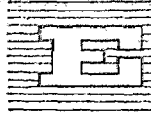


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COMMISSION ON HUMAN RIGHTS
COMMISSION FOR SOCIAL DEVELOPMENT

STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK

Note by the Secretary-General

Addendum

Annex II, Part I: Replies received from Governments (continued)

FEDERAL REPUBLIC OF GERMANY

[6 August 1975]

In the Federal Republic of Germany the status of persons born out of wedlock was fundamentally revised by the law concerning the legal status of children born out of wedlock, enacted on 19 August 1969. That law accords children born out of wedlock a large measure of legal equality with children born in wedlock. But in addition it contains special provisions based on the principle of equality embodied in the Basic Law, which, in particular, are designed to ensure equal opportunities for children born out of wedlock.

The General Principles, however, point in the direction of purely systematic equality in respect of persons born out of wedlock, which according to the view prevailing in the Federal Republic of Germany would not in fact serve their interests.

The following comments refer to some aspects of the Draft in particular:

Re paragraph 1

The Draft would be completely deprived of its value if the General Principles which it intends to introduce were made subject to the requirement that those whose duty it should be to observe the Principles must consider them compatible with the principle of the protection of the family.

To clarify this point it is suggested that a sentence, perhaps to the following effect be added: "The General Principles set forth hereunder are not in conflict with the principle of the protection of the family."

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Re paragraph 7

Systematic equal treatment of a child born out of wedlock with children born in wedlock may be contrary to his interests in view of the circumstance that he will normally not grow up in a family which includes his father. He should therefore not have the same status as a person born in wedlock but one equal to that status. The word "equal" should therefore be substituted for "same".

Re paragraph 9

As regards the rights and obligations pertaining to parental authority, a child born out of wedlock cannot be subject to the same rules as children born in wedlock. Even in the case of children born in wedlock whose parents are permanently separated or divorced, only one of the parents is entitled to exercise paternal authority by virtue of a judicial decision. A child born out of wedlock, however, normally lives with his mother from his birth. The mother alone must therefore be entitled to exercise paternal authority - and that without any special judicial decision.

In the event of a revision of the General Principles it should be provided that paternal authority is due to and exercised by the mother and not, for instance, by a government authority.

Re paragraph 10

For the same reasons it should be provided that a child born out of wedlock will on principle share his mother's domicile.

Re paragraph 13

Since German family law still predominantly associates a child born out of wedlock with his mother and his mother's family, German law on nationality does not provide for a child born out of wedlock to derive German nationality from his father; he can derive German nationality from his mother only.

Paragraph 13, second sub-paragraph, as it stands, can thus not be applied to German nationality law in so far as it requires maternal filiation to have the same effect as paternal filiation. The consequence of this would be that a child born out of wedlock would not acquire German nationality by virtue of his maternal filiation because the acquisition of German nationality by virtue of his paternal filiation is alien to German nationality law.