

Violence Against Children in GERMANY

Relevant extracts from an NGO alternative report presented to the UN Committee on the Rights of the Child

CRC Session 35, 12 - 30 January 2004

National Coalition for the Implementation of the CRC in Germany - English
www.crin.org/docs/resources/treaties/crc.35/Germany_Coalition_ngo_report.doc

[...]

The National Coalition is concerned that the majority of recommendations and suggestions expressed in the Concluding Observations of the UN Committee on the Rights of the Child on Germany's First Report (at the 259th meeting on 17 November 1995) have not yet been implemented and, in some areas, the Federal Government has not acknowledged the deficits mentioned there.

[...]

WITHDRAWAL OF THE DECLARATION OF RESERVATIONS

Many children and young people have a very well-developed sense of fairness. In their own surroundings they have found that not all children are treated equally, above all, in the case of refugee children. For this reason, children and young people have repeatedly advocated measures to ensure that refugee children have recourse to equal rights in Germany, and called for the withdrawal of the declaration to the UN Convention on the Rights of the Child.

[...]

Violence-free upbringing

Children and young people expressed their view that more efforts are needed to clarify what is 'equitable' and 'inequitable' and called for making laws such as, for example, the 'child's right to an upbringing free of violence' more widely known. The nation-wide Children's Rights Ballot showed that the vast majority of the children and young people questioned still saw a need for steps to be taken in Germany to implement the right to an upbringing free of violence. In their view, there should be improved measures to provide help for victims of violence and their families; other areas they highlighted as requiring action include ensuring better international cooperation on criminal prosecution of perpetrators and regulating stricter penalties for Germans who take part in sex tourism.

[...]

The National Coalition criticises the fact that the Second Report has been submitted more than two years late. The grounds offered for this by the Federal Government of a change of government and debate on revoking the German declaration on the Convention are, in the view of the National Coalition, insufficient. Submitting the report late leads to the Federal Government's report referring to events extending into the third report's reporting period and complicates the evaluation of achievements in the reporting period covered here.

[...]

The National Coalition is extremely concerned to note that the UN Convention on the Rights of the Child is not unconditionally valid in Germany. Germany still has not withdrawn any of the reservations expressed in the declaration entered at the time it ratified the UN Convention on the Rights of the Child.

The reservations relate specifically to Section IV of the declaration, to what is known as the declaration on aliens (*Ausländervorbehalt*). Submitting this declaration has led to refugee children not being able to enjoy the same rights as other children in Germany (for further details, see VIII). Failing to withdraw this declaration impedes aligning legislation on foreigners and asylum-seekers, court

decisions, and the customary practice in administrative matters and government authorities with the standards set by the UN Convention on the Rights of the Child. In the period falling outside the reporting period, the Federal Government has been expressly called upon three times by parliament (1999 and 2001), and lastly in 2002 by the parliament's Petitions Committee, to withdraw its declaration. However, up until now, the Federal Government has not yet done so.

[...]

The National Coalition is especially concerned that the principle of a child's well-being having primacy continues to be systematically suspended for refugee children living in Germany due to the 'declaration on aliens' (for further details, see VIII). For this reason, the National Coalition considers it an urgent matter to anchor the principle of the primacy of a child's well-being in German legislation on aliens and asylum.

[...]

Participation in legal and official procedures

In the context of restructuring the law of the parent and child, the family court can provide what is known as a 'procedural curator' (counsel for the child) to provide advice and assistance 'as far as this is necessary to safeguard [the child's] interests'. Such a curator is provided in cases where the interests of the child appear to clash significantly with those of the parents or guardians (§ 50 FGG, Law on matters of non-contentious jurisdiction). However, appointing a procedural curator is not mandatory and depends on the view of the particular judge in the case; furthermore, there is a lack of minimum standards in training such procedural curators. In official child and juvenile proceedings, no provision is made at all for an independent representation of interests and, lastly, there is no obligation to explain to children and juveniles their right to advice, counselling and support when the right of access is exercised.

[...]

Despite the growing awareness that children here, especially, have to be respected as independent people and greater use made of an approach to raising children taking negotiation as a basic principle, children nonetheless continue to have negative experience in participation, in particular, within the family. For this reason, increased efforts are required to further develop awareness and create greater acceptance for a model of competent children in both the wider public and among parents.

[...]

The Hague Convention on the Civil Aspects of International Child Abduction follows the basic principle that, in cases of doubt, where a child has been illicitly transferred and is withheld abroad, the status quo prior to the illicit transfer is to be restored as swiftly as possible. A strict framework provides for exceptions in the interests of the child's well-being. Nonetheless, the actual length of proceedings is frequently such that children have become so accustomed to their new surroundings that any change in their situation conflicts with child's well-being.

[...]

In the reporting period, the conditions setting the framework for families of children with disabilities have become significantly worse. There is practically no chance to ensure that children with special needs attain the greatest amount of independence, self-determination, parity of treatment and integration possible while still enjoying a certain amount of care and supervision, since the specific legislative basis for this is lacking, as is the requisite planning and structures.

Although children with disabilities can receive all-day care in kindergartens and schools, this is only the case where facilities have been specifically provided for children with special needs. The parents themselves then have to shoulder the funding for any treatment and care needed. If the services of an ambulant child nurse are needed, the parents have to pay for this from their public assistance benefits for the payment of nursing care.

Children and young people with disabilities are rarely involved in the affairs that affect them; the aim of integration continues to fall at the hurdle of insufficient funding and inadequate conceptual planning.

[...]

Parents, children and teachers all complain about the growth of violence in schools. In this context, the discussion increasingly includes issues focussing on the lack of participation and the phenomenon of structural and verbal violence.

[...]

Immigration has turned Germany into a multi-cultural country; of the foreign children in Germany under six years, around 88% were born here.

Instead of the wealth this cultural diversity offers being used to support the learning process, children with experience of migration are often labelled as a problem group. In many nursery day-care centres and schools, the integration of children from other countries of origin is still seen as a strain on the educational process.

In the National Coalition's view, there is a pressing need to ensure the design of educational provision and realisation of educational planning does not merely become concentrated on the aim and application of vocational qualifications; instead, it needs to integrate the wider issues of social attitudes and ethical and religious points of reference, for example, as they are embodied in the respect for other people and a feeling of personal and social responsibility. All educational institutions have now to acknowledge Germany's variety of cultures far more, providing greater support to mother tongue languages, and promoting bilingualism and multilingualism.

Although the Youth Welfare Act (*Kinder- und Jugendhilfegesetz*) promises to establishing an intercultural and cross-religious approach to education (§ 9), this is not yet sufficiently applied in practice.

[...]

In its Second Report, the Federal Government doubts whether there is any need to change the applicable law for refugee children in the case of the right of entry and residence, and in provisions governing asylum and asylum proceedings (paragraphs 791, 792). It paints a positive picture of how some *Länder* have established clearing offices for refugee children under 16 but then goes on to emphasize that, in principle, the same regulations on entry and asylum procedures should apply for children seeking asylum and travelling alone as apply to adult asylum-seekers (paragraph 793). Despite numerous reports and studies containing empirical evidence showing that the social situation of refugee children in Germany has deteriorated in the reporting period, in the Second Report the Federal Government nonetheless maintains that Germany 'fundamentally meets the obligations resulting from Article 22 of the Convention' (paragraph 803) and rejects calls for a basic right of entry for minors until the clearing process has been concluded.

[...]

The National Coalition notes that, in some cases, minors in Germany are sentenced to youth custody without being represented by legal assistance during the legal proceedings. Since no statistics have been compiled on this, the precise number of such cases is not known.

The reservation expressed by the Federal Government on this issue is still in force. The National Coalition does not share the view put forward by the Federal Government in the Second Report (paragraph (844)) that the reservations expressed in the declaration submitted on ratification were not actually necessary, since, in terms of standard practice, on the one hand, and the judicial decisions and legislation on the other, the standards of the Convention are met completely.

Instead, the National Coalition believes that in this point German law does not match the requirements enshrined in the Convention. For this reason, the National Coalition sees a pressing need for action on the part of the legislature to change the existing law on juvenile courts (*Jugendgerichtsgesetz*) so that a sentence of imprisonment passed on a youth without legal defence assistance is inadmissible on principle.

[...]

2. CHILDREN AND YOUNG PEOPLE IN CUSTODY (ARTICLE 37 B-D)

The National Coalition notes that Germany still does not have legal provisions dealing specifically with enforcement of juvenile custody, arrest and imprisonment.

During the reporting period, the figures for youth custody and the detention of young offenders have risen by around 40 per cent. Proportionally, the share of juveniles from another country of origin in

these statistics is approximately two to three times higher than their share in the relevant age groups in the general population. It is a matter of some concern that the large increase of juveniles in custody cannot be explained by recourse to a similarly large rise in the number of serious offences. Instead, it is noted that growing numbers of juveniles are being committed on remand for comparably minor offences, such as theft or fraudulent misappropriation, and sentenced to youth custody. The exceptionally high number of juveniles who are remanded without then finally being sentenced to custody is extremely disquieting and leads to the conjecture that, in many cases, remand might be being illegally misused as a covert form of short-term imprisonment.

[...]

German law prescribes a separation between juvenile and adult prisons. However, juvenile prisons and custody are not only used to confine minors but are also used for young adults up to the age of 25 and over. In these institutions, the main group is clearly formed by those over eighteen. Generally speaking, juvenile prisons do not practice separating younger prisoners under 18 from those over 18, which, in certain instances, can lead to grave problems, especially for very young prisoners, where older prisoners may, for example, subject them to threatening behaviour, blackmail or even rape.

[...]

3. SEXUAL EXPLOITATION AND SEXUAL ABUSE (ARTICLE 34)

Despite the improvements in legislation protecting children as victims of sexual abuse, this problem remains widespread in Germany since the legal provisions are not being sufficiently applied in practice. The National Coalition views with especial concern the growing use of the Internet as a place where child pornography can be exchanged anonymously, and notes that legal measures have not yet been able to combat this adequately. This is an area where, first and foremost, there is a need for international steps to be taken.

The reforms of the criminal law in 1993 and 1998 allow perpetrators who have sexually exploited children abroad to be subject to criminal proceedings in Germany providing they are German nationals or have the main centre of their life here. However, there is a large gap between the threat of criminal proceedings and the application of the law; from 1993 until the beginning of 1999, there were only around 50 cases in Germany. There have been fourteen judgements passed by the court of the first instance that have found perpetrators from Germany guilty. The new law on protecting witnesses and victims that came into force on 1 December 1998 facilitated questioning of child and juvenile witnesses by introducing measures including the regulating of video questioning of children abroad and provision for the financial assistance of witnesses during questioning.

With regard to applying the new legislation, the National Coalition notes there are significant deficit and gaps. In particular, Germany is lacking overall comprehensive plans of measures for prevention and for basic research into the extent, manifestations, traumas, and specific situations of risk.

The Federal Government's 1997 working programme against the sexual exploitation of children details and promotes key projects. The fact that the programme does not include the children of migrants is to be noted as a criticism of it; the participation of young people and children, as demanded by the World Congress, is also lacking so far.

The new working programme planned should give particular significance to prevention and the rehabilitation of juvenile perpetrators. Abuse of children in organisations and by personnel in institutions needs to be given special attention.

[...]