



Convention on the Rights of the Child

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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-fifth session

SUMMARY RECORD OF THE 926th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 16 January 2004, at 10 a.m.

Chairperson: Mr. DOEK

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Second periodic report of Germany (CRC/C/83/Add.7; CRC/C/Q/DEU/2; CRC/C/RESP/51; HRI/CORE/1/Add.75/Rev.1)

1. At the invitation of the Chairperson, Mr. Dichans, Mr. Fischer, Mr. Haines, Mr. Laut, Mr. Pawlowsky, Mr. Ruhenstroth-Bauer and Ms. Scholl (Germany) took places at the Committee table.
2. Mr. RUHENSTROTH-BAUER (Germany) said that children were society's most important asset. Consequently, the creation of equal opportunities for children and the protection of their rights under the Convention were top priorities for both the Federal Government and the Länder (states). By organizing the Berlin Conference on Children in Europe and Central Asia in May 2001, Germany had played a significant role in preparations for the special session of the General Assembly on children. The Government had begun drafting a national action plan, with the participation of the Länder, local authorities, non-governmental organizations (NGOs) and children's groups. The dialogue with the Committee would make an important contribution to the completion of the national action plan.
3. The National Coalition for Implementation of the Convention on the Rights of the Child in Germany, comprising some 90 NGOs, played a key role in promoting awareness and monitoring implementation of children's rights. It received substantial financial support from the Government.
4. The German education system had performed poorly in a recent study by the Programme for International Student Assessment. Drawing on the results of that study, the Government had released €4 billion for the development of school infrastructure. In addition, €1.5 billion would be allocated to local authorities each year to fund expansion of the day-care system.
5. The Government was introducing a paradigm change with regard to its policies for children and families by shifting the focus away from benefits and towards more long-term investment in infrastructure. It was fostering the development of cooperation between various local authorities to promote the role of the family, emphasizing the need to strike a balance between family life and the world of work.
6. Ms. SMITH said that, in its second periodic report (CRC/C/83/Add.7), Germany had followed the guidelines of the Committee and struck the right balance between information pertaining to the Federal Government and details of the situation in specific Länder. The written replies had updated many aspects of the report by focusing on the period since April 1999. She welcomed the adoption of the law on nationality and citizenship of 15 July 1999, the elimination of discrimination against children born out of wedlock, and the ratification of the International Labour Organization (ILO) Convention No. 182 concerning the Worst Forms of Child Labour.
7. Germany had not yet incorporated all of the rights contained in the Convention into its domestic law. For example, she took issue with the claim that the well-being of the child was a primary consideration in all actions concerning children. She enquired whether the Government

had considered giving the Convention precedence over domestic law. Other countries, such as Norway, had taken that approach and had thereby given new momentum to the protection of children's rights.

8. She was surprised that the Government had dismissed the Committee's recommendation that children's special needs should be recognized in the Constitution. One of the main reasons for drafting the Convention had been the recognition that children's special needs had been overlooked by earlier human rights conventions and that they required a more precise legal context. Some sections of the report gave the impression that the Government was trying to limit what it called "overinterpretation" of the Convention rather than implement its provisions to the maximum extent of its available resources.

9. Germany had made several declarations and reservations when it had ratified the Convention. In her view, the declaration regarding parental custody had become obsolete in the light of new legislation concerning the relationship between children and parents. The reservations in respect of article 40, paragraph 2 (b), of the Convention, and the declaration concerning the distinction between nationals and aliens, should be withdrawn. The treatment of refugees between the ages of 16 and 18 as adults, which restricted their access to education, counselling and the services of a legal guardian or representative in legal proceedings, was inconsistent with article 2.

10. She asked whether all unaccompanied children entering the country enjoyed the same welfare and education entitlements as German children. The delegation should explain whether children who had entered the country illegally enjoyed the same rights.

11. She requested further information regarding the right of children to be heard, for instance when they received medical treatment or in decisions concerning their education. She wished to know how the Government protected children from harmful information and whether the new laws in that area had been effective. She asked whether any steps had been taken to prevent young girls from offering sexual services on the Internet.

12. Ms. SARDENBERG asked why the Ministry for Family Affairs, Senior Citizens, Women and Youth had been responsible for preparing the report to the Committee on the Rights of the Child, while the Commissioner for Human Rights Issues in the Ministry of Justice was in charge of reports to the other treaty bodies.

13. She welcomed the fact that Germany had ratified all the major human rights instruments and had a good reporting record. However, she wondered whether Germany's numerous declarations and reservations reflected its general attitude towards human rights conventions. She asked whether the Government was planning to ratify the Optional Protocol on the involvement of children in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography.

14. She asked how policies for children reflected the need to overcome disparities between the former German Democratic Republic and West Germany. She requested further details regarding the division of responsibilities between the Länder and the Federal Government. In particular, she wished to know whether any conflicts arose between Land and federal laws concerning child rights.

15. The delegation should explain the shift in children's policy announced by the Federal Government. She wondered how that change would affect the level of child poverty in Germany. She requested information on the role of Parliament in determining children's policies and on the reporting system used, including the latest report and follow-up to it. She wished to know how the system for submitting petitions worked and what effect the petitions had on children's policy.

16. Ms. CHUTIKUL enquired how the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth managed to coordinate and monitor the implementation of the Convention among all the other relevant government ministries. She wished to know what percentage of all local officials the 350 child welfare officers represented. She requested information on the nature of the Federal Government's participation in Land and local children's organizations, which was described as taking place in a guest capacity. She asked how the Federal Government intervened to uphold its international commitments in cases where local practices diverged from those commitments.

17. She wondered whether any of the numerous human rights mechanisms in Germany had specific mandates to deal with children's rights and whether they met the conditions of the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles) with regard to independence. She asked whether a children's ombudsman existed to allow children or their parents to file a complaint and whether complaints could be filed at the local level.

18. She expressed concern over the declining birth rate and asked whether it had resulted in a generation gap. She enquired whether the National Child and Youth Plan took into consideration all the provisions of the Convention or whether it was limited to the goals defined by the outcome document of the special session of the General Assembly on children, entitled "A World Fit for Children". She wished to know which body was responsible for coordinating implementation and monitoring of the National Child and Youth Plan and how it would be carried out at the local level.

19. Ms. KHATTAB said that the Government should ensure that foreign-language translations of the Convention were made available to the numerous migrant workers in Germany in their mother tongue. While Germany was very active in international cooperation, the level of its official development assistance was rather low. She wondered whether the Government would consider debt-swapping, provided that participating countries would use that form of assistance for social programmes that gave priority to children.

20. She was concerned at the xenophobic attitudes, particularly among young people, towards foreigners and migrant workers. In that connection, she urged the Government to take measures to ensure a minimum level of peaceful coexistence among the various ethnic groups. Primary school children should be taught not only tolerance but also an appreciation of the positive contributions of other cultures. She requested details on the findings of the 1994-1998 survey on right-wing extremism among young people, and she wondered whether the Government was considering repeating the survey to determine whether any progress had been made. She enquired whether any measures had been taken to help immigrants to maintain their native languages.

21. She wished to know the number of rejected asylum-seekers who were children. She enquired whether the Government's decision not to deport Roma children of Serb origin was part of a policy that would apply to other asylum-seekers. She asked what steps the Government was taking to deal with the attacks and threats faced by the various ethnic groups that had fled Kosovo.

22. Ms. VUCKOVIC-SAHOVIC said that she hoped the Government would continue to provide assistance and increase budget allocations to development projects in other countries, particularly projects relating to the rights of the child.

23. There had been numerous reports of ill-treatment of Roma children and their families during deportation procedures. She wondered whether the problem had been recognized and whether any progress had been made since the publication of the reports. She wondered to what extent attitudes towards certain ethnic groups and towards the participation of children in political decision-making differed between former East and West Germans and, if so, whether any efforts had been made to address those differences.

24. Mr. AL-SHEDDI enquired whether the assistance provided to developing countries for primary education was bilateral in nature or whether it was linked to international cooperation agreements. He wondered whether such assistance included training in human rights awareness-raising.

25. He requested information on the role of the Federal Government in dealing with children's issues, in particular with respect to immigrant children. He asked for details concerning the way in which budget allocations for the National Child and Youth Plan were distributed and whether such funds were transferred directly to local governments.

26. He pointed out that the Federal Government, and not an independent commission, was responsible for preparing periodic reports to the Committee. There appeared to be very few references in the second periodic report to children's rights as such, and he wondered whether the preference given to such terms as children's issues, interests or protection accurately reflected the Government's priorities.

27. Mr. CITARELLA said that Germany's federal system, which required it to coordinate the functions and responsibilities arising from the respect of children's rights with the Länder, gave rise to potentially serious problems with regard to compliance with the Convention. He wished to know what mechanisms existed within the Federal Government to ensure that the legislative and policy-making activities of the Länder respected Germany's obligations under the Convention.

28. He enquired whether there was a central bureau of statistics that could supply information on social expenditure for children, particularly in the fields of health and education, made by the Federal Government and by each Land.

29. The State party's declaration that the Convention could not be applied directly but that its obligations would be met by domestic law constituted a very broad reservation to the Convention. There were some discrepancies in German legislation concerning the relative status

of children born in and out of wedlock, as well as in the entitlement to youth welfare benefits enjoyed by foreign children residing lawfully in Germany and the lack of such entitlement on the part of foreign children without legal status.

30. Mr. FILALI requested information on the declining birth rate and wondered whether any studies had been conducted or measures taken to reverse that trend. The Government should consider appointing an ombudsman or mediator, with regional and local representation, to deal with complaints involving children's rights. The guarantee of the rights of the child in Germany appeared to derive more from family law than from the protection of the child as such. He enquired whether the Government had any plans to incorporate the Convention into the Constitution.

31. He wished to know why Germany had not ratified the Optional Protocols to the Convention. The delegation should explain why the Länder had not declared their support for the withdrawal of the declarations that the State party had made when it had ratified the Convention.

32. Since many persons of foreign origin resided lawfully in Germany and since, as a consequence, there were many mixed marriages, he enquired whether the Government had concluded any bilateral agreements with the countries of origin of such foreigners in order to prevent their children from being deported to those countries. Teaching German was not enough to ensure the integration of foreign children; other more ambitious programmes were required to prepare such children to live in German society as full-fledged German citizens.

33. Mr. KOTRANE commended Germany's active role in ensuring that the outcome document of the special session of the General Assembly on children in May 2002, entitled "A World Fit for Children", referred to the Convention on the Rights of the Child. He wished to know whether the Convention was directly justiciable before German courts and whether judges were familiar with its provisions.

34. Mr. LIWSKI wished to know more about specific measures to combat racism and xenophobia, and whether those measures were based on the Convention. Surveys had shown that children and youths had a poorly developed political outlook, which reflected the difficulties involved in implementing the Convention with regard to xenophobia and racism.

35. The CHAIRPERSON said that he wished to know how the State party reconciled its expulsion of 6- to 8-year-old Roma children who had been born and raised in Germany, with its obligations under the Convention. He also wished to know the basis on which the Government determined the age of refugee children who did not have documentation of their date of birth. More information was needed on budget allocations; in particular, he would appreciate an explanation of figures that seemed to indicate that less money had been allocated to the new Länder than to the old, since the increase in spending on day-care facilities and assistance to parents had been greater in the old Länder than in the new.

The meeting was suspended at 11.35 a.m. and resumed at 11.55 a.m.

36. Mr. RUHENSTROTH-BAUER (Germany) said that perhaps the relationship between the various levels of Government had not been clearly explained in the report. International obligations, such as international treaties, were signed by the Federal Government with the agreement of the Länder, which could accept them outright or with reservations. The Länder also served as a bridge between the federal and municipal levels of government, creating a three-tiered system. The Federation and the Länder had separate budgets and there was a system of horizontal financial equalization between the Länder, while the local authorities both raised revenue themselves and received income from the Länder. Although the general framework was determined by the Federation, implementation was the responsibility of the Länder, who were competent in the areas determined by the Federal Constitution. The Federal Government was the guest of the Länder in that it had restricted competence in some areas, although there was close cooperation between the two.

37. Ms. SARDENBERG asked whether there was a mechanism that allowed the Federal Government to assess implementation by the Länder.

38. Mr. RUHENSTROTH-BAUER (Germany) said that the Federal Government and the Länder were bound by federal laws and by the Federal Constitution. He confirmed that there were mechanisms to deal with violations by the Länder.

39. Mr. FILALI asked whether there was a judicial hierarchy between the Federal Government and the Länder.

40. Mr. RUHENSTROTH-BAUER (Germany) said that, while federal law took precedence over Länder law, federal law did not extend to all areas; for example, the Federal Government did not have competence in the fields of education and culture. However, since the Länder had given their consent for the Federation to sign the Convention, they also had to comply with the provisions of the Convention. German legislation did not always make explicit reference to the Convention because the provisions of the Convention had been incorporated into domestic legislation.

41. Mr. CITARELLA asked what action the Federal Government would take against a Land that failed to provide free and compulsory primary education.

42. Mr. RUHENSTROTH-BAUER (Germany) said that the obligation to provide compulsory education was stipulated in the Federal Constitution, which was binding on the Länder, and it was highly unlikely that a Land would fail to provide free and compulsory education. In such a situation, the Federal Government would first consult with the Land in question, and that would in all likelihood resolve the matter. The Constitution applied in all Länder and a mechanism existed to ensure that Länder fulfilled their obligations.

43. Mr. LAUT (Germany) said that, if necessary, such a matter could be referred to the Constitutional Court. Moreover, children and parents would have the possibility of legal recourse. The application of the Convention could therefore be considered to be justiciable, since its provisions were protected by law.

44. Ms. KHATTAB said that, since the denial of birth certificates to children of asylum-seekers owing to incomplete documentation violated article 7 of the Convention, she wondered what steps had been taken to rectify that situation.

45. Mr. LAUT (Germany) said that, if German law had been violated, the victim would have a right to bring proceedings. He confirmed that the consent of the Länder was always required for the ratification of international agreements. The areas in which the Federal Parliament required the consent of the Länder and those in which it was able to undertake legislation without their consent were set out in the Federal Constitution.

46. Mr. RUHENSTROTH-BAUER (Germany) said that the question of the direct justiciability of the Convention did not arise, since its provisions had been incorporated into domestic law. A variety of measures had been taken to raise awareness of the Convention.

47. Mr. DICHANS (Germany) said that the Convention had been translated into German for adults and, with the involvement of a German television station, for children. The Caravan for a More Child-Oriented Society had passed through several cities and towns campaigning for greater awareness of children's rights. A children's assembly (*Kinderversammlung*) had enabled children to ask for practical changes to make their communities more child-oriented. Video, audio and printed materials for raising children's awareness of their rights were available to schools and youth clubs for purchase or loan.

48. Ms. ORTIZ asked whether international cooperation was included in the national plan of action.

49. Ms. SARDENBURG requested recent statistics on public awareness of the Convention. She wondered what measures had been taken to disseminate the Convention among certain professional groups, such as the police.

50. Mr. DICHANS (Germany) said that the national plan of action would contain a section on international cooperation. No public awareness surveys had been carried out since 1997, but knowledge of the Convention had certainly increased as a result of government and Länder awareness-raising activities. Regarding the dissemination of the Convention among professional groups, the closer professionals worked with children, the more likely they were to be aware of the Convention. Awareness among professionals who did not work with children would be investigated.

51. Mr. RUHENSTROTH-BAUER (Germany) said that the Convention was disseminated primarily in German. The Government was considering making the text available in other languages and improving access to the Convention and other related materials by publishing them on the Internet.

52. Ms. AL-THANI said that the text of the Convention should also be made available to blind and visually impaired children.

53. Mr. RUHENSTROTH-BAUER (Germany) said that the Government would consider publishing information on the Internet in such a way that it was also accessible to the visually impaired.

54. The term “paradigm change” seemed to have been misunderstood by the Committee. During the previous legislative period, the Government had focused on giving financial assistance directly to families and children. Emphasis was currently being placed on improving general infrastructure for families. The change of focus had not resulted in reduced financial assistance but rather in additional consideration to family environment in general. The Government was taking all family situations into account. A minimum amount of tax-free financial assistance had been introduced for single-parent families. Measures were being taken to keep schools open all day in order to enable single parents to work without having to make childcare arrangements. Although €4 billion were available to the Länder for the implementation of such schemes, spending had to be agreed with the central Government in order for funding to be granted. From 2005, the Government would spend €1.5 billion a year to expand care facilities for children under 3.

55. Ms. SMITH wished to know whether one of the measures to allow mothers to work would be to extend paid maternity leave.

56. Mr. FISCHER (Germany) said that Germany adhered to European Union standards for paid maternity leave. Parental leave was granted following the birth of a child and, after 2001, changes had been introduced to allow both parents to work part-time in order to look after their children and remain in touch with working life.

57. Mr. RUHENSTROTH-BAUER (Germany) said that parental leave was granted for a maximum of three years. The Government was not considering extending that period.

58. Ms. SMITH asked to what extent the best interests of the child were incorporated into legislation on education and juvenile justice. She wished to know whether public health funding had been reduced owing to economic difficulties. She enquired whether modern illnesses, such as allergies and eating disorders, were receiving adequate attention.

59. Ms. SARDENBURG asked how NGOs could be considered to be independent if the National Coalition for Implementation of the Convention on the Rights of the Child was government-funded.

60. She asked whether the Government was considering lowering the minimum voting age to 16 in order to enable children to be involved in political life.

61. Ms. AL-THANI requested updated statistics on infant mortality and more detailed statistics on sexually transmitted infections. She commended Germany’s HIV/AIDS programme, particularly since it had considerably reduced mother-to-child transmission.

62. She was concerned at the number of cases of children born with foetal alcohol syndrome. Although the Committee had been informed about alcoholism programmes for adolescents and young children, she wondered whether such programmes also existed for pregnant mothers. She requested information on the success rates of anti-drug programmes. She wished to know whether measures were being taken to reduce the alarming suicide rate among 12- to 14-year-olds.

63. She enquired whether there were any programmes for anorexics and bulimics, and requested information on the outcome of the European Union campaign on nutrition in schools.

64. She asked whether the Government was taking any measures to improve the situation of working mothers who, although entitled by law to one hour a day for breastfeeding, often had to negotiate that time with their employers. She requested statistics on the number of babies that were exclusively breastfed during their first six months of life.

65. She was concerned that foreign children with disabilities were not given the same opportunities to attend mainstream schools as German children. She requested statistics on the percentages of disabled children living at home and in institutions.

66. Ms. KHATTAB wished to know why discrimination against girls still existed in Germany. She would be interested in knowing the outcome of the Girls in Youth Welfare programme and the Girls 2000 study.

67. She wondered whether academic assistance was available to foreign children and, if so, whether parents were aware of it.

68. Since children who sought asylum were subject to the same laws as adults, she wondered whether any measures had been taken to protect young female asylum-seekers from being deported to countries where they might be vulnerable to prostitution.

69. Regarding family reunification for refugees, she wished to know whether there were federal minimum standards that all Länder were obliged to apply.

70. Mr. KOTRANE said that, since 90 per cent of Germany's part-time workers were women, active measures must be taken to encourage fathers to take parental leave. He wished to know whether measures had been taken to establish a structured day-care service for children.

71. Ms. LEE asked why there were twice as many foreign children as German children in German special needs schools.

72. She wished to know the Government's definition of children with disabilities, and asked why such a high number of disabled children lived in the old federal Länder, as compared with other areas. She enquired whether measures were being taken to fund services for disabled children in order to reduce the financial burden on parents. She asked what facilities were provided for children in psychiatric institutions. She requested an explanation for the alarming rate of secondary illiteracy in Germany.

73. Ms. ORTIZ wished to know when Germany had ratified the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. She wished to know how the best interests of the child were determined in situations where illegal practices had been committed in adoption procedures. She wondered whether prospective parents who had engaged in such practices could become adoptive parents.

74. Ms. VUCKOVIC-SAHOVIC enquired what measures were being taken to encourage broader family involvement in the upbringing of children.

75. Mr. FILALI wished to know whether the State could intervene in the civil registration of a child's given name. He requested further information on the nationality status of children of non-residents, and children of persons applying for political asylum. He also requested information on the principles and results of legal provisions for joint custody.

76. The CHAIRPERSON said that the Committee had been informed that legal proceedings in cases of international child abduction were slow and that judges were often reluctant to return children to their country of origin. He asked what measures were being taken at the Länder level to implement visitation rights.

77. He wished to know what the German Government's reaction would be in the event that the Committee introduced an individual complaints procedure.

The meeting rose at 1.05 p.m.