



**Deutsches Institut
für Menschenrechte**

National CRC Monitoring Mechanism

Submission

**on ending immigration detention of
children and seeking adequate
reception and care for them**

to the UN Special Rapporteur on the human rights of
migrants

April 2020

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1 Preliminary remarks

The German Institute for Human Rights (GIHR) is the independent National Human Rights Institution of Germany. It is accredited according to the Paris Principles of the United Nations (A-status) and is specifically mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.

In the following, the GIHR will answer the questionnaire of the Special Rapporteur on the human rights of migrants; the answers are limited to those questions on which the Institute has worked in its function as CRC monitoring body in particular in recent times.

2 Immigration detention of children in Germany

1. Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.

There is no law prohibiting the use of immigration detention of children and their families in Germany. § 62 par. 1 of the federal residence act restricts the detention of minors and families with minors in the context of migration to exceptional cases and limits its period by the best interests of the child. Hence, German legislation does not assume that detention of children in the context of migration is never in the best interests of the child.

*§ 62 Absatz 1 Aufenthaltsgesetz: „Die Abschiebungshaft ist unzulässig, wenn der Zweck der Haft durch ein milderer Mittel erreicht werden kann. Die Inhaftnahme ist auf die kürzest mögliche Dauer zu beschränken. **Minderjährige und Familien mit Minderjährigen dürfen nur in besonderen Ausnahmefällen und nur so lange in Abschiebungshaft genommen werden, wie es unter Berücksichtigung des Kindeswohls angemessen ist.**“*

*English translation of § 62 par. 1 of the federal residence act (provided by GIHR): “Detention in the context of migration is inadmissible if the purpose of detention can be achieved by a milder means. Detention shall be limited to the shortest possible period. **Minors and families with minors may only be detained in the context of migration in special exceptional cases and only for as long as is appropriate in the best interests of the child.**”*

In the summer of 2019, the implementation of detention in the context of migration has been reformed by a highly controversial law (*Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht*). The new § 62a par. 1 of the federal residence act makes it possible that detention in the context of migration no longer has to take place in special detention facilities and can be executed in regular penal institutions, too.

This new provision also applies for families with children. Yet, deportation detainees must be separated from prisoners and families must be separated from other deportation detainees and shall be guaranteed an appropriate level of privacy.

*§ 62a Absatz 1 Aufenthaltsgesetz: „Abschiebungsgefangene sind getrennt von Strafgefangenen unterzubringen. **Werden mehrere Angehörige einer Familie inhaftiert, so sind diese getrennt von den übrigen Abschiebungsgefangenen unterzubringen. Ihnen ist ein angemessenes Maß an Privatsphäre zu gewährleisten.**“*

*English translation of § 62 par. 1 of the federal residence act (provided by GIHR): “Deportation detainees shall be kept separate from prisoners. **If several members of one family are detained, they are to be accommodated separately from the other deportation prisoners. They shall be guaranteed an appropriate level of privacy.**”*

3 Good practices on the right to education

3. Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).

In recent years, the GIHR has worked in depth in particular on the right to education of asylum seeking children; therefore, the answer is limited to this topic. Due to the federal structure, education in Germany is within the responsibility of the federal states. In this respect, there are different regulations in each federal state.

In 2016, 2017 and 2019, the GIHR surveyed the federal states on the access to education for asylum seeking children to schools and day-care centres. The results are online available in German language (www.landkarte-kinderrechte.de). From the last query in 2019, the following best-practice examples can be listed:

Access to schools:

- While in several federal states compulsory schooling does not begin until three to six months after entry or upon assignment to a municipality, in five states (Berlin, Bremen, Hamburg, Saarland and Schleswig-Holstein) compulsory schooling begins as soon as the child enters Germany. Thus, the right to education can be exercised without delay.
- Regrettably, there is no consensus among the federal states that educational offers for asylum seeking children whose protection status has not yet been decided should not take place in initial reception facilities / collective accommodation facilities on a permanent basis. In Baden-Württemberg, North Rhine-Westphalia and Saarland, however, education takes place in regular schools, thus increasing the integration opportunities of children.
- In many federal states there is only one mechanism for informing the school authorities about school-age children. This is regularly the transmission of data by

the registration office – but the registration offices do not always have the data of asylum seeking children at their disposal. In some federal states, however, the school authorities also receive the information via contact points at the education authorities, through the initial reception facilities, the school boards or the schools themselves. In the majority of the federal states, however, there is only one single information channel - which presupposes either a statutory automatism with the involvement of the registration office, the active efforts of the child's family to make use of advice centres or possible obligations of other state agencies like health authorities to cooperate. Bremen stands out very positively - there are seven different information channels:

- directly via the initial reception facility and the temporary accommodation
- via an information hotline set up for this purpose
- in a multilingual consultation hour set up for this purpose
- via a mail address set up for this purpose
- via other departments (health department, job centre, youth employment agency)
- through the secretariats of the schools
- via the residents' registration office

A variety of different information channels will increase the chances that the school authorities will be informed about school-age children without significant delay. This is a necessary prerequisite for the school authority to be able to take the next steps and thus contribute to the right to education being exercised promptly after entry.

Access to day-care centres:

- Saarland is the only federal state in which children can attend a day care centre from the time of their initial reception - and not only after leaving the initial reception facility. This right on the one hand strengthens the right to early childhood education and at the same time significantly increases the child's chances of integration.
- Typically, families are informed about the right to a day care place in the initial reception facilities. The administrative practice in Bremen is to be positively emphasized – there, all families are additionally contacted by the responsible authority and informed about the right to a day care place.
- In Germany, almost all federal states do not collect data on the extent to which asylum seeking children attend a day care centre. Only data is available on how many children with a migration background attend a day care centre; however, no concrete conclusions can be drawn from this as to the extent to which the right to early childhood education of asylum seeking children is realised. Only in Berlin and Hamburg are corresponding data now being collected.
- In all federal states, the day care centres now receive support for work with asylum seeking children. The counselling needs of the day-care centres are met in very different ways, in particular through handouts and further training courses. Additional positive practices can also be found: In Rhineland-Palatinate, "round tables" have been set up to network institutions and strengthen support services. In Schleswig-Holstein, there are free training courses lasting up to nine days, in-house counselling and case supervision with a focus on trauma education.

- In Germany, there are no legally binding protection standards for early childhood care services in initial reception facilities / collective accommodation facilities. Corresponding offers also do not require an operating licence. In Hamburg, at least offer-specific protection standards for childcare services are laid down in the authority's funding decisions for the institutions. We are not aware of any best practice examples in Germany with regard to standards of protection for early childhood care services in initial reception facilities / collective accommodation facilities.

Imprint

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German Institute for Human Rights

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