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EUROPEAN SOCIAL CHARTER

REPLY TO SUPPLEMENTARY QUESTION

26th report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF GERMANY

(for the period 1 January 2003 to 31 December 2007:
Article 14§1)

Report registered at the Secretariat on 5 June 2009

CYCLE 2009

Reply by Germany regarding questions in respect of the 26th report of Germany concerning Article 14§1 ESC

1. What eligibility criteria are applied for access to social services?

The eligibility criteria are largely regulated in the individual books of the Social Code. In the social insurance schemes, eligibility is based on contribution payments made by insured persons and employers. Entitlements are determined not only by legislation but also by the statutes adopted by the self-governing bodies. As far as tax-financed services are concerned, eligibility is governed by the relevant legislation at the federal or *Länder* level. As a rule, this legislation is implemented at the local level. Citizens have a legal entitlement – which is also legally enforceable – to the central services, some additional services are within the discretion of the social benefit fund.

In the legislation, account is taken of specific needs, on the one hand (such as special – educational or financial – assistance for families in difficult situations in life); on the other hand, it may also provide for an entitlement to be given to all citizens (for example, the entitlement to child care in day care centres).

Social services are largely provided by independent, charitable and private-commercial bodies (social service providers), partly also by municipal service providers. The state and/or the social benefit funds have a safeguarding mandate here, i.e. it is their responsibility to ensure that the social services are available to an adequate degree and contribute to the achievement of social justice and social security (cf. §§ 1(1) and (2) and 17 of Book One of the Social Code). The framework for this is embedded in the federal state and social system of the Federal Republic of Germany. The execution of social law provisions is also governed by *Länder* regulations. The largest share of the social services is provided by the social benefit funds in the form of services, cash benefits and benefits in kind as laid down in the various books of the Social Code; this applies in particular to benefits and services for the social welfare of persons in need of assistance and care (cf. § 4 of Book One of the Social Code).

It is possible to distinguish between several forms of provision and funding for social services:

- a) direct provision of benefits by a social benefit fund
- b) provision at the expense of the benefit fund by a provider selected by the beneficiary in the so-called "social-law triangle"
- c) granting a personal cash benefit to the beneficiary to purchase the service (as seen above all under the law on rehabilitation)
- d) the promotion of service providers by means of subsidies (as seen above all in the law on youth assistance)
- e) the provision of benefits with no state participation, i.e. through the funds of the independent, charitable facilities (e.g. lunch, shops with donated stock for those on a low income, etc.)

The most frequent form of the provision of social services is that seen in a social-law triangle relationship. This relationship describes a constellation of three parties, namely a social benefit fund, a social service provider and a person entitled to social services. It is applied not only in social insurance law but in particular in social assistance law (incl. help for the homeless, advice for drug addicts, support of convicts), law on youth assistance and law on basic security benefits for job-seekers. In the social-law triangle relationship, suitable facilities and services conclude a contract with the respective funding agency (social insurance fund, agency responsible for social assistance under *Länder* legislation, etc.) and are hence licensed to provide services.

If the statutorily prescribed eligibility criteria are met, the funding agency has to take account of the wishes of the benefit recipient as to the concrete structure of the assistance and his/her selection of a suitable provider. This means that as a rule, the benefit recipient may choose from all licensed facilities and services and thus decide autonomously which provider provides the service. The conclusion of the service agreement between the funding agency and the provider does not entail a

guarantee that the service will be taken up; the service provider bears the risk of the service being taken up. The social benefit fund does not incur any costs if overcapacities exist since it pays or may be called upon to pay only for beneficiaries for whom services are actually provided. Besides, reference is made to the information provided in the 26th report submitted by the Government of the Federal Republic of Germany in October 2008.

2. Is there a right to appeal to an independent body in respect of access to social services (counselling and advice)?

As a rule, the grant of benefits and services as laid down in the Social Code is preceded by a so-called approval decision. An objection may be lodged against this decision with the authority that issued the administrative act; incidentally, every administrative act may be objected to. If the objection is rejected, it is possible to take legal action before the competent court. A complaint on the grounds of discrimination with regard to access to social services on the basis of the General Equal Treatment Act, including compensation, is also feasible (cf. § 2 (1) of the General Equal Treatment Act for its scope of application). Besides, it is also possible to take legal action before the respectively competent courts.

In the following, information is given on the special support that is granted to caregiving family members as an example for the provision of social services and the right to counselling. The aim is to help the persons concerned and their families to better cope with a situation, for example, which is new for them and which may sometimes arise all of a sudden – a family member may be in need of care after a stay in hospital – and to offer them further support, e.g. in the form of counselling. A matter of special importance pursued by the 2008 reform of the care sector is a better networking and linkage of close-to-home (long-term) care services and their focus on the individual needs of the persons requiring care and their family members.

Apart from other measures, the Further Development of Care Act which entered into force on 1 July 2008 provides above all for the nationwide setting up of care support centres working for the purpose of care management. With effect from 1 January 2009, a right to care counselling has been introduced which is focussed on case management.

Care support centres

In the care support centres, counselling about all care-related, medical and social services and their networking is pooled under one roof. A care support centre is no new or additional agency. It only serves as one roof for the staff of the long-term care and health insurance schemes, of services and facilities for old people and of the social assistance funds; under this roof, they coordinate their activities and inform those who are seeking advice and help about the relevant social services and help them to get access to these services and also offer on-going support while these services are being utilized. All care-related services should be included which means, for example, also the local services and facilities for old people and care assistance provided under social assistance law. Persons doing voluntary work should also be involved in the work of the care support centres. The care support centres must be independent and offer comprehensive counselling. They should be established in the local vicinity or community and be easy to reach so that persons in need of care and their family members can make use of the counselling services offered without having to drive long distances.

Care counselling

Since 1 January 2009 every person who is in need of care or where this risk is clearly discernible has an enforceable legal entitlement to help and support to be provided by a care counsellor. The care counsellor's task is, in particular,

- to systematically identify and analyse the need for assistance while taking account of the results of the assessment made by the medical service of the health insurance fund,

- to draw up an individual care plan including the social benefits and services and any health-promoting, preventive, curative, rehabilitative or other medical as well as care-related and social help required in the individual case,
- to help make sure that the measures required for the implementation of the care plan, including their approval by the respective benefit fund, are taken,
- to monitor the implementation of the care plan and, if necessary, adjust it to changing needs, and
- to evaluate and document the process of providing assistance in particularly complex cases.

Where care support centres have been established, the care counsellors have to offer their services at these centres.

3. What are the measures taken to monitor the quality of services?

In the relevant legislation, e.g. on (long-term) care services or on benefits granted under social assistance law, provision is made, *inter alia*, for agreements on the quality of services. The funding agencies run checks on these agreements which are part of the remuneration or cost agreements to see whether the requirements are met.

In the course of the 2008 reform of the care sector, for example, legislation was adopted which provides for an increase of the frequency of quality checks in the domestic and institutional care sector. As from 2011, all licensed care institutions will be checked once a year by the medical service of the health insurance. In a transitional period, each licensed care institution will be checked at least once until the end of 2010. As a rule, all checks are made without prior notice.

The conclusions of the reports on these checks are made public and will be easily available on the web for everybody free of charge.

In the field of independent, charitable bodies, the associations have agreed on a joint quality policy.

1. Recognised European quality model (DIN EN ISO 9001 and EFQM),
2. continuous inclusion of specialist standards of the various areas of work, as well as
3. value orientation on the basis of guidelines and their implementation.

Over and above this, independent welfare has agreed on quality orientations which are to do justice to the benefits needed, to include their value orientation and accommodate an individualised approach to providing assistance. In this, the joint quality policy of independent welfare is based on the conviction that competition between social service enterprises must be primarily quality competition for the optimum support of people in certain situations. To this end, they have defined joint quality requirements in an intensive work process as welfare-specific standards and lent them concrete form for working practice at a level susceptible to audit:

1. guideline orientation
2. orientation towards personal (consumer) benefit
3. goal and effect orientation
4. staff orientation
5. orientation towards community and society
6. contractual partnership
7. resource orientation
8. quality management.

These standards in the supra-association sense are to be benchmarks of quality management of professional social service enterprises within independent welfare.

Furthermore, those involved in the provision of (long-term) care in Germany have agreed on a "Charter of Rights of Persons in Need of Assistance and Care" because everyone has an absolute right to respect for his/her dignity and uniqueness. People requiring assistance and care have the

same rights as all others and must not be discriminated against in any way in their special situations.

On the basis of the central objective to strengthen the role and legal status of persons in need of assistance and care, quality parameters and aims are formulated in the Charter which the service providers should seek to achieve for the purpose of good care. These rights are thus a reflection of the respect for human dignity, and this is why they are also laid down in numerous national and international legal texts. The Charter provides a guideline for people in all agegroups and for the institutions that want to assume responsibilities in the fields of care and treatment and integrate the principles of the Charter into their work on a voluntary basis. In Germany, the latter include operators of domestic care services, of institutional and partly institutional facilities as well as persons responsible for these fields in local governments, health and long-term care insurance funds, private insurance companies, welfare associations and other organisations in the health and social sectors. It should be mentioned, however, that the public and social responsibility towards persons in need of assistance and care as codified in the Social Code, in particular, does not free the individual from his/her responsibility for a healthy and responsible lifestyle which may help considerably to delay, alleviate or overcome a need for assistance and care.

APPENDIX

SECRETARIAT GENERAL

DIRECTORATE GENERAL OF HUMAN RIGHTS
AND LEGAL AFFAIRS

DIRECTORATE OF MONITORING

DEPARTMENT OF THE EUROPEAN SOCIAL CHARTER
THE HEAD OF DEPARTMENT
EXECUTIVE SECRETARY OF THE EUROPEAN COMMITTEE
OF SOCIAL RIGHTS

ESC 117
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Mr Udo Pretschker
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Social Affairs
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Wilhelmstrasse 49
D-10117 Berlin

Strasbourg, 17 April 2009

Dear Mr Pretschker,

The European Committee of Social Rights is currently examining the 26th German report on the European Social Charter and has instructed me to forward to you the enclosed questions concerning Article 14§1.

The Committee would be grateful if you could reply to these questions before 5 June 2009 in order to allow the information to be taken into account in Conclusions 2009.

Yours sincerely,

Régis Brillat

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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX



17 April 2009

Questions in respect of the 26th report of Germany

Article 14§1:

- What eligibility criteria are applied for access to social services ?
- Is there any right to appeal to an independent body in respect of access to social services ?
- What are the measures taken to monitor the quality of services ?