

ECPAT¹ Commentaries on the written reply of the Federal Government of Germany to the List of Issues concerning the Optional Protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography

Comment on the answer to question no. 1

Information on measures to ensure that national law is in full compliance with the Art 2 and 3 of the OPSC.

In its written reply to the List of Issues question number 1, the State Party states that it is in compliance with the OPSC.

It has to be mentioned that forced child begging isn't an offence according to German law and until now there aren't any protection measures in place for this group of children. Therefore it is important that forced child begging becomes an offence in the frame of the national anti-trafficking legislation.

Comment on the answer to question no. 2 and 3

The State Party was asked to provide statistics on OPSC related issues.

The State Party writes that there aren't any case-related flow statistics. The provided statistical data aren't sufficient. The data from the criminal statistics shows a decrease of reported cases of child trafficking and child prostitution but there are also figures available which shows higher numbers than the provided statistics by the State Party². This should not be taken as an indicator that there are less cases of child prostitution or child trafficking as there is no darkfield study about the offences of child trafficking, child prostitution or child pornography. This is also mentioned in the police criminal statistics of some federal states. Unfortunately the investigation of these offences is not of high priority in almost all federal states. Therefore we have to notice that only one federal state has a specific commissariat of the police dealing with child trafficking and child prostitution (situated at Landeskriminalamt LKA Berlin).

Comment on the answer to question no. 4 and 5

It was asked which measures have been undertaken to raise awareness and disseminate the OPSC (no 4) and indicate if there is a government body which is responsible for the coordination, monitoring and evaluation.

The State Party has mentioned the 2011 National Action Plan (NAP) on Protecting Children and Young Persons from Sexual Violence and Exploitation. Measures and activities of the NAP are only covered until the end of 2013. Unfortunately the German Government hasn't adopted a follow up plan.

The response provided by the German Federal Government under paragraph 30 focuses only on protection of children in online situation and internet but no information is provided about measures on protection of children from sale, trafficking and prostitution.

¹ ECPAT has submitted an alternative report and took part in the pre-session meeting in June 2013.

² The provided figures by the State Party under the paragraph 23 aren't clear. For example The Federal State Saxonia indicates 727 reported cases under § 176 in the police criminal statistic for 2012 and the Police criminal statistic of the Federal state NRW shows 87 reported cases under § 176 only for the city Dortmund (PP) in 2012.

Comment on the answer to question no. 6

The Committee asked the State Party to inform about specific measures undertaken to protect especially children in irregular migration situations and unaccompanied minors.

The answer of the State Party focuses only on measures which might be possible to undertake but not on the real situation. The response covers the legal situation less the existing practice in the 16 Federal states. The Youth Welfare Act rules that all unaccompanied minors under the age of 18 entering Germany have to be taken into custody by the youth services. But there are still more than 25 percent of the Federal states in which children are accommodated in regular reception facilities for adults. We know examples from Bavaria, Brandenburg and Bremen.

According to our knowledge there is no national referral mechanism (NRM) for this target group in place. Also there isn't a proactive involvement of the youth welfare services for these children.

We would like to refer to the comment to the CRC/OPAC of the National Coalition NC in Germany about the insufficient rights of the guardians of unaccompanied minors if it comes to a court case. It seems that there isn't a detailed knowledge and evaluation about the existing provisions and different procedures in practice in the 16 Federal States. In general, the response of the Federal Government illustrates the underlying issue which we consider to be highly problematic: the German Federal Government's lack of detailed knowledge.

The reply of the second part (from paragraph 34 -38 – page 7) is not problem oriented. It describes detailed the training at the Police University without indicating the outreach of this training and no information about training for the Police in the Federal States. There aren't any figures and numbers about the training for the judges and prosecutors.

According to our knowledge there is still a gap with nationwide specific awareness measures or training for judges and prosecutors. This gap should be closed.

Comment on the answer to question no. 7

The State Party was asked to provide detailed information about cases of victims of one of the offence criminalized in the OPSC.

The German Government informed that no data is collected about this target group.

This gap should be closed.

Comment on the answer to question no. 8

The State Party was asked to provide information about protection and victim protection measures. The Government's reply describes detailed new victim protection legislation laws and esp. the Act to Strengthen the Rights of Victims of Sexual Abuse – StORMG, which entered into force in September 2013.

There is no experience of the practice of the new law. It would be helpful to set up a monitor mechanism to evaluate the impact of the StORMG for the victims of child prostitution, trafficking and child pornography.

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