

# **Contribution to the Committee on the Rights of Persons with Disabilities in relation to the review of the periodic reports of Germany (CRPD/C/DEU/2-3)**

**Presented by ODRI - Office against discrimination, racism and intolerance**

**July 2023**

(2248 words)

## **I. Introduction**

ODRI - Office against discrimination, racism and intolerance appreciates the opportunity to address the Committee on the Rights of Persons with Disabilities. We sincerely hope that this report will assist the Committee in effectively realizing the human rights model of disability.

## **II. Respect for privacy (article 22)**

1. In Germany, persons with disabilities are facing distressing and unlawful interferences on their right to privacy, perpetrated by medical personnel and private companies. This vulnerability is particularly acute for intersex children with disabilities. During the reporting period, ODRI has uncovered alarming cases where German medical practitioners and publishers have taken and disseminated photographs of at least 20 children with disabilities, submitting them to medical journals without obtaining prior informed consent from either the children or their legal guardians.

2. Among these cases, ODRI has documented two deeply concerning cases where medical practitioners treated intersex female babies disregarding their privacy. Subsequently, these practitioners published not only the medical histories and the prognoses of the infants, but also images of their faces, genitalia and other sex characteristics in medical journals. The academic journals fail to provide clarity regarding the extent of consent obtained from the medical practitioners and whether it was given without any coercive circumstances during the medical interventions. Additionally, the recorded data in the journals reveal degrading medical photography and the undignified exposure of the babies to medical staff during their treatment. Furthermore, the reports of the journal show that medical professionals asked stereotyped and intrusive and demeaning questions to the guardians without medical necessity.

3. Adding to the concern, a German publishing company registered these publications under the International Standard Serial Number (ISSN) system, which designates serial publications to appear indefinitely, without adequately considering the potential privacy risks of storing such images and sharing these articles in databases. These articles, including the images, have been accessed by at least 700 users, while the German company charges USD 39.95 to those who wish to purchase each article in a PDF format.

4. Additionally, ODRI has found that, due to the lack of privacy-preserving algorithms or anonymization and de-identification techniques on the databases, these images are easily accessible online through online searches in the public domain without access to the databases, using simple keywords. Alarming, in one instance, a German web scrapper included the picture of one intersex girl with disabilities in a German pornography gallery, labelled under the offensive term "Inflammable vagina." ODRI has also discovered that the web scraper has recollected pictures of naked intersex and transgender persons to bait users to promote online sexual services.

5. If needed, ODRI might share a confidential dossier with the CRPD Secretariat, containing supplementary visual evidence of privacy violations. ODRI has confidence that this information will remain restricted to the members of the CRPD and not be disclosed elsewhere.

6. ODRI suggests CRPD to ask during the constructive delegation to the delegation of Germany:

- Inform about the measures to ensuring data protection and privacy practices in hospitals for persons with disabilities, including children with disabilities, and intersex persons with disabilities.
- Provide information on the regulations and the trainings provided on the online risks to privacy for sensitive information related to investigations of persons with disabilities, including children with disabilities, and intersex persons with disabilities.

7. ODRI respectfully proposes that CRPD make the following recommendation to the German government:

- (a) Implement data protection protocols in health-care facilities with disabilities, guaranteeing the privacy of personal, health and rehabilitation information of persons with disabilities, including children with disabilities, and intersex persons with disabilities.
- (b) Identify and investigate reports of interferences to privacy of persons with disabilities, to implement safeguards to prevent invasive practices during investigations, and to ensure that perpetrators and publishers are held accountable under the law, and victims are protected in the digital space.

### III. Equal recognition before the law and access to justice (articles 12 and 13)

8. Despite the legal reforms and trainings implemented by the government (CRPD/C/DEU/2-3, para. 127-130), persons with intellectual and psychosocial disabilities still face barriers that negatively impact in the enjoyment of the rights to due process, judicial protection and non-discrimination. Judicial courts guided by “psychiatric experts” still reproduce stereotypes of the assumed peligrosity and the social burden of persons with disabilities when determining the provisional or indefinite placement in psychiatric institutions.

9. ODRI shares with the Committee three cases recently resolved that show stereotypes against persons with disabilities, suggesting that mental disorders inherently lead to criminal behaviour and reduced self-control, or questioning the decisions of a defendant with disabilities that has social benefits.

Region	Stereotypes documented in the judgments and forensic reports
Saarbrücken, Sarre	According to the psychiatric report, the defendant's ability to resist committing crimes was significantly reduced due to either a "schizophrenic, delusional disorder, or personality disorder." The expert emphasized that the defendant's actions and the commission of the crime were strongly influenced by a "psychological defect". Notably, the expert also pointed out a direct correlation between the defendant's "increased irritability" and the occurrence of the crime. As a result of the expert opinion, the Saarbrücken Regional Court, in December 2022, ordered the defendant to be confined to a psychiatric hospital and her funds were confiscated. This

Region	Stereotypes documented in the judgments and forensic reports
	decision was based on the proven causal relationship between the defendant's illness and the commission of the crime.
Leipzig, Saxony	In 2016, following a diagnosis of enduring schizophrenic illness, the Leipzig Regional Court ruled for the defendant's placement. Two years later, in 2018, the Chamber for the Execution of Sentences decided to continue the defendant's imprisonment, transferring them to an addiction treatment centre. The defendant remained incarcerated until 2021, when they successfully demonstrated the absence of "enduring schizophrenic illness." Subsequently, when faced with new charges, the Leipzig District Court sentenced the defendant to four years in prison in June 2022. This decision was reached after taking into account that "under these conditions, the commission of the offence is highly likely after the release from prison."
Traunstein, Bavaria	The psychiatric expert observed, to explain the character of the defendant, that the accused had predominantly utilized the unemployment benefits he received for purposes other than essential needs, directing a significant portion towards the acquisition of alcohol and drugs. Furthermore, the expert emphasized that, "from a forensic-psychiatric standpoint," the defendant's addiction to substances should not impede his criminal behaviour. In November 2022, the district court of Traunstein sentenced the defendant to six years of imprisonment and mandated his placement in a rehabilitation centre.
Manheim, Baden-Wurtemberg	The psychiatric expert expressed that the accused may engage in significant illegal activities in the future. Specifically, the expert suggested a high likelihood of the accused experiencing madness, increasing destructive impulses. This behaviour, similar to the night of the crime, could pose a considerable risk to the physical and mental well-being of others and to objects. On October 2019, the district court sentenced the accused to one year in prison for arson.

10. These cases highlight the harmful impact of misconceptions and stigmatization faced by persons with intellectual or psychosocial disabilities, particularly concerning the judiciary's interpretation of articles 20 and 21 (on incapacity and reduced criminal responsibility), and 63 and 64 (danger to the general public and institutions for treatment for addictions) of the Criminal Code – StGB, along with related Section 81 and Article 136 of the German Code of Criminal Procedure – StPO. Regrettably, German advocates and lawyer still struggle to acknowledge that people with disabilities possess the same legal capacity of those without disabilities. It is crucial to avoid making automatic assumptions that mental health conditions lead to prolonged incarceration and automatic diminished responsibility, as persons with intellectual and psychosocial disabilities are not inherently more dangerous than those without such disabilities.

11. In November 2022, the German Society for Psychiatry and Psychotherapy, Psychosomatic Medicine and Neurology (DGPPN for their acronym in German) raised their concern about the prevailing conditions in German hospitals responsible for accommodating and confining defendants with intellectual and psychosocial disabilities<sup>1</sup>. The DGPPN criticized the widespread issues of overcrowding, insufficient resources, and instances of violence within 78 German facilities. This society also reported that a survey showed that over a quarter of the patients have spent more than ten years in a forensic facility. During a press conference, Thomas Pollmächer, the President of DGPPN, emphasized that in 2019 alone, approximately 12,000 individuals were housed in forensic

psychiatric clinics under articles 63 or 64 of the Criminal Code. This situation places “an enormous strain on the clinics and poses a significant threat to the quality of treatment, which is pivotal in reducing the risk of further criminal offences after the patients' discharge”<sup>ii</sup>.

12. ODRI suggests CRPD to ask during the constructive delegation to the delegation of Germany:

- Provide information on the measures to revise discriminatory provisions and discriminatory practices in the application of the Criminal Code – StGB and the German Code of Criminal Procedure – StPO that could restrict legal capacity and subject persons with intellectual or psychosocial disabilities to imprisonment in psychiatric institutions.
- Inform on the activities taken to raise awareness and training for police officers, prosecutors, judges, psychiatric experts, lawyers and court personnel about the provisions of the Convention and its application to criminal cases where persons with intellectual and psychosocial disabilities are defendants.

13. ODRI respectfully proposes that CRPD make the following recommendation to the German government:

- (a) Strengthen the capacities of the police officers, prosecutors, judges, psychiatric experts, lawyers and court personnel about the provisions of the Convention and its application to criminal cases where persons with intellectual and psychosocial disabilities are defendants, including through trainings conducted by persons with intellectual and psychosocial disabilities.
- (b) Generate qualitative information on the cases of persons with intellectual and psychosocial disabilities who are currently deprived of their liberty in prisons and psychiatric institutions and disaggregated data on the available infrastructure and resources to provide them with treatment during their deprivation of liberty.

#### **IV. Liberty and security of the person (art. 14) and freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)**

14. On June 8, 2021, with no reference to the Disability Convention, the Second Chamber of the Federal Constitutional Court of Germany issued a significant decision (2 BvR 1866/17, 2 BvR 1314/18)<sup>iii</sup> addressing compulsory medical treatments [*Zwangsbearbeitung*]. The ruling underscored the importance of safeguarding personal autonomy and integrity from coerced treatments. According to the judgment, explicitly express their refusal of specific medical procedures or treatments and provide details about the awareness of the scope, to uphold their right to reject treatment (paragraph 75 of the judgment). Furthermore, it is essential to note that the Federal Constitutional Court also recognized the possibility of coerced treatment under certain circumstances when is present a concrete and serious danger to the life or health of third parties. This exception comes with certain conditions: the compulsory treatment must offer a promising chance of success, and the expected benefits must clearly outweigh the potential harm of non-treatment and the adverse effects associated with the coercive measure (paragraphs 65-70 of the judgment).

15. Despite the progress made by this judgment, some practical challenges have emerged.<sup>iv</sup> In May

2023, a psychiatric organization issued instructions declaring that the rejection of compulsory medical treatment would not be considered valid to situations involving restraint or isolation to avert harm to others, and, in principle, instances where administering a drug becomes necessary to prevent harm to others. Furthermore, this organization affirmed that forced isolation remains lawful under article 30 of the Infection Protection Act<sup>v</sup>. Also, the government has not effectively disseminated these standards in an easy-to-understand to persons with intellectual and psychosocial disabilities, health providers and disability organizations. Moreover, there are also some criticisms about the accountability and transparency mechanisms of the responsible parties tasked with identifying cases of forced medical treatment to safeguard third parties in real-world scenarios.

16. ODRI would like to emphasize that there are still positive attitudes in the medical community towards forced medical treatments, such as electroconvulsive therapy (ECT). In July 2022, the German Society for Psychiatry and Psychotherapy, Psychosomatics and Neurology e. V. (DGPPN), a prominent organization in psychiatry representing approximately 10,000 members, including associations of German neurologists and psychiatrists, and the working group of chief physicians of psychiatric and psychotherapeutic clinics in Germany, issued a statement endorsing ECT as an effective and safe medical treatment for a long list of mental health conditions that include:<sup>vi</sup>

- Unipolar depression / depressive syndromes.
- Schizophrenia and Schizoaffective Syndromes.
- Bipolar affective disorder (including depressive and manic syndromes, mixed states, rapid cycling, delirious mania, and delirious depression).
- Catatonic syndromes (including pernicious catatonia and neuroleptic malignant syndrome)
- Therapy-resistant severe behavioural disorders (e.g., severe (auto)aggression) associated with neuropsychiatric disorders, dementia, autism spectrum disorders, and other intellectual development disorders.
- Autoimmune encephalitis (with intractable, severe psychiatric symptoms).
- Treatment-refractory Parkinson's disease (motor and psychiatric symptoms).
- Treatment-refractory status epilepticus.
- Therapy-resistant delirious syndromes (including therapy-resistant benzodiazepine or barbiturate withdrawal delirium).

17. The Commission for Psychiatry Violations of Human Rights Germany eV (Kommission für Verstöße der Psychiatrie gegen Menschenrechte Deutschland e.V.) has voiced its disapproval of this position and is urging an end to perpetuating the myth of chemical imbalance as the root cause of disabilities. This organization has quoted the Disability Convention to advocate against using the medical model of disability as a justification for enforcing treatments like electroconvulsive therapy<sup>vii</sup>.

18. To compile this report, ODRI has gathered numerous accounts from victims of coercive treatments and their relatives, shedding light on the adverse effects of electroconvulsive therapy. Among the many testimonials, we wish to present a couple to the Committee for consideration:

*“Electroshock therapy Ekt destroyed my life. (...)*

*Unfortunately, in 2018, at the age of 26, I was treated with ECT far too quickly due to severe depression and suffered severe brain damage. I thought major depression was hell, but the damage and pain I've experienced from the shocks is far, far worse, I've never felt this bad in my entire life. After 13 shocks I already had symptoms and was diagnosed three times with mild sch,*

*unfortunately I then went back to the hospital and the psychiatrist only said "what a trauma surgeon says, he's not a psychiatrist", so I continued to be shocked with the result that I, a student who previously lived independently, had to move back in with my parents and can no longer continue my studies, because I have such barbaric brain damage. I can only advise anyone who thinks about it and under no circumstances allow yourself to be treated like this, no matter how bad you are. I can't do so many things now that I could before.*

*(...) I had a completely normal severe depression, that was my initial illness, because I say that I have such severe brain damage from the shocks, I am now suddenly delusional depressive and schizoaffective, which was never my diagnosis before and only because because I say that I have brain damage from the ECTS and the bad thing is I can't even prove it, a neurologist told me after 13 shocks that one couldn't prove brain damage from ECTS. There was nothing in the MRI either, but after 13 shocks I already had damage to the temporal lobes and could no longer recognize myself in the mirror because recognition processes had failed. Unfortunately, the whole thing happened in a hospital where every second person got Ekt and it is used most frequently in Germany. (...) All I can say is that Ekt destroyed my life as I knew it. Another hospital stay only came about because I tried to take my own life due to the damage”.*

*“In 2016, I spent two times seven weeks in the clinic and received ECT treatments there. Up until early 2018, I continued to have them for conservation at increasingly longer intervals. When I got out of the clinic back then, I had lost part of my memory. For example, I no longer knew how to get to the supermarket where I always go shopping. I still can't remember my wedding 15 years ago. The doctors said my memory is coming back, but I hardly notice it.”*

19. ODRI respectfully proposes that CRPD make the following recommendation to the German government:

- (a) Adopt the necessary measures to implement the jurisprudence of the German Federal Constitutional Court that prohibit coercive treatment and protect personal autonomy.
- (b) Prohibits all restrictive practices such as physical, mechanical, and pharmacological restraints, including isolation, electroconvulsive therapy and the application of psychotropic drugs without consent.
- (c) Investigate and provide effective remedies to victims of forced treatments, and provide guarantees of non-recurrence of similar practices.

- i Psychiater fordern bessere Versorgung psychisch erkrankter Straftäter, Pressemitteilung, 25 November 2022. <https://www.dgppn.de/presse/pressemitteilungen/pressemitteilungen-2022/psychisch-erkrankte-straftaeter.html>
- ii Psychiater fordern bessere Versorgung psychisch erkrankter Straftäter, Pressemitteilung, 25 November 2022. <https://www.dgppn.de/presse/pressemitteilungen/pressemitteilungen-2022/psychisch-erkrankte-straftaeter.html>
- iii BVerfG, decision of the Second Senate of June 8, 2021, 2 BvR 1866/17, paras. 1-95. Available at: [http://www.bverfg.de/e/rs20210608\\_2bvr186617.html](http://www.bverfg.de/e/rs20210608_2bvr186617.html)
- iv Cf. Ines Reiling, ‚Freiheit zur Krankheit‘ in Grenzen: Zum selbstbestimmten Ausschluss der medizinischen Zwangsbehandlung in der Unterbringung, JuWissBlog Nr. 86/2021 v. 16.9.2021, <https://www.juwiss.de/86-2021/>.
- v Psychiater fordern bessere Versorgung psychisch erkrankter Straftäter, Praxisempfehlung. Patientenverfügungen und psychische Erkrankung. 16.05.2023, <https://www.dgppn.de/schwerpunkte/aktuelle-positionen-1/aktuelle-positionen-2023/praxisempfehlung-patv.html>
- vi Psychiater fordern bessere Versorgung psychisch erkrankter Straftäter, 04.07.2022, Stellungnahme Indikationen zur Elektrokonvulsionstherapie <https://www.dgppn.de/schwerpunkte/aktuelle-positionen-1/aktuelle-positionen-2022/elektrokonvulsionstherapie.html>
- vii Berlin, den 23. November 2022 Pressemitteilung Kommission für Verstöße der Psychiatrie gegen Menschenrechte Deutschland e.V. im Einsatz für die Menschenrechte <https://www.kvpm.de/pressemitteilungen/mythos-des-chemischen-ungleichgewichts>.