
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th session, 15 October to 2 November

1. The Committee considered the sixth periodic report submitted by Germany (CCPR/C/DEU/6) at its 2930th and 2931st meetings (CCPR/C/SR.2930 and CCPR/C/SR.2931), held on 18th and 19th October 2012. At its 2944th and 2945th meetings (CCPR/C/SR 2944 and CCPR/C/SR 2945.), held on 30 and 31 October 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Germany which was drafted in line with the new reporting guidelines. It expresses appreciation for the constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies to the list of issues (CCPR/DEU/Q/6/Add.1) which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and other steps taken by the State party:

- (i) The adoption of the General Equal Treatment Act, on 18 August 2006;
- (ii) The many legal and practical measures taken to address problems in nursing homes;
- (iii) The measures taken in 2009 to include information on criminal offenses committed by police officers into the criminal statistics.

4. The Committee welcomes the ratification by the State party of the following international instruments:

- (a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 13 December 2004;
- (b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 4 December 2008;
- (c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 15 July 2009;

(d) The Convention on the Rights of Persons with Disabilities, on 24 February 2009;

(e) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 24 February 2009;

(f) The International Convention for the Protection of All Persons from Enforced Disappearance, on 24 September 2009.

C. Principal matters of concern and recommendations

5. The Committee regrets that the State party, despite its indicated willingness to consider withdrawing its reservation to article 15, paragraph 1, as set out in paragraph 114 of its sixth periodic report (CCPR/C/DEU/6), has not yet taken the necessary steps to do so. The Committee is concerned about the State party's reservation to article 5, paragraph 2 (a) of the Optional Protocol to the Covenant which restricts the Committee's competence with regard to article 26 of the Covenant and which the State Party has ratified without any reservation (art. 2).

The State party should give further consideration to withdrawing its reservations, in particular those to article 15, paragraph 1 of the Covenant and to article 5, paragraph 2(a) of the Optional Protocol to the Covenant.

6. While welcoming the adoption of the General Equal Treatment Act in 2006, the Committee is concerned at the fact that the mandate of the Federal Anti-Discrimination Agency established by the Act is limited to public relations, research activities, advice and assistance to alleged victims of discrimination but does not encompass the possibility to deal with complaints, which limits its efficiency (arts. 2 and 26).

The State party should extend the mandate of the Federal Anti-Discrimination Agency including the power to investigate complaints brought to its attention and to bring proceedings before the courts, so as to enable it to increase its efficiency.

7. While noting the explanations provided by the State on the aim of the provision on housing enshrined in Section 19 subs. 3 of the General Equal Treatment Act of 2006, which is to facilitate the integration of migrants by avoiding wherever possible the formation of closed and ethnically homogeneous residential areas, the Committee is concerned that the wording of its Section 19 subs. 3 may be interpreted as allowing discrimination against people with immigrant backgrounds in housing by private landlords (arts. 2 and 26).

The State party should take the necessary steps to clarify the wording of Section 19 subs. 3 of the General Equal Treatment Act of 2006 and ensure that it is not used abusively by landlords to discriminate against people with immigrant backgrounds on the basis of their ethnic origin when renting housing.

8. While noting progress made by the State party to promote equality between women and men, such as in Parliament and the Judiciary, the Committee is concerned that the representation of women in leading positions in the private sector remains low. It is also concerned at the persistent wage gap between women and men in the State party (arts. 2, 3, and 26).

The State party should firmly strengthen its efforts aimed at promoting women in leading positions in the private sector including by closely monitoring the implementation by companies of the German Corporate Governance Code of 2010. The State party should also take concrete measures to reduce the wage gap which persists between women and men and address all causes which widen such a gap. The State party should further promote the enhancement of women's careers including by strictly applying the Federal Act on Gender Equality and the General Equal Treatment Act.

9. While welcoming the State party's various efforts to combat violence against women and girls at legislative and policy levels, such as initiatives and projects carried out under the Second Plan to Combat Violence against Women of 2007, the Committee is concerned about the persistent violence against women in the State party. The Committee is concerned about the high level of violence faced by women with immigration backgrounds, in particular those of Turkish and Russian origin, despite various measures taken by the State party to prevent and combat such violence (arts. 3 and 7).

The State party should continue to strengthen its efforts to combat violence against women and girls and, in particular, increase measures to protect women of Turkish and Russian origin. It should continue to facilitate access to existing counselling and support services for particularly vulnerable and marginalized women victims of violence, and to investigate allegations of cases of such violence, prosecute and, if convicted, punish those responsible. Moreover, the State party should improve the coordination between the Federation and the *Länder* on this issue and regularly evaluate the impact of its initiatives.

10. The Committee is concerned about allegations of ill-treatment by police and prison officers of the State party. The Committee is also concerned that most complaints on ill-treatment are dismissed and that the State party has not yet set up independent complaint bodies to deal with complaints on police misconduct. The Committee is further concerned about the existing disparities between *Länder* with regard to measures to ensure that police officers can be identified (arts. 7 and 10).

The State party should

- a) **Ensure that all allegations of ill-treatment by police and prison officers are assessed, promptly, thoroughly and impartially investigated, those responsible are punished accordingly and victims are provided with compensation;**
- b) **Ensure that victims of ill-treatment by police and prison officers are aware of their rights and can lodge complaints without fear of reprisals;**
- c) **Set up independent complaint bodies to deal with police allegations of ill-treatment, as previously recommended by the Committee, and**
- d) **Encourage its *Länder* to take measures to facilitate the identification of police officers when they are carrying out their function in order to hold them responsible for misconduct when implicated in ill-treatment.**

11. While noting that the transfers of asylum seekers under the Dublin II Regulation have been suspended to Greece until January 2013 due to difficult reception conditions, the Committee is concerned that despite rulings by the German Constitutional Court, the European Court of Human Rights and the European Court of Justice, Section 34a subs. 2 of the Asylum Procedure Act, excluding provisional legal protection in the case of transfers to safe third States and to Member States of the European Union and other European States bound by the Dublin II Regulation, remains in force and continues to be applied by certain domestic courts(arts. 7 and 13).

The State party should revise its Asylum Procedure Act to allow suspensive orders in case of transfers of asylum seekers to any State bound by the Dublin II Regulation. The State party should also inform the Committee whether it will extend the suspension of transfers of asylum-seekers to Greece beyond January 2013.

12. While noting information provided by the State party, the Committee is also concerned that the practice by the State party to request diplomatic assurances in cases of extradition may expose affected persons to the risk of torture, cruel and degrading treatment and punishment in the requesting State (art. 7).

The State party should ensure that no individuals, including those suspected of terrorism, are exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment when extradited or deported. It should further recognise that the more systematic the practice of torture, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be. Moreover, the State party should exercise the utmost care in the use of such assurances and adopt clear and transparent procedures allowing review by adequate judicial mechanisms before individuals are deported or extradited, as well as effective means to monitor the fate of affected individuals.

13. While noting the various measures taken by the State party to combat trafficking in persons, in particular for sexual exploitation and forced labour purposes, the Committee is concerned about the persistence of such a phenomenon in the State party (art. 8).

The State party should systematically and vigorously investigate allegations of trafficking in persons, prosecute and, if convicted, punish those responsible and provide compensation. The State party should also strengthen its support and protection measures at the Federal and *Länder* levels to victims and witnesses, including rehabilitation. It should further facilitate access to justice for victims of trafficking without fear of retaliation and regularly evaluate the impact of all initiatives and measures taken to counter trafficking in persons.

14. While welcoming the steps taken by the State party to revise its legislation and practice on post-conviction preventive detention in accordance with human rights standards and noting information that a draft bill addressing the issue is currently before parliament, the Committee is concerned about the number of persons who are still detained in such detention in the State party. It is also concerned about the duration of such a detention in some cases as well as the fact that conditions of detention have not been in line with human rights requirements in the past (arts. 9 and 10).

The State party should take necessary measures to use the post-conviction preventive detention as a measure of last resort and create detention conditions for detainees which are distinct from the treatment of convicted prisoners serving their sentence and only aimed at their rehabilitation and reintegration into society. The State party should include in the Bill under consideration, all legal guarantees to preserve the rights of those detained, including periodic psychological assessment of their situation which can result in their release or the shortening of the period of their detention.

15. The Committee is concerned about the reported incidences of physical restraints applied, in particular, to dementia sufferers in residential homes, including being tied to a bed or kept behind closed doors, are applied in contravention of applicable legal provisions limiting the use of such measures. (arts. 7, 9, and 10).

The State party should take effective measures to ensure full implementation of legal provisions related to the use, in compliance with the Covenant, of physical restraint measures in residential homes, including by improving training of staff, regular monitoring, investigations and appropriate sanctions for those responsible.

16. While welcoming measures taken by the State party to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards, the Committee is concerned that such remedies may not be sufficient in all cases (art. 2, para. 2).

The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.

17. While noting the various measures taken by the State party to combat racism, the Committee is concerned at the persistence of racially-motivated incidents against members of the Jewish and Sinti and Roma communities as well as Germans of foreign origin and asylum seekers in the State party. The Committee is concerned about the persistent discrimination faced by members of the Sinti and Roma communities regarding access to housing, education, employment and healthcare (arts. 2, 18, 20, and 26).

The State party should take concrete measures to increase the effectiveness of its legislation and to investigate all allegations of racially-motivated acts and to prosecute and punish those responsible. The State party should also strengthen its efforts to integrate members of the Sinti and Roma communities in Germany by firmly promoting their access to education, housing, employment and healthcare. The State party should further pursue its awareness-raising campaign and promote tolerance between communities.

18. The Committee is concerned at continued allegations of hate speech and racist propaganda on the Internet including from right-wing extremism, despite awareness-raising efforts and judicial measures taken on the basis of Sections 86 and 130 of its Criminal Code (arts. 2, 18, and 26).

The State party should take the necessary steps to effectively prohibit and prevent hate speech and racist propaganda in particular through the Internet. It should increase its awareness at federal and at *Länder* levels with regard to racist propaganda and speech, in particular from extreme right-wing associations or groups.

19. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the sixth periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the official language of the State party. The Committee also requests the State party, when preparing its seventh periodic report, to broadly consult with civil society and non-governmental organizations.

20. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 11, 14 and 15 above.

21. The Committee requests the State party, in its next periodic report, due to be submitted on 31st October 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.