



International Covenant on Civil and Political Rights

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Human Rights Committee

Report on follow-up to the concluding observations of the Human Rights Committee*

Addendum

Evaluation of the information on follow-up to the concluding observations on Germany

Concluding observations (133rd session): CCPR/C/DEU/CO/7, 1 November 2021

Follow-up paragraphs: 21, 31 and 43

Information received from State Party: CCPR/C/DEU/FCO/7, 12 November 2024

Committee's evaluation: 21 [B], 31 [B] [C] [A] and 43 [B]

Paragraph 21: Intersex persons

The State Party should take all steps necessary to ensure that all acts relating to the assignment of a sex to intersex children performed without their free and informed consent are specifically prohibited, except in cases where such interventions are absolutely necessary for medical reasons and the best interests of the child have been duly taken into account. This should include the consideration of amendments to the Law on the Protection of Children with Variations in Sex Development of 2021 within the five-year period allocated for its review, if necessary. The State Party should also ensure that all victims have access to remedies, including through a revision of the application of statutes of limitation for violations in childhood, taking steps to ensure that all victims have access to their health records and considering the establishment of a dedicated compensation fund.

Summary of the information received from the State Party

Under the Act on the Protection of Children with Variations in Sexual Development, effective from 22 May 2021, a new section 1631e was inserted in the Civil Code. According to section 1631e, it is prohibited to align children diagnosed with sexual development variants to an assigned sex if they are unable to consent. Parents or court-appointed curators may not consent on behalf of the child. Under section 1631e (2) and (3), surgical intervention on a child's internal or external genitalia is permitted with parental consent only if the procedure cannot wait until the child is able to consent, and only following ratification by the family court.

* Adopted by the Committee at its 144th session (23 June–17 July 2025).



The Act encourages interdisciplinary assessment of planned interventions. The new provisions are to be reviewed within five years to evaluate the effectiveness of protection and the possible expansion of the process of ratification by the family court to other treatment.

Individuals affected by violations of the legislation are entitled to extensive compensation under civil law, and State compensation in certain circumstances. In some cases, criminal charges may also be brought.

Under sections 630c (2) and 630e, of the Civil Code, the treating party is subject to extensive obligations with regard to disclosure and information, forming the basis for the patient's informed consent under section 630d. Under section 1631e (6), the treating party must keep the medical records until the person treated reaches the age of 48. Under section 630g, patients must be permitted, upon request, to inspect their complete medical records to the extent that there are no significant therapeutic grounds or third-party rights at stake that would warrant objections to inspection. A review is under way to evaluate how to further improve safeguards, such as by defining in more detail when sex-assignment intervention is prohibited and by facilitating access to medical records. The courts, relevant associations, the research community and civil society are all providing input.

Unlawful genital-altering surgery can lead to criminal prosecution for bodily harm and female genital mutilation, and victims may be entitled to receive State social compensation, such as psychotherapeutic intervention and pensions. Victims are already guaranteed sufficient time to bring claims: under section 197 (1) (1) of the Civil Code, there is a 30-year period of limitation for claims on grounds of intentional injury, enabling children affected to bring claims themselves once they reach the age of 18; and under section 207 (1) (2), the limitation of claims between a child and the child's parents is suspended until the child reaches the age of 21, ensuring that an injured party has sufficient time upon majority to bring any compensation claims against their parents or doctors.

Committee's evaluation

[B]

The Committee welcomes the information that a review is under way to evaluate how to further improve safeguards for intersex children, and that a review of the new provisions under the Act on the Protection of Children with Variations in Sexual Development will take place within five years from the adoption (that is, before May 2026). It regrets, however, the lack of concrete information provided on the steps taken during the reporting period: (a) to ensure compliance with and the adequate implementation of the Act; and (b) to guarantee the provision of remedies in practice. It reiterates its recommendations in this regard, and requests further information on the progress of the legislative review and statistical data on the number of complaints received regarding violations of the legislation, on any criminal charges that have been brought and on the compensation provided to victims.

Paragraph 31: Institutional care

Recalling the Committee's previous recommendation, the State Party should:

- (a) **Continue and step up efforts to monitor, prevent and eradicate the use of physical and chemical restraints in institutional care settings;**
- (b) **Intensify efforts to monitor, prevent and eradicate all forms of abuse against older persons and those with psychosocial disabilities in residential care facilities;**
- (c) **Consider further harmonizing the legal standards in the different Länder on the involuntary hospitalization and forced committal of those with psychosocial disabilities, ensuring that all such standards and judicial oversight mechanisms uphold the principles of necessity and proportionality;**
- (d) **Remove any exception in the law to the ban on the forced sterilization of adults with disabilities and ensure that such standards are effectively implemented;**

(e) Consider increasing the availability of specific complaints mechanisms to receive, investigate and facilitate the prosecution and punishment of those responsible for all forms of abuse in institutional care settings;

(f) Take targeted measures to protect older persons from coronavirus disease (COVID-19) and/or other major public health emergencies and restore full regulatory oversight as soon as possible.

Summary of the information received from the State Party

(a) and (b) To prevent abuse and restrictions, measures are in place to advise care homes and services on and monitor their compliance with quality, legal and medical standards, such as annual quality inspections by the Federal Medical Advisory Service and unannounced inspections following complaints. Findings are published and may lead to corrective measures or sanctions.

Inspectors examine whether measures involving deprivation of liberty, such as mechanical restraint and sedatives, are being avoided wherever possible, and whether, when there is no alternative, they are being employed correctly, with consent and authorized by the courts in accordance with section 1831 of the Civil Code. Sanctions for violations include fines of up to 25,000 euros.

The competent supervisory authority follows up without delay on complaints regarding the use of measures involving deprivation of liberty, where appropriate with medical services 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.

Facilities receive guidance on reducing the use of restraints and training is provided to staff on preventing violence. In some cases, training courses are mandated by statute.

Since October 2019, long-term residential care facilities have been required to record quality data biannually based on 10 quality indicators, including “use of straps”. A process is currently under way at the national level to improve protection against violence, aimed at reducing the use of measures involving deprivation of liberty and meeting the needs of persons with psychosocial disabilities.

At the ninety-ninth Conference of Labour and Social Affairs Ministers, held in 2022, a resolution was adopted on protection from violence for people in need of care, which launched a process of defining and implementing practical solutions to improve such protection. A joint steering group, comprising the relevant federal ministries and the competent department of the Berlin Senate, is coordinating this initiative.

Under the Social Code (book IX, sect. 37a), service providers are required to take appropriate measures to protect persons with disabilities from violence, including strategies tailored to the facility or services.

(c) Pursuant to the mental health acts of the Länder, a person may 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 condition.

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

The requirements for such placement under the mental health acts of the Länder are essentially identical, with many Länder sharing the same legislative text. The principles of necessity and proportionality are taken into account, and the following standards apply in the mental health acts of all 16 Länder:

- Placement is permissible only if and for as long as there is a current danger that the person concerned will cause significant harm to themselves or another owing to their mental condition.
- Placement is permissible only if the current danger cannot otherwise be averted.

- A current danger is considered to exist if the mental condition manifests itself in such a way that a harmful event is imminent, or its occurrence is unforeseeable yet expected at any time owing 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.

(d) Under the Act to Reform the Law on Guardianship, passed on 4 May 2021 and in effect since 1 January 2023, former section 1905 of the Civil Code was replaced with new section 1830. According to section 1830, sterilization is permissible only if the person incapable of consenting themselves agrees to it; that is, if the intervention corresponds to the natural will of the person concerned. For persons who are incapable of forming or expressing their natural will, sterilization is now prohibited. The will and wishes of persons incapable of consenting are safeguarded by the requirement, under section 1821 of the Civil Code, that the supporting legal representative provide the person concerned with comprehensive information and advice and establish their actual will in the interests of a supported decision-making process.

As with former section 1905 of the Civil Code, 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. Sterilization is a method of contraception that is frequently used as a matter of course by persons 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 such persons the right to choose a particular contraceptive method, which would be incompatible with the right of self-determination.

(e) 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.

The provisions governing care homes at the Land level have been or are currently being amended. In some Länder, centralized and decentralized complaints offices have already been set up.

More extensive complaints mechanisms are also being discussed in the context of the resolution of the Conference of Labour and Social Affairs Ministers on protection from violence for people in need of care.

(f) During the COVID-19 pandemic, protective measures were periodically introduced for older persons. Entry into residential and semi-residential care facilities, as well as the provision of home care services, was restricted to individuals wearing respiratory masks and presenting proof of a negative test result in accordance with section 22a (3) of the Act on the Prevention and Control of Infectious Diseases in Humans.

The population as a whole was periodically subject to lockdown and social distancing rules, and extensive testing and vaccination campaigns were introduced, especially for residents and staff of care facilities, to protect vulnerable groups. To strengthen medium- and long-term preparedness, the decision was taken to create a national reserve for health protection, and the federal Government is storing the protective equipment procured during the COVID-19 pandemic, some of which may be used by care facilities.

A national “lessons-learned” process is under way to document experiences of the pandemic and enhance the resilience of the care system to future crises.

Committee's evaluation

[B]: (a)–(c) and (e)

While welcoming the 2022 resolution on protection from violence for people in need of care, which initiated efforts to develop practical safeguards, the Committee regrets the absence of

specific data on inspections of care facilities, the outcomes thereof and the sanctions imposed in relation to the use of physical and chemical restraints. It requests further details on the process referred to by the State Party aimed at improving protection against violence in long-term residential care facilities, reducing the use of measures involving deprivation of liberty and meeting the needs of persons with psychosocial disabilities.

The Committee notes with satisfaction that, following decisions of the Federal Constitutional Court, the mental health acts of the Länder are becoming increasingly uniform in the areas of physical restraint and compulsory medication, and requests further information in this regard. While noting the information provided on the standards applied in the mental health acts of all 16 Länder, the Committee regrets the lack of information on further steps taken to harmonize the legal standards in the different Länder on the involuntary hospitalization and forced committal of those with psychosocial disabilities. The Committee reiterates its recommendation in this regard.

The Committee welcomes the efforts being made to amend the provisions governing care homes at the Land level, and the establishment of complaints offices in several Länder, and it appreciates that more extensive complaints mechanisms are being discussed. The Committee requests further information in this regard and specific data on the number of complaints of abuse received, the investigations that have been conducted and the results thereof, including the sanctions applied.

[C]: (d)

While welcoming the replacement of former section 1905 of the Civil Code with new section 1830 through the Act to Reform the Law on Guardianship, passed on 4 May 2021 and in effect since 1 January 2023, the Committee regrets that the legislation still provides for circumstances under which the forced sterilization of adults with disabilities remains permissible. It reiterates its recommendation.

[A]: (f)

The Committee welcomes the steps taken by the State Party to protect older persons from COVID-19 and to ensure long-term preparedness, including by taking the decision to set up a national reserve for health protection and continuing to make protective equipment available to care facilities. It requests additional information on the progress of the national “lessons-learned” process referred to by the State Party.

Paragraph 43: Right to privacy

The State Party should ensure that all types of surveillance activities and interference with privacy are in full conformity with the Covenant, in particular article 17. Such activities should comply with the principles of legality, proportionality and necessity and be subject to judicial authorization. The State Party should also ensure that surveillance is subject to effective independent oversight mechanisms, namely judicial mechanisms, and ensure access to effective remedies in cases of abuse.

Summary of the information received from the State Party

German law ensures that all types of surveillance activities and interference with privacy are in full conformity with the Covenant, in particular article 17. The Covenant does not state that all types of surveillance activities should require judicial authorization.

Under section 1 (2) of the Federal Intelligence Service Act, the Federal Intelligence Service is tasked with gathering the information necessary to obtaining intelligence on other countries that is significant to the foreign and security policy of Germany. The Federal Intelligence Service, as part of the executive, is bound by law and justice (Basic Law, art. 20 (3)), and it operates under the Federal Intelligence Service Act, supplemented by the Act on Restriction of the Privacy of Correspondence, Post and Telecommunications (also known as the Article 10 Act or “G 10”).

Since 2021, the Federal Intelligence Service Act has repeatedly been reformed to ensure that the actions of the Federal Intelligence Service have a secure and precise legal basis and comply with national and international obligations regarding the protection of fundamental rights. Legislative amendments were also made in response to decisions of the Federal Constitutional Court in May 2020 and September 2022.

The federal intelligence services are subject to comprehensive and detailed oversight. The Independent Control Council, established in 2022, provides independent legal oversight of federal intelligence services. The control mechanisms of the Parliamentary Oversight Panel include regular classified meetings, extensive powers of investigation and the right to conduct hearings, while additional layers of oversight are provided, in their respective areas of competence, by the G 10 Commission, the Federal Commissioner for Data Protection and Freedom of Information, the Trust Body and the Federal Court of Audit.

Criminal investigations require legal authorization and must adhere to the principle of proportionality. Surveillance by technical means, such as remote searches or monitoring of telecommunications, is permitted only under strict conditions, pursuant to sections 100a (1) and 100b (1) of the Code of Criminal Procedure. Such measures are permissible only if serious offences are suspected, and require judicial approval, except in urgent cases, where an order by the public prosecutor's office must be judicially confirmed within three days.

Extensions beyond six months for remote searches require higher court approval. Both types of surveillance are subject to rules for the protection of data relating to private life. Any such data collected must be deleted without delay and may not be used against the accused. Judicial decisions on such surveillance are subject to appeal, and illegally obtained evidence may be deemed inadmissible.

Committee's evaluation

[B]

The Committee welcomes the State Party's efforts to ensure that all types of surveillance activities and interference with privacy are in full conformity with the Covenant. In particular, it notes with satisfaction: (a) the reforms of the Federal Intelligence Service Act since 2021, ensuring a secure legal basis for the Service's actions and consistent protection of fundamental rights under national and international obligations; and (b) the legislative amendments made in response to decisions of the Federal Constitutional Court in May 2020 and September 2022, including the establishment of the Independent Control Council in 2022 to provide independent legal oversight. The Committee regrets, however, the lack of concrete information on the practical implementation of the Federal Intelligence Service Act. It requests additional details on the reforms of the Federal Intelligence Service Act that have taken place since 2021 and concrete information on the work of the Independent Control Council. Furthermore, it requests data on the complaints received regarding any abuse of surveillance powers, the investigations carried out and the results thereof, and the effective remedies provided.

Recommended action: A letter should be sent informing the State Party of the discontinuation of the follow-up procedure. The information requested should be included in the State Party's next periodic report.

Next periodic report due: 2028 (country review in 2029, in accordance with the predictable review cycle).
