



Economic and Social Council

Distr.: General
12 May 2011

Original: English

Committee on Economic, Social and Cultural Rights

Forty-sixth session

Summary record of the 9th meeting

Held at the Palais Wilson, Geneva, on Friday, 6 May 2011, at 10 a.m.

Chairperson: Mr. Pillay

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The meeting was called to order at 10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (agenda item 7) *(continued)*

Fifth periodic report of Germany (E/C.12/DEU/5; E/C.12/DEU/Q/5 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Germany took places at the Committee table.*

2. **Mr. Scharinger** (Germany) introduced the members of the delegation and said that there had been close cooperation among a number of ministries and input from civil society in preparing his country's fifth periodic report (E/C.12/DEU/5).

3. **Mr. Storm** (Germany), introducing the report, said that his Government took the Committee's views and recommendations very seriously. That was evidenced, for example, by the State party's response to the concerns the Committee had expressed in 2001 on the issue of long-term care provided for older persons in Germany; it had since adopted initiatives which had considerably improved the overall situation, including through changes to training standards, and its declaration of 2011 as the year of long-term care.

4. On the effects of the global economic and financial crisis on Germany's labour market, although Germany's economic productivity had decreased sharply in 2009, its labour market had maintained a good level of performance, with employment rates currently as high as in the early 1990s. Civil society and the country's culture of social dialogue had helped it to take a number of measures to avoid a breakdown in the labour market. Indeed, his Government had not only maintained, but further developed its commitment to the protection of the rights to adequate work, gender equality, social security, and economic, social and cultural rights. Social benefits had been improved, for example for short-term work, which compensated for a loss of demand, particularly in export-oriented industries. In spite of those positive developments, there was still room for improvement.

5. Reducing the unemployment rate was one of the Government's top priorities. Unemployment had dropped significantly over the previous five years, from 5 million in 2005 to 3.24 million unemployed persons in 2010, and the aim was to achieve a figure of below 3 million in 2011.

6. Measures were in place to respond to the shortage of skilled labour in some sectors due to the high number of retired persons in Germany, fostering conditions that helped older persons to remain employed for a long time, by means of sustainable human resources policies, but also comprehensive health management and lifelong learning and skills-building initiatives.

7. His Government placed disadvantaged persons at the heart of its policies. For example, since children's access to education was often dependent on parents' material resources, legislation was being prepared in the form of an education package for children and young persons of poor families, through which more than €1.3 million would be disbursed annually through 2030. That legislation, which would help families to cover the cost of school outings, lunches and materials, transportation to and from school, and tutoring, would enter into force in spring 2011. The Government also provided €10 a month to students towards their participation in sport, music or cultural activities.

8. Germany sought to improve equal opportunities in the workplace. The gender gap in the labour force had been narrowing steadily over the years, and, according to the Statistical Office of the European Communities, 69 per cent of women between 20 and 65 years of

age were in employment, which was above the European average. The goal was to achieve a rate of 73 per cent by the end of the decade, and to focus in particular on women with young children, through measures to help improve the work/family balance and to promote women's full-time employment. In that regard, there were plans to further develop Germany's childcare and day-care services.

9. In addition, efforts were being made to increase the participation of women in top management positions in the business sector. In addition to voluntary measures in place, a quota had been established for women's participation in boards of directors and other supervisory positions.

10. The issue of integrating migrants into German society was also a priority. The body addressing migrant issues was now attached to the Federal Chancellor's Office rather than a ministry, and a programme was in place to build the skills of migrant workers and foster their integration into the labour market. A national plan of action would be developed in 2011 to further address the integration of migrants, and steps were being taken to legally recognize the qualifications they obtained in other countries. In addition, counselling was made available to migrants.

11. Germany had actively promoted the provisions of the Covenant, such as those relating to water and sanitation, in other forums and settings. It also attached great importance to the right to adequate housing.

12. His Government would give further consideration to signing and ratifying the Optional Protocol to the Covenant once the first experiences relating to that instrument were known and the Committee could complement its jurisprudence and comments. In the meantime, the State party would continue to advocate the Optional Protocol at the international level.

13. **The Chairperson** said the Committee was pleased to note that Germany took its obligations under the Covenant seriously and had taken action to address the particular concerns expressed by the Committee in its 2001 concluding observations.

Articles 1 to 5 of the Covenant

14. **Mr. Atangana** (Country Rapporteur) said that in its replies to the list of issues (E/C.12/DEU/Q/5/Add.1), the State party had indicated that it had no plans to broaden the mandate of the German Institute for Human Rights to include powers to conduct inquiries and investigations. He wondered whether the State party might consider changing that position, since national human rights institutions should be able to carry out inquiries and make recommendations in that respect.

15. He noted that the reason the Committee wished to know whether the Covenant and its provisions had been invoked in court decisions and whether citizens could directly bring cases of violations of economic, social and cultural rights before the courts related to ensuring the justiciability of rights.

16. He would welcome more information on the measures that had been taken to ensure gender equality and whether the effects of the relevant plan of action could already be evaluated. On official development assistance (ODA), the gradual improvements the State party had reported in that regard seemed insufficient, and he wished to know what share of gross domestic product was allocated for that purpose in 2011.

17. **Mr. Abdel-Moneim** expressed his gratitude, as an Egyptian, for Germany's stance during the recent revolution in Egypt, in which demands for economic, social and cultural rights had figured prominently.

18. For the Covenant to be invoked before local courts, it first needed to be an integral part of a State party's municipal law. He wondered why the State party could not already accede to the Optional Protocol to the Covenant; that instrument needed the support of Governments to be strong.

19. He asked whether there had been cases of detention in the context of emergency or anti-terrorism laws, and what measures were in place to guarantee the economic, social and cultural rights of the persons concerned and of their families.

20. **Mr. Kedzia** asked whether the social clause under article 20, paragraph 1, of the German Basic Law provided a link to the Covenant as far as the judiciary was concerned or whether it was unrelated.

21. He was deeply convinced that ratification of the Optional Protocol to the Covenant by Germany would encourage other countries to follow suit.

22. He asked whether the recent change that accorded responsibility for monitoring implementation of the Convention on the Rights of Persons with Disabilities to the German Institute for Human Rights meant that the competencies of the Institute might be further expanded in the future to include monitoring the implementation of other human rights instruments. In addition, he wondered whether the Government was considering creating an ombudsman institution.

23. He enquired, also on behalf of Mr. Schrijver, whether the German Government was on track to meet the United Nations and European Union commitment of providing 0.7 per cent of gross national income (GNI) as ODA by 2015. Further, to what extent did Germany pursue a human rights-based approach, in particular with regard to economic, social and cultural rights, in its development assistance policy? To what extent did those rights provide a framework for development cooperation programmes and expert assistance?

24. Lastly, he asked to what extent foreign companies with their headquarters in Germany were bound, under German law, to respect economic, social and cultural rights in their activities abroad. Were there any specific examples of human rights impact assessments of such activities by the German corporate sector abroad and would the Government consider withholding investment or insurance if a German company violated the provisions of the Covenant in its activities abroad? Did any official guidelines exist in that respect?

25. **Mr. Dasgupta** asked whether Germany had attained its goal of providing 0.51 per cent of GNI as ODA in 2010, as stated in paragraph 15 of its fifth periodic report. He also asked what percentage of the ODA target represented debt cancellation and how that compared to the additional financial resources being made available by the Government. Lastly, he wondered whether the Government was considering reaching the target of providing 0.7 per cent of GNI as ODA before 2015.

26. **Mr. Abashidze** asked, with reference to paragraph 145 of the core document (HRI/CORE/DEU/2009), what was understood by "ordinary statutes". He enquired whether the provisions of the Covenant took priority over other laws and which body in Germany was responsible for interpretation of the Covenant.

27. In national statistics, how were persons who were not ethnic Germans but were German citizens categorized? Were they considered as migrants or foreigners? What were the criteria for classifying people as migrants?

28. Many human rights issues were dealt with at the level of the Länder in Germany, but he suggested that a federal body should be created to oversee the entire system.

29. **Mr. Texier** asked whether Germany had a mechanism to verify that its export policies and its cooperation in civil engineering projects abroad did not have a detrimental

effect on the economic, social and cultural rights of the people in the countries and communities concerned.

30. **Ms. Shin** asked for details on the machinery that existed in Germany for dealing with violations of human rights and on how accessible it was to anyone who wished to lodge a complaint. She also asked which agencies were responsible for providing education on economic, social and cultural rights, monitoring those rights and dealing with any complaints made with respect to violations of them.

31. She enquired whether the principles of gender equality, environmental protection and human rights protection were included in the national regulations for providing ODA to developing countries.

32. She wondered whether the issue of harmonizing work and family life was considered relevant to men as well as women and whether any legal and administrative policies in Germany focused on the need for men and women to be equally responsible for balancing work and family life and taking care of the home.

33. Lastly, she asked what progress had been made on legal reform with regard to transsexuality and whether there had been any consultations with transsexual and intersexual people on issues of concern to them.

34. **Mr. Ribeiro Leão** asked for further information on the scope of the expression “full participation in social ... life”, as contained in paragraph 54 of the report (E/C.12/DEU/5). He also asked for clarification of the meaning of “rights similar to basic rights”, which appeared in the heading to paragraph 139 of the core document (HRI/CORE/DEU/2009).

35. **Mr. Sadi** asked to what extent different ministries used the Covenant as a reference point and for specific examples of cases in which the Covenant had served as a basis for decisions or actions.

36. He requested information on any opposition shown by the German people or migrants to the integration process that was required of immigrants to the country.

37. He asked what status Germany accorded to the general comments of the Committee and whether it agreed that the provisions of the Covenant were justiciable in Germany. Were there any examples of case law implementing the Covenant?

38. **Mr. Kerdoun** asked for the current proportion of German cooperation with least developed countries through the World Bank and the International Monetary Fund. He also asked whether Germany implemented any direct cooperation with those countries.

39. He requested further information on the Government’s position with regard to the participation of German companies in renewable energy projects abroad, such as the DESERTEC solar energy project in Algeria.

Article 9 of the Covenant

40. **Mr. Martynov** asked how unemployed persons, and in particular former salaried employees, had been affected by the recent changes to the social security system. He also wished to know what action the Government had taken with regard to the calculation of standard levels of “*Alg II*” unemployment benefit for recipients with children under the age of 15.

41. He further asked for clarification of the mechanism used to link pensions to inflation and wished to know if it was true that the real value of pensions had fallen by nearly 15 per cent since 2000. He pointed out that pension benefits were higher in the Western Länder than in their Eastern counterparts and asked what action the Government was taking to resolve that issue. He enquired whether former high-ranking employees of the German

Democratic Republic received the same pension benefits as other citizens. Finally, he requested clarification concerning the last sentence of paragraph 159 of the fifth periodic report, in which it was stated that “Recipients of the benefits are in principle required to accept any acceptable job.”

42. **The Chairperson** invited the German delegation to respond to the questions of the members of the Committee.

43. **Mr. Storm** (Germany) said that the competence of the German Institute for Human Rights could not realistically be expanded to include investigation and review activities, as other bodies already existed which fulfilled those functions. Normally, the independent justice system was referred to regarding such activities. The highest court in that system was the Federal Constitutional Court, which had issued many of the decisions referred to by the members of the Committee in their questions. On the question of the assessment of assistance for recipients of benefit with children, reforms had been introduced following a Federal Constitutional Court decision which had contained specific instructions and criticism of the authorities for failing to take into account certain fundamental rights.

44. A system of Petitions Committees existed in Germany, at the level both of the Federal Parliament and the Länder Parliaments. Some 18,000 petitions had been received by the Federal Parliament in 2009 as against 10,000 petitions in 1980. There was also a new and extremely popular online petition mechanism. Other relevant bodies included the Federal Anti-Discrimination Agency, the Joint Commission of the Länder on the Prevention of Torture, and the Commissioners for the Armed Forces and Patients’ Affairs of the German Federal Parliament.

45. With regard to the relationship between the Covenant and the German Basic Law, and in particular article 20, the Basic Law formed part of the Constitution and pre-dated the adoption of the legal instruments of the United Nations. Indeed, the rights of German citizens were derived from that Law.

46. As to gender equality, labour market participation of women stood at nearly 70 per cent and the Government was aiming to increase that figure to at least 73 per cent by 2020. New measures had been adopted relating to parental leave and allowances, in order to encourage men to take longer parental leave. The goal was to achieve the equal distribution of responsibilities, an aim which also applied to the provision of long-term care for parents.

47. Regarding the ODA target, a decision had been taken to reduce Germany’s national debt and, consequently, there was little scope for achieving the target earlier than scheduled.

48. As to the Egyptian revolution, the Federal Ministry of Labour and Social Affairs was interested in more intensive cooperation on social and labour market issues and would look into the matter in the near future.

49. With regard to the implementation of the Covenant in German law and the issue of the Optional Protocol, the Government reserved its position and would examine the matter further.

50. The Commissioners for the Armed Forces and for Patients’ Affairs of the German Federal Parliament were excellent examples of efficient institutions operating within specific areas. However, the Petitions Committees were more suitable when it came to dealing with a wider range of issues. The response of those Committees was rarely unsatisfactory and the Petitions Committee of the Federal Parliament had very far-reaching powers.

51. Regarding corporate social responsibility, there were very strict criteria relating to the export of arms.

52. On the relationship between constitutional law and the Covenant with reference to paragraph 145 of the periodic report, that issue would be explained in connection with the implementation of the Covenant.
53. Regarding statistics on ethnicity in the context of migration, there were strict rules governing the collection of data on ethnic origin in order to prevent discrimination. However, a clearer picture of the situation had recently begun to emerge. About one fifth of the German population were from migrant backgrounds and there were twice as many naturalized migrants as foreigners without German nationality. One large group of migrants who had come to Germany in the 1980s but who had had German nationality from the beginning were ethnic Germans from the former Soviet states. From the 1960s onwards, migrants had begun to arrive from Turkey in particular. Second- and third-generation members of that community had become German citizens and were therefore not included in the statistics as foreigners. More precise figures would help the Government to tackle certain education issues.
54. Citizens often sought remedies with Länder Parliamentary Petition Committees, especially regarding issues which had an impact at the local level.
55. Regarding the role of the Covenant as a reference value, Germany had sometimes lagged behind in terms of social measures. One example was long-term care insurance, which had only been introduced in 1995. Initially, there had been problems regarding the introduction of a new pillar within the social security system and discussions were continuing on the issue of whether the concept of “need for long-term care” should have a wider scope.
56. Regarding integration on the basis of qualifications, children in Germany would only succeed at school if they spoke German and therefore language support was provided at day-care centres for very young children. Learning German was of particular importance in the case of children from migrant backgrounds who came from countries where the education system was less developed than that in place in Germany. There was a need to make such children aware of the importance of training opportunities for school-leavers, given that young people from migrant backgrounds were much less likely to have vocational qualifications than those from German backgrounds. A range of activities were undertaken to help children and young people from migrant backgrounds to obtain vocational qualifications. Work was carried out in mosques to try to reach out to that group. In schools, assistance was provided to help those of migrant backgrounds decide what they would do once they left the education system and to help them find a training placement.
57. The Länder cooperated in their attempts to ensure that vocational guidance was offered to young people, in particular those from migrant backgrounds, before they left school. Special schemes had also been set up offering support to entrepreneurs from migrant backgrounds who wished to provide training opportunities. The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, working with the chambers of industry and commerce, ran an initiative to help such entrepreneurs offer training to young people.
58. The Committee’s general comments had an important signalling function for Germany. However, the contents of the recommendations needed to be set out in more concrete terms.
59. In the light of the tragic events of March 2011 in Japan, Germany was considering how to change the mix of its energy provision. In that context, the DESERTEC solar energy project might well play an important role.
60. All persons who were employable and who met the requirements of the unemployment insurance scheme received regular unemployment benefits. After a period of time, the benefits expired and the people concerned received the so-called

“unemployment benefit II”, a welfare package. The system had been changed in order to introduce a uniform welfare benefit and to ensure that people did not become dependent on benefits in the long term. It was hoped that they would therefore be encouraged to rejoin the labour market. The number of people who had been unemployed for over a year had fallen significantly since 2006, and the target of reducing long-term unemployment by a further 20 per cent had been set for 2020. The focus was now on measures that would bring people back into the labour market.

61. On 9 February 2010, the Federal Constitutional Court had ruled that the standard rates for unemployment benefit II were unconstitutional owing to a lack of transparency in the way they had been calculated. In November 2010, the new standard rate of €364 per month had been set. According to the Court ruling, it was unconstitutional to base children’s rates on those of adults; instead they should be calculated on the basis of children’s expenditure. The benefits for children were now granted partly in cash and partly in the form of the educational package available to those in need. The package enabled children to have individual tuition at school, free school lunches, membership of sports clubs and free music lessons.

62. Pension payments for retirees had risen by 10 per cent since 2001. Since the payments had not kept pace with price increases, discussions were under way on whether to introduce an element of compensation for inflation. Given that pensions were currently based on wages, weak wage increases resulted in low rises in pensions. In addition, a mechanism had been introduced into the pension system to compensate for the fact that there would be more pensioners and fewer workers contributing to pension funds in the future. Pensions in the future would therefore not keep pace with wage increases. Further, in the light of the wage decreases that had been seen in 2009, a guarantee had been built into the system to ensure that pensions would not decline if wages ever fell again. The cost of that guarantee was reflected in lower increases when wages were rising. Pension entitlements in the former German Democratic Republic were 5 per cent higher than in the former West Germany in order to compensate for the fact that wages remained lower in the East. The Government was working on the establishment of a uniform pension law.

63. **Mr. Merz** (Germany) said that the Constitution stipulated respect for the fundamental principles of international law by the courts and all State officials. Since the provisions of international instruments were not considered to form part of those fundamental principles, the obligations the State assumed on ratifying a treaty had to be incorporated into domestic legislation before they were valid.

64. Individuals who were convicted of terrorist crimes received the same treatment as other inmates. They enjoyed the same protection of their rights under the Covenant, including respect of their religious beliefs and practices.

65. **Ms. Chammas** (Germany) said that the Government was firmly committed to reaching the 0.7 per cent ODA target by 2015. According to estimates of the Organization for Economic Cooperation and Development, German ODA had increased from €8.7 billion in 2009 to €9.6 billion in 2010, constituting a rise of 10 per cent in disbursed funds. Debt cancellation had amounted to about €124 million in 2010, representing over 1 per cent of total ODA.

66. Since 2004, development cooperation had pursued a human rights-oriented approach. A policy paper on human rights and development cooperation included binding guidelines on how the government-owned implementing agencies should address human rights in their projects and how the Federal Ministry for Economic Cooperation and Development should address human rights in its interaction with multilateral organizations and other actors in the development field. The policy paper had been discussed in detail with civil society and other relevant actors and would be launched in late May 2011.

67. Cross-cutting issues were addressed in various ways; safeguards were in place to ensure that projects included environmental impact assessments and a gender balance. In addition, cross-cutting issues were raised in the dialogue that Germany held with partner countries.

68. **Mr. Koller** (Germany) said that DESERTEC was a European project. As the Commissioner for Energy at the European Commission was German, the project had strong political support. However, the current political situation in North Africa was making it difficult to convince large companies to make progress on that initiative.

Articles 6 to 8 of the Covenant

69. **Mr. Texier** noted that, for several years, the International Labour Organization (ILO) had been drawing the State party's attention to the problem of prisoners working for private companies. The ILO considered that, since prisoners were not specifically required to give their prior consent to work for private companies in the prison workshops, the State party was violating the provisions of the ILO Convention concerning Forced or Compulsory Labour (No. 29). He asked whether the State party planned to amend its legislation to bring its practice into line with that Convention.

70. He commended the State party for the progress it had made in reducing inequalities in employment. However, it appeared that women with young children were still at a disadvantage in the labour market. He asked what measures the State party planned to take to remedy that situation. Given that little progress had been made between 2007 and 2008 to close the significant gap between men's and women's pay, he requested updated data on the situation in 2011 and asked what steps the Government was currently taking or planning to take to address that inequality.

71. It would appear that some public servants who did not exercise authority in the name of the State, such as postal and railway staff, were denied the right to strike and to collective bargaining. Those rights were enshrined in the ILO Conventions concerning Freedom of Association and Protection of the Right to Organise (No. 87) and the Right to Organise and Collective Bargaining (No. 98), both of which the State party had ratified. He therefore wished to know whether any amendments had been made to the relevant provisions of domestic legislation, or whether there had been any changes in practice. It would be useful to know the opinion of the trade unions in that regard.

72. **Mr. Atangana** (Country Rapporteur) asked whether prisoners who worked for private companies received any form of remuneration from those companies.

73. **Mr. Kedzia** asked whether the difference in average earnings in the former German Democratic Republic and West Germany was justifiable. If not, he would be interested to know what measures were being taken to redress the imbalance.

74. He requested confirmation that a strike ban had been imposed on teaching staff in the State party on the basis that they enjoyed the status of public servants. He failed to understand why the granting of that status had resulted in a restriction of teachers' rights. Given that the duty of allegiance had been invoked in several official documents, he asked whether that was sufficient grounds to limit teachers' right to strike.

75. **Ms. Cong** asked whether the State party had analysed why women had been slightly less affected by unemployment than men in 2005 (E/C.12/DEU/5, para. 83). In the light of the statement in paragraph 128 of the periodic report that workers in the informal economy often failed to assert their rights, she asked whether they were aware of their rights and able to comply with the necessary procedures and fill in the relevant forms. It would be useful to know if there was an agency in the State party that assisted workers in the informal economy to assert their rights.

76. **Mr. Sadi** said that migrant workers in the State party reportedly faced significant levels of discrimination in employment and that employers almost always gave preference to native workers. He asked whether the Government had taken any steps to remedy or at least alleviate that situation. He also requested confirmation that migrant workers did not receive equal pay for work of equal value.

77. **Mr. Abdel-Moneim** observed that, in his opinion, the right to work went beyond the issue of employment and unemployment in the concept of the labour market. In the State party, within the concept of the labour market, there appeared to be significantly more focus on the supply side, as there was in most industrially developed countries. He asked why the State did not play a more important role in creating jobs and thus ensuring the stability of the labour market. If it did not, the right to work, which was one of the most basic rights in the Covenant, was jeopardized. He requested clarification of the meaning of the term “capable of working”, in the last sentence of paragraph 79 of the periodic report.

The meeting rose at 1 p.m.