



International Convention on the Elimination of All Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-third session

SUMMARY RECORD OF THE 1887th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 6 August 2008, at 10 a.m.

Chairperson: Ms. DAH

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (agenda item 4) (*continued*)

Sixteenth to eighteenth periodic reports of Germany (CERD/C/DEU/18;
HRI/CORE/1/Add.75/Rev.1; list of issues, document without symbol distributed in
the Committee room, in English only) (*continued*)

1. *At the invitation of the Chairperson, the members of the delegation of Germany took places at the Committee table.*
2. Ms. WITTLING-VOGEL (Germany) said that her country was fully aware that right-wing extremism was not a marginal phenomenon and that it was considering the possibility of including the term "racism" in legislation. Germany did not yet collect statistics on racist offences and crimes but intended to put in place a framework which would allow a record to be kept of all such acts, in particular those based on right-wing extremist ideas.
3. The police collected statistics disaggregated by type of offence, such as those occurring in the workplace or involving bodily harm, but not on sentences imposed on police officers having committed racist offences in the performance of their duties.
4. Statistics on offences committed in the new *Länder* had been inadvertently left out of the report under consideration but they would be communicated to the Committee very shortly. Statistical data were collected by different collection systems according to whether they concerned the Eastern or Western *Länder*.
5. Although Germany distinguished, for statistical purposes, between citizens and non-citizens, it had deliberately chosen not to collect data by national or ethnic origin, hoping thereby to prevent particular population groups from being stigmatized. The question did however arise whether such data would not offer a more precise idea of the situation and make it possible to determine which groups were most targeted by racist crimes and which groups committed the greatest number of such crimes. That question was being considered, but the Federal Commissioner for data protection always expressed considerable concern whenever the collection of such data was proposed.
6. Even though Germany had not appointed an ombudsman exclusively responsible for human rights or tasked a particular office with centralizing related complaints, it had established a system of protection to which recourse could be had by persons who considered that their basic rights had been flouted; that system relied in particular on the Anti-Discrimination Office, the Commissioner for integration and migration, the Commissioner for data protection and the Office of the Ombudsman.
7. The Commissioner for repatriates took care of German citizens returning from foreign countries like the Russian Federation, while the Commissioner for migrants looked after non-citizens, mostly from Turkey or from the former Socialist Federal Republic of Yugoslavia.
8. Germany had signed Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe but, in

order to ratify it, was waiting for a decision by the European Court of Justice which should establish whether that protocol prohibited the making of any distinction in national legislation between citizens and non-citizens, as was the case in certain of the State party's domestic laws.

9. Although religious issues did not come within the Committee's mandate, Germany had included in the report information concerning the treaties concluded between the Federal Government and/or the *Länder* and the Jewish communities, considering that the question of anti-Semitism was sufficiently important for such information not to be considered superfluous. In addition, the State had concluded a concordat with the Roman Catholic Church, and certain *Länder* had concluded treaties with the Protestant Church.

10. Mr. RAUTENBERG (Germany) said that the right-wing extremist crime rate and the incidence of racist propaganda were indeed higher in the new *Länder* and that the situation in that regard was of particular concern. He explained that phenomenon by the resurgence, in 1989, of nationalist and right-wing extremist movements which had been held down by the communist regime, and by the fact that young people in those *Länder*, at a loose end and left to themselves when the wall had fallen after years of totalitarianism, had rapidly rallied to extremist views that blamed foreigners for all their woes. As Prosecutor of the Federal State of Brandenburg, he had systematically registered all acts of violence committed by right-wing extremists, the great majority being young males. The judicial authorities now reacted swiftly whenever they were notified of acts of violence committed against a foreigner, which had not been the case in the past; nevertheless, fear of prosecution would not suffice to stem the phenomenon. An alliance had therefore been formed in 1997 to combat violence and right-wing extremism and activities had been carried out to change people's attitudes. The economic situation in the five new *Länder* was less favourable than in the rest of the country and consequently prospects of a better life had not materialized.

11. Mr. SEITZ (Germany) said that the German Government had put in place the German Standing Conference on Islam in order to establish a lasting dialogue between the State and the Muslim community and to promote its social integration. It was regrettable, however, that the State was not able to deal with a single representative of the Muslim community.

12. The Conference on Islam had set up various working groups which had made several recommendations, in particular for teaching the principles of Islam in schools, building mosques and drawing the attention of the media to the prohibition of the dissemination of prejudice concerning Islam. The deliberations had also led to the conclusion that it was crucial to identify right-wing extremist movements as soon as possible in order to be able to counter their propaganda.

13. The Internet, which offered an easy way of propagating extremist ideas, had also been a focus of the discussions. Hundreds of biased websites had been identified and a number of them had been banned. Thanks to the combined efforts of the German authorities, Internet service providers and special police units, the action of right-wing extremist organizations on the Internet had been able to be combated. The operation had therefore been successful at the national level; unfortunately that was not the case at the international level, as Germany had no means of recourse against sites based abroad. An initiative of the federal criminal

police involving some 15 countries should however help to advance the situation in that regard.

14. The purpose of the National Action Plan against Racism was not to compile an exhaustive list of measures to be taken in that area but rather to lay the foundations for a strategy predicated on the prevention of racism through the promotion of such values as tolerance, which was a key to the coexistence of communities and to social peace. The stakeholders had not all given their support to the proposed plan, but it was an ongoing process to which changes could still be made.

15. Mr. KLUMP (Germany) said that the National Action Plan against Racism had indeed been recently amended in the light of criticisms made by non-governmental organizations closely involved in its preparation. As it had not yet been approved by the Government, it was not yet possible to reveal all of its provisions. That being said, the plan was designed to strengthen respect for human rights and to combat discrimination and violence, in particular through prevention. Once approved, it would be communicated to the Office of the High Commissioner for Human Rights and then put on line through the Internet so as to be available to everyone.

16. Mr. LAHIRI, noting the delegation's explanations concerning the German authorities' reluctance to collect data disaggregated by ethnic group or minority, said that the State party should have statistics disaggregated by ethnic origin in order to be able to detect any structural discrimination against a particular population group and thus to recognize the need to adopt special measures for the group concerned. It was therefore worrying to be told by the delegation that some national minorities living in Germany did not need to be protected as a group since their members were protected individually by the law; some population groups, like migrant workers from Turkey, were known to be at a disadvantage when seeking to have access to certain services, including health and education. Special measures should therefore be taken in order to remedy the inequalities from which such persons suffered. He wished to know in that connection whether the German legal system placed any obstacles in the way of special measures by the State party in support of population groups not recognized as minorities.

17. Mr. SICILIANOS, pointing out that Germany was one of the few countries to have followed up on the Durban Declaration and Programme of Action by drawing up a National Action Plan against Racism, said that he hoped that that document would soon be adopted and that the State party would include in it special measures for certain minorities living in Germany, in particular the Roma.

18. He stressed the importance for the State party of the bill currently being prepared to make racist motives for an offence an aggravating circumstance. The provisions currently in force were vague and their enforcement depended on their interpretation by the national courts, which could vary over time. Because of the permanent and binding character of a law, courts would be required to enforce the new provisions, which meant that it would no longer be left to judges to determine whether the racist motives for an act should be taken into account.

19. Noting with satisfaction that, according to the delegation's replies, the Anti-Discrimination Office could introduce legislative proposals, he regretted however that that body submitted reports only every four years and asked whether the interval could be reduced to two years.

20. Concerning the delegation's reply concerning the burden of proof, he noted that, as a general rule, the specific laws adopted by States Members of the European Union in order to incorporate community directives into their domestic law were seldom applied by national courts because they did not know about them. The new provisions on the burden of proof should therefore be directly incorporated into the Code of Civil Procedure, otherwise they were in danger of remaining a dead letter. Moreover, if the delegation had been unable to refer to any case law in that connection, it was probably because German judges were not aware of the existence of those provisions.

21. In its decision concerning communication n° 38/2006, *Zentralrat Deutscher Sinti und Roma et al v. Germany* (CERD/C/72/D/38/2006), which it had considered at its seventy-second session, the Committee had found no violation. It had however emphasized the discriminatory, insulting and defamatory nature of the comments made by the police officer against whom the authors of the communication had brought a complaint, and the particular weight of such comments when made by a law enforcement official (CERD/C/72/D/38/2006, par. 9). The Committee had thereby implicitly requested the State party to ensure that that there was no recurrence of such incidents. He accordingly requested the delegation to provide the Committee with written information concerning the measures taken by the competent authorities to inform all members of the police force that such comments were unacceptable.

22. Mr. DIACONU noted that Germany, like other countries of Western Europe, recognized only a very limited number of ethnic minorities and that only the smallest ones, with fewer than 100,000 members, had that status. That contrasted with the situation in the countries of Eastern Europe, where a large number of minorities were recognized irrespective of the number of their members. However, the size of minorities did not stay the same and could change radically according to population trends. Moreover, if the State did not recognize a national or ethnic minority as such, it lost the possibility of knowing its point of view in regard to the difficulties it encountered as a group.

23. The replies of the delegation showed that the State party continued to regard Muslims as a minority. It therefore used religion and not ethnic origin as a criterion. However, among the Muslims living in Germany, there were persons who, apart from religion, had nothing in common and could not be viewed as Arabs, such as the Turks and Bosnian Muslims. Since Turks were very strongly represented in Germany, particularly in Berlin, he did not understand why the State party still did not recognize them as a distinct minority.

24. Noting with appreciation that German integration policy, of which the National Integration Plan formed a part, did not aim to assimilate foreigners, he said that Germany should make every possible effort to protect the language and culture of the persons concerned. That required, in particular, the teaching of the mother tongue of their communities, parallel to the teaching of German, which was also essential. It was interesting to observe that in the *Land* of Rhineland-Palatinate, the Constitution provided that ethnic and linguistic minorities must be respected. Thus, the *Länder*, by virtue of self-government, could adopt provisions offering more extensive protection to minorities than existed at the federal level. It would be desirable for other *Länder* to follow that encouraging example.

25. The delegation having stated that the purpose of the Criminal Code was to keep the peace, he wished to know whether, for the State party, the maintenance of public order was more important than the protection of communities and individuals. The order of priority should be reversed. Lastly, demonstrations organized by communities seeking recognition of their cultural identity could not be treated in the same way as demonstrations by extremist and racist groups. The provisions of domestic legislation punishing incitement to public agitation should therefore be amended in the light of article 4 of the Convention.

26. Mr. de GOUTTES noted with satisfaction the comprehensiveness, precision and quality of the delegation's replies and the evident determination of the State party to combat racism. He also noted the explanations provided by the Prosecutor General of Brandenburg on the possible causes of the resurgence of xenophobic and racist acts since the fall of the Berlin wall. It was probably through the development of public awareness and the teaching of the values of tolerance in schools that people's attitudes might change. Civil society organizations and religious organizations could have an essential role to play in that regard.

27. He drew the attention of the delegation to the fact that the burden of proof could be reversed only in civil cases since, in criminal proceedings, by virtue of the principle of presumption of innocence, the burden of proof could not be on the defendant. He wished to know in that connection whether the legislation of the State party authorized a method known as "testing", the aim of which was to demonstrate the existence of a discriminatory practice based on race or ethnic origin, particularly at the entrance of public establishments such as discotheques.

28. Mr. PETER said that, according to the delegation's explanations regarding the compensation of victims, the Act on compensation for victims of acts of violence was clearly discriminatory in that it made distinctions between foreigners according to length of residence in Germany. The amount of compensation should hinge on the seriousness of the offence and not on the status of the victim. Could the State party consider amending that Act to ensure that all victims of acts of violence were treated on an equal footing?

29. He noted that German legislation contained provisions allowing recourse to mediation between the victim and the perpetrator of a criminal offence (*Täter-Opfer-Ausgleich*). He wished to know whether that method of dispute settlement could be used in cases of racism, in cases where the person committing the offence was a member of the police or when the victim was a migrant, in other words a particularly vulnerable person.

30. M. MENGEL (Germany) said that the National Integration Plan applied to migrants who were not born or whose parents were not born in Germany, representing some 20 per cent of the immigrant population. The plan was based on the concept of integration rather than assimilation, which meant that migrants were not the only ones required to make efforts to adapt to those country but that the host country also had an active role to play in integrating the newcomers. Although it had been adopted only in July 2007, the plan would be the subject of an interim evaluation report, which should be published in November 2008. As for the naturalization procedure, applicants would be required, as from 1 September 2008, to complete a questionnaire which would contain a total of 310 questions, only 33 of which would be asked at random. Applicants would have to reply correctly to 17 questions, which should not create any great difficulties for them. It was planned to

provide applicants with some 60 hours' preparation so as to enable them to pass the test easily.

31. There were indeed restrictions on the movement of asylum-seekers. So long as a decision had not been taken on their status, they were required to remain in the district where they had filed the application, except in an emergency. Those restrictions were lifted as soon as they had been granted the status of refugees. In 80 per cent of cases, decisions were taken in under three months; it was true, however, that efforts still needed to be made to speed up further the procedure for granting asylum. Right-wing extremist organizations and groups were closely monitored by the public authorities and could be banned or dissolved. When they were banned, their assets were automatically frozen. In cases of racially-motivated offences, members of organizations were held individually accountable. As for the integration courses at the core of the integration mechanism established by the new Immigration Act, they seemed to be producing excellent results and the Federal Government had allocated to them €150 million in 2005. The interim report due to be submitted in November 2008 following evaluation of the National Integration Plan would address the question of the effectiveness of the courses. Germany applied the European Union directive on the return of illegally staying third-country nationals, which meant that retention rates were duly respected, as were all safeguards.

32. Ms. RYBERG (Germany) said that integration was the only way of preserving the cultural identity and roots of migrants. In Germany, integration was regarded as an opportunity for migrants. Under its Integration Plan, Germany stressed the importance of learning German from infancy, as a number of migrants had difficulty in speaking it; that slowed down their economic and social integration. Studies had shown that 15 per cent of pupils of foreign origin did not use German at school. That was why priority was given not to mother tongue education but rather to the teaching of German. Young migrants could, however, follow courses in their mother tongue given by the various consular services of their countries.

33. The question of the wearing of headscarves by Muslim women teachers had been a subject of stormy debate in Germany. No uniform solution had yet been found at the federal level and the *Länder* were free to adopt their own regulation on the question. It was to be noted that Muslim women teachers were allowed to wear headscarves during their training. There were likewise no restrictions on the wearing of headscarves by Muslim girls. The presence of a large number of immigrant children in special classes was linked to the fact that they often had educational difficulties, which were not due solely to their poor command of the German language. The decision to place a child in a special class was taken by the teachers, in close collaboration with parents.

34. The enrolment in school of child asylum-seekers was compulsory in all *Länder*. The delegation had no information concerning the allegations that children seeking asylum had more difficulties in being enrolled in schools on account of their age.

35. Mr. BEHRENS (Germany) said that his country was very attached to freedom of expression and to press freedom and that there was no preliminary vetting of an article before it was published or of a piece of information before it was put on the Internet. Article 130 of the Criminal Code, which punished the offence of incitement to public agitation, including incitement to racial hatred, was a good means of

combating xenophobic propaganda and right-wing extremist propaganda. Any person or group who considered themselves to be victims of racist or discriminatory remarks could refer the matter to the German Press Council, an institution which enjoyed considerable prestige in the country and published warnings which had a strong deterrent effect.

36. Mr. BORNMANN (Germany) said that racially-motivated offences were covered by article 130 of the Criminal Code, which punished incitement to racial hatred and naturally protected all foreigners, refugees and asylum-seekers. Furthermore, article 86 of the Criminal Code punished the dissemination of means of propaganda by unconstitutional organizations, including those connected with Germany's Nazi past. A bill was currently before the *Bundestag* to make racist motives an aggravating circumstance, even though the executive branch had long considered there to be no need for the adoption of a law to that effect, in so far as the national courts already so regarded them. The victims of racism could obtain redress under the Act on compensation for victims, which provided for the payment of financial compensation to victims when the State had not been able to protect them. The Act applied solely to German citizens, citizens of the European Union and the citizens of countries that had concluded a reciprocity agreement with Germany, namely the United States of America and Canada. The amount of the compensation was the same for Germans and foreigners but the latter were required to have resided for more than three years in the territory, failing which the compensation was reduced. The Act did not provide for the compensation of tourists and visitors. In view of the increase in racially-motivated offences, a special fund for the compensation of victims had been set up in 2000. In 2007, 122 applications had been made to the fund and 82 victims had received compensation in amounts ranging from €200 to €20,000.

37. Mr. KLUMP (Germany) said that his country attached great importance to the effective implementation of the Durban Declaration and Programme of Action and was participating actively in the preparations for the Durban Review Conference. Since the first meeting of the Preparatory Committee in Geneva in August 2007, Germany had been in close contact with NGOs concerned with questions of racism and xenophobia in the country. Generally speaking, it spared no effort to facilitate as far as possible the participation of NGOs in the preparations for the Durban Review Conference.

38. Ms. KOEPPEN (Germany) said that the Anti-Discrimination Office could conduct independent studies on discrimination, racism and xenophobia and make proposals, including legislative proposals, in that area. The Office submitted a report to the competent authorities every four years. Its most recent activities included action to support efforts by the media to reflect more fully the ethnic diversity of the country. It was also seeking to develop awareness in the various competent ministries of the need to make up for the lack of data and statistics based on race. That initiative would perhaps lead to an improvement in the situation, even though it was not up to the Office to decide whether or not it would be useful to collect such data. Lastly, she confirmed that there was a provision providing for the reversal of the burden of proof when the injured party could not give proof of a discriminatory practice.

39. Mr. AMIR raised the question whether the German legislative authority did not have a very important role to play in providing a legal framework for efforts to

combat racism and xenophobia. Considering that the reappropriation of painful events in the past very often contributed to deep-seated changes in individual behaviour, he requested information on the content of history programmes taught in primary, secondary and higher education, and wished to know in particular whether German children and young people were familiar with the Hitler chapter of their history.

40. Mr. LINDGREN ALVES welcomed the Federal Government's initiative of organizing a Standing Conference on Islam with the representatives of the Islamic community with a view to improving the religious and social integration of the Muslim population in Germany and preventing violent Islamism. He also appreciated the explanations given by the delegation concerning the reasons for the resurgence of right-wing extremist movements in the former German Democratic Republic.

41. He said that he understood the reasons why Germany refused to break down statistical data by race or ethnic affiliation but considered that the authorities should find another means of identifying and protecting particularly disadvantaged groups of persons, particularly persons of African descent living in Germany who, according to NGOs, were the main victims of aggression and acts of racial discrimination.

42. He also wished to know whether the former members of banned extremist organizations were subject to special police surveillance and whether measures had been taken to prevent them from disseminating their ideology by other means, in particular by the Internet.

43. Ms. WITTLING-VOGEL (Germany) said that the very constructive and far-reaching dialogue with the Committee had enabled her delegation to appreciate more fully the importance given by the Committee to certain issues. Her delegation thus understood the attention given by the Committee to the establishment of a dialogue with minorities that were encountering specific problems. She stressed in that connection that the 2007 National Integration Plan should help to further that dialogue and to enable the interests of foreigners and migrants to be taken into account at the federal level.

44. She had also taken note of the importance attached by the Committee to statistical data disaggregated by race and ethnic affiliation and said that she would convey that concern to the competent authorities. She would likewise inform the Ministry of Justice that the Committee considered that racial motives for a criminal act should constitute an aggravating circumstance. In addition, Germany would ensure that its next periodic report contained information on the follow-up given to complaints registered by the Central Council of the German Sinti and Roma.

45. In response to comments made by Mr. Amir, she said that legislation as such did not suffice to make tolerance prevail and to change behaviour, as it was the responsibility of civil society as a whole to rise up against racism and xenophobia and to disseminate the values of understanding and tolerance. Convincing that the solution could not lie solely in punishment, the German authorities were endeavouring to bring about a change in attitudes through human rights training and the establishment of a lasting dialogue with communities. In response to the question put by Mr. Lindgren Alves, she said that the former members of banned or dissolved right-wing extremist groups and organizations were placed under regular

police surveillance to ensure, in particular, that they did not create racist sites on the Internet or new extremist political organizations.

46. Mr. THORNBERRY, Country Rapporteur, commended the German delegation for the quality of its replies and for the light it had shed on a number of specific points. He recalled that the Committee attached so much importance to statistical data disaggregated by race and ethnic affiliation because such data served to reveal the existence of possible structural discrimination and could lead to the adoption of measures to eliminate it. He understood that it was a sensitive issue in Germany and took note of the information that the Federal Government would consider the possibility of obtaining such data in the near future.

47. He welcomed the explanations provided by the delegation concerning the attraction of racist ideologies to the younger generations and the interesting clarifications of the concepts of integration and assimilation of foreigners. The delegation had also provided very useful information about the country's criminal law practice and the incorporation into its domestic law of European Directive 2000/43/CE on the reversal of the burden of proof in cases involving racial discrimination.

48. Germany had taken many steps to combat racism and xenophobia and build a tolerant, peace-loving and dynamic society. He expressed the hope that the dialogue established with the Committee would be instrumental in promoting understanding of all the issues at stake.

49. The CHAIRPERSON welcomed the frank and very constructive dialogue that had taken place between the Committee members and the German delegation. She said that the Committee had concluded the first part of the consideration of the sixteenth to seventeenth periodic reports of Germany.

50. *The delegation of Germany withdrew.*

The meeting rose at 1 p.m.