

GERMANY

CRC A/51/41 (1996)

26. Concluding observations

714. The Committee considered the initial report of Germany (CRC/C/11/Add.5) at its 243rd to 245th meetings (CRC/C/SR.243-245), on 6 and 7 November 1995, and adopted, at its 259th meeting, on 17 November 1995, the following concluding observations.

(a) Introduction

715. The Committee notes that the report prepared by the State party offered a comprehensive explanation of the legislative framework for the implementation of the Convention on the Rights of the Child; however, it did not contain sufficient information on the actual implementation of the principles and provisions of the Convention throughout the country. The Committee, therefore, expresses its appreciation for the frank and self-critical approach of the delegation to answering the questions raised by the Committee and for the clarifications regarding the measures being taken and envisaged for the implementation of the Convention. The Committee welcomes the constructive discussion and exchange of views with the delegation.

(b) Positive factors

716. The Committee welcomes the statement by the delegation expressing the willingness of the State party to consider reviewing the declarations made to the Convention with a view to their possible withdrawal.

717. The Committee welcomes the declaration made by the State party that the participation of children aged 15 and over as soldiers in armed conflict is not compatible with the best interests of the child, as well as the willingness of the Government to support the drafting of an optional protocol to the Convention in this area. The State party's support for the international call for a ban on the manufacturing and trade in anti-personnel land-mines is also warmly welcomed.

718. The Committee notes with satisfaction that a committee of experts has been established to prepare a comprehensive picture of the actual situation of children in Germany and has embarked upon its work, with a view to contributing to the child and youth report to be presented to the Bundestag and Bundesrat.

719. The Committee acknowledges the determination of the State party to prevent and combat xenophobic tendencies and manifestations of racism. The Government is to be commended for the extensive efforts undertaken to ensure the involvement of and effective cooperation between the federal, state and local authorities in the implementation of a country-wide campaign to prevent and combat such phenomena and to promote ethnic and racial harmony, in the general framework of the Youth Campaign launched by the Council of Europe.

720. The Committee also appreciates the willingness of the State party to undertake research and additional measures for the early detection and prevention of violence and sexual abuse within the family. Equally, the Committee welcomes the State party's willingness to organize initiatives to educate the media about the need to protect children from harmful influences.

721. The measures being taken by the Government to prepare the ground for the future ratification by Germany of the Hague Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption are welcomed.

722. The Committee acknowledges the efforts made by the State party with a view to accepting comparatively large numbers of refugees and asylum-seekers, particularly from the former Yugoslavia.

723. With regard to the efforts undertaken by the State party to combat the sexual exploitation of children, the Committee notes with satisfaction that the Criminal Law has been extended to make sexual abuse of children abroad a criminal offence. In addition, note is taken of the recent measures to make the possession of pornographic materials featuring children a punishable offence.

724. The Committee takes note with appreciation of the support of the State party for the ILO programme for the elimination of child labour.

725. The Committee notes with interest that as of 1996 every child in Germany will have the legal right to a place in a kindergarten.

(c) Principal subjects of concern

726. The Committee regrets the extent of the declarations made by the State party to the Convention. It is the view of the Committee that several of the declarations made raise concern as to their implications and compatibility with the full enjoyment of the rights recognized by the Convention.

727. It is a matter of concern to the Committee that insufficient attention appears to have been given to the matter of the establishment of an effective coordination and monitoring mechanism at the federal, state and local levels for the implementation of the Convention. Such a mechanism is of essential importance for the evaluation and promotion of the development of policies and programmes for the benefit of children, in the light of the Convention.

728. The Committee is concerned about the insufficient awareness and understanding among adults and children of the principles and provisions of the Convention.

729. While acknowledging the clearly stated commitment of the State party to take the Convention as the framework for action on behalf of the child, the Committee is concerned at the insufficient reflection given to the child as a subject of rights as provided for in the Convention in national legislation, policy and programmes. In this regard, it is of concern to the Committee that the incorporation of the general principles of the Convention as laid down, inter alia, in its articles 2 and 3 appears to have been neglected.

730. With respect to the implementation of articles 12, 13 and 15 of the Convention insufficient attention has been accorded to ensuring the involvement of children in decisions, including within family, and in administrative and judicial procedures regarding them.

731. The Committee recognizes that while considerable efforts have been undertaken by the Government and substantial progress has been achieved in ensuring complete unity between the old and new Länder, the goals of equalizing living conditions and establishing comparable structures for child and youth services throughout the country remain to be accomplished. Thus, the Committee remains concerned about the prevailing disparities in living standards and in the quality of services between the different Länder and about the difficulties faced by particularly vulnerable groups in society, such as children born out of wedlock and single-parent families.

732. The Committee remains concerned about the extent to which account is taken of the special needs and rights of children in asylum-seeking and refugee situations. Procedures governing asylum-seeking children, particularly those relating to family reunification, expulsion of children to safe third countries and the “airport regulation” give cause for concern. In this respect the Committee notes that the guarantees provided for in the Convention, in particular in its articles 2, 3, 12, 22 and 37 (d), do not appear to be complied with, while insufficient attention seems to have been ensured to the implementation of articles 9 and 10 of the Convention. The Committee also notes with concern that the provision of medical treatment and services to asylum-seeking children does not appear to be interpreted in the light of the principles and provisions of the Convention, in its articles 2 and 3.

733. With regard to matters relating to juvenile justice, the Committee expresses its concern about the declaration made by the State party to article 40 (2) (b) (ii), which appears to limit the child’s rights to access to justice and to a fair hearing as well as the right to legal assistance and defence.

(d) Suggestions and recommendations

734. The Committee warmly welcomes the information provided by the State party that consideration is being given to the incorporation of the Convention in the Constitution of Germany and, in this spirit, it encourages the State party to pursue the ongoing efforts aiming at according constitutional status to the Convention.

735. The Committee recommends that the State party pursue the review of the declarations entered to the Convention with a view to considering their withdrawal. The Committee is of the opinion that, in the light of proposed reforms to national legislation, it would appear that such declarations are unnecessary; doubts are raised as to their compatibility with the Convention.

736. The Committee suggests that the State party give further consideration to the establishment of a permanent and effective coordination mechanism on the rights of the child at the federal, state and local levels. Consideration should also be given to the development of an evaluation and monitoring system, addressing all areas covered by the Convention based on the comprehensive and systematic collection of data and ensuring priority attention to the most vulnerable groups, while bridging prevailing economic and social disparities. The Committee is encouraged by the State party’s commitment to continue fostering closer cooperation and dialogue with the non-

governmental organizations and children's groups involved in the monitoring and implementation of children's rights. The Committee also encourages the State party to look more closely into the work of the Ombuds institution for children, particularly with respect to its potential contribution for monitoring the implementation of the rights of the child.

737. With respect to article 4 of the Convention, the Committee emphasizes the importance of the allocation of resources to the maximum extent for the implementation of economic, social and cultural rights of the child at federal, state and local levels, in the light of the principles of the Convention, in particular those of its articles 2 and 3 relating to non-discrimination and the best interests of the child.

738. While acknowledging the strong commitment of Germany to providing structural assistance to third countries, the Committee would like to encourage the State party in its efforts to achieve the 0.7 per cent target for international assistance to developing countries, as well as to give consideration to the use of debt conversion and forgiveness measures in favour of programmes to improve the situation of children. In this respect, the Committee emphasizes that the undertaking of a study on the impact on children of a State party's international cooperation and development assistance programmes has proved a useful tool in evaluating the effectiveness of such initiatives for the implementation of the Convention.

739. The Committee notes with satisfaction the acknowledgement by the State party that a key area of attention should be the development of a comprehensive and systematic strategy for disseminating information and creating awareness of the rights of the child. The development of public campaigns through the use of the media and the involvement of the civil society, including non-governmental organizations and children's groups, would contribute to effectively addressing the need to increase understanding and to promote respect for the rights of the child.

740. The Committee recommends that the State party make full use of the opportunity offered by the United Nations Decade for Human Rights Education, to pursue further the preparation of educational materials on human and children's rights and the incorporation of human rights education, particularly about the rights of the child, into school curricula and into the training programmes of professional groups working with or for children, including teachers, judges, lawyers, social workers, health service personnel, police and immigration officials.

741. The Committee is encouraged by the State party's proposed reform of national legislation in the light of article 2 of the Convention, *inter alia*, to ensure that children born out of wedlock are not discriminated against. The Committee, therefore, recommends that the efforts to harmonize legislation with the provisions and principles of the Convention be further pursued and that the State party continue to give priority to reflect in its legislation and policies the general principles of the Convention, particularly those laid down in articles 2 (non-discrimination) and 3 (best interests of the child).

742. The Committee notes that provisions of the Convention relating to the participation of children, including its articles 12, 13 and 15, need to be more thoroughly considered and encouraged. To this end information and awareness campaigns should be developed. Similarly, the Committee recommends that consideration be given to extending and broadening the involvement of children

in decisions affecting them in the family and in social life, including in proceedings relating to family reunification and adoption.

743. Appreciation is expressed of the State party's acknowledgement of using the Convention as an instrument to sharpen awareness of the responsibilities of persons taking care of children and the need to equalize the responsibilities between parents in bringing up their children. The Committee encourages the State party to pursue its efforts towards changing attitudes with a view to eradicating all forms of violence against children, including the use of corporal punishment within the family. In this regard, it further encourages that, in the ongoing process of reform of the Civil Code, consideration be given to the incorporation of an absolute ban on corporal punishment.

744. Taking note of the allocation of additional resources to family-related benefits and of the willingness to undertake other measures to achieve further progress in addressing the problems facing single parents, and recognizing the State party's commitment to undertake measures to improve poorer children's access to out-of-school activities, including leisure activities, the Committee believes that greater priority should be given to an analysis of the occurrence of child poverty. Such an analysis should be undertaken from a holistic perspective, taking into account the possible linkages between such matters as housing conditions, family support to the child at home and in school, and the risk of dropping out of school. The results of this research could serve as a vehicle for discussion of these matters both in Parliament and with the relevant authorities as well as for the development of a more comprehensive and integrated approach for responding to the problems identified.

745. The Committee suggests that the State party undertake more comprehensive research on the possible effects of environmental pollution on the health of children.

746. The Committee is of the opinion that the issue of asylum-seeking and refugee children deserves further study with a view to its reform in the light of the Convention and of the concerns expressed during the discussion with the Committee. Such initiatives should reflect, *inter alia*, on the procedures, especially as they affect children 16 to 18 years of age, that govern the expulsion of children to third safe countries, family reunification and the "airport regulation" as to their compatibility with the provisions and principles of the Convention, in particular those of its articles 2, 3, 5, 9, paragraphs 3, 10, 12, 22 and 37 (d).

747. Note is taken of the Government's intention to reform the system of juvenile justice, including with regard to considering strengthening the services and the development of child-friendly proceedings for dealing with child victims and witnesses. It is also noted that the elimination of the possibility of applying an indeterminate sentence on juveniles has been taken into account in the context of this reform. Additionally within this framework, the Committee expresses the hope that the declarations made by the State party to article 40 (2) (b) (ii) and (v) will be reviewed with a view to their possible withdrawal.

748. The Committee also recommends that a plan of action with time-bound targets be prepared for the undertaking of the legislative reform, policies and action to implement fully the provisions and principles of the Convention. The Committee suggests that the occasion of the child and youth report to be presented by the Federal Government to the Bundestag and Bundesrat be used to

generate a debate by parliamentarians of the issues facing children in the State party and to determine policies to address these matters.

749. The Committee recommends that the State party's report to the Committee, the summary records of the discussion of the report and the concluding observations adopted by the Committee be widely disseminated in the country with a view to promoting wider awareness of children's rights, including at the Land and local levels, among the authorities, non-governmental organizations, relevant professional groups and the community at large, including children.