

CEDAW Interim Report
by the Federal Republic of Germany

Berlin, March 2019

(Regarding the current state of implementation of the four recommendations of the CEDAW Committee in para 38b, 40b, 48b and 50d of the *Concluding Observations* from March 2017)

Preliminary Remarks:

After receiving the *Concluding Observations* of the CEDAW Committee (CO) in March 2017, the Federal Government had these translated into German, published and integrated the recommendations into the government's work in the new legislative period. Pursuant to para No. 55, Germany reports below on the steps taken to either implement the recommendations or on the current state of affairs and the reasons why the prospect of implementing all recommendations cannot be offered.

Regarding para No. 38(b)

In Germany, access to safe terminations of pregnancy is ensured by law. There is a mandatory counselling regulation, which serves the protection of life. According to this legal regulation, the counselling is to take place without a preconceived outcome and based on a woman's autonomous decision. Nothing indicates that women resort to unsafe abortions in order to circumvent counselling and the waiting period.

In principle, Germany pursues a preventive approach, especially through comprehensive awareness raising policies and ensuring access to contraceptives. Consequently, the number of abortions has decreased from approx. 130,000 per year between 1996 and 2004 to approximately 101,000 in 2018.

Pursuant to its Constitution and its human-rights obligations, Germany is obliged to protect life. This also includes the protection of unborn life. The question of the legal treatment of abortion has been the subject of public discussion for decades. It requires a balance between the interests of pregnant women and the right to life of the unborn.

The law on abortion currently applicable in Germany, including the provision on counselling contained in section 218a (1) of the Criminal Code (StGB) and the aspects of health insurance law, are the result of many years of debate and a viable compromise.

The legislature has regulated certain exceptional circumstances in which abortions are permitted (medical and/or criminological indication). If such an exceptional case allowing a lawful abortion is not present, the German constitution provides the legislator with the possibility to refrain from imposing criminal sanctions if, with a view to protecting unborn life, it provides comprehensive counselling for the pregnant woman. It is then an unlawful, but unpunished abortion.

The current regulation of sections 218 et seq. StGB has been in existence since the mid-1990s and resulted from a judgment of the Federal Constitutional Court (FCC) in 1993. The court had clarified that a protective obligation on the part of the State existed for the benefit of unborn life, which must be reflected in the criminal law as well. According to the court, the State had an obligation to protect unborn life and thus could not freely refrain from using the criminal law and the protective effect it entails. However, it was not constitutionally precluded in principle to focus mainly on counselling the pregnant women in the early stages of pregnancy in pregnancy conflict situations. The provision on counselling is thus based upon the legal notion that criminal law should be placed in the background in the interest of open-ended counselling which is to encourage the woman to continue the pregnancy. The law assumes that a woman who does not consider herself either physically or psychologically capable of carrying her unborn child to term is in a very particular, incomparable conflict situation, regardless of the reasons which led to the conflict situation in the individual case. Furthermore, it assumes that in this situation a better protection of unborn life can be achieved through binding counselling for the pregnant woman, which helps her to solve the

conflict situation, than through being threatened with criminal sanctions, which in the past proved to be largely ineffective.

In the case of an unlawful, but unpunished abortion, the insured person's entitlement to health coverage is restricted. In principle, this means that the coverage excludes services relating to the abortion itself. Based upon the judgment of the FCC, the legislature merely covered services prior to the abortion, for complication-related aftercare as well as for treatment for the health benefit of the unborn child and potential children from future pregnancies.

However, women in social need are entitled to full coverage in the case of a penalty-free abortion, if it is unreasonable for them to raise the necessary funds.

The rules described above reflect a hard-won societal consensus in Germany, which serves to balance out the irreconcilable interests of the pregnant woman in the case of an intended abortion and the right of life of the unborn. Therefore, Germany cannot offer the prospect of any change in this regard.

Regarding *para No. 40(b)*

1. Principal remarks on German maintenance law

Each parent is obligated to provide maintenance for his/her minor child under German law (Section 1601 of the German Civil Code, BGB). A parent is liable according to their ability to pay (Section 1603 BGB). Parents are obligated to provide increased levels of maintenance (Section 1603, para 2, sentence 1 BGB) for minor and/or privileged children (within the meaning of Section 1603 para 2, sentence 2 BGB).

The obligor must use all available resources to pay the maintenance. If the obligor is unemployed, he/she must endeavour to find new employment. Should the obligor fail to fulfil his/her obligations, he/she must be treated as if he/she had an income commensurate with his/her individual abilities and actual employment opportunities. Low income of an obligor therefore does not necessarily result in the reduction or complete elimination of the maintenance obligation. Rather, in such cases, maintenance is calculated on the basis of fictitious income.

The amount of maintenance owed is determined by the child's position in life (Section 1610 BGB), which is derived from that of his/her parents. Maintenance is therefore to be paid according to the living conditions of the parents liable for maintenance. Since 2008, the needs of minors have also been secured further through a minimum maintenance requirement (Section 1612a BGB). The obligor must pay at least this minimum amount of maintenance, which is derived from his/her ability to pay.

The described sustainable system for the payment of child maintenance applies irrespective of the status of the children or their parents' legal relationship to each other. It secures minor children's entitlement to receive maintenance, particularly after separation or divorce.

2. State-secured child maintenance payments

In Germany, single parents who do not receive any or no regular maintenance for a child from the other parent can receive advance maintenance payments from the State. The advance maintenance payment amounts to the minimum maintenance for a child of that age minus the child allowance for the first child of currently 194 euros. As a result, since 1 January 2019, the amount of the advance maintenance payment has been graduated according to the age of a child:

For children

- under 6 years old 160 euros,
- between 6 and 11 years old 212 euros,
- between 12 and 17 years old 282 euros.

Together with the child allowance, separated and divorced parents thus receive financial State support equal to the amount of the minimum child maintenance. In mid-2017, statutory regulations on advance maintenance payments were significantly expanded. Since then, around 370,000 additional children in Germany receive this benefit. This reform enables single parents to receive advance maintenance payments for their minor children without any time restrictions. The previously applicable maximum period of 6 years no longer applies. This means serious financial relief for single parents, the vast majority of whom are women.

If the other parent were able to pay maintenance for the child, but does not do so, then the agency for the advance maintenance payment would retrieve this advance maintenance from him/her.

As a further contribution to counteract child poverty, the Federal Government is examining together with the *Länder*, how additional organisational improvements in the work of the local youth welfare offices can secure child support even better in Germany in the long term.

Furthermore, the Federal Government has for some time been examining the effects on maintenance law of two parent care constellations that are increasingly being practised in social reality: the so-called co-supervision and the alternating model. Under this model, parents share care and upbringing of the child. According to German law, a genuine alternating model only exists when these areas are shared equally. The issue of whether one parent focuses more on actual support and care, or whether both parents share equal responsibility, depends on the trial judge's assessment on a case-by-case basis. In this respect, not only the amount of time spent looking after the child is decisive, but also which tasks the respective parent performs in childcare. By way of derogation from the standard rules of procedure, this model is solved by case law in such a way that there is no one-way obligation for cash maintenance, but rather that both parents have cash maintenance obligations proportionate to their income. This ensures that the child's needs are safeguarded and that the maintenance burden is shared appropriately, with the courts being responsible for the individual calculations, taking into account each individual case. According to current plans, the Federal Government is expected to submit a bill during this legislative period, which is based on the reform consideration to have maintenance law take greater account of co-supervision and/or alternating model arrangements.

In the Federal Government's Coalition Agreement of March 2018, it was also agreed to substantially raise and further develop federal child benefits (child allowance and child supplement). With the reform of the child supplement, low-income families, particularly single-parent families and families with many children are to be even better relieved. The legislative process has already begun. The law is expected to enter into force on 1 July 2019. These improvements in child supplement are aimed at reaching roughly 500,000 additional children. This would mean that an estimated 750,000 children from low-income families (both single-parent and two-parent families) would profit from the supplementary child allowance.

Regarding para No. 48(b)

In the context of EU law, the special situation of vulnerable persons must be considered. Vulnerable persons are listed under Article 21 of the Reception Directive (2013/33/EU). These include, but are not limited to minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minors and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. States shall assess whether a vulnerable person has special reception needs and needs particular procedural guarantees. The provisions at EU-level referred to by the CEDAW committee in recommendation 48b, specifically the EU Reception Directive, are already being implemented in Germany through national regulations. Furthermore, German law contains additional requirements in order to meet the special protection needs of female refugees.

Between 2016 and 2018, 1,15 million asylum seekers were registered in Germany. Slightly over a third of these (36.4%) were women. The Federal Office for Migration and Refugees (BAMF) has granted the legal status of a refugee in 694,000 cases, 264,000 of which were female, under the Convention on the Status of Refugees (*Geneva Convention*) or granted subsidiary protection within the meaning of Directive 2011/95/EU. This corresponds to 46.1% of all decisions taken by the BAMF or 50.4% when only female asylum seekers are considered. In about 18,600 cases, refugee protection was granted under Section 3, para 1 of the German Asylum Act (AsylG) on the grounds of gender-specific persecution.

The German regulation on gender-specific persecution in Section 3b AsylG is more favourable for the women concerned, than the provisions in EU law according to Article 10 of Directive 2011/95/EU. While, according to the Directive, gender-related aspects need only to be “adequately” taken into account when determining the grounds for persecution, the AsylG provides that persecution on the grounds of membership in a particular social group can already exist when it is linked solely to gender or gender identity.

The internal administrative instructions of the BAMF include special procedural and legal regulations and guidelines for dealing with victims of gender-based violence. Examples include instructions on the use of specially-trained female decision-makers, female interpreters and instructions for hearings or legal assessment of gender-specific human rights violations. In addition, the so-called ‘country of origin guidelines’ take into account particular national circumstances and include guidelines on decision-making practice for frequently occurring case situations, such as genital mutilation or human trafficking. Since 1996, the BAMF has already been deploying specially-trained female decision-makers nationwide for particularly vulnerable groups. Depending on the female asylum seekers’ needs, special representatives for unaccompanied minors, for gender-specific persecution, for victims of torture and trauma, or for victims of human trafficking are in place.

In all BAMF locations where asylum procedures are processed, there should be at least one special representative for victims of human trafficking. These are currently approximately 50 locations. In addition to personal suitability, the prerequisites for becoming a special representative include at least one year of experience as a decision-maker. Decision-makers have already completed the EASO modules: Hearing Techniques, Evidence Assessment and Granting of Protection. Special representatives for victims of human trafficking are additionally trained in the EASO module “Interviewing Vulnerable Persons”.

In order to implement the EU Victims Protection Directive, Section 25 (4a) of the Residence Act (AufenthG) contains a special humanitarian provision to provide a residence permit to victims of human trafficking for participation in criminal proceedings.

Also, a foreign national whose residence-permit was issued on humanitarian grounds, for example pursuant to Sections 23a, 25 paras 4, 4a, 4b or 5 AufenthG, may receive a permit to work.

The BAMF determines whether vulnerable persons require specific procedural guarantees based on the requirements of Article 24 of Directive 2013/32/EU. One example is the consideration of the needs of single parents with minor children when scheduling the hearing, carrying out the hearing in a sensitive manner, securing childcare facilities for children during the hearing as well as checking the possibility of prioritising the proceedings according to Article 31, para 7b of Directive 2013/32/EU. In addition, where necessary, decision-makers and interpreters of a specific gender may be appointed during the hearing in accordance with Article 15, para 3b of Directive 2013/32/EU.

Moreover, on 1 February 2018, the Council of Europe's Convention on preventing and combating violence against women and domestic violence came into force in Germany. Self-evidently, its statutory regulations also apply in the so-called arrival, decision and return centres as well as in all refugee shelters.

In 2016, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and UNICEF launched an initiative to protect women and children in refugee shelters. Together with the partners of the initiative, minimum standards for the protection of refugees in refugee accommodation were developed. (<https://www.bmfsfj.de/blob/jump/121372/minimum-standards-for-the-protection-of-refugees-and-migrants-in-refugee-accommodation-centres-data.pdf>).

One of the Federal Government's focal points is on educational and awareness-raising measures aimed at informing women and girls at refugee accommodation centres about their rights as well as the counselling and protection services available in Germany. The aim is to offer a protective and supportive environment and to provide long-term support in the integration process and the establishment of an independent livelihood.

A major contribution to this is also made by the nationwide "Violence against women support helpline" (available twenty-four/seven, in eighteen different languages, free of charge) and the nationwide anti-violence and anti-trafficking networks and agencies or the association for women's shelter coordination.

Integration and tailor-made support services, especially for refugee and migrant women, are particularly important concerns of the Federal Government in terms of their access to the labour market and promotion of independent livelihoods. The Federal Government therefore supports these groups through a large number of programmes and measures.

Regarding para No. 50(d)

The assumptions underlying the Committee's concern are incomplete and do not reflect the facts as described below.

The status of women getting divorced under the law of the German Democratic Republic (GDR) has been the subject of numerous reviews by the legislative, executive and the judicial branches (*inter alia*, 2003 before the Federal Constitutional Court, 2013 before the European Court of Human Rights) as well as in a complaint brought before the CEDAW Committee under Article 8 of the CEDAW Optional Protocol (2011-2014). The CEDAW Committee itself rejected the complaint. Thus, the concluding observation No. 50d came as a great surprise to Germany in 2017.

Nonetheless, in the past two years, the German Government has again thoroughly examined the situation.

In the Coalition Agreement in 2018, the Coalition parties agreed to a fund for people receiving only social assistance for the elderly and who can be considered as special cases of hardship after the German pension transfer process. Like others, who feel disadvantaged

because of the process, women divorced under GDR law will be included in the examination as potential beneficiaries. A working group comprising of the Federal Government and the German regions (*Länder*) was set up to establish such a fund for special hardship cases.

However, regarding the issue of setting up a special “compensation scheme” exclusively for women who got divorced in the former GDR to supplement their pensions, the Federal Government concludes that there is no substantiated unequal treatment of divorcees under GDR law, neither because of gender nor in relation to women from the former West-German *Länder*.

Merging two fundamentally different pension systems in the context of German reunification was complex and could only be achieved by resorting to typifying assumptions. Although since 1992, a uniform pension law applies in Germany (Sixth Book of the Social Code: SGB VI), the transfer from GDR law to the wage- and contribution-dependent pension law of SGB VI included clauses protecting ownership and legitimate expectations for those who acquired pension benefits in the former GDR.

The claim by the women, who got divorced under GDR law, that up to 40 years of life employment periods were deprived, does not reflect reality. Until 31 December 1996, there were generous ownership and trust regulations for pensioners and those approaching retirement age. In this respect, East-German pensioners were actually privileged over their West-German counterparts.

The West-German pension system was wage and contribution-oriented; largely dependent on whether and how much someone had worked. The GDR pension system was aimed at ensuring contribution-independent minimum pensions and minimum contribution rates. Moreover, a pension splitting in case of divorce would not have led to noteworthy changes in the GDR pension amount. The minimum pension with a waiting period of 15 years was 330 GDR marks per month, increasing every 5 years by 10 GDR marks. The highest minimum pension amount for 45 and more years of insurance was 370 GDR marks, around 50 GDR marks less than the pension attainable by paying contributions in the GDR pension scheme.

Under the German Reunification Treaties, the GDR pension law was aligned in an initial step with the wage and contribution-dependent pension law of the SGB VI. In order to raise pensions to a net pension level of 70%, the existing GDR pensions were increased depending on the number of years someone had worked and the individual start of the pension on a percentage basis and subsequently twice by 15% before the Pension Transfer Act took effect on 1 January 1992.

Based on the Pension Transfer Act coming into force in 1992, the individual income points for GDR pensioners were determined in a blanket procedure based on the data available at the time (number of years of activity subject to compulsory insurance and additional years attributed due to invalidity up to the age of 55 as well as the average salary during the twenty years prior to retirement). Periods, previously relevant for the former GDR pension, were also counted although they would have not been regarded as contribution periods, if the SGB VI had been consistently applied (e.g. for care leave periods). In addition, certain periods were counted with a higher value than under the strict application of SGB VI regulations.

Since 1 January 1992, pensions in East and West are calculated according to the same principles. The pension amount depends primarily on the length of the insurance period (and thus working life, in which contributions to the pension scheme were paid) and on the amount of the insured remuneration. The objective was to replace the GDR minimum pension scheme with a wage and contribution-based, wage-dynamic pension system, irrespective of marital status.

Contrary to the portrayal of the Association of Women Divorced in the GDR, voluntary contributions of 3 GDR marks served - also according to the GDR pension law - solely to maintain pension entitlements and did not have a pension-raising effect due to the minimum

pension provisions (about 70% of women's pensions received minimum pensions). According to SGB VI, voluntary contributions of less than 15 GDR marks per month result in pension benefits from a so-called higher insurance, which is ultimately more favourable than the replaced GDR pension law.

According to GDR law, if certain criteria were met, care periods were regarded as equivalent to periods of employment requiring the payment of pension contributions. Transferring those GDR care benefit periods into SGB VI would have permanently favoured GDR pensioners over the pensioners of the West German *Länder* in a constitutionally questionable manner. Moreover, the effect of recognising periods of care under GDR law was not comparable with that of compulsory contribution periods for long-term care under the provisions of the SGB VI, which were not introduced until 1995.

The additional years attributed for the birth of a child under GDR law, and the minimum pension possible for women with five or more children (330 GDR marks in 1989), were also not transferred to SGB VI. However, the conversion to the child-raising regulations of the SGB VI is generally not a disadvantage, since under former GDR law, one year of child-raising only led to a maximum pension of 6 GDR marks. In many cases the years spent raising children did not increase the pension at all.

As of 1 January 2019, under SGB VI, the first 30 months are principally counted as child-raising periods for children born before 1992. This leads in general to a pension increase of one pension income point (equals approx. 30 Euros) per year of child-raising.

The Federal Constitutional Court found that “there was no argument from any constitutional point of view to preserve the advantages of the GDR social security system for existing GDR pensioners and at the same time to grant them the advantages of the all-German pension insurance system.”

A pension splitting for divorces in the new *Länder* was introduced by 1 January 1992. A retroactive introduction was not possible under constitutional and international law, as it would have retroactively infringed the rights of the spouse liable for compensation. Also, no survivor's pension (widow pension for divorced persons) was provided for divorces before this date because this had already been abolished in former West Germany with the introduction of the pension splitting in case of divorce in 1977. Furthermore, GDR pension law contained no divorce-specific provisions comparable with those of West German pension law.

A special provision exclusively for former GDR divorcees, even in form of a fund, would not be possible due to constitutional considerations, as it would lead to an unfair treatment of other groups. It is therefore not possible that the CEDAW recommendation will be implemented in the form requested by the Committee.

Additional information:

The available statistical surveys – particularly the study “Old-Age Security in Germany (ASiD)” and the special analyses carried out in this context – show no general discrimination of women divorced under GDR law. Rather, the average amount of pensions from the statutory pension insurance is proportionately higher among women in the new *Länder* and the proportion of small pensions lower than in the corresponding group in the former *Länder* of West Germany.

In the last few years, improvements in benefits, such as the upgrading of child-raising periods have contributed to a considerable pension increase for women in Germany. The current Coalition Agreement, moreover, aims to provide for the remuneration of life-time achievements and the prevention of poverty in old age.