

Mandates of the Special Rapporteur on the rights of persons with disabilities; and the Special Rapporteur on the right to education

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the rights of persons with disabilities; and Special Rapporteur on the right to education, pursuant to Human Rights Council resolutions 44/10 and 44/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Ms. [REDACTED], a 15-year-old child with learning disabilities, who has been denied the right to inclusive and quality education, as well as reasonable accommodation** in Koblenz (Rhineland-Palatinate State).

According to the information received:

Ms. [REDACTED] is a 15 year-old girl with an intellectual disability from Koblenz (Rhineland-Palatinate State), who wishes to attend a mainstream school.

Unlike most children in Germany, [REDACTED] did not attend primary school at the age of six. Rather, her entry into primary mainstream school was deferred by one year, after which she was admitted at the request of her mother, Ms. [REDACTED].

After divorcing from her husband in 2006, on 22 June 2010, the Local Court of Koblenz granted Ms. [REDACTED] the sole custody rights over her daughter [REDACTED].

In 2013, the Youth Welfare Office of the City of Koblenz granted [REDACTED] integration assistance in primary school, pursuant to section 35a of the German Social Code, Book VIII, from April 2013 until July 2014.

On 28 July 2014, the Youth Welfare Office decided to withdraw the abovementioned assistance, on the basis that continued education in the mainstream school system was allegedly not in accordance with the best interests of [REDACTED]. The Office determined, however, that a continued integration assistance would be granted should [REDACTED] be transferred to a segregated special school for pupils with disabilities.

Between 2014 and 2017, and notwithstanding the withdrawal of integration assistance by the German authorities, [REDACTED] successfully attended a mainstream primary school (*Regenbogen Grundschule*). As provided by the

school legislation of the State of Rhineland-Palatinate, all children who complete primary school receive a “recommendation” from the “class conference” (composed of all the teachers that educated the child), signed by the schoolmaster. Accordingly, at the conclusion of primary school, the recommendation that ██████ received advised that she attend a mainstream secondary school.

Between November 2017 and July 2020, ██████ attended the *Albert Schweitzer Realschule Plus*, a “specialist school” (*Schwerpunktschule*) that, according to the legislation of the State of Rhineland-Palatinate, is tasked with delivering inclusive quality education for all students with and without disabilities (section 14a of the Rhineland-Palatinate Schools Act).

At this school, ██████ experienced a series of difficulties, stemming reportedly from the lack of adequate arrangements for inclusive education, including with regard to reasonable accommodation and training of teachers. In particular, ██████ experienced social exclusion and bullying, and was reportedly made to feel unwanted in class by her teachers and classmates. The responsibility of episodes of conflicts and aggressions, resulting allegedly from the constant bullying and exclusion, was always and solely attributed to ██████ by her teachers. A number of ██████’s classmates were available to attest that she was not the origin of any of those aggressions, but rather reacted to serious mobbing and physical assaults from other classmates.

In April 2018, ██████ was suspended from school, initially for one week but then protracted until June 2018. The reason for the suspension was an alleged threat of violence by ██████ against a fellow pupil. After the Easter holidays of 2018, the school put the return to school of ██████ under the condition that an integration assistant accompanied her, although, as mentioned above, the Youth Welfare Office had withdrawn such assistance by decision of 28 July 2014, arguing that it would only be granted if ██████ were to attend a segregated special school (see above).

Between the beginning of the school year 2018/2019 and until her involuntary suspension from the school, ██████ attended classes only for three hours a day (mostly for the first three lessons of each school day), contrary to her wish to participate in all classes of a typical school day (approximately 6 hours of schooling). ██████ was not provided any replacement or accommodation to catch up on the school hours and classes that she missed. The reasoning for this provided by the school authorities was that ██████ is “unable” to concentrate for a full school day without an integration assistant. Again, it is noted that the Youth Welfare Office had withdrawn integration assistance for ██████ in 2014, with the reasoning that it may be granted if she were to attend a segregated school (see above).

In June 2018, the Youth Welfare Office initiated proceedings before the Local Court of Koblenz (Family Law Section) to withdraw from Ms. ██████ all

parental custody rights for ██████, and to order State guardianship. The Youth Welfare Office argued that ██████'s well-being was at risk and that her mother acted systematically against the best interests of her child. In particular, it alleged that Ms. ██████ exerted excessive pressure to perform on her daughter, who had a considerable need for support and showed "clear deficiencies" in her development. According to the Office, ██████'s mother had failed to take full advantage of the authority's offers of clarification and assistance since those did not correspond to her intentions to ensure that her child has access to inclusive education.

On 24 August 2018, the Local Court of Koblenz decided not to grant in full the order requested by the Youth Welfare Office, but anyway requested that Ms. ██████ engage in "constructive discussions" with the Office, to support and ensure ██████'s school attendance as well as to apply for the integration assistance for ██████ (that had been withdrawn in 2014 as mentioned above). Reportedly, this decision did not take into consideration the fact that Ms. ██████ had already filed an application for the provision of integration assistance with the Youth Welfare Office: her application had reportedly been rejected by the Office, which declined its jurisdiction on the matter in favour of the Social Welfare Office, arguing that ██████ had to be considered as having a permanent and substantial "cognitive" disability, in addition to an "intellectual" disability, entailing a change of jurisdiction from the Youth Welfare Office to the Social Welfare Office under the relevant provisions of German social law (*Sozialgesetzbuch VIII* – youth welfare law, and *Sozialgesetzbuch IX and XII* – disability welfare law). Since Ms. ██████ disagreed with this assessment of the Youth Welfare Office, she did not submit a new application to the Social Welfare Office. Instead, she requested that the pending application be submitted again to the Youth Welfare Office. However, the latter took Ms. ██████'s resistance as an indication that she was not willing to cooperate constructively with the authorities in the best interests of her child as it had been required by the Local Court.

On 7 January 2020, the Family Law Section of the Local Court of Koblenz decided to withdraw from Ms. ██████ the right to apply for youth welfare measures, to file applications under the German Social Codes (*Sozialgesetzbücher*), to decide on school matters as well as issues of health care for ██████, and ordered a supplementary guardianship, appointing the Youth Welfare Office of the City of Koblenz as the supplementary guardian. In its decision, while the Local Court of Koblenz acknowledged that Ms. ██████ had sought to act in the best interests of her child and had chosen school-based support for her daughter through inclusion at a mainstream school, it found a specific threat to ██████'s wellbeing. The Court argued that she had been subject to excessive pressure to perform at school by her mother, and this was the cause of her alleged aggressive behaviour towards fellow pupils and teachers (see above). The Local Court held that, while the choice of school is generally based on the parents' right to choose, in the present case, the mother's decision had resulted in ██████ not receiving the necessary support that she needed in the

past - due to her lack of acceptance of the “diagnosis” of ██████, as well as of her need for special support measures.

On 13 May 2020, the Higher Regional Court of Koblenz upheld the decision of the Local Court, which made the appointment of the supplementary guardian legally binding. During the same month, the supplementary guardian de-registered ██████ from her previous inclusive “specialized” school, effective on 3 July 2020 (i.e. the last day of the 2019/2020 school year) and enrolled her to a segregated special school for the 2020/2021 school year. It is reported that this decision was made against ██████ and her mother’s express will and preference.

On 26 June 2020, ██████ and ██████ filed a constitutional complaint with the German Federal Constitutional Court (FCC) that included a request for interim measures. They argued that Courts’ decisions mentioned above aimed at transferring custody of ██████ to the Youth Welfare Office in order to be able to implement, against the express will and preference of both the child and her mother, ██████’s education in a segregated special school.

On 8 July 2020, to demonstrate to the FCC the particular urgency of the matter and to provide an update regarding the removal of ██████ from the specialized mainstream school, ██████ and ██████ supplemented their submissions with additional arguments against the decision.

On 12 August 2020, ██████ met with the supplementary guardian during the summer holidays before the start of the current (2020/2021) school year. During the meeting, ██████ reportedly made it clear that she did not want to attend a segregated special school. Since then, the supplementary guardian has not reached out to ██████ nor inquired about her situation.

On 16 July 2020, the FCC denied the request for interim measures.

On 17 August 2020, following the decision of her supplementary guardian described above, ██████ was transferred to a segregated special school.

On 2 October 2020, ██████ and ██████ submitted a Petition to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention on the Rights of Persons with Disabilities - which Germany ratified on 24 February 2009, including an urgent request for interim measures. While both proceedings are currently pending on the merits, it is reported that the Committee did not grant interim measures.

As the proceedings on the merits before the FCC and the CRPD Committee may take a long before being finalized, even if ██████ and ██████ were to succeed on the merits, ██████ would inevitably face severe difficulties in re-joining a mainstream school.

While continuing to attend the segregated special school for children with disabilities, ██████ feels bored and intellectually unchallenged. She is feeling increasingly miserable about this situation. She is reportedly stigmatized and embarrassed for being educated at a school where she is segregated from other children without disabilities, and does not wish to be recognized in her own neighborhood. On her way home from school, she often hears insults from other children.

In October 2020, as a sign of protest, ██████ has decided not to engage in discussions or work while in the classroom. It is reported that the teachers and the school director sanctioned this behavior, including by forbidding her to drink or to use the toilet during class, forbidding her to have breakfast or go outside during the breaks, and by making her stand or sit in the corridor outside the class room, or having to stay at school on Friday afternoons after class have ended.

On 23 November 2020, ██████ wrote a letter to the supplementary guardian, reiterating the fact that her placement in a segregated school is becoming increasingly unbearable, and asking the guardian to facilitate her inclusive education at a mainstream school. In the letter, ██████ claimed her right to inclusive education and expressed the concern that nobody respects her own choice, will and preference on this matter. Reportedly, she received no reply from the guardian.

On 26 November 2020, ██████ wrote a letter to the Ministry for Family, Women, Youth, Integration and Consumer Protection of the State of Rhineland-Palatinate, asking for help. At the time of writing, no response has been received.

While we do not wish to pre-judge the accuracy of these allegations, we wish to express our concern over the alleged violations of the right to inclusive and quality education, to reasonable accommodation, as well as the consideration of the best interests of the child, of ██████

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please clarify the steps being taken to guarantee that ██████ can resume attendance in a mainstream school in the community in

which she lives, as soon as possible, and that she receives all necessary individualized support measures and the reasonable accommodations that she is entitled to, as provided for in Article 24 (2) of the CRPD.

3. Please provide information on how the best interests, the will and preference and the right to be heard of ██████████ in relation to attending a mainstream secondary school, which she clearly expressed, were taken into consideration by the relevant authorities as well as by the supplementary guardian, in the process leading up to the decisions that placed ██████████ in a segregated special school, in line with the provisions of the ICESCR, Article 7 and 21 of the CRPD and Articles 3 and 12 of the Convention on the Rights of the Child.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Gerard Quinn
Special Rapporteur on the rights of persons with disabilities

Koumbou Boly Barry
Special Rapporteur on the right to education

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Germany on 17 December 1973, the Convention on the Rights of the Child (CRC), ratified on 6 March 1992, and the Convention on the Rights of Persons with Disabilities (CRPD), ratified on 24 February 2009.

The right to education is enshrined in Article 26 of the Universal Declaration of Human Rights, in Article 13 of the ICESCR, in Article 23 (3) of the CRC, and Article 24 of the CRPD. Additionally, Article 2 (definition of reasonable accommodation), Article 5 (equality and non-discrimination), and Article 7 (children with disabilities) of the CRPD that are closely related to the right to education.

Article 24 (2) of the CRPD contains the obligation for States to ensure that persons with disabilities can access inclusive, quality and free primary and secondary education on an equal basis with others in the communities in which they live; to provide reasonable accommodations so that students with disabilities can have access to education on equal terms with others; and to ensure that persons with disabilities receive the support required, within the general education system, to facilitate their effective education. In its General Comment No.4 (2016) on the right to inclusive education, the Committee on the Rights of Persons with Disabilities stressed that, for this to be implemented, students should be entitled to the support they require to facilitate their effective education and enable them to fulfil their potential on an equal basis with others¹. The Committee also clarified that the denial of reasonable accommodation constitutes discrimination on the basis of disability².

Furthermore, Article 7 of the CRPD provides that (2) in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration; and that (3) States shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right³.

The best interests of the child is also one of the Guiding Principles of the CRC, which provides, in its Article 3, that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. It further provides that States shall ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties

¹ See CRPD/C/GC/4 (2016), para. 32

² See CRPD/C/GC/4, para. 31

³ See CRPD/C/GC/4, para. 47

of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Additionally, we wish to bring to your attention of Your Excellency's Government Article 21 of the CRPD, which provides that States shall ensure that persons with disabilities can fully exercise the right to freedom of expression and opinion; as well as Article 12 of the CRC which provides that States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting them, and that the views of the child are given due weight in accordance with their age and maturity. Additionally and for this purpose, Article 12 (2) states that the child shall be provided the opportunity to be heard in any judicial and administrative proceeding affecting them either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

We would also like to draw the attention of the Government to Article 13 of the ICESCR, which recognizes the right of everyone to education, and states that education must be oriented towards the full development of the human personality and the sense of its dignity, and strengthen respect for human rights and fundamental freedoms. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 13 (1999) on the Right to Education highlighted that education is an intrinsic human right and an indispensable means of realizing other human rights. As indicated in a 2007 report⁴ of the Special Rapporteur on the right to education regarding the right to education of persons with disabilities, Article 13 of the ICESCR implicitly promotes the concept of inclusive education by stressing the role of education in enabling "all persons to participate effectively in a free society".

Finally, we wish to bring to Your Excellency's Government attention the provisions of Article 23 (3) of the CRPD, prescribing that States shall ensure that children with disabilities have equal rights with respect to family life.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org and can be provided upon request.

⁴ A/HRC/4/29