



ARTICLE 40

OF THE

UN - CONVENTION

ON THE RIGHTS OF THE CHILD

(b) an obligation to have a sentence not calling for imprisonment reviewed by a "higher competent ... authority or judicial body."

Political reason given by the Ministry for Women and Youth on this reservation in August 1994 (quoted from the Initial report of the German Government, page 36):

94. The right of the juveniles stipulated in paragraph 2 (b) (ii), namely to be informed of the charges against him or her - either directly or through his or her parents or legal guardians - and to have legal or other assistance, is already guaranteed by the provisions of the international Covenant on Civil and Political Rights (see also art. 6, para. 3 (a) and (c), of the European Convention for the Protection of Human Rights and Fundamental Freedoms). This guarantee does not necessarily imply an obligation to assign legal or other appropriate assistance to a juvenile in a youth court proceeding in each and every case without exception; pursuant to the International Covenant on Civil and Political Rights, legal assistance must be assigned to the accused "in any case where the interests of justice so require". The Federal Government therefore pointed out, within the framework of a declaration which is submitted at the time the instrument of ratification was deposited, that article 40, paragraph 2 (b), should be applied in such a way that, in the case of minor infringements of the penal law, there shall not in each and every case exist an entitlement to have legal or other assistance in the preparation and presentation of the defence. In cases of the latter kind, it is sufficient as a matter of principle under the provisions of national law (sect 50, subsect. 1, and sects. 67 and 69 of the Youth Courts Act) if the parents or other persons with parental powers are able to participate in the main proceedings."

STATEMENT:

According to the reservation made by the German Government on article 40 of the Convention there should not exist an entitlement of legal or other appropriate assistance in cases of minor infringement of the penal law.

Out of the following reasons this argumentation is not convincing and comprehensible

1. There is no unified understanding of the nature and aim of education (education through punishment or education through assistance?) in the Youth Criminal Act so that neither the public prosecutors nor the magistrates or the representative according to the Juvenile Courts Act guarantee an adequate advocacy for the young person or young adult.
2. According to the general principle of the penal proceedings the rights of the defence counsel guarantee most likely the representation of interests of an accused/suspect/defendant.
3. The role of the defence counsel is superior to those of any administrative or judicial authority, as well in the process of supplying the proof of the truth as in the definition of the consequences of legal proceedings, because the defence counsel generally is the most trusted by the suspect.
4. The representative according to the Juvenile Courts Act has no right of a witness to refuse to give evidence (Paragraph 53 Legal Proceedings Act). The provisions of the Juvenile Courts Act state that he or she has the role to investigate, report, and monitor court orders, and not to represent the defendants interests.
5. Young persons and young adults feel especially powerless in face of the investigative apparatus of the public prosecutor and police resp. the penal authority of the court irrespective of the juvenile courts assistance. Furthermore, all representative mentioned above have an obligation to objectivity in contrast to a defence counsel.
6. The necessary defence according to paragraph 68 Juvenile Courts Act provides only a minimum standard which is not in accordance with art. 40 of the Convention.

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JUVENILE DELINQUENCY

Suspects under the age of 18 yrs in 1993

under 6 yrs.	1.746
6 - 8 yrs.	3.862
8 - 10 yrs.	10.417
10 - 12 yrs.	22.755
12 - 14 yrs.	49.532
14 - 16 yrs.	93.252
16 - 18 yrs.	114.692
Total	296.220

Federal Criminal Statistical Yearbook 1993

Children in Prisons

(Figures of 1990 / former Federal Republic of Germany)

Detention in a reform school	3.311
from it 6 months until 1 yr.	2.215
more than 1 yr.	1.072
undetermined	24
Detention	6.225
Total of Children in Prisons	12.847

StJB Statistical Yearbook 1993