family structure. The German and Dutch youth care agencies also need the help and support of the Turkish origin families and non-governmental organizations. In that sense, it is very important to implement family awareness campaigns and trainings in collaboration with the youth agencies.

13- It is significantly important to improve the employment of Turkish origin experts in the youth care agencies.

14- Psychological and legal expert help should be given to the families whose children are seized by the youth care agencies.

15- The Turkish origin families should be encouraged to become foster families.

16- It is necessary to raise the awareness of the families against the implementations of youth agencies and they should be explained about their rights and responsibilities.

17- It will be beneficial to organize units within the foreign delegations that would serve as family counseling. As a matter of fact, it seems that our Ministry of Family and Social Policies has such a work. It is considered that these units can work together with the youth care agencies and local pedagogues in order to guide the families



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in raising a child, and that they can provide information to the youth care agencies on the socio-economic situation of the Turkish society abroad as well as other necessary topics, and also they can help the youth care agencies in finding Turkish origin foster families.

18- The domestic problems in the Turkish society are causing the children to be subjected to the youth care agency implementations.

19- It is necessary for our citizens who migrate from Turkey to accord themselves with the conditions of the country they immigrated to.

20- It is understood that most of our seized children have been living in children's homes and in these places they have been face to face with very serious problems and dangers. As a matter of fact, the 504 of the 671 children who are seized in Netherlands are presumed to be staying in children's homes, and more than half of the children who are seized in Germany are presumed to be staying in these children's homes. Therefore, it is necessary to conduct an immediate study regarding the children who are staying in children's homes.

21- As per the Vienna Convention, the German, Belgian, and Dutch authorities are obliged to notify our foreign delegations on the Turkish origin children who are taken under custody.