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GERMANY

**CHILDREN'S RIGHTS:
INTERNATIONAL AND NATIONAL LAWS AND PRACTICE**

Executive Summary

Germany is a party to the global conventions that protect the rights of the child, yet Germany prefers to interpret these according to the precepts of European agreements, in particular the European Human Rights Convention, and also in accordance with German Constitutional guarantees. Germany has generous systems of health care and social welfare that benefit all citizens and long-term residents, while being less generous for new immigrants. The education system differentiates between vocational and college-bound tracks, and that is sometimes criticized in international comparisons. Problems occur in particular with the children of immigrants. Stringent laws against child labor are fully enforced, as are criminal provisions against the sexual exploitation of children and human trafficking. The juvenile justice system was path-breaking in the 1920s, but more recently it has borrowed ideas from the United States, particularly on diversion.

I. Introduction

In Germany the parents are primarily responsible for raising their children, yet governmental policy protects and supports children and youth in various ways to promote their personal and social development and to assure that they will find their place in the world when they are adults. These goals are accomplished through protective legislation and various forms of assistance. In these efforts, the Federal Government often takes the lead in cooperative programs with the states and non-profit organizations.

II. Implementation of International Rights of the Child

Global Conventions

Germany ratified the Convention on the Rights of the Child in February 1992,¹ and it became effective for Germany on April 5, 1992.² However, when Germany deposited the ratification documents, it made interpretative statements and reservations³ that show that Germany views the Convention as a welcome development in international law that hopefully will improve the situation of children worldwide, and that Germany will play its part, in keeping with article 3 paragraph 2 of the Convention, by drafting legislation to live up to the spirit of the Convention and to ensure the well-being of the child. As an example of such legislation, Germany promised to reform parental custody law.⁴ However, Germany makes it clear that the Convention is not considered as being self-executing by making the following sweeping statement:

¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S 3, ratified by Germany Feb. 17, 1992, BUNDESGESETZBLATT [BGBl, official law gazette of Germany] II at 121.

² Bekanntmachung, Jul. 10, 1992, BGBl II at 990.

³ *Id.*

⁴ Germany kept this promise in 1997, by introducing joint custody for divorced parents [Kindschaftsrechtsreformgesetz, Dec. 16, 1997, BGBl I at 2942.

The Federal Republic of Germany also declares that domestically the Convention does not apply directly. It establishes state obligations under international law that the Federal Republic of Germany fulfills in accordance with its national laws, which conform with the Convention.

This statement may contain an implied reference to the fundamental rights guaranteed by the German Constitution,⁵ in particular its article 6 guaranteeing the family and the welfare of children, as well as its article 1 and 2, guaranteeing human dignity and personal freedom.

In addition to denying any domestic effects of the Convention, Germany made specific reservations or interpretative statements to several articles of the Convention. For instance, concerning article 18 (1), dealing with the common responsibility of the parents to raise the child, Germany declared that parental custody has to be awarded on a case-by-case basis, taking into consideration the situation of the parents, and declared furthermore that this article does not derogate German law concerning legal representation of minors, custody for children born in wedlock, and family and inheritance law for children born out of wedlock. Moreover, Germany made exceptions to the Convention's guarantees of legal representation and appellate proceedings by stating that these guarantees might not be provided in some cases for minor infringements.

Germany made an even more serious reservation in favor of its immigration laws by stating that:

Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens.

In several immigration cases, the German courts have upheld the German government's intent to deny any domestic effects to the Convention,⁶ and this also appears to be the prevailing opinion in the legal literature, where it is often pointed out that article 6 of the German Constitution guarantees to children at least the same level of rights as the Convention.⁷ However, there is a strong minority opinion in the legal literature arguing that Germany is bound by the Convention and that its domestic applicability cannot be totally excluded.⁸ Public interest groups, particularly those advocating a higher level of rights for child immigrants, want Germany to withdraw the reservations.⁹

In 2004, Germany ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,¹⁰ without any reservations, and declared that seventeen is

⁵ Grundgesetz für die Bundesrepublik Deutschland [GG], May 23, 1949, BGBI 1.

⁶ For instance, Verwaltungsgericht Berlin, decision of Dec. 11, 1996, docket number 36 X 643.95, available at the subscription database JURIS.

⁷ G. RENNER, AUSLÄNDERRECHT 494 (München, 2005).

⁸ G. RENNER, AUSLÄNDERRECHT IN DEUTSCHLAND 165 (München, 1998).

⁹ National Coalition für die Umsetzung der Kinderrechtskonvention in Deutschland, *Themennetzwerk Kinder ohne deutschen Pass*, at the non-official website <http://www.national-coalition.de> (last visited Aug. 4, 2007).

¹⁰ May 25, 2000, 39 INTERNATIONAL LEGAL MATERIALS [I.L.M.] 1285 (2000), ratified by Germany by Gesetz, Sept. 16, 2004, BGBI II at 1354.

the minimum age for military service in Germany.¹¹ Germany did not ratify the Sex Traffic Protocol,¹² yet joint action is being contemplated within the European Union.¹³

Germany ratified the International Covenant on Civil and Political Rights of 1966 in 1973, and it became effective in the country in 1976.¹⁴ Germany made a few reservations on matters relating to criminal law and procedure,¹⁵ which Germany declared it would handle according to the guarantees of the European Convention on Human Rights [EHRC].¹⁶ Generally, however, the Pact is applicable statutory law in Germany.¹⁷ Germany is also a member of the International Covenant on Economic, Social and Cultural Rights¹⁸ and of the Convention on the Elimination of All Forms of Discrimination against Women.¹⁹

UN Resolutions and Declarations

Germany is not in the habit of adopting U.N. declarations and resolutions;²⁰ instead, it is assumed that these are binding on the basis of article 25 of the U. N. Charter.²¹ These principles undoubtedly apply to the UN Universal Declaration on Human Rights.²² This instrument is highly respected in Germany and frequently relied upon for the interpretation of the fundamental rights guaranteed by the German Constitution.²³

European Human Rights Convention

Germany is also a member of the European Convention on Human Rights [EHRC].²⁴ This Convention is fully applicable in Germany and theoretically it ranks at the level of statutory German law;²⁵ however, due to the possibility of every individual petitioning the Court in case of alleged violations of human rights, the human rights guarantees of this convention are taken very seriously in Germany. Yet

¹¹ *Id.*

¹² Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, May 25, 2000, 39 I.L.M. 1285 (2000).

¹³ See references to EU legislation against trafficking in human beings and the sexual exploitation of children at the official website http://ec.europa.eu/justice_home/doc_centre/crime/trafficking/doc_crime_human_trafficking_en.htm (last visited Aug. 4, 2007).

¹⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, res. 2200A (XXI); UN Doc. A/6316, ratified by Germany Nov. 15, 1973, BGBl II at 1533, effective date for Germany, Mar. 23, 1976, BGBl II at 1218.

¹⁵ *Id.*

¹⁶ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, ratified by Germany Aug. 7, 1952, BGBl II at 685.

¹⁷ Hamburgisches Oberverwaltungsgericht, June 17, 2004, docket no. 1 Bf 198/00, available at the subscription database JURIS.

¹⁸ Dec. 19, 1966, 999 U.N.T.S. 171, ratified by Germany Nov. 23, 1973, BGBl II at 11569.

¹⁹ Dec. 18, 1979, 19 I.L.M. 33 (1980), ratified by Germany Apr. 25, 1985, BGBl II at 647.

²⁰ C. STARCK, DAS BONNER GRUNDGESETZ, art. 24 ¶ 1, comment 20 (München, 1999).

²¹ Charter of the United Nations, June 26, 1945, 59 Stat 1031; 993; 3 BEVANS 1153. Germany became a member of the United Nations in 1973 [Gesetz, Jun. 6, 1973, BGBl II at 430].

²² Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

²³ C. SCHREUER, DECISIONS OF INTERNATIONAL INSTITUTIONS BEFORE DOMESTIC COURTS 144 (Dobbs Ferry, 1981).

²⁴ *Supra* note 16.

²⁵ Verwaltungsgericht Hamburg, decision of Feb. 27, 2006, docket no. 15 E 340/06, available at the subscription database JURIS.

its application causes few problems because many of its principles are mirrored in the German Constitution.²⁶

Agreements on Jurisdiction, Applicable Law, and Child Protection

Germany is a member of the Convention on the Protection of Minors,²⁷ and in the past this Convention has been of great importance in the German legal practice. However, the influence of this Convention is waning. Within the European Union, it has been replaced by community legislation.²⁸ In 1996, some thirty-five states signed a replacement for this Convention, hoping that it might apply also to countries beyond the European civil law sphere. This replacement Convention, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children,²⁹ has already been ratified by five East European member states of the European Union [EU]. The other EU member states had agreed to ratify it jointly, possibly in 1996;³⁰ but this had not happened as yet.

In 1980, Germany ratified the European Convention on the Adoption of Children³¹ that harmonizes substantive adoption law among the treaty members. In 2002, Germany ratified the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.³² In addition, Germany ratified the European Convention on the Exercise of Children's Rights³³ in 2001, together with a statement specifying the matters of family law for which the Convention would be applied.³⁴ According to the German legal literature, the German level of compliance lives up to the mandatory portion of the Convention.³⁵

III. Child Health and Social Welfare

Health Care

Germany has a universal health care system that provides coverage for virtually all children who reside in Germany. The health care system consists of a social health care system that is mandatory for low- and middle-income earners³⁶ and private, contractual health care that is elected by some nine percent of the population.³⁷ Both the social and the private health care systems provide family coverage, thus covering children. For the few that would fall through the cracks of this tight social net, health benefits

²⁶ *Id.*; Renner, *supra* note 8.

²⁷ Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Minors, Oct. 5, 1961, 658 U.N.T.S. 143, ratified by Germany Apr. 30, 1971, BGBl II at 217.

²⁸ Council Regulation (EC) 2201/2003, Nov. 27, 2003, OFFICIAL JOURNAL OF THE EUROPEAN UNION (L338) 1.

²⁹ Oct. 19, 1996, 35 I.L.M. 1396.

³⁰ B. v. HOFFMAN & K. THORN, INTERNATIONALES PRIVATRECHT 374 (München, 2005).

³¹ Apr. 24, 1967, 635 U.N.T.S. 255, ratified by Germany Aug. 25, 1980, BGBl II at 1093.

³² May 29, 1993, 32 I.L.M. 1134 (1993), ratified by Germany Oct. 10, 2001, BGBl II at 1034.

³³ Jan. 25, 1996, 35 I.L.M. 651 (1996).

³⁴ Gesetz, Nov. 5, 2001, BGBl II at 1074.

³⁵ I. Baer & A. Marx, *Das Europäische Übereinkommen über die Ausübung von Kinderrechten*, 44 ZEITSCHRIFT FÜR DAS GESAMTE FAMILIENRECHT 1185 (1997).

³⁶ Sozialgesetzbuch Fünftes Buch Gesetzliche Krankenversicherung [SGB V], Dec. 20, 1988, BGBl I at 2477, as amended.

³⁷ R. Schlegel, *Comment: German Health Care – Towards Universal Access: An Overview of the Principles of Access and Benefits* 18 JOURNAL OF CONTEMPORARY HEALTH LAW AND POLICY 673 (2002).

are granted as a welfare service, either by granting benefits in kind or by paying the social health insurance contributions for the needy person.³⁸

The social health care system dates back to the 19th century and is based on employment, being financed largely by equal employer and employee contributions. However, to the extent that coverage extends to non-contributing individuals such as university students and interns, it is funded in part by the system and in part by federal subsidies. The benefits are extensive, and they include natal care, pre- and postnatal care, preventive care, ambulatory and stationary care, dental care, nursing care, rehabilitation, and sick pay.

Social Welfare

Currently social services for children and youths are provided on the basis of Title Eight of the Social Code.³⁹ However, it remains to be seen how long this federal law will remain fully in effect in the various states, since the constitutional reform of 2006 gave the states legislative power over welfare matters that would allow the states to override federal legislation and enact their own laws. Currently, the social services community is concerned about the potential developments.⁴⁰ One reason for the constitutional change was that under the heretofore prevailing system the federation could impose burdensome unfunded mandates on the local communities and the states.

Title Eight of the Social Code grants every young person the right to obtain assistance for his or her development and the right to an education that makes the young person a responsible member of the community.⁴¹ To ensure these rights, various forms of assistance are granted to children, juveniles below the age of eighteen, the parents of these beneficiaries, and, to some extent, even to young adults up to the age of twenty-one. Inclusion of the family in the benefit schemes lives up to the German creed that the parents are primarily entitled to and responsible for raising their children. An important aspect of social assistance for young people is to make up for disadvantages that may result from circumstances such as poverty or a lack of integration in society. The protection of young people from dangerous influences also is an important task. A variety of programs and subsidies are provided to deal with problems that young people may face. These include counseling, placement in day care centers, foster parenting, some medical assistance, and support payments. These are applied case-by-case, based on expert evaluations.

Social assistance to young people is provided primarily through the youth offices of the municipalities and states. There is, however, much cooperation between the public and the private sector. Many organizations that assist young people are private volunteer organization or are sponsored by a religious community.

IV. Education, Including Special Needs

The legislative and executive power over primary and secondary education always has been vested in the states and most of the states have constitutional provisions on education and extensive legislation on the educational system.⁴² Some uniformity among the states is achieved through the efforts of a permanent conference of the education ministers of the states.⁴³ In 2006, a major reform of the

³⁸ Sozialgesetzbuch XII, Dec. 27, 2003, BGBl I at 3022, §§ 47 – 52.

³⁹ Sozialgesetzbuch VIII [SGB VIII], Dec. 8, 1998, BGBl I at 3456, as amended.

⁴⁰ R. Wabnitz, *Neugestaltung des Artikel 84 Grundgesetz und Auswirkungen auf die Kinder- und Jugendhilfe*, SOZIALRECHT AKTUEL 1 153 (2006).

⁴¹ SGB VIII, § 1.

⁴² In Bavaria, for instance, Bayerisches Gesetz über das Erziehungs- und Unterrichtswesen, repromulgated May 31, 2000, BAYERISCHES GESETZ- UND VERORDNUNGSBLATT [BayGVBl] 414, as amended.

⁴³ Kutmusterministerkonferenz im Schulwesen, at its official website <http://www.kmk.org/> (last visited Aug. 4, 2007).

German Constitution⁴⁴ has strengthened the role of the states by granting them power over framework legislation on universities, which prior to the reform had been vested in the Federation. However, the same reform gives the Federation the power to institute uniform standards for examinations at universities.

Attendance at school is mandatory for all children in Germany from the age of six until the age of eighteen, and home schooling is not permissible. Children often have a choice between public and private schools. The latter may be religious or secular, and either can obtain governmental subsidies if they are properly accredited.⁴⁵ Aside from a few private universities, attendance at colleges and universities is free,⁴⁶ and stipends and loans are provided to students who cannot defray their living expenses while studying.⁴⁷

The German education system is structured into preschool (below the age of six), primary school (grade 1-4, ages six to ten), secondary schooling (up to age nineteen), and tertiary schooling at universities and colleges. Secondary schooling branches out into tracks at age eleven, with more opportunities to choose at age fifteen. These tracks differentiate between a general education, a college-preparatory track, and a vocational track. In some states, the college-preparatory track already starts at age eleven, although opportunities for changing the direction of a child's education exist at various levels. This track system that makes children choose their career path at an early age has recently come under criticism. Vernor Muñoz, Special Rapporteur on the Right to Education, reported to the United Nations General Assembly that the German school system disadvantages children of low socio-economic backgrounds, in particular, the children of immigrants.⁴⁸

Germany has a longstanding tradition of providing special schools for children with special needs. Yet until a few years ago, education for the disabled and other special children was provided in segregated schools. Since 1994, however, the awareness has been growing that this form of special schooling discriminates against the disabled, and efforts have since then been underway to integrate special education into the regular school system.⁴⁹ The issue has constitutional overtones, since an amendment to the Constitution now prohibits discrimination of the disabled.⁵⁰ Decisions of the Federal Constitutional Court have applied this guarantee to the schooling of the disabled, yet change is required only to the extent that is financially feasible.⁵¹

V. Child Labor and Exploitation

Children below the age of fifteen generally may not be employed in Germany, under legal provisions that are very similar to federal legislation in the United States,⁵² yet the German prohibition does not apply to minor jobs such as carrying out newspapers, babysitting, tutoring, taking care of pets, or assisting in agricultural enterprises, provided the work of the child is "light," which is defined as not involving uncomfortable postures or dangers from animals or machinery that a child may not assess

⁴⁴ Grundgesetzänderungsgesetz 2006, Aug. 28, 2006, BGBI I at 2034.

⁴⁵ GG, art. 7.

⁴⁶ Hochschulrahmengesetz, Jan. 19, 1999, BGBI I at 18, as amended.

⁴⁷ Bundesausbildungsförderungsgesetz, June 6, 1983, BGBI I at 645, s amended.

⁴⁸ United Nations Human Rights Council, Implementation of General Assembly Resolution 60/ 251, Mission to Germany (Feb. 2006), <http://www.netzwerk-bildungsfreiheit.de/html/munoz.html>, click "Mission in Germany."

⁴⁹ H. AVENARIUS, EINFÜHRUNG IN DAS SCHULRECHT 22 (Darmstadt, 2001).

⁵⁰ GG, art. 3 ¶ 3.

⁵¹ Avenarius, *supra* note 49.

⁵² C. Rasnig, *Unintended Sibling Legislation? Statutory Regulations of Child Labor in Germany and the United States*, 8 FLORIDA JOURNAL OF INTERNATIONAL LAW 141 (1993).

accurately or may not have experience in averting. Those below the age of thirteen may not be required to lift objects repeatedly that weigh more than 7.5 kilograms or to lift objects occasionally that weigh more than 10 kilograms. Children may be allowed to participate in artistic performances, for which a permit will be granted if the conditions are suitable. None of these occupations of children may interfere with their attendance at school. For this reasons, daily work is limited to two hours per day during the school year (three hours for farm work), and to four weeks during vacation.⁵³

Minors below the age of eighteen may be employed, albeit under numerous prohibitions that apply in principle also to vocational training. Some exceptions are made for properly supervised training. Minors may not be employed in dangerous occupations, which are listed in the Youth Labor Protection Act,⁵⁴ such as work that exceeds their physical or mental capacity; work that exposes them to moral dangers; work that involves the risk of accidents; and work that endangers health through excessive heat, cold, wetness, noise, air pollution, radiation, vibration, and chemical or biological agents.

The employment of minors under piece-work pay systems or in units where other workers are paid by the piece is prohibited. Also prohibited is work that is strictly timed, such as assembly line work. In addition, minors may not be employed in underground mines, except for properly authorized and supervised training situations for minors above the age of sixteen.⁵⁵

Various persons with criminal records are prevented from employing minors. Among them are those who have been convicted of a felony and sentenced to imprisonment for two years or more, those who have been convicted of hurting young people in violation of their duties as employers or educators, those who have been convicted of sexual offenses or of violent crimes, and those who have been convicted for violating the laws of protecting minors from presentations of sex or violence in the media.⁵⁶

In addition to these prohibitions, various restrictions apply to the working conditions of minors. Among these are medical requirements, occupational safety requirements, and mandatory working hour rules. Before beginning an employment relationship, a minor must provide the employer with a medical certificate that shows that the minor has been examined and found fit for the particular occupation. The certificate may also make various suggestions relating to the work to be performed. When the minor has been employed for one year, another medical examination is mandatory, and every year thereafter follow-up examinations are recommended.

Employers are also under a special duty of care to instruct minors in the risks and dangers of the work environment that the employer must make as risk-free as possible. Night work is generally not permitted, and after a day's work there must be at least twelve hours of rest. Minors should not be employed for more than forty hours per week, and special rules apply for minors who work as part of a vocational training program. They must be given enough time to attend their classroom instruction. Minors should be employed only for five days a week, and their weekend rest should consist of at least two days. Saturday and Sunday work is only permitted for certain specified workplaces, such as hospitals or agricultural work. Minors below the age of sixteen must get thirty work days of vacation, and a few days less are required for minors who are sixteen or seventeen years old.⁵⁷

Violations of the protective labor provisions for children and minors are punishable primarily by administrative fines, but short prison sentences can be imposed on employers who hurt a youngster by

⁵³ Jugendarbeitsschutzgesetz, [JArbSchG], Apr. 12, 1976, BGBl I at 965, as amended, § 5; Kinderarbeitsschutzverordnung, Jun. 23, 1998, BGBl I at 1508.

⁵⁴ JArbSchG, § 22.

⁵⁵ JArbSchG, §§ 23 – 24.

⁵⁶ See *infra* note 73-75 and accompanying text.

⁵⁷ JArbSchG, §§ 8 – 21 b.

disobeying the rules.⁵⁸ In addition, the German Criminal Code makes it a criminal offense to abuse, maltreat, or neglect a minor or helpless person who is in the custody of a teacher, employer, or other person who is in a position of responsibility.⁵⁹

VI. Sale and Trafficking of Children

The German Criminal Code contains stringent provisions against the sexual exploitation of children. Its section 174 penalizes those who have custody or authority over a person below the age of eighteen for the commission of sexual acts upon these minors. The penalty is up to five years of imprisonment. Section 176 makes the commission of sexual acts on persons below the age of fourteen punishable with imprisonment of up to ten years, and the same punishment applies to inducing a child to commit sexual acts with a third person. Punishable with up to five years imprisonment is the commission of sexual acts in front of a child or the inducing of a child to commit sexual act on his or her own body, as well as the showing of material with a pornographic content to a child.

Section 176 a provides a minimum sentence of one year in prison for certain aggravated forms of sexual abuse of children, including acts of penetration, acts committed by more than one person, and acts committed by repeat offenders. Those who engage in sexual abuse of children with the intent of producing pornography are punished with up to two years in prison, while those who seriously harm a child through sexual exploitation are punishable with imprisonment of no less than five years. If death results, the penalty is imprisonment for life or for at least ten years. Section 182 of the Criminal Code penalizes the sexual abuse of minors between the ages of fourteen and sixteen, if sexual conduct is forced upon them through the exploitation of a coercive situation.

Since 1993, Germany prosecutes sex tourism under sections 176 through 176 b and 182. At that time, a change in the rules on criminal jurisdiction was enacted that makes these offenses punishable if a German commits them anywhere in the world.⁶⁰ The law is successful; in 1998, a UNICEF report praised Germany for the number of prosecutions.⁶¹

Provisions against child pornography are contained in section 184 b. It penalizes the production, distribution, marketing, and display of child pornographic material with between three months and five years imprisonment, but twice the punishment is applied to commercial endeavors. In addition, section 232 of the Criminal Code penalizes human trafficking for the purpose of sexual exploitation; if perpetrated on a child, the offense is punishable with imprisonment of one to ten years. Section 180 a, 180 b and 181 contain various prohibitions against forcing others into prostitution.

VII. Juvenile Justice – Age Requirement for Bearing Criminal Responsibility

Germany has had an enlightened policy on juvenile delinquency since the 19th century. Since then, the goal of the juvenile justice system has been to limit detention time for young offenders and to focus on their rehabilitation through educational measures. Aside from a few years toward the end of the Nazi regime, these principles have been applied consistently in Germany, and today Germany has the lowest juvenile incarceration rate in Europe, despite an increase in juvenile crime in Germany and public outcries against leniency.⁶²

⁵⁸ JarbSchG, §§ 58 – 60.

⁵⁹ Strafgesetzbuch [StGB], repromulgated Nov. 13, 1998, BGBI I at 3322 § 225.

⁶⁰ StGB § 5 no. 8. A. Fraley, *Note: Child Sex Tourism Legislation under the Protect Act: Does It Really Protect?*, 79 ST. JOHN'S LAW REVIEW 445 (2005).

⁶¹ A. Fraley, *id.* at 445.

⁶² H. Albrecht, *Youth Justice in Germany*, 31 CRIME AND JUSTICE 443 (2004).

When Germany enacted a Youth Court Act in the 1920s, it served as a model for other countries. Since then, this Act has been refined repeatedly, and some of its reforms were inspired by the practice in the United States, in particular, the principle of diversion.⁶³ In its current version, the Youth Court Act⁶⁴ continues to live up to the principles of diversion, “depenalization,” and “decarceration.”⁶⁵

The Act applies to offenders who were between the ages of fourteen and eighteen at the time of their offense. The Act states that these juveniles should be punished only if they were mature enough to realize the wrongfulness of their conduct and were also capable of acting accordingly.⁶⁶ Yet, even though these circumstances are commonly investigated by social and psychological evaluations, the Courts usually find young offenders guilty and punishable, within the more lenient framework of the Youth Court Act.⁶⁷ The Act also allows for its application to offenders between the ages of eighteen and twenty, if they lack the maturity to be tried as adults.⁶⁸

Juvenile offenders are tried for the same criminal offenses as adults, albeit with different consequences. Prison time is kept to a minimum by not imposing prison sentences of less than six months and by making ten years in prison the maximum penalty that can be meted out. Juvenile offenders are never imprisoned together with adults, and the youth prisons are staffed with personnel with educational expertise. Recently, a bill has been drafted by the Cabinet that would allow for the detention of very dangerous young criminals after they have served the prison sentence, in order to protect the public from their continued violent predisposition. Such an institution already exists for adult offenders,⁶⁹ and a need seems to exist to extend this institution to the few juvenile offenders who continue to be very dangerous.⁷⁰

Prison sentences are imposed on juveniles only as a measure of last resort, and, if at all possible, prison penalties are suspended or educational and disciplinary measures such as fines and community services are imposed instead. This practice lives up to the principle that rehabilitation is the primary purpose of a youth sentence. While the offender is usually deemed legally responsible for the deed, the penalty considers the overall situation of the offender, his background and education, and devises a plan for reforming him. All this has to be accomplished under observation of the principle of proportionality that calls for applying the least intrusive measures possible that still will achieve their purpose.⁷¹

Usually, a youth crime proceeding begins with a criminal investigation that is referred to the prosecutor for a decision on whether to drop the charges or prosecute. At a very early stage in the investigation, social workers are involved to evaluate the background and psychological development of the young person. If the case comes to trial, the social worker must report his findings to the judge, and the social worker is often influential in shaping the sentence. Youth criminal trials are not open to the public; only the parents of the accused and the victim may attend the trial.

⁶³ G. Blau, *Diversion und Strafrecht*, JURA 25 (1987).

⁶⁴ Jugendgerichtsgesetz [JGG], Dec. 11, 1974, BGBl I at 3427, as last amended by Gesetz, Apr. 13, 2007, BGBl I at 513.

⁶⁵ Albrecht, *supra* note 62.

⁶⁶ JGG § 3.

⁶⁷ Albrecht, *supra* note 62.

⁶⁸ JGG § 105.

⁶⁹ StGB, § 66.

⁷⁰ *Sicherungsverwahrung für Jugendliche*, FRANKFURTER ALLGEMEINE ZEITUNG 1 (July 19, 2007).

⁷¹ Albrecht, *supra* note 62.

Statistics seem to indicate that the German juvenile justice system is working. There has been an increase in crime, particularly after 1990, that is often ascribed to a rise in unemployment, especially in the eastern part of Germany. However, most of the reported incidents involved petty crimes, and serious offenses have remained rare occurrences, though some of them were much publicized. . Moreover, only thirty percent of the young offenders have committed repeat offenses.⁷²

VIII Miscellaneous Issues

Germany protects young people against exposure to alcohol, tobacco, and descriptions of sex and violence in the media. Children below the age of sixteen may not purchase tobacco products or hard spirits; however, other alcoholic beverages may be consumed in public by children between the ages of fourteen and sixteen if they are accompanied by an adult. Children below certain age limits may not visit drinking and dancing places at certain hours of the night.⁷³

The protection of young people against sex, violence, and racial hatred extends to virtually all media including books, serial publications, audio and video recordings, television, radio, and the Internet. Restrictions are contained in the federal Youth Protection Act,⁷⁴ and these apply primarily to written materials and recordings. Proliferation of sex and violence in the broadcast media and the Internet is governed by an agreement between the German states.⁷⁵

Concluding Remarks

Germany has an effective legal framework for protecting the young and promoting their welfare. However some problems are encountered in integrating the children of immigrants and in providing a quality education for them.

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August 2007

⁷² *Id.*

⁷³ Jugendschutzgesetz, July 23, 2002, BGBl I at 2730, as amended.

⁷⁴ *Id.*

⁷⁵ Jugendmedienschutz-Staatsvertrag der Länder, Sept. 27, 2002, BayGVBl 147 (2003).