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Human Rights Committee

Information received from Germany on follow-up to the concluding observations on its seventh periodic report *

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* The present document is being issued without formal editing.

Follow-up information to the concluding observations (CCPR/C/DEU/CO/7)

1. This statement meets the Committee's request in paragraph 53 of its Concluding observations relating to paragraphs 21, 31 and 43.

Follow up information related to paragraph 21

Prohibition of the assignment of sex

2. The Act on the Protection of Children with Variations in Sex Development, which entered into force on 22 May 2021, enshrined in section 1631e of the Civil Code (BGB) extensive protection for those children's right of sexual self-determination. Treatment with the specific purpose of aligning, to an assigned sex, children with a diagnosed variant of sexual development who are not yet able to consent is strictly prohibited. If a child is unable (does not yet have the maturity and capacity) to make a self-determined decision on intervention, their parents, acting as their legal representatives, cannot consent on their behalf, nor can the child be represented by a court-appointed supplementary curator.

3. Under section 1631e(2) BGB, parents of such a child may consent to surgical intervention in that child's internal or external genitalia, the consequence of which could be an alignment of the child's physical appearance with that of the male or female sex, only if there is another ground for the intervention and the operation cannot be postponed until the child is able to consent themselves. Parental consent must also be reviewed and ratified by the family court. The Act intentionally creates incentives for interdisciplinary assessment of planned interventions.

4. The new provisions are to be reviewed within five years, with the review covering the effectiveness of protection and whether the family court ratification process should be extended to other types of treatment or other groups of children. This process is to identify any gaps in protection.

Access to justice

5. Individuals affected by violations of the legislation have extensive compensation entitlements under civil law; in certain circumstances, they have a right to state compensation. In some cases, criminal charges may also be brought.

6. Under treatment contracts, the general statutory obligations enshrined in sections 630a et seqq. BGB provide far-reaching civil-law protection, which covers the treatment of intersex children. Section 630a(2) BGB stipulates that treatment is to take place according to the generally recognised standards of medical care applying at the time of the treatment.

7. Under section 630c(2) and section 630e BGB, the treating party is also subject to extensive disclosure and information obligations, which form the basis for patients' effective informed consent under section 630d BGB. The treating party must record in medical records all measures that are relevant in medical terms for current and future treatment and its outcome (section 630f BGB), and must keep those medical records until the day on which the person treated reaches the age of 48 (1631e(6) BGB). Under section 630g BGB, the patient is, on request, to be permitted to inspect their complete medical records without undue delay if and to the extent that there are no significant therapeutic grounds or third-party rights at stake that would warrant objections to inspection. This complies with the right to information – which is not usually exercised until adulthood – of the children treated.

8. A review is also currently underway of how to further improve safeguards for the children affected – for example: by defining in more detail when sex-assignment intervention is prohibited, or by facilitating access to medical records (e.g. through a register). The courts, relevant associations, the research community and civil society are all providing input.

9. Unlawful genital-altering surgery can lead to criminal prosecution for bodily harm (sections 223 et seqq. of the Criminal Code (StGB)) and female genital mutilation (section 226a StGB).

10. Where genital-altering surgery constitutes a violent crime within the meaning of Book 14 of the Social Code (SGB XIV), victims may be entitled to state social compensation under SGB XIV. Possible benefits range from early psychotherapeutic intervention to pensions in cases of long-term or permanent health impairments.

Statute of limitations

11. Response to concerns about the statute of limitations for compensation claims for unlawful genital-altering surgery: victims are already guaranteed sufficient time to bring claims under the limitation periods currently in force. Claims for damages on the grounds of intentional injury to limb do not become statute-barred until 30 years after the event (section 197(1) no. 1 BGB). This allows children affected to bring claims themselves once they turn 18 and are legally considered adults. Under section 207(1) no. 2 BGB, the limitation of claims against parents who have authorised genital-altering surgery is suspended (i.e. the 30-year limitation period does not begin) until the child turns 21. These provisions ensure that an injured party has sufficient time after attaining their legal majority and becoming able to manage their own affairs to bring any compensation claims against doctors who treated them and/or against their parents.

Follow up information related to paragraph 31 (a) and (b)

12. To prevent abuse and restrictions, measures are in place at various levels to advise care homes and care services on and monitor their compliance with quality, legal and medical standards.

- Annual quality inspections are conducted by the Federal Medical Advisory Service or the Auditing Service of the Association of Private Health Insurers as required under Book 11 of the Social Code (SGB XI). Findings are published and can lead to corrective measures or sanctions. In residential care facilities, inspectors examine whether measures involving the deprivation of liberty (e.g. mechanical restraint; isolation; and the administration of sedatives) are being avoided wherever possible, and whether, when there is no alternative, they are being employed correctly. Inspectors also check whether ongoing measures involving deprivation of liberty are regularly reviewed and whether a given measure has been consented to or authorised or approved by the court in accordance with section 1831 BGB.

13. Since 1 October 2019, long-term residential care facilities have also been required to record quality data for all residents every six months on the basis of ten quality indicators. Indicators include ‘use of straps’ and ‘use of bed rails’, ensuring better documentation of any coercive measures and allowing steps to be taken to address their use.

14. Alongside scheduled annual inspections, unannounced inspections can also be conducted in response to information or complaints.

- The care home inspectorates in the *Länder* also conduct both scheduled and for-cause inspections to monitor and advise care facilities. The scope and conduct of those inspections are governed by *Land* care home acts and ordinances. Inspectors can examine facilities’ approach to measures involving deprivation of liberty and documents such as court orders.

- Facilities are advised on chemical and physical restraints and on how to reduce the use of measures involving deprivation of liberty (for example: the ‘Werdenfelser Weg’ approach; ReduFix; technological alternatives such as scanning systems; non-slip pads; crash mats; and alternative – safe – living areas).

15. Care home inspectorates have the power to impose sanctions. For example, section 7(4) of Lower Saxony’s Act on Assisted Living requires care home operators to notify the care home inspectorate if they become aware of a risk to or interference with residents’ right to life, physical integrity or sexual self-determination. A culpable breach of this requirement can result in a fine of up to 10,000 euros. Comparable regulations in Brandenburg provide for fines of up to 25,000 euros.

16. The competent supervisory authority follows up on information or complaints relating to measure involving deprivation of liberty without delay and generally unannounced, if

appropriate together with the Medical Service or the local police or judicial authorities. Where mistreatment or sexual abuse is suspected, the supervisory authority works with the criminal investigation and prosecution authorities.

- A wide range of professional development courses on preventing violence are offered to facility staff to help prevent incidents, ensure ongoing staff training and raise staff awareness of the issues. In some cases (for example in Hesse), training courses are mandated by statute.
- A number of *Länder* fund additional advisory and complaints bodies and/or have set up stakeholder networks for the prevention of violence. Examples: Berlin and Brandenburg have a central contact point for crises and violence prevention in residential and home care settings; Saxony has a unit to combat violence in facilities and services for the rehabilitation and participation of people with disabilities; and Hamburg has a specialist unit on avoiding coercive measures in care.

17. A process is currently underway at national level to improve protection against violence from people in need of care. It is aimed in part at cutting the use of measures involving deprivation of liberty and at meeting the needs of people with psychosocial disabilities.

18. The 99th Conference of German Labour and Social Affairs Ministers (ASMK) adopted a resolution on 'Protection against violence for people in need of care' in 2022. A process was then launched involving public administration; care associations; representatives of care recipients; civil society; and research organisations. All stakeholders are working together to define and implement practical solutions to improve protection from violence for people requiring care.

19. The Federal Ministry of Health, the Federal Ministry of Justice, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the competent Berlin Senate Department are coordinating implementation of the ASMK resolution in a joint steering group.

20. Regarding facilities caring for people with disabilities, section 37a of Book 9 of the Social Code (SGB IX, Rehabilitation and participation of people with disabilities) requires service providers to take suitable measures to protect people with disabilities and people at risk of disability from violence. Those measures include, notably, developing and implementing anti-violence strategies tailored to the facility or services.

Follow up information related to paragraph 31 (c)

21. Pursuant to the mental health acts of the *Länder* ('PsychKGs'), a person can be placed in a clinic against his or her will if there is an acute and considerable risk of self-harm or harm to others as a result of a mental disorder/illness.

22. The requirements for such placement under the PsychKGs of the *Länder* are essentially identical, with many *Länder* sharing the same legislative text.

23. In all sixteen PsychKGs, the following applies as standard:

- Placement is only permissible if and as long as there is a current danger that the person concerned will cause significant harm to themselves or another due to their mental illness.
- Placement is only permissible if this current danger cannot otherwise be averted.
- A current danger is considered to exist if the mental illness manifests itself in such a way that a harmful event is imminent or its occurrence is unforeseeable yet expected at any time due to special circumstances.
- Placement requires an application and a court decision. In the case of provisional placement, court approval is required within the first 24 hours.

24. The principles of necessity and proportionality are taken into account.

25. As a result of the decisions of the Federal Constitutional Court, the PsychKGs of the individual *Länder* are becoming increasingly uniform in the areas of physical restraint and compulsory medication.

Follow up information related to paragraph 31 (d)

26. With the Act to Reform the Law on Guardianship of 4 May 2021, section 1905 BGB (old version) was replaced with section 1830, which has applied since 1 January 2023. According to section 1830 BGB, sterilisation is only possible if the person incapable of consenting themselves agrees to it, i.e. if the interference corresponds to the natural will of the person concerned. For persons who are incapable of forming or expressing a natural will, sterilisation is now prohibited. The will and wishes of persons incapable of consenting are safeguarded by the requirement of section 1821 BGB, which states that the supporting legal representative must provide the person concerned with comprehensive information and advice and establish their actual will in the interests of a supported decision-making process.

27. As with the previous version of section 1905 BGB, the legislator has decided against a complete statutory ban on proxy consent as part of the reform of guardianship law. Such a ban would have resulted in an unjustifiable restriction of the right of self-determination of persons with supporting legal representation. Sterilisation is a method of contraception which is frequently used as a matter of course by people who do not have supporting legal representation, and it has fewer side effects than other methods. By prohibiting this option, persons incapable of consenting would be unable to use it even if it corresponded to their self-formed wishes. An absolute ban would therefore deny this group of people the right to choose a particular contraceptive method. This would be incompatible with the right of self-determination.

Follow up information related to paragraph 31 (e)

28. Persons requiring care and their relatives may contact the long-term care insurance fund or the competent care home inspectorate at any time. These bodies may then commission unannounced inspections. If the circumstances are criminally relevant, the police or public prosecutor's office may also be notified; if there are sufficient factual indications of a criminal offence, the public prosecutor’s office is then obliged to investigate.

29. The provisions governing care homes at *Land* level have been or are currently being amended. In some *Länder*, centralised and decentralised complaints offices have already been set up (e.g. in North Rhine-Westphalia, Lower Saxony, Berlin, Hamburg and Bavaria).

30. More extensive complaints mechanisms are also being discussed in the context of the AMSK resolution on ‘Protection against violence for people in need of care’ (see also paragraph 31 b).

Follow up information related to paragraph 31 (f)

31. The Covid-19 pandemic lasted roughly from the beginning of February 2020 to the beginning of April 2023. During this period, the following protective measures, amongst others, were periodically introduced for elderly persons, in particular to protect those in residential care homes from falling severely or fatally ill:

- Residential or semi-residential care facilities for the elderly, the disabled or those in need of care – as well as any comparable facilities – could only be entered while wearing a respiratory mask (FFP2 or similar) and with proof of a negative test result in accordance with section 22a(3) of the Infection Protection Act (IfSG).
- In home care services and companies providing services comparable to those of residential or semi-residential care facilities for elderly or disabled persons or persons requiring care, activities could only be carried out by persons wearing a respiratory mask (FFP2 or similar) who had also presented a negative test result in accordance with section 22a(3) IfSG at least three times per calendar week.
- Initially, there were restrictions on visiting care homes, and the population as a whole was periodically subject to lockdown and social distancing rules (particularly in the

first year of the pandemic) in order to prevent or slow the further spread of the virus while protecting vulnerable groups.

- Extensive testing and vaccination programmes were funded and implemented, particularly for residents in care facilities and the staff working there.

32. In order to ensure the healthcare system is well equipped in the medium and long term, the decision was taken to set up a National Health Protection Reserve. The Federal Government is currently storing the protective equipment procured in the context of the Covid-19 pandemic. Some of these stored materials can also be used by care facilities.

33. The measures and experiences of the pandemic are being documented as part of a national 'lessons-learned' process. The aim is to make the care system more crisis-resilient and thus better prepared for future pandemics and other critical events.

Follow up information related to paragraph 43

34. The Federal Government shares the view that States Parties should ensure that all types of surveillance activities and interference with privacy are in full conformity with the Covenant, in particular Article 17. This is ensured by German law. The Covenant does not state that all types of surveillance activities should require judicial authorisation.

Surveillance activities of the Federal Intelligence Service

35. According to section 1(2) of the Federal Intelligence Service Act (BNDG), the statutory mandate of the Federal Intelligence Service (BND, the sole German foreign intelligence service) is to gather and analyse the information necessary to obtain intelligence on other countries that is significant to the foreign and security policy of the Federal Republic of Germany. The BNDG stipulates that the BND may not be affiliated with a police office (section 1(1) sentence 2 BNDG) and that the BND has no police powers or authorities to issue instructions (section 2(3) sentence 1 BNDG).

36. As part of the executive, the BND is bound in the performance of its activities by law and justice (Article 20(3) of the Basic Law). The primary basis for its actions is provided by the BNDG. The BNDG is supplemented by the Article 10 Act (G 10), which governs the restrictions on the privacy of correspondence, post and telecommunications. The BNDG in particular has repeatedly been reformed since 2021 in order to ensure that the BND's actions have a secure and precise legal basis and that the BND consistently provides the necessary protection of fundamental rights arising from national and international obligations. Legislative amendments were also made in response to decisions of the Federal Constitutional Court and the constitutional requirements established therein (see, for example, the decision of 19 May 2020, 1 BvR 2835/17, and the subsequent fundamental revision of the BNDG (in force since 2022); or the decision of 28 September 2022 - 1 BvR 2354/13 and the subsequent amendment of the BNDG (in force since the beginning of 2024)).

37. The establishment of the Independent Control Council in 2022 to provide independent legal oversight is also the result of requirements set by the Federal Constitutional Court.

38. At the heart of the existing parliamentary oversight of federal intelligence services lies the Parliamentary Oversight Panel, which has effective control mechanisms with a basis in legislation (the Oversight Panel Act), including regular classified meetings, extensive powers of investigation, right to conduct hearings etc. The heads of the federal intelligence services are also questioned once a year in a public hearing.

39. This oversight is supplemented by the oversight exercised by the G 10 Commission in matters relating to the G 10, the oversight of data protection law by the Federal Commissioner for Data Protection and Freedom of Information, and the oversight of the intelligence services' financial plans by the Trust Body and by the Federal Court of Audit. Finally, the information rights of members of the German Bundestag in the form of parliamentary queries also apply to matters relating to the federal intelligence services; the same also applies to the Bundestag's rights of inquiry in the form of investigative committees. Overall, the BND and the other federal intelligence services are subject to comprehensive and detailed oversight.

Surveillance activities of criminal prosecution authorities

40. In Germany, criminal investigations by prosecuting authorities always require a basis of authorisation and must comply with the principle of proportionality in each individual case.

41. Accordingly, German investigating authorities may only under very strict legal conditions interfere by technical means in an information technology system used by the person concerned without their knowledge and either extract data from the system (remote search) or monitor telecommunications for the purposes of criminal prosecution.

42. Pursuant to the provisions of section 100b(1) and section 100a(1) of the German Code of Criminal Procedure (StPO), these investigative measures are only possible if certain facts give rise to the suspicion of the (attempted) commission of a specific listed criminal offence. In the case of remote searches, listed offences are particularly serious offences with maximum sentences of 10 years' imprisonment or more (such as murder, murder under specific aggravated circumstances, or the formation of terrorist groups). The list of offences for telecommunications surveillance in section 100a(2) StPO is broader than that in section 100b(2) StPO, but it too sets high hurdles by limiting itself to serious crimes. In both cases, the offence must be especially serious in the concrete case, and the investigation into the facts of the case or ascertaining the whereabouts of the accused in another manner must be considerably more difficult or without prospect of success.

43. Furthermore, extremely strict procedural requirements apply to both the ordering of remote searches and the ordering of telecommunications surveillance. Specifically, the relevant measure may only be ordered by judicial decision at the request of the public prosecutor's office. In the event of imminent danger, an order by the public prosecutor's office is sufficient. However, the judicial decision must then follow within three days. The order for a remote search must be limited to a maximum of one month and may only be extended by one month at a time. In the case of telecommunications surveillance, an order may only be issued for a period of three months with an option to extend by only three months at a time.

44. If the duration of the order for a remote search has been extended to a total period of six months, the next highest court is to decide on any further extension orders. The court ordering the measure must also be informed about the course of the measure. Furthermore, both the remote search and telecommunications surveillance are subject to provisions for the protection of data relating to the core area of private life. Any collected data relating to this area must be deleted without delay and may not be used against the accused.

45. Judicial decisions on remote searches and telecommunications surveillance are subject to appeal and their lawfulness can thus be reviewed retrospectively by a higher court. If the legal requirements for the ordering of the measures have been violated, the evidence obtained may be declared inadmissible.