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CONTRIBUTION

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to the UN Human Rights Committee on the information provided in the Seventh periodic report submitted by Germany (CCPR/C/DEU/7, 23 April 2020)

The primary goal of the German Women Lawyers' Association is to achieve substantive equality for women in all areas of society and to help realize women's human rights. It was founded in 1948, bringing together women from all legal professions. The German Women Lawyers' Association addresses gender-based discrimination in every field of society, professional and family life by advocating for and participating in law reforms, by submitting amicus curiae briefs to the Federal Constitutional Court, by reporting to human rights bodies, by offering continued legal education, by supporting young female legal professionals and scholars, and by connecting women lawyers from different backgrounds.

I. Violence against women, including sexual and domestic violence (arts. 2, 3, 6, 7 and 26)

In its List of Issues Prior to Reporting (LoIPR)¹, the Human Rights Committee called on the Federal Government to report on the progress made in combating violence against women, including domestic violence, in particular with regard to prevention initiatives, underreporting of such violence and the low prosecution and conviction rates including the relevant statistics, and availability of adequate funding for and access to shelters and other support services for all victims, regardless of their immigration status.

The Federal Government did not sufficiently address the questions raised by the Human Rights Committee in the Seventh periodic report. In particular, the Federal Government did not specifically report if progress has been made in combating violence against women and if so, in which regard and to what extent:

Ratification of the Istanbul Convention

As a positive example for progress the Federal Government stated that it has ratified the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) on 12 October 2017, after having signed the Istanbul Convention on 11 May 2011. The Convention entered into force for Germany on 1 February 2018.

The Federal Government mentioned further that with the Convention's entry into force, it has become the task of all levels of government – the Federation, the *Länder* and the municipalities – to secure the enduring implementation of this instrument. However, the Government did not elaborate the state of implementation and if the ratification of the Istanbul Convention has brought real change concerning the prevention and protection of women against domestic violence.

On occasion of the ratification of the Istanbul Convention, the German government claimed that all obligations under the Convention are already fully met by national law and practice. These allegations raise some concern on the government's awareness of the situation of victims of violence and of the daily reality of shelters and support structures.

These concerns have not been allayed to date. The act of ratification alone is not sufficient to improve the situation the protection of women against domestic violence in Germany. Concerning gender-based violence, there is still a significant gap between legislation und legal practice. In several key areas there is still a considerable need for better implementation of the international commitments to effective protection against gender-based violence as well as a need for application with regard to the regulations with the same content that are valid as federal law. This results in demands on legislation, the executive, judiciary and authorities of the Federation as well as the *Länder*. These demands relate in particular to improved pre-

¹ Human Rights Committee, List of issues prior to submission of the seventh periodic report of Germany, UN Doc. CCPR/C/DEU/QPR/7, 13 August 2018.

vention, especially in the case of intimate partner violence, as well as comprehensive protection, support and counselling for women affected by violence and their effective access to justice.²

First and foremost, there are still gaps in concerning criminal punishment. Sexual harassment has so far only been punishable as physical sexual harassment and in cases where it fulfils criminal offences such as that of insult, coercion, or threat. However, non-physical forms of sexual harassment are also a common form of everyday sexism that can violate the right to sexual self-determination. A violation of the right to sexual self-determination occurs in cases where sexuality is unwantedly imposed on another person in an unreasonable manner.³

Finally, the further training of judges and public prosecutors would have to be obligatory. Such an obligation could be anchored in the Federal Judges Act, taking into account the independence of judges. Gender-specific and especially sexualised violence can lead to serious psychological stress for the victim; if judges and public prosecutors are not sufficiently sensitised to the effects of such acts and the risks of secondary victimisation, there is a risk that these psychological stresses will worsen during the criminal proceedings. The subject of these training measures should therefore be the causes and effects of gender-based violence and the examination of gender stereotypes and sexuality myths.⁴

Prevention initiatives and support services

The German Women Lawyers' Association welcomes the measures taken regarding the improvement of prevention initiatives and support services, since information is a key factor in being able to protect oneself from violence and does currently not reach many women, especially women who are affected by multiple discrimination. This applies both to women who do not have the information in their first language or in simple language, as well as to people who face obstacles due, to other categories of difference, such as social affiliation and disabilities, among others.

However, the measures mentioned are not enough. For example, the Federal Government has hardly conducted any information campaigns on the women's rights instruments that apply here. Publications of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth are regularly not available in easy-to-read language or other languages commonly spoken in Germany. Women seeking protection are thus denied access to information because of their level of education, their origin, a disability or their social class.⁵ A lack of information and

² Cf. Bericht des Deutschen Juristinnenbundes e.V. (djb) zur Umsetzung der Istanbul-Konvention in Deutschland, 25 November 2020, p. 4, available at https://www.djb.de/fileadmin/user_upload/st20-31-IK-Bericht-201125.pdf.

³ Cf. Deutscher Juristinnenbund e.V. (djb), Stellungnahme zu dringendem gesetzgeberischen Handlungsbedarf zur Bekämpfung von Gewalt gegen Mädchen und Frauen, 1 June 2021, available at https://www.djb.de/fileadmin/user_upload/st21-12_Gewalt_gegen_Maedchen_und_Frauen.pdf.

⁴ Cf. Deutscher Juristinnenbund e.V. (djb), Stellungnahme zu dringendem gesetzgeberischen Handlungsbedarf zur Bekämpfung von Gewalt gegen Mädchen und Frauen, 1 June 2021, available at https://www.djb.de/fileadmin/user_upload/st21-12_Gewalt_gegen_Maedchen_und_Frauen.pdf.

⁵ Cf. Bündnis Istanbul-Konvention, Alternativbericht zur Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt, Februar 2021, p. 67, available at https://www.djb.de/fileadmin/user_upload/Alternativbericht-BIK-2021.pdf.

the associated knowledge to assess the specific circumstances (with regard to the Istanbul Convention, e.g. protection and support measures, criminal prosecution, accommodation, the Protection against Violence Act, residence rights, etc.) are a major challenge for women seeking protection who have to make serious decisions for themselves.

Funding and access to shelter

The German Women Lawyers' Association welcomes the plans to invest 120 million euros to build, extend and refit women's shelters and counselling centres throughout Germany as well as the other measures taken by the government. These are important contributions to combat and prevent violence against women, but they are far from sufficient.

To date access to protection and support in a women's shelter for women and their children seeking help is not guaranteed throughout Germany. There is a shortage of around 15,000 places for women and children in women's shelters. In many towns and districts there are no women's shelters or too few places. There is a lack of a nationwide infrastructure of specialised protective facilities for girls and young women under 18 who have been affected by violence. Only in a few places are there, for example, girls' shelters.⁶

In addition, migrants affected by violence with uncertain residence status or without papers, asylum seekers, women without entitlement to benefits according to the Social Security Codes, refugee women as well as certain EU citizens cannot be admitted to many women's shelters for reasons of lack of funding and restrictive legislation or can even be prosecuted for an administrative offence for leaving their accommodation without permission. This problem is exacerbated by the increasing individualisation (case-by-case financing) of services for women's shelters.⁷

Overall, funding of women's shelters and support structures for victims of gender-based violence is still based upon a confusing mix of social assistance benefits, individual payments, state and local funding, awarded fines and private donations. The (generally underpaid and generally female) employees of shelters and counselling centres have to spend large amounts of their working time for fundraising, dealing with underfunding and worrying about the future (state and regional funding must be applied for anew every year) instead of supporting and caring for victims of violence.⁸

The structural obstacles to sufficient and reliable funding remain also unaddressed. Persistent constitutional law questions concerning the permissible relationship between federal, state

⁶ Cf. Bündnis Istanbul-Konvention, Alternativbericht zur Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt, Februar 2021, p. 82, available at https://www.djb.de/fileadmin/user_upload/Alternativbericht-BIK-2021.pdf.

⁷ Cf. Bündnis Istanbul-Konvention, Alternativbericht zur Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt, Februar 2021, p. 84, available at https://www.djb.de/fileadmin/user_upload/Alternativbericht-BIK-2021.pdf.

⁸ Cf. Deutscher Juristinnenbund e.V. (djb), Contribution to the UN Human Rights Committee on the List of Issues Prior to Reporting by Germany (Seventh Periodic Report), 3 April 2018, pp. 7 et seq. For more details see Bündnis Istanbul-Konvention, Alternativbericht zur Umsetzung des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt, Februar 2021, p. 85, available at https://www.djb.de/fileadmin/user_upload/Alternativbericht-BIK-2021.pdf.

and local funding are not answered. Further, the Federal Government does not reflect upon the problem of major funding by social assistance benefits paid for individual victims seeking refuge or support—a system causing the impossibility of developing any planning security. The main obstacle for dependable support and shelter is not even mentioned: the legally unfounded idea that shelter and support for victims of gender-based violence would be a voluntary and not mandatory state task.⁹

Trafficking of women and girls

The measures taken by Germany to combat human trafficking – the setup of federal/ *Länder* working groups on domestic violence and human trafficking – may be a first step in the right direction. Nonetheless, the German Women Lawyers' Association is still deeply concerned as the situation of trafficking in women and girls has not improved since. Although in November 2016, several amendments to the Penal Code entered into force extending the criminal liability concerning forced prostitution, the reckless benefitting from forced prostitution and trafficking in women and girls for the purpose of labour exploitation and of sexual exploitation. There is no indication that these new regulations have any considerable effect and contributed to the elimination of human trafficking.¹⁰

What is still missing is an overall strategy and coherent national action plan against all forms of trafficking in women, children, and men. Moreover, criminal law is no substitute for the comprehensive and effective protection and support of victims of trafficking and the enhancement of their rights. It must also be ensured by enacting respective legislation that all affected persons can receive compensation benefits, regardless of their residence status, the form of exploitation and without having to have experienced physical violence. In addition, trafficked persons must be better informed about their rights and an easy access to support services ensured.¹¹

In particular, victims of trafficking who are non-EU citizens are severely affected by the insecurities of their residence status. Therefore, the right of residence must be uncoupled from their suitability as witnesses in criminal proceedings and their willingness to testify.¹²

We urge the Federal Government

- **to take concrete measures to guarantee a more effective implementation of legislation to prevent, combat and prosecute gender-based violence, particularly concerning measures to bring about fundamental legal and cultural change, e.g. measures to**

¹⁰ Cf. Deutscher Juristinnenbund e.V. (djb), Contribution to the UN Human Rights Committee on the List of Issues Prior to Reporting by Germany (Seventh Periodic Report), 3 April 2018, p. 10.

¹¹ Cf. Deutscher Juristinnenbund e.V. (djb), Contribution to the UN Human Rights Committee on the List of Issues Prior to Reporting by Germany (Seventh Periodic Report), 3 April 2018, p. 10.

¹² CEDAW Alliance of civil society organizations in Germany, CEDAW Alternative Report, 2017, pp. 25 st seqq., available at <https://www.frauenrat.de/cedaw-allianz/>.

improve the professional understanding of gender-based violence for judges and other law enforcement personnel, specific education measures, public awareness raising etc.;

- to enhance the availability of multilingual, easy-language and low-barrier information services in the field of prevention, support/care for persons affected;
- in order to create equal living conditions, to initiate the enactment of a federal law and thus a uniform federal regulation for the financing of all women's shelters;
- to initiative the enactment of changes in residence and asylum law in order to remove access barriers to shelters for female migrants and refugees;
- to take measures to effectively implement the statutory amendments concerning trafficking and forced prostitution;
- to take further measures and invest resources to guarantee the protection and support of victims of trafficking and to safe-guard their rights, both independent from their nationality or actual or former status of residence.
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II. Voluntary termination of pregnancy (arts. 3, 6, 7, 17 and 26)

The Human Rights Committee asked the government to respond to the reports of street harassment by anti-abortion activists of pregnant women seeking counselling, and report on the measures to ensure their effective protection against such acts. The Federal Government was unable to name any specific measures:

Under German law, women seeking for a safe and legal abortion are obliged to receive mandatory counselling before they can receive the medical services needed. The counselling can only be offered by (very few) state-approved counselling centers. For some time, religious fundamentalists have been loitering on the streets directly in front of approved counselling centers to harass women who are seeking counselling. They yell at any woman crossing their way, insult women as 'baby murderers', show them pictures with fetuses cut into pieces and lots of blood, put mock child coffins on the sidewalk, and harass women in any number of ways to force them to surrender from seeking counselling and safe and legal abortion. This constitutes inhuman and degrading treatment of women who are in an especially difficult and vulnerable position and who cannot avoid the harassment due to the mandatory character of the counselling and the small number of approved counselling centers.¹³

However, in the Seventh periodic report, the government merely refers to the responsibility of police and public order authorities as well as the possibility to file an injunction criminal action for insult (*Beleidigung*) or malicious gossip (*üble Nachrede*). But authorities refuse to protect women against this discrimination, harassment and interference with their most intimate decisions upon pregnancy and family planning, arguing that the anti-abortion activists

¹³ Cf. Deutscher Juristinnenbund e.V. (djb), Contribution to the UN Human Rights Committee on the List of Issues Prior to Reporting by Germany (Seventh Periodic Report), 3 April 2018, p. 12.

would exercise their freedom of religion and freedom of speech. But neither of these freedoms includes the right to impose (religious) opinions upon other people or to harass women, especially not when they are in a vulnerable position and cannot avoid the interference, as several German courts have confirmed.¹⁴ As the street harassment takes place in different towns and regions of Germany, a federal statute obliging authorities to intervene would be necessary for the effective protection of the reproductive rights, intimacy, integrity and equality of women.¹⁵

We urge the Federal Government

- **to take immediate measures to guarantee protection against degrading treatment and street harassment of pregnant women by anti-abortion activists in front of approved counselling centres or medical practices and clinics offering abortion services;**
- **to initiate the enactment of federal regulation to protect pregnant women from street harassment.**
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III. Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person, and treatment of persons deprived of their liberty (arts. 6, 7, 9, 10 and 24)

Forced sterilization of women with learning disabilities

The Human Rights Committee called on the Federal Government to report on the measures taken to address forced sterilization and coercive abortions performed on adults with disabilities effectively. But the Federal Government did not sufficiently address the question. In particular, the Federal Government did not satisfactorily elaborate on the measures it wants to take to prevent disabled women from being pressured into sterilization against their will:

The Federal Government reported that sterilization of persons unable to give consent may be authorized by guardianship courts (*Betreuungsgericht*) under the strict standards governed by Section 1905 of the Civil Code. By these standards the consent of the guardian is required which must be in line with the (natural) will of the person concerned. The Federal Government maintained that section 1905 of the Civil Code serves to protect persons under guardianship from having sterilisations performed on them without having been provided with sufficient information and advice and without their actual will having been established, as the guardian's

¹⁴ Administrative Court of Karlsruhe, judgment of 27 March 2019, 2 K 1979/19 (http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&nr=27813); see further Administrative Court of Freiburg, judgment of 4 March 2011, 4 K 314/11; State Administrative Court of Baden-Württemberg, judgment of 11 October 2012, 1 S 36/12; approved by the Federal Administrative Court, judgment of 22 July 2013, 6 B 3/13.

¹⁵ Cf. Heinrich-Böll-Stiftung, „Möglichkeiten gesetzlicher Neuregelungen im Konfliktfeld ‚Gehsteigbelästigungen‘, Rechtsgutachten und Handreichung“, available at <https://www.gwi-boell.de/de/rechtsgutachten-zur-verbesserung-des-zugangs-zur-schwangerschaftskonfliktberatung>.

duties include providing persons under their guardianship who are not capable of giving consent with information and advice and establishing their actual will. Furthermore, a special guardian must always be appointed for the decision on consent to a sterilisation (section 1899 (2) of the Civil Code).

The Federal Government further stated that the numbers of authorized sterilisations have been continuously decreasing in the last decade. However, they further reported on plans to launch a research project to establish a body of empirical legal research in order to determine whether section 1905 of the Civil Code should be maintained, modified or abandoned altogether and replaced by a general ban on the sterilisation of persons under guardianship.

The German Women Lawyers' Association commends the efforts of the Federal Government to launch a review of Section 1905 of the Civil Code based on empirical research as outlined in the Seventh Periodic Report. Nevertheless, we question the willingness of the Federal Government to go forward with the research project. To this date, the Federal Government has not published any results of or any further information on an empirical evaluation of Section 1905 of the Civil Code. To the contrary, the Federal Government introduced a bill on the reform of Guardianship Law into Parliament that was passed on 5 May 2021 and enters into force on 1 January 2023.¹⁶ Under the new law sterilization will be governed by a new Section 1830 of the Civil Code. The intended regulation takes over Section 1905 of the Civil Code in its current version with only two editorial changes. The substance of the provision is retained.

The adoption of this new regulation marks a radical departure from the intended evaluation of Section 1905 of the Civil Code mentioned above. It furthermore does not comply with the findings by the Committee on the Rights of Persons with Disabilities. In its Concluding observations on the initial report of Germany the committee explicitly requested the Federal Government to repeal Section 1905 of the Civil Code due to non-compliance with the CRPD.¹⁷ In the recently adopted law the Federal Government neither repealed the provision on sterilization nor substantiated its decision to retain the provision with any empirical findings. However, the provision violates Germany's obligations under the ICCPR, CRPD, as well as Art. 36 (b) of the Istanbul Convention.¹⁸

Any sterilization without the prior, informed and effective consent of the woman concerned constitutes a criminal offense and must be consistently prosecuted. This also and in particular applies to sterilizations of women with disabilities. It is still not uncommon for sterilization to be purely "prophylactic". The information chains of doctors and relatives are rather result-oriented and aim less at the feelings and wishes of the persons concerned. The German

¹⁶ Gesetz zur Reform des Vormundschafts- und Betreuungsrechts, 4 May 2021, BGBl. I S. 882, available at https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Verkuendung_BGBl_Gesetz_Reform_Vormundschaft_Betreuungsrecht.pdf.

¹⁷ Committee on the Rights of Persons with Disabilities Thirteenth session 25 March–17 April 2015, Concluding observations on the initial report of Germany.

¹⁸ Cf. Deutscher Juristinnenbund e.V., Strafbarkeit von Zwangsterilisationen, Stellungnahme 19-27, 28 November 2019, available at <https://www.djb.de/presse/stellungnahmen/detail/st19-27>.

Women Lawyers' Association has pointed this out in a statement on the draft bill.¹⁹ We expressly regret that the Federal Government did not seize the opportunity to repeal Section 1905 of the Civil Code in the recent change of legislation and thus did not remedy the violations of international law.

We urge the Federal Government

- **to repeal Section 1905 (soon to be Section 1830) of the Civil Code;**
- **to take effective measures to counteract sterilizations on the basis of inadequate information and ineffective consent.**

Prof. Dr. Maria Wersig

President

Anne Pertsch

Chairwoman of the Commission European law and
public international law

¹⁹ Cf. Deutscher Juristinnenbund e.V., Stellungnahme zum Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz zum Gesetz zur Reform des Vormundschafts- und Betreuungsrechts, 10 August 2020, available at <https://www.djb.de/presse/stellungnahmen/detail/st20-24>.