



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Sixty-fifth session

### Summary record of the 1867th meeting

Held at the Palais Wilson, Geneva, on Monday, 27 January 2014, at 3 p.m.

*Chairperson:* Ms. Sandberg

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports of States parties** (continued)

*Third and fourth periodic reports of Germany* (continued) (CRC/C/DEU/3-4; CRC/C/DEU/Q/3-4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*
2. **Mr. Kleindiek** (Germany), replying to questions raised at the previous meeting, said that although the federal system was relatively new, it had proven highly satisfactory and there was no question of changing it, despite some inefficiencies and discrepancies between Länder. The Government was considering a number of measures to combat child poverty, by introducing a mandatory minimum wage, promoting gender equality and improving education and social participation mechanisms.
3. All national laws must be interpreted from a human rights perspective. In that context, the explicit incorporation of children's rights into the Constitution had been the subject of extensive discussion. He agreed that the expression "child welfare" should be replaced with the more appropriate concept of the "best interest of the child" in the Constitution.
4. Children were issued a birth certificate regardless of whether their father's identity was known. Surrogacy was prohibited in Germany; nevertheless, should the situation arise, a German surrogate mother would transmit her citizenship to her child. A child born in Germany to a surrogate mother who was not a German citizen would acquire German citizenship after five years.
5. The constituting document of the National Coalition for the Implementation of the United Nations Convention on the Rights of the Child in Germany pointed to the need to amend the Criminal Code to introduce harsher penalties for hate crimes. The issue of intersex children was new; the Government was still studying its ramifications while bearing in mind the best interest of the child. Provisions for the protection of privacy contained in personal status and youth protection laws also applied to unaccompanied refugee children.
6. New guidelines on baby hatches promoted ways of dissuading mothers from abandoning their babies. Mothers who had left their babies in a hatch were able to reclaim them within eight weeks if they so wished.
7. **Ms. Herczog** invited the delegation to clarify the Government's position on baby hatches. She would also like to know whether the use of baby hatches was regulated and how the legal right of such children to know their origin was upheld. Was it true that up to 25 per cent of babies left in hatches disappeared?
8. **Mr. Kleindiek** (Germany) replied that no children disappeared after being left in baby hatches. The Government's position was that those facilities saved lives. No additional hatches would be set up, but those already in place would continue to operate. As for children's right to know their origin, baby hatches contained a letter encouraging mothers to leave a description of themselves so that the children could later trace their biological parents. Children did have the right to know their origin but could not exercise that right if the information did not exist.
9. **Ms. Krieger** (Germany) added that the authorities had to balance the right of mothers to anonymity against that of children to know their origin. Pursuant to new legislation, data on mothers in such cases were collected, where possible, and kept confidential until the children reached the age of 16.

10. **Ms. Herczog** said she regretted that, despite the State party's commitment to the Europe 2020 strategy, only 20 per cent of children under age 3 and a mere 15 per cent of immigrant children in that age group attended early childhood education centres. Referring to reports that families in underprivileged areas had poor access to services, she asked whether the specific needs of the most vulnerable were taken into consideration in the provision of services. In view of the trend towards greater institutionalization, she also asked what measures were being taken to reduce institutional placements, to ensure early intervention and to provide adequate primary care. Although returning children to their biological families after years in the foster care system was positive in some respects, she wished to know how the authorities balanced the right of children to live with their families against the benefits of stability, and how they determined the best interest of the child in such cases.

11. **Mr. Kleindiek** (Germany) said that his Government would be spending 6 billion euros on expanding childcare services.

12. **The Chairperson** asked whether the Government had the means to enforce greater respect of privacy regulations, especially by the media. Children in residential establishments were reportedly dissatisfied with their level of privacy and complained, in particular, that male staff were rifling through girls' possessions. Was the privacy of children in such establishment regulated? She wished to know whether institutionalized children had access to a complaints mechanism or a helpline.

13. **Mr. Kleindiek** (Germany) replied that privacy in children's institutions was regulated by law and by internal codes of conduct. Such institutions had the authority to take administrative action against those who violated privacy rules. Efforts were being made to protect children more effectively from the dangers of the Internet and to educate parents. In addition, the constituting document of the National Coalition for the Convention addressed the issue of cyber-mobbing. Children could file complaints with the Children's Commission of the German Bundestag or call a helpline.

14. **Ms. Loegering** (Germany) said that children's institutions were required to have a complaints mechanism and to ensure that children knew how it worked.

15. **Ms. Khazova** (Country Task Force) asked whether children knew about the helpline and how they were informed about it.

16. **Mr. Madi** (Country Task Force) asked whether there was a single national helpline number or whether it differed from one Land to the next, who operated the helpline and how helpline staff processed complaints.

17. **Ms. Loegering** (Germany) replied that the helpline was widely known. It was publicized on flyers and in schools and could be accessed via the Internet. The toll-free number was the same throughout the country and the helpline was operated by an association.

18. **Mr. Madi** wished to know whether the association that operated the helpline was the association known as Nummer gegen Kummer. If so, could the delegation comment on reports that the helpline was not operating effectively owing to a lack of resources and awareness?

19. **Ms. Loegering** (Germany) confirmed that that association did operate the helpline. The delegation would follow up on those reports.

20. **Mr. Kleindiek** (Germany), replying to an earlier question, said that the law on the prohibition of corporal punishment had entered into force in 2006. It was well known and was invoked in legal proceedings.

21. **Mr. Cardona Llorens** (Coordinator, Country Task Force), said that, in view of the delegation's assertion that judges had become more sensitive to the issue of domestic violence, he wished to know how many court cases there had been that involved such offences and what the outcomes had been.
22. **Mr. Dittmann** (Germany) replied that his country was lagging behind in terms of data collection; therefore the Ministry of Justice was unable to provide such statistics.
23. **The Chairperson** urged the State party to remedy that shortcoming.
24. **Mr. Kleindiek** (Germany) said, in reply to questions raised earlier on education, that although educational opportunities did vary between the different Länder, some common standards had been developed in recent years to improve the situation. Placement assessments took into account the wishes of the parents and the child. There was a growing trend towards establishing comprehensive schools rather than segregating students as in the past. The authorities planned to introduce all-day schools, as studies had shown that educational achievement improved when students spent more time in school. Benefits covering expenses such as school lunches and school supplies varied among the Länder, as did the situation of education for children with disabilities. Closed institutions for children with disabilities were used only for a small number of children and only as a last resort.
25. **The Chairperson** said that the Committee would appreciate more detailed information on the educational opportunities available to children with disabilities.
26. **Ms. Herczog**, supported by **Mr. Cardona Llorens**, said that not only children with disabilities but also other vulnerable children were subjected to segregation and discrimination, and that children from low-income families had fewer chances of attending a gymnasium, an advanced secondary school where emphasis was placed on academic attainment. The State party should make efforts to reduce early school leaving and support the integration of children at risk of dropping out. All-day schools produced better outcomes only if they were inclusive and offered high-quality education.
27. **Mr. Cardona Llorens** added that it would have been useful to include representatives of the Länder in the State party's delegation. In some Länder, only 6 per cent of children with disabilities attended mainstream schools. A large proportion of children were segregated in the education system, and that situation should be changed.
28. **The Chairperson** said that children were often under considerable pressure to perform well in school, which was detrimental to their mental health and their ability to enjoy life and leisure pursuits.
29. **Mr. Kleindiek** (Germany) said that he agreed with the Committee's comments. The discrepancies between the services provided by different Länder needed to be remedied, and the federal Government was planning to transfer approximately 10 per cent of the federal budget to the Länder for that purpose.
30. **The Chairperson** asked whether any conditions would be attached to that transfer, and whether the federal Government would provide guidelines on how the money should be spent.
31. **Mr. Kleindiek** (Germany) said that the federal Government had drawn up a list of projects on which the money could be spent, which included day-care centres and schools. Related goals and benchmarks had been established.
32. **Ms. Khazova** asked whether that list included support for families in difficult circumstances.
33. **Mr. Gastaud** asked whether any monitoring was carried out to ensure that children were not obliged to perform domestic or other work outside school hours and thus had time

to enjoy the right to play. A recent spate of complaints in neighbouring countries about noise made by children playing had resulted in the closure or relocation of some school playgrounds. He asked whether such complaints would be legally admissible in the State party and, if so, whether the courts had issued any rulings penalizing schools for noise made by children.

34. **Mr. Kleindiek** (Germany) said that some noise complaints had been brought before the courts. In one such case, pertaining to whether a kindergarten could be opened in a residential area, the courts had ruled in favour of the kindergarten at second instance. The legal framework in most Länder and municipalities had been amended to make such cases inadmissible.

35. **Ms. Loegering** (Germany) said that the federal Government was endeavouring to ensure that the noise made by children was accepted by society. A federal law on noise emission established that noise made by children was not punishable by law, and facilities for children were allowed in residential areas. School playgrounds often remained open after school hours.

36. **Ms. Ryberg** (Germany) said that there were no uniform rules about playtime for children, and that the amount of time spent in the classroom depended on the child's age. The number of years spent in school for students on the Gymnasium track had been reduced from 13 to 12, which had created excessive pressure on some children. In response, some Länder had reverted to the previous arrangement. Students nowadays had more options regarding the length of time they spent in school, and there were more pathways to graduation.

37. **Mr. Kleindiek** (Germany) said that discussions on whether children should study for 12 or 13 years were still ongoing in Germany and that agreement remained to be reached.

*The meeting was suspended at 4.25 p.m. and resumed at 4.45 p.m.*

38. **Ms. Ryberg** (Germany) said that a paradigm shift was taking place in the Länder, which were replacing special schools for children with disabilities with an inclusive school system. However, teachers, parents of children with disabilities and parents of other children had some reservations about that change. Some special schools might remain open. Experience would show which mix of schools was best for children with disabilities. Tracking was not used as rigorously in the mainstream school system as in the past, and the types of secondary education available included gymnasiums and various types of vocational schools. Studies had shown the quality of the German education system to be above average. Students whose parents could not afford childcare could remain at school after hours for extra tutoring.

39. **Mr. Cardona Llorens** said that experience had shown inclusive education to be in the best interest of children in all but the most exceptional cases. Special schools might remain open during a transitional period, but should not continue to operate in the long-term. As for tracking in the education system, the comprehensive schools established thus far had shown very positive results. He would like to know what the Government was doing to further expand that system.

40. **The Chairperson** said that it would appear to be difficult for a child to change tracks by moving from a vocational school to a Gymnasium or vice versa.

41. **Ms. Ryberg** (Germany) said that the debate about inclusive education was ongoing. The Government wished to implement an inclusive system, but the extent to which special schools would remain open had yet to be decided. With regard to tracking in secondary education, the system was more flexible than it appeared. While it was not common for students to transfer from a vocational school to a gymnasium, it was possible to do so.

42. **Mr. Kleindiek** (Germany), turning to questions raised earlier on juvenile justice and children in conflict with the law, said that federal legislation provided for a number of measures at the Land and municipality levels to deal with children in conflict with the law. In Hamburg, for example, multiparty teams worked with such children to prevent them from entering a life of crime.

43. **Mr. Cardona Llorens** requested further information about those teams, including the preventive and family support measures that they took. He asked whether such teams existed in all Länder. He also asked whether the Government was planning to revise the regulation that allowed children under 18 to be placed in detention with young adults.

44. **Mr. Kleindiek** (Germany) said that he had mentioned the teams working in Hamburg only as an illustrative example and that a federal regulation was in place to govern the treatment of children in conflict with the law.

45. **Ms. Ryberg** (Germany) said that the judicial system provided for a broad range of services for children and youths in conflict with the law throughout the country, including intensive, one-on-one social and educational support.

46. **Mr. Dittmann** (Germany) said that in his country's juvenile justice system, a distinction was made between juveniles (14 to 18 years of age) and young adults (over 18 and under 21 years of age). Judges exercised their discretion in deciding whether a young adult was sufficiently mature to be tried as an adult. Priority was given to education and training in the juvenile justice system. The length of custodial sentences handed down to juveniles was not necessarily shorter than those handed down to adults. Conditions of detention for juveniles differed from those for young adults. The sentences handed down varied from one Land to another. Some Länder took a more lenient approach, in an attempt to show young offenders the error of their ways and guide them down the right path. Some people had argued that the age of criminal responsibility should be reduced, but the Government was not eager to do so.

47. **Mr. Cardona Llorens** asked whether, under the system used in juvenile detention centres, a minor of 15 or 16 years could be confined with an adult of 20 or 21 years. He would like to know whether there were plans to harmonize the approaches of the different Länder. Experience had shown that it was not desirable to lower the age of criminal responsibility to 14 years.

48. **Mr. Dittmann** (Germany) said that adolescent inmates were separated from young adults. No harmonization among the Länder was planned, and his Government did not intend to reduce the age of criminal responsibility.

49. **The Chairperson** asked whether the State party would consider raising the age of criminal responsibility to 15 years.

50. **Mr. Kleindiek** (Germany) said that he had no indication of any plans to do so.

51. **Mr. Dittmann** (Germany) said that recent revelations about child abuse in institutions had had a major impact on the national discussion on child victims. In judicial proceedings, it was important to strike a balance between protecting the victim from additional trauma resulting from the proceedings and ensuring that the defendant was tried fairly. In the wake of those revelations, protection for child victims had been extended so that they could not only avoid directly confronting defendants but could provide videotaped testimony. Since witnesses were not cross-examined in his country, there was no obligation to give defendants an opportunity to confront their accusers. In short, the protection usually afforded to defendants was slightly reduced in order to protect child victims. Child abuse cases were tried behind closed doors. Detailed guidelines existed for law enforcement officials dealing with such cases, and victims were looked after by specially trained police officers during proceedings.

52. **Mr. Cardona Llorens** asked whether child victims were questioned by judges or by specially trained interviewers.
53. **Mr. Dittmann** (Germany) said that during the main proceedings, questioning was usually, although not always, conducted by a judge. Separate questioning was conducted by a psychologist who visited the child at the child's place of residence.
54. **The Chairperson** asked who conducted the interview when a child's testimony was videotaped.
55. **Mr. Dittmann** (Germany) said that videotaped interviews were conducted by specially trained law enforcement personnel, who, in the case of child victims, were very often female.
56. **Mr. Kleindiek** (Germany), replying to an earlier question in connection with arms exports to countries where children were known to be involved in armed conflict, said that his Government kept a careful eye on the situation in the countries to which Germany exported arms. If it appeared that violations of the Convention might be taking place, exports of arms to the country concerned were not authorized.
57. Replying to a question about joint custody, an arrangement referred to in Germany as *gemeinsame Verantwortung* (shared responsibility), he said that his Government's experience demonstrated clearly that shared parental responsibility served the best interest of the child.
58. **The Chairperson** said that the question had been about the English term "custody". If the equivalent German term meant "responsibility" then, from the Committee's viewpoint, the answer was satisfactory.
59. **Ms. Khazova** said that, as she understood it, the word actually used in German law translated into English as "custody", not "responsibility".
60. **Mr. Kleindiek** (Germany) said that the term *Sorgerecht* (custody) was used in legal texts, while the newer term *gemeinsame Verantwortung* was often used in other contexts. In practice, both terms referred to the concept of shared responsibility for the child.
61. **The Chairperson** observed that the term *Sorgerecht* emphasized parental authority rather than responsibility, and that most European countries had updated their legal terminology in that regard.

*Initial report of Germany on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/DEU/1; CRC/C/OPSC/DEU/Q/1 and Add.1)*

62. **Mr. Gurán** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) said that, although the State party had ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography five years previously, it had still not provided the Committee with sufficient data on implementation. The Committee required data that was more fully disaggregated, for example by ethnic origin and refugee status. Information should be provided on all cases covered by the Optional Protocol, whether they had been investigated or not. Information about cases that had been investigated should include data on prosecutions and convictions. The fact that each Land produced separate statistics, often using different indicators, made it difficult to grasp the overall situation.
63. National standards were needed to improve coordination among the Länder in respect of the treatment of victims.
64. He asked why the State party's replies to the list of issues did not mention the sale of children. In view of the fact that the State party had not provided information on sex

tourism, he would like to know whether steps had been taken to develop a code of conduct for travel agencies. Moreover, the Committee would like to receive detailed information on compensation received by victims under the Optional Protocol.

65. **Ms. Oviedo Fierro** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked for a progress report on implementation of the Action Plan to Protect Children and Juveniles against Sexual Violence and Exploitation. Were training and awareness-raising activities focusing on the risks of sexual exploitation and abuse carried out in all Länder and at the national level? Were there activities tailored to families and children?

66. The Committee had noted that some services relating to implementation of the Optional Protocol were provided by NGOs and wondered how the sustainability of such services was ensured. For example, if an NGO was asked to develop a set of guidelines or a code of conduct, what role did the Government play in that endeavour? Likewise, the Committee was concerned that many policies were translated into projects, which could be discontinued if funding or political will vanished. How did the State party ensure continuity in the implementation of public policy? In that connection, she would like to know whether the nationwide helpline for children was managed and funded by the State and what mechanisms were in place to ensure its sustainability.

67. Did refugee children rescued from trafficking, pornography, prostitution or sale enjoy the same protections as German children? How did institutions monitoring incidents of child abuse coordinate with schools and families? What training was provided to teachers, social services staff and others working with children regarding their obligations under the Optional Protocol?

68. She requested additional information on recent cases involving large rings of people involved in the sale of children, child prostitution and pornography, as well as information on the State party's cooperation with other countries and with the European Union in connection with implementation of the Optional Protocol.

69. **Mr. Kotrane** said that the Criminal Code did not appear to fully reflect the provisions of the Optional Protocol regarding the sale of children. For example, it was not clear from paragraph 4 of the State party's replies whether the law treated the sale of a child's organs for transplantation as a case of the sale of children. Also, it was not clear whether making children perform forced labour or trafficking them for the purposes of adoption were considered to represent the sale of children.

*The meeting rose at 6 p.m.*