



# Convention on the Rights of the Child

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

### Summary record of the 927th meeting

Held at the Palais Wilson, Geneva, on Friday, 16 January 2004, at 3 p.m.

*Chairperson:* Mr. Doek

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

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

*Second periodic report of Germany* (continued) (CRC/C/83/Add.7; CRC/C/Q/DEU/2; CRC/C/RESP/51; HRI/CORE/1/Add.75/Rev.1)

1. *At the invitation of the Chairperson, the members of the delegation of Germany resumed their places at the Committee table.*
2. **Mr. Dichans** (Germany) said that at both the federal and local levels there was a very dense network of institutions and bodies to which children whose rights had been infringed could turn for help. Foremost among them were the local youth departments.
3. **Mr. Laut** (Germany) said that the situation regarding complaints differed according to whether the breach of rights in question constituted a civil or a criminal offence. In the latter case, public prosecutors could institute proceedings as soon as they learned of an offence; in the former, proceedings could not begin until a complaint had been filed, a step in which minors were represented by a parent or other adult.
4. **Mr. Filali** welcomed the fact that public prosecutors could institute criminal proceedings on their own authority. However, they had first to hear of the offence, and he would therefore like to know what machinery there was for transmitting the relevant information to them.
5. **Mr. Laut** (Germany) said that there were numerous channels for passing on such information: the judicial system, the police, teachers, social workers, etc.
6. **The Chairperson**, speaking as a member of the Committee, remarked that any system, however sophisticated, was open to perversion or misapplication by one or more individuals. That was why countries just as developed as Germany had taken the laudable step of appointing a children's ombudsman to supplement their existing procedures.
7. **Mr. Ruhenstroth-Bauer** (Germany) said he found it hard to see what would be the benefit of having such an institution when a wide range of child-protection bodies at both the federal and the Länder levels was already competent to receive and to deal directly with complaints.
8. **The Chairperson**, speaking as a member of the Committee, said that only a truly independent institution such as an ombudsman could take an objective view and criticize any shortcomings there might be in the judicial system, government apparatus or civil service. The Committee believed as a matter of principle that there was room for the services of an ombudsman in every country, whatever its level of development.
9. **Mr. Pawlowsky** (Germany) said with regard to reservations, that the declarations made concerning articles 9, 10 and 18 of the Convention could probably be withdrawn without much difficulty. That was not, however, the case with the declaration concerning article 22. The reason was that, although the Federal Government considered German law to be consistent with the Convention and therefore favoured withdrawal of the declaration, the majority of the Länder, fearing that courts would interpret the provisions concerning refugees in a narrower, more restrictive fashion in the event of a withdrawal, disagreed.
10. **Ms. Sardenberg** asked the delegation to explain what the Federal Government was doing to win the support of the Länder for its position.
11. **Mr. Ruhenstroth-Bauer** (Germany) said that the federal authorities had set out their point of view on numerous occasions, when introducing reports, at inter-ministerial meetings and in exchanges of correspondence.

12. **Ms. Smith** inquired whether, from a strictly legal standpoint, the withdrawal of a declaration required the agreement of all the Länder or whether it was for political reasons that the federal authorities were not contemplating withdrawal until there was a unanimous decision.

13. **Ms. Ortiz** expressed regret that the delegation had not supplied additional information concerning the question raised at the previous meeting of refugees in Berlin who were unable to register their children's births because they had no identity papers.

14. **Mr. Ruhenstroth-Bauer** (Germany) said that, treatment of refugees being a matter within the competence of the Länder, it seemed wiser to discuss issues relating to the Convention with those bodies' representatives rather than unilaterally to impose on them the withdrawal of a declaration, even if that option was legally possible.

15. As he understood it, problems in registering births because of the parents' lack of identity documents had arisen in Berlin, and only there. They were probably attributable to obligatory administrative formalities aimed solely at preventing the recording of inaccurate information and the issuance of certificates reproducing the errors.

16. It was in principle for refugees to prove their age. If a person had no documentary proof, experienced specialized authorities carried out a variety of medical examinations to determine whether he or she was an adult. The refugee had the benefit of any doubt.

17. A memorandum of understanding on the repatriation, mostly to Kosovo, of members of the Roma minority had been signed. To his knowledge, it did not refer expressly to the Convention, although that was not essential since all those involved in the repatriation process, including the frontier guards, were duty-bound and trained to take children's well-being into account. UNHCR representatives were present in Germany and provided various services for refugees, including rehabilitation treatment for victims of torture.

18. **Ms. Khattab** inquired whether the federal authorities had thought of pointing out that the Committee had requested the withdrawal of the reservation to article 22 in its concluding observations on Germany's initial report and whether a strong recommendation in the concluding observations on the second report would carry weight.

19. **Mr. Ruhenstroth-Bauer** (Germany) said that references to the Committee's concluding observations were among the powerful arguments that the Federal Government had used and would continue to use in its difficult job of persuasion.

20. **The Chairperson**, speaking as a member of the Committee, asked whether the signing of the memorandum of understanding on repatriation to the Balkan countries had been accompanied by a process of thought and discussion concerning the limits of an unconditional policy of return. He drew Germany's attention to its practices regarding refugees and their children, some of whom had been born and had grown up in the country. Forced entry into refugees' homes at dead of night to take them straight to the airport was nothing other than humiliating and degrading treatment.

21. **Mr. Laut** (Germany) stressed that the Federal Government took its obligations under article 11 of the Convention very seriously and had taken steps in the spheres both of civil and of criminal law to combat trafficking in children.

22. Germany was a party to the Hague Convention on the Civil Aspects of International Child Abduction. In domestic law, child abduction was the subject of article 235 of the Criminal Code. The authorities were anxious to alleviate the child's suffering in the event of non-representation or abduction by a parent and therefore strove to accelerate the legal proceedings while authorizing the other parent to visit the child in Germany once the case was under way.

23. **The Chairperson**, speaking as a member of the Committee, asked whether in Germany parents of newborn children had complete freedom concerning the choice of forenames.

24. **Mr. Laut** (Germany) said that German private law was very liberal on the question of every child's right to a name and that foreign parents therefore enjoyed, without any discrimination, a certain degree of freedom to preserve their cultural identity. However, even though the limits on the acceptability of forenames were very broad, only forenames that were not contrary to the child's interest could be entered in civil status registers.

25. **The Chairperson**, speaking as a member of the Committee, asked whether there was not a tendency for the German authorities to accept, in the child's best interest, the de facto adoption of children who were brought into the country illegally but had already spent some time with the couple seeking to adopt them.

26. **Mr. Laut** (Germany) replied that every effort was made to avoid adoptions that did not have the consent of the child's biological parents and that there were provisions in criminal law to that end. Illegal adoption was therefore unacceptable, whatever the circumstances.

27. **Mr. Ruhenstroth-Bauer** (Germany) said that the lawmakers' aim with respect to adoption had been to draft a fair law that would prevent and combat inadmissible practices while taking due account of the best interests and well-being of the child, who might already have established a strong relationship with his or her prospective adoptive parents. Consequently, when a child had already spent some time with the prospective parents, the practice to date had been to forego systematic repatriation in favour of official acceptance of the adoption irrespective of the circumstances surrounding it.

28. Despite the equalization system established after reunification, there were still significant differences between the levels of living in the former West Germany and the former East Germany. Although the Federal Government's major financial efforts to modernise infrastructure, the transport network and the labour market were ongoing, unemployment remained very high in the new Länder. The statistical indicators were, however, less important than the level of realization of children's rights.

29. **Mr. Dichans** (Germany) said that, with a view to boosting the birth-rate and enabling parents to combine work and family life, the Federal Government had made the improvement of child-minding services and the increasing of day-nursery places one of the priorities of its social policy. Beginning in 2005, spending on services and facilities for children under 3 would amount to 1.5 billion euros per year.

30. **Mr. Fischer** (Germany) said that the low birth rate of 0.9 in the former East Germany in the early 1990s had mostly been due to the particularly weak economic situation. Currently, the birth-rate in that region was comparable to the rate of 1.2 in the former West Germany. The aim was still, however, to promote child-bearing by increasing the number of child-care facilities, raising allowances and achieving economic stability so that children could flourish and have confidence in the future.

31. **Mr. Liwski** asked how the authorities explained the rise in racism and xenophobia among young people and what measures had been taken to prevent and combat it.

32. **Mr. Ruhenstroth-Bauer** (Germany) said that there were several reasons why, as was the case in many countries, young people were drawn to extreme right-wing views. Among them were lack of education, fear of unemployment and absence of future prospects.

33. Combating right-wing extremism entailed understanding its underlying causes and attacking it at the roots, in the West and in the East, by mobilizing citizens through

initiatives and programmes such as a national plan of action against racism. It was not so much a matter of law enforcement as of the demonstration of real political will and the emergence of general public awareness of the problem. The focus was therefore on mutual understanding between foreigners and the local population and on intercultural education aimed at instilling in pupils attitudes based on the principles of liberty, responsibility, tolerance and mutual respect.

34. **Ms. Vuckovic-Sahovic** wished to know how Germany's highly decentralized education system could give rise to federal-level decisions to include in curricula compulsory courses aimed at promoting tolerance.

35. **Mr. Filali** asked whether, in order to promote tolerance, integration and peace, current curricula included teaching about other peoples, cultures and civilizations.

36. **Ms. Sardenberg** requested additional information about the wearing of the Islamic headscarf by female teachers in public schools, a practice that had recently been banned in one Land.

37. **Mr. Ruhenstroth-Bauer** (Germany) said that the federal authorities hoped that there would soon be a national law on the topic and that the Constitutional Court had recommended in a judgment concerning it that Länder should legislate within the sphere of their own competence if they wished to prohibit teachers from wearing the scarf in public schools.

38. As the Federal Government had no power where education was concerned, the promotion of tolerance and mutual respect was the sole responsibility of the Länder, which ran awareness-raising campaigns and special programmes in that regard.

39. **Mr. Haines** (Germany) stated that, encouragingly, more money had been allocated to the health sector in 2003 than in previous years. Despite the current trend towards lower health spending, there need be no doubt that the Government would continue to ensure that no harm was done to children's health.

40. As part of the reform of the public health system, the Government had placed emphasis on prevention and information regarding drug addiction, smoking and disorders such as anorexia. There had been a campaign to promote breast-feeding and Germany was among the countries where every effort was made to ensure that women in employment were able to continue suckling their children.

41. **Ms. Al-Thani** wished to know whether prenatal medical examinations were free and whether the body that dealt with patients' rights was federal. It was incumbent on States parties to take concrete measures to combat drug addiction and alcoholism; initiatives aimed at prevention were not enough.

42. **Ms. Smith** asked to what extent children participated in decisions about medical treatment they were to receive.

43. **The Chairperson**, speaking as a member of the Committee, said the suicide rate among young people was alarming and asked what was being done to remedy the problem.

44. **Mr. Haines** (Germany) said that pregnant women were entitled to 10 free medical examinations during their pregnancy.

45. The body set up in early 2004 to deal with patients' rights had federal competence. All patients wishing to know their rights could consult it.

46. Regarding alcoholism, drug addiction or smoking, Germany, like any other democratic country, had no power to force anyone to abandon an unhealthy practice and had few options other than to organize prevention campaigns.

47. The same was true with respect to suicide among young people, which had little connection with action or inaction by the authorities. Germany's economic recession was no doubt having a serious effect on young people's morale and optimism.
48. There was no legal provision that governed children's right to express their opinions concerning medical treatment they were to receive. Medical decisions were always taken in agreement with the parents and, to the extent possible, the child, depending on the latter's age.
49. **The Chairperson**, speaking as a member of the Committee, requested information on Germany's position regarding research on embryos, drug testing on children and the female genital mutilation practised in some immigrant communities.
50. **Mr. Ruhenstroth-Bauer** (Germany) said that Germany had always firmly condemned research on embryos and made every effort to promote medical ethics.
51. Female genital mutilation was prohibited and considerable efforts were made, in cooperation with non-governmental organizations, to inform parents of the harmfulness of such practices.
52. More broadly speaking, Germany did a great deal to promote equality between the sexes and to combat discrimination against girls. In accordance with the Beijing Platform for Action, palliative measures were taken in support of girls in sectors where they were disadvantaged by comparison with boys. Schools and universities held open days to inform girls about careers in science and technology.
53. **Ms. Smith** asked why young offenders were increasingly frequently placed in preventive detention, even when accused of misdemeanours.
54. **Ms. Vuckovic-Sahovic**, noting that minors could not bring cases unless they were represented by an adult, asked to whom they could turn when they were victims of violence within their family.
55. **Mr. Citarella** requested information on the progress of the reform of the juvenile justice system announced during the introduction of Germany's initial report. He wished in particular to hear about the establishment of more child-friendly procedures for the giving of testimony and about the shortening of custodial sentences for minors. He wondered whether measures had been taken to avoid minors being imprisoned with adults, as too often happened, and whether there was discrimination against children born out of wedlock.
56. **Mr. Liwski** requested further information on the Government's pilot projects to analyse the causes and context of the increase in delinquency by children and young people and on the new means, including penalties other than deprivation of liberty, adopted to curb that rise.
57. **Mr. Filali**, referring to the Federal Government's reservation to article 40, subparagraphs 2 (b) (ii) and (v), of the Convention concerning minors' right to legal assistance with their defence and to the statement in paragraph 839 of the second periodic report that the relevant jurisdiction would be "anchored in the planned reform of the Juvenile Court Act", asked whether minors in fact received such assistance and how soon the reform would be made.
58. **Ms. Khattab** asked, with reference to the combating of child prostitution and child pornography, whether German law provided for the prosecution of German nationals who committed offences of the kind in question abroad, what was Germany's minimum age of consent to sexual relations and what behaviour or acts involving a minor were actionable. She also asked why it was that children of foreign origin formed the great majority of children in conflict with the law.

59. **Mr. Kotrane** inquired whether the measures against ill-treatment included preventive mechanisms such as obligatory reporting to enable the social services to step in and find solutions without delay, before an offence had been committed.

60. **Mr. Laut** (Germany) said that, pursuant to the Juvenile Court Act, minors could only be placed in preventive detention to protect the investigation of the alleged offence.

61. All minors who were victims of ill-treatment could contact the police, a judge or the Ministry of Justice *proprio motu* and request legal assistance. If necessary, counsel would be appointed for them.

62. Children under 14 could not be sentenced to prison, but it did happen that minors who were given a custodial sentence were incarcerated with adults, something that might of itself compel them to develop a sense of social relations. When sentencing minors, judges always opted for alternative penalties such as community service rather than deprivation of liberty.

63. He could not give any precise reason other than the obvious factors of immigration and integration why far more foreign than native-born children were in conflict with the law.

64. In accordance with the relevant international agreements, German nationals could be prosecuted in Germany for sexual offences committed abroad. The age of consent to sexual relations should shortly be raised to 18.

65. **Mr. Ruhenstroth-Bauer** (Germany) said that the Government spared no effort to make the precepts of the Convention as widely known as possible and cooperated for the purpose with NGOs, including the Federal Youth Council, with which it had in particular launched a campaign involving meetings between politicians and children at which the participants gave mutual undertakings before coming together again a year later to check whether they had been honoured. Every year the country's youth plan, which had an annual budget of 100,000 euros, identified activities in support of young people in which all the bodies specializing in that field could take part.

66. **Mr. Dichans** (Germany) said that everything to do with culture and education was within the competence of the Länder and that support for gifted children or children with learning disabilities was therefore not a matter for the Government. That situation was currently the subject of dispute in Germany, because the measures in force seemed unsatisfactory: children of the kind in question should be cared for individually from infancy, as recommended in the Plan of Action of the World Summit for Children.

67. **Ms. Smith** thanked the delegation for the constructive dialogue concerning Germany's second periodic report. The fact that there had been few questions concerning education or health testified to the good implementation of the Convention in those fields. The Committee's concluding observations and recommendations would concern mostly the reservations and declarations made by Germany when depositing its instrument of ratification, the procedures for implementation of the Convention and the issue of refugees.

68. **Mr. Ruhenstroth-Bauer** (Germany) assured the members of the Committee of his Government's determination to create the conditions necessary for the full and complete application of the Convention, both in words and in deeds, in Germany.

*The meeting rose at 6 p.m.*