

Ref: CommHR/DM/ns 028-2021

Ms Christine LAMBRECHT

German Federal Minister of Justice and Consumer Protection
German Federal Minister for Family Affairs, Senior Citizens,
Women and Youth

Strasbourg, 13 July 2021

Dear Minister,

As Council of Europe Commissioner for Human Rights, it is my mandate to foster the effective observance of human rights in all 47 member states of the Council of Europe. To this end, an important part of my work is to engage in dialogue with the governments of member states and to assist them in addressing possible shortcomings in their laws and practices. In this capacity and since we were not able to meet as originally planned last May, I am writing to raise a number of issues related to the protection of children's rights in Germany.

I note with regret that, despite repeated calls by the UN Committee on the Rights of the Child, children's rights are still not anchored in the German Constitution (*Grundgesetz*). I understand that the amendment to Article 6 of the Constitution which you presented last January was not adopted by the German Parliament (*Bundestag*) in early June, notably because it fell short of international and European child protection standards. I believe that at a time when the particularly adverse affects of the pandemic and related containment measures on children and youth are so clearly emerging, the protection of their rights and needs should be an absolute priority for the government.

I would therefore encourage you to pursue efforts to ensure that the German Constitution provides the same guarantees as enshrined in the UN Convention on the Rights of the Child (CRC). This concerns, in particular, the fundamental and internationally acknowledged principle guaranteed by Article 3 CRC that the best interests of the child shall be a primary consideration in all actions concerning children. Another important and fundamental provision (Article 12 CRC) stipulates the right of children to have their views given due weight in all matters affecting them. Since the low level of child participation in decision making in Germany has been raised repeatedly, including by the German Institute for Human Rights, I believe that it is high time for Germany to enshrine child participation guarantees in the German Constitution, in accordance with the CRC. In a recent Human Rights [Comment](#), I underlined the benefits of effective child participation for sound and sustainable policy making related to children and youth affairs and called on all member states to strengthen their efforts in this regard.

I observe that in the European context, Germany has imposed especially strict lockdowns on schools and that studies have pointed consistently to the adverse effects of these lockdowns on children in the country, including as regards a particularly steep decline in reported mental health condition among children. Amid a renewed public debate regarding school closures in Germany in the Autumn, I would like to draw your attention and the attention of your government to the recent [recommendations](#) on schooling during the COVID-19 pandemic from the European Technical Advisory Group of the WHO Regional Office for Europe. They clearly state that keeping schools open should be a key objective for governments and that closures, given their detrimental effects on child health and well-being and on educational outcomes, should be considered only as a measure of last resort, i.e., when other measures, including in other spheres, have proven inadequate.

Given the long-term adverse effects that COVID-19 will have on children and the exercise of their rights, whether related to health, education, employment opportunities or living conditions, it is crucial to ensure that their best interests are considered a priority in all government action now. I trust that the CRC provisions will give due guidance to your government in all future COVID-related decision making.

I look forward to receiving your reply and to continuing a constructive dialogue and co-operation with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a large, stylized initial 'D'.

Dunja Mijatović