United Nations CCPR/C/SR.2171

International Covenant on Civil and Political Rights

Distr.: General
21 April 2004

Original: English

Human Rights Committee
Eighteenth session

Summary record of the 2171st meeting
Held at Headquarters, New York, on Wednesday, 17 March 2004, at 3 p.m.

Chairperson: Mr. Amor

Contents

04-27343 (E)

0427343

The meeting was called order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of Germany (*continued*) (CCPR/C/DEU/2002/5, CCPR/C/80/L/DEU; HRI/CORE/1/Add.75/Rev.1)

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

List of issues (*continued*) (CCPR/C/80/L/DEU)

2. **The Chairperson** invited the members of the Committee to continue putting questions to the delegation in connection with articles 2, 3, 6, 7 and 10 of the Covenant (questions 1 through 10 on the list of issues).

3. **Mr. Shearer**, referring to the Counter-Terrorism Act (question 4 of the list of issues) and the various other enactments amended pursuant to its adoption, asked whether such amendments had all been made in a single enactment, including those relating to the law governing private associations. He would appreciate receiving a copy of the Act itself and of the decision of the Federal Constitutional Court of 2 October 2002 mandating certain legislative changes to avoid conflict with religious freedom. He would like more information on the role of the various organs referred in the delegation's oral introduction to its report (CCPR/C/DEU/2002/5) in monitoring the content and applications of all counter-terrorism legislation. He noted that the new National Human Rights Institute (report, paras. 9 and 10) was not a government body, and wished to know more about its composition and how its independence was guaranteed. Noting the Committee's concern regarding derogations from human rights during a state of emergency, expressed in its general comment No. 29, he asked whether the principles of necessity and proportionality explicitly espoused by the Government had been applied in its drafting of all anti-terrorism laws.

4. The text of the delegation's reply to question 17, which would be addressed later in the meeting, seemed to imply that exceptions might sometimes be made to the requirement that a court order must be issued to justify intrusive investigative measures. He also wondered in what ways the Federal Constitutional Court decision of 3 March 2004 had restricted the application of audio surveillance of residential premises.

5. **Mr. Wieruszewski**, commending the German attitude of openness to the Committee and to non-governmental bodies and not simply to the European system, welcomed the establishment of the Institute for Human Rights as an important new source of non-governmental information, and looked forward to learning about its work in the next periodic report. The figures given indicating an improvement in the position of women in the country (question 5) were encouraging, but left room for improvement. He noted that the composition of the delegation itself reflected the progress made. He would like to know more about the impact of the government policy to combat domestic violence, sensitize the judiciary and protect the victims; and about any lingering east-west discrepancies in that area.

6. With regard to the expulsion of refugees (question 10), he asked whether the unavailability of medical treatment would, under the Foreigners Act, constitute an obstacle to deportation, whether the newly established anti-terrorism measures were preventing refugees from being given asylum on a mere suspicion and whether such decisions could be challenged.

7. He wondered whether the presumption of the safety of a designated third country to which asylum-seekers were to be deported (question 11) could be challenged, and whether it had ever been determined that a non-specific threat of a general nature existing in such a country constituted an obstacle to deportation. He observed that Poland had given asylum to a person expelled by Germany to his country of origin, where in fact he had subsequently been tortured.

8. **Sir Nigel Rodley** said that the decline in the number of allegations of police brutality in Germany (question 8), as reported by Amnesty International in January 2004, was a good sign. Recalling that the Committee had in the past urged the Government to establish an independent mechanism to investigate allegations of torture and ill-treatment, he asked whether the independent parliamentary Commission on Human Rights and the National Human Rights Institute had any fact-finding powers and the power to act on individual cases. He noted the inability of the Government to provide any solid data on such

incidents: it would be highly desirable for the authorities to keep such statistics. It was unclear how the figures given by the delegation for known cases of ill-treatment meshed with the much higher figures later given for cases of bodily harm in the text of the reply to question 13. Half the known cases of ill-treatment were said to have involved foreigners. The other half, consisted of those nationals perceived as not being ethnic Germans encountering any particular problems, was the case in many countries, although virtually all cases were prosecuted, the results indicated that the courts seemed reluctant to convict police officers. It would be interesting to know what percentage of those who had been penalized had received fines and what percentage had been given a term of imprisonment, or had otherwise been disciplined or dismissed from the police force, and whether there was any provision for reparations for victims.

9. With respect to torture (question 9), which the Government had banned absolutely, he asked the delegation to comment on the countervailing legal argument in Germany that, where there was a conflict of legal values, necessity could be invoked as a defence against a charge of torture.

10. **Mr. Solari Yrigoyen** noted with concern that several articles of the 1949 Constitution — for example, articles 8, 9, 11 and 12 — guaranteed the rights only of Germans, and wondered about the status of the human rights of foreigners in Germany. Whereas article 12 of the Covenant was non-restrictive as to liberty of movement, it was unclear if legal residents, for example, would need special permission to move within or leave the country.

11. **Ms. Chanet** applauded the Government's firm position with regard to torture. On the other hand, she asked whether it envisaged maintaining its many reservations to the Covenant and the Optional Protocol. In particular, she would appreciate an explanation of its reservation to article 15, paragraph 1, which concerned a non-derogable right. Also, since the report indicated (paras. 371-372) that Germany was ratifying the Twelfth Optional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, containing a general prohibition of discrimination, there seemed no longer to be any justification for maintaining its reservation to the Optional Protocol to the Covenant with specific regard to violations of article 26 of the Covenant.

12. **The Chairperson** invited the delegation to respond.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

13. **Mr. Stoltenberg** (Germany) said that he would send the statutes of the German Institute for Human Rights to the Committee by e-mail and noted that a recent declaration by the German Parliament listing the institute's tasks did not include following up any individual human rights violations. While the institute did look into individual cases in order to ascertain if there were structural faults, it did not act as an ombudsman. On the question of the independence of the institute and the criteria for selecting its governing board, he indicated that there were 16 voting members from civil society, two from the Parliament, three representatives of the German Human Rights Forum, two from science and two from the media. The board was strictly an advisory body and the institute operated under private, not public, law. The institute received a subsidy of 1.5 million euros but that did not impose any obligation. One of the institute's first actions was to produce a booklet on terrorism and human rights, and which was available on its web site. The booklet enumerated 10 basic interpretations, including on the right to work, on the State's position on economic, social and cultural rights and on the European protection of human rights.

14. With regard to the composition of the delegation, he wanted to make clear that no women had been available to represent the specific areas and he was not happy with that situation. On the subject of torture and the newspaper interview given by Mr. Döring, he emphasized that Mr. Döring was a recognized scientist but had never dealt with international law. There was no exception in international law to the absolute ban on torture and Mr. Döring did not address that issue. With respect to the regulations that applied to foreigners, he said that there were human rights provisions under the Universal Declaration of Human Rights and under the Covenant that went beyond German Basic Law. Thus, German fundamental rights, applied only to German nationals, while basic rights or human rights applied for all citizens. However, the Federal Constitutional Court had ruled that foreign nationals had more or less the same rights as German nationals, including the right of assembly.

15. Commenting on the late submission of the English version of the delegation's statements in response to the list of issues, he wished to make it clear that the delegation had not intended to give that English version to members. In fact, that version was meant for the interpreters.

16. He expected the reservation to article 15 of the Covenant to be abolished, as had already been the case with the reservation to article 7, paragraph 2. With regard to the Twelfth Protocol to the European Convention on Human Rights, he noted that few States had ratified it and that it was not clear when it would enter into force. There were reservations on the part of the Federal Government, which wanted to wait for the ruling of the European Court of Human Rights on that optional protocol. Certain States had reservations about the distinction made between the rights of nationals and those of non-nationals with regard to social aid, though the ruling of the court might end that differentiation thus creating an enormous burden for the federal budget. The Government would maintain its reservation to article 26 and wait for further developments affecting the optional protocol.

17. With regard to the relationship between the Federation and the Länder, he noted that the report and the concluding observations had been sent to the Länder on the recommendations of the Committee. There would be a meeting with all ministries on a federal level and the Länder would be invited to the follow-up to the conference of the Institute for Human Rights. On the basis of the conference outcome, it would be decided how to cooperate with the Länder.

18. **Mr. Mengel** (Germany) said that the freedom of movement guaranteed in the Basic Law was not applicable to foreigners. However, under a ruling by the Federal Constitutional Court if their freedom of movement was restricted within federal territory, they could evade that restriction by invoking either article 2, paragraph 1, of the Basic Law or article 12 of the Covenant. Foreign nationals from the member countries of the European Union had freedom of movement in principle, while special regulations had been agreed for the accession countries, including a transition period of seven years. Other foreign nationals who resided in Germany legally enjoyed freedom of movement. Asylum-seekers could remain in Germany legally while their request was being processed, though they could not travel beyond a defined territorial area. Foreign nationals who were not legal residents were tolerated but had to be available to the authorities at all times.

19. Commenting on the consequences of the Law on the Combat of Terrorism, he said that the Government's starting-point had been Security Council resolution 1373 (2001), which called upon States to redouble their efforts to fight terrorism in the framework of international law, including the Geneva Convention relating to the Status of Refugees. In Germany, the Geneva Convention relating to the Status of Refugees had not been fully implemented but that omission had been rectified. The regulation in article 1, paragraph f of the Geneva Convention relating to the Status of Refugees was incorporated in German asylum law and paragraph 2, sentence 2 of the Foreigners Act. There had to be reason to believe that the foreigner was trying to breach the peace and the suspicion of terrorism had to be justified. The justification included membership in a terrorist organization, prosecution on that charge, or eviction on grounds of suspected terrorism.

20. Moreover, foreign nationals were not deported if medical treatment was not available in the country to which they were being deported. The federal Government and the Foreign Office tried to verify if medical treatment was feasible in the asylum-seeker's country of origin. Furthermore, he noted that it was possible to refute the argument that a third country was considered safe in specific circumstances, although the procedure had never been applied. In addition to the regulations on safe third countries, there were also regulations on safe countries of origin. With regard to Mr. Wieruszewski's comment that Poland had deported asylum-seekers to their States of origin, where they had been prosecuted, he said that he was not aware of that situation. He added that there was a ban on chain deportation, where an individual was deported to a country, which then deported her/him to a third country in which he/she was under threat of police prosecution.

21. **Mr. Wieruszewski** said that his comment had been misunderstood. It was not the case that Germany had sent a person to Poland, and Poland had then sent that person back to his country of origin. In fact, Germany had deported a refugee to his country of origin, where he had then been tortured. The refugee had then gone to Poland and was granted asylum there. The German authorities had been notified of the transfer.

22. **Mr. Stoltenberg** (Germany), speaking on the subject of acoustic surveillance, noted that the Federal Constitutional Court had found that the specific legal provisions authorizing such surveillance were unconstitutional and that the list of crimes where such surveillance was permitted was too comprehensive. Only severe crimes warranted such interference and there was a need for protective measures, such as the establishment of a time limit. Overheard personal conversations were not reliable evidence and such recordings should be deleted in compliance with the decision of the Federal Constitutional Court.

23. **Mr. Kiel** (Germany) said that some articles of the Law on the Combat of Terrorism had required changes in 20 other laws. The Associations Act was not part of the Law on the Combat of Terrorism, it had been adopted previously in separate legislative action. The aim of the law was to prohibit, within the scope of the Associations Act, organizations which posed as religious groups in order to mask their terrorist activities. However, the prohibition of religious organizations was only justifiable if the organization took active measures in violation of basic rights, including human rights.

24. In response to Sir Nigel Rodley's question, the delegation had already commented on the report of Amnesty International in their State report. There were no central statistics regarding abusive or unjust treatment by the police. The various offices of the 16 Länder had details of disciplinary action taken against officers which might also apply to minor offences committed outside official duties. A person who had committed an offence outside his official capacity could be sanctioned under disciplinary rules, as well as under criminal law. The data for the Länder could only be provided after a lengthy process and when the delegation queried the 16 Länder regarding their Amnesty International reports, it found that 50 per cent of the victims were foreign nationals and the other 50 per cent were German nationals. However, there were no figures indicating how many of those German nationals were of foreign origin because those statistics would touch on a very sensitive issue. The figures for the use of weapons by police officers which had resulted in death or injury, supplementing the statistics for 2000 provided in the report, were five deaths and 26 injuries in 2001, and six deaths and 28 injuries in 2002. The figures for 2003 were not yet available.

25. **Mr. Rothen** (Germany), head of the Task Force for Human Rights in the Federal Foreign Office, told Mr. Kälin that the applicability of the Covenant to armed or police forces deployed internationally, including in Afghanistan, had become an issue in Germany fairly recently and was still under consideration. His Government was fully aware of the need to forge a clear position on the matter and would certainly take the Committee's views into account in doing so.

26. **Mr. Simon** (Germany), representing the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, replying to Mr. Wieruszewski said, that full equality between men and women had not yet been achieved in Germany. The Domestic Violence Prevention Act, a piece of civil legislation, adopted a radical new approach to the problem. While, formerly, victims of domestic violence had had to flee to shelters or friends' homes, perpetrators were now barred from entry to the family home until protective measures were fully in place. The Act was supplemented by the legislation of the various Länder. Criminal police statistics showed an increase in the number of incidents of domestic violence investigated since the adoption of the Act, and in the number of women who dared to come forward and seek help. Nonetheless, there were still 40,000 women in shelters, demonstrating the great need for protection, care and counselling.

27. The tendency for women to be the first to be dismissed from industries whose business was declining was not peculiar to the former Länder of the German Democratic Republic, it was a nationwide problem. His Ministry was in close contact with industry and trade associations and was attempting to caution them against the drawbacks of dismissing women first, particularly educated women. A very high percentage of women civil servants in the former German Democratic Republic had been incorporated into the Federal public service after reunification. The average income of women from the former German Democratic Republic after reunification was 95 per cent that of men in 2001, while the average income of their western counterparts was 75 per cent that of men.

28. **The Chairperson** invited the delegation to address questions 12 to 22 on the list of issues (CCPR/C/80/L/DEU).

Right to be free from torture or cruel, inhuman or degrading treatment or punishment and to be treated, as a prisoner, with dignity (articles 7 and 10 of the Covenant) (continued)

29. **Mr. Stoltenberg** (Germany), referring to question 12 on the list of issues, said that the Government was taking steps to remedy the problems in providing care to elderly persons (CCPR/C/DEV/2002/5, paras. 113 to 115). They focused on better homes for the elderly, medical service inspections, health insurance, long-term care inspections and reporting (the next report would focus on practical experiences since the amendment of the Homes Act) and amendments to ordinances with a view to improving the building standards for new homes for the elderly. In October, a Long-term Care Round Table had been organized by the competent federal ministries as a forum for the exchange of best practices, to formulate recommendations and elaborate a charter of rights of elderly persons. Although there were no statistics broken down by offences, inspectors and a number of Länder had referred cases to the Federal Public Prosecutor's Office. The federal Government had also commissioned a study on crime and violence against elderly persons.

30. Question 13 on the list of issues was closely related to question 8. Unfortunately, any data that might have been available on ill-treatment of detainees by police officers, prison wardens and persons in similar positions were incorporated in overall crime statistics. The only figure he could provide was that, between 1993 and 2002, about 25 persons had been convicted yearly for bodily injury, including corporal punishment by teachers. Although ill-treatment of detainees was the exception, improved training programmes were in place to reduce the frequency of such incidents. Ill-treatment of detained persons was a criminal offence for which charges were brought by the Public Prosecutor before independent courts.

31. Referring to question 14 on the list of issues, he said that there were no federal statistics on the number and duration of cases of solitary confinement. In response to a request for figures sent to federal States where prison facilities were located, North Rhine-Westphalia, where approximately one quarter of all German inmates were imprisoned, reported 266 cases of solitary confinement in 2003 out of 48,525 prisoners, equivalent to 0.5 per cent of all prisoners. In no case had solitary confinement exceeded three months. In several other Federal States, solitary confinement had lasted more than three months a year in about 10 cases. Under the Prison Act, the supervisory body's consent had to be obtained in such cases. In Schleswig-Holstein, the supervisory body's permission had had to be obtained for a total of 16 cases between 1998 and 2004, or about two cases every year, in which solitary confinement had lasted from three to nine months. Overall, the figures clearly demonstrated the exceptional nature of solitary confinement in Germany.

32. Referring to question 15 on the list of issues, he said that Germany was combating trafficking in human beings, which it regarded as a serious breach of human rights, through special criminal provisions. In the Federal Criminal Police Office and in some criminal police offices in the Länder, special police units had been established to combat such trafficking. The Federal Criminal Police worked closely with the International Criminal Police Organization (Interpol), the European Police Office (Europol) and other bodies, particularly the Task Force on Organized Crime in the Baltic Sea Region and the Anti-terrorism Task Force of the Southeast European Cooperative Initiative. As far back as 1997, the Government had set up a national working party on trafficking in women. Germany was careful to provide full protection to victims and witnesses, who could shed light on offences and provide information that would ultimately help to convict offenders. To that end, the working party on trafficking in women had facilitated cooperation by the federal and State criminal prosecution authorities with non-governmental organizations (NGOs) and international agencies.

33. Germany was strongly committed to preventing trafficking in human beings before victims left their States of origin. The federal Government conducted education programmes at visa counters and provided support to the educational activities of NGOs in States of origin and transit States, and the German police cooperated with police forces of major States of origin by exchanging information, organizing special seminars in those States and offering internships. The statistics on criminal proceedings requested by the Committee were contained in the full text of the delegation's replies to the list of issues, and in annexes to be forwarded to the Committee.

34. Referring to question 16, he said that protection against the economic exploitation of prostitutes and

other contemporary forms of slavery was guaranteed under German penal law, and by the statutory definitions of the crimes of kidnapping and deprivation of liberty in the Penal Code. The legal status of prostitutes had improved significantly since 2002. The Prostitution Act was currently under review; the findings of the study would be submitted to the Bundestag in early 2005.

35. Turning to question 17 on the list of issues, he said that, earlier in the month, the provisions on audio surveillance of residential premises had been further restricted following a review by the Federal Constitutional Court. Those provisions would be updated as soon as possible. In practice, audio surveillance of residential premises was relatively limited. Apart from permitting the inclusion of certain social data in computer-assisted searches, the Counter-Terrorism Act described in the response to question 4 in no way broadened investigative powers under criminal procedural law. No such searches were conducted in connection with the incidents of 11 September 2001. The Act essentially expanded the investigative powers of the intelligence services, and, together with other relevant legal provisions, would be evaluated prior to its expiration in 2007. In its annual report for 2002, the Parliamentary Control Panel had found that the intelligence services had used their special powers judiciously, applying them in only 28 cases that year.

36. Referring to question 18 on the list of issues, he said that eligibility for public office was governed by article 33, paragraphs 2 and 3, of the Basic Law. The sole criteria for eligibility were suitability, qualifications and professional achievements, irrespective of faith and religious or political beliefs. Since one aspect of suitability was proof of loyalty to the Constitution, the authorities had to be satisfied that prospective civil servants would uphold the free democratic constitutional system within the meaning of the Basic Law. Loyalty to the Constitution was examined only where doubts arose as to a candidate's personal suitability. State authorities needed to ascertain the degree to which candidates who were members of the Scientology Organization were controlled or influenced by that organization, since its demand for total obedience and adherence to its aims could create a conflict with the obligations of a civil servant or other public service employee. Doubts as to a civil servant's loyalty to the Constitution did not constitute sufficient grounds for a dismissal; disciplinary proceedings would be instituted only where there was evidence of a breach of political loyalty, in violation of the public service laws.

37. Referring to question 19 on the list of issues, he said that his Government had taken a number of measures to put a stop to genital mutilation, particularly through publicity campaigns aimed primarily at physicians and counsellors. Under the strengthened provisions of the Sixth Reform Act of the 1998 Criminal Code, parents who removed their children from Germany to have a circumcision performed in another country were criminally liable for joint perpetration, together with the person who carried out the circumcision, and would be charged with incitement or aiding and abetting. Civil Code restrictions on parental custody rights and their right to determine their place of residence afforded additional protection. Germany also supported organizations and initiatives aimed at combating genital mutilation in the countries concerned.

38. Referring to question 20 on the list of issues, he said that it was not currently possible to foresee when his Government would ratify Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, paving the way for examination of its reservation under the Optional Protocol to article 26 of the Covenant. After the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001, the Federal Government had provided a detailed outline of its policy on xenophobia and anti-Semitism in a report on current and planned measures and activities against right-wing extremism, xenophobia and anti-Semitism and violence. The Government was tackling that extremely complex issue on several fronts including human rights policy, strengthening civil society, promotion of integration of foreigners and measures aimed at offenders and their environment.

39. Pursuant to the decisions taken at the Durban Conference, the Federal Government was drawing up its National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance with NGO participation through the Forum against Racism. Germany was cognizant of its historical responsibility to place strong emphasis on combating anti-Semitism. A Conference on Anti-Semitism within the context of the Organization for Security and Cooperation in Europe (OSCE), to be held in Berlin at

the end of April, would explore possibilities for joint action including the exchange of best practices and legislative and educational measures. Germany was fully aware that much remained to be done to eradicate anti-Semitism and xenophobia in its territory and was attempting to address those problems.

40. Question 22 on the list of issues had already been covered in his introductory statement to the Committee. The full details of the delegation's replies to the list of issues were contained in the text it had circulated.

41. **The Chairperson** invited Committee members to continue their questions and comments on the list of issues.

42. **Mr. Shearer**, referring to question 12 on the list of issues, asked whether the new National Human Rights Institute and the other organs established also monitored care of the elderly. He wondered whether young people providing community service in lieu of military service might have a role to play in that regard. While they might have less training or experience than professionals, their presence could be invigorating for elderly people.

43. **Mr. Wieruszewski**, referring to question 15 on the list of issues, asked whether the State party was contemplating granting residence permits to victims and witnesses of trafficking in human beings or providing a basic allowance for them under the social security scheme. With regard to question 20, he commended Germany on hosting a large number of refugees and displaced persons, including those originating in the former Yugoslavia, but feared that the repatriation of Roma to Serbia and Montenegro constituted discrimination based on ethnic origin. Following up Ms. Chanet's question on the implementation of the provisions of article 26 of the Covenant, he said that he found it extremely disturbing that a State party should seek to make a reservation to a substantive part of the Covenant through a reservation to the Optional Protocol concerning that article. That practice was contrary to the Vienna Convention on the Law of Treaties and other international standards. The reservation to the Optional Protocol meant that the Committee could not admit complaints under that article but it did not relieve Germany of its obligations under article 26 proper; to claim otherwise would be to renege on its treaty obligations.

44. **Mr. Glèlè-Ahanhanzo** echoed Mr. Wieruszewski's concern about the systematic repatriation of Roma and Sinti and also enquired about the status of third-generation Turks born in Germany. Lastly, he wondered why the Act on Registered Partnerships guaranteed "tolerance" of homosexuals and lesbians rather than affirming their rights in terms of human dignity.

45. **Ms. Wedgwood**, referring to question 18 on the list of issues, said that she had been taken aback by the statement that the Scientology Organization was "not a religious or philosophical community but an organization aimed at economic gains and acquisition of power" (CCPR/C/DEU/2002/5, para. 312), and that it enjoyed no status as a religion. She wished to know how many former civil servants from the German Democratic Republic had actually been rehired. Recalling the case of an OSCE diplomat who had been dismissed from the German Foreign Service, she found it troubling that persons whose constitutional loyalty was summarily called into question were not given individual hearings.

46. **Mr. Ando** also expressed concern about care for the elderly. In an ageing society, even under programmes entitling young people to fulfil their military obligations in civilian service in nursing homes for example, there would be a growing shortage of young people to take such positions. To an increasing degree, the elderly would be looking after other elderly people, which would inevitably affect the quality of care. He wondered whether the German authorities had developed any solutions to ensure quality care for the elderly.

47. **Mr. Kälin** asked whether the State party's reservation to article 26 implied that it did not accept full application of article 26 or simply that it excluded the Committee's competence to examine individual communications. He also would welcome comment on the case of the Inuit people of Canada because arguably the territorial scope of the application of article 1 of the Covenant as invoked by the Inuit people was different from that of article 2 because of the special character of article 1.

48. **Sir Nigel Rodley**, although he recognized the difficulty of obtaining comprehensive statistics, said that the federal Government should be doing something to ensure that adequate statistics were available on a continuing basis. He also noted an apparent

discrepancy between the statistics provided in the second paragraph of the reply to question 8 on investigations of ill-treatment on the part of the police and border guards, and the information provided in the reply to question 13 concerning convictions for inflicting bodily injury while in public office; he wondered whether the delegation could comment on or clarify that discrepancy. Finally, he requested information on any compensation provided to individuals whose complaint of torture or ill-treatment had been upheld.

49. **Mr. Stoltenberg** (Germany) said the National Human Rights Institute would be undertaking a study of the situation in nursing homes with a view to ensuring adequate quality care for the elderly. With regard to the reservation to article 26, he said that it only applied to the Committee's jurisdiction to hear individual complaints.

50. **Mr. Simon** (Germany) pointed out that young men who fulfilled their military obligations by working in nursing homes chose that placement; they recognized that it would be a challenging experience and were committed to doing a good job. In addition, they received between four and eight weeks' training before beginning work. His Government was fully aware of the problems posed by the ageing of society and had instituted family policies to try to ease the process. In order to ensure quality care, it was attempting to make employment in nursing homes more attractive by improving the image and increasing the pay of those who chose that occupation.

51. The basic problem in providing benefits for the victims of trafficking was one of residency status. Programmes to compensate the victims of trafficking could not be financed by applying the social security law; they had to come under the legislation relating to asylum-seekers. Discussions were under way to extend increased benefits to the victims of trafficking but adequate funding was also a problem and in some cases advocacy organizations were forced to advance funding to assist victims. New measures within the framework of the asylum law would be necessary as well as additional support for helping organizations.

52. His Government, in its effort to provide equal rights to homosexuals, had passed legislation establishing registered same-sex partnerships. The federal Government recognized the need to amend fiscal regulations to take into account the rights of homosexuals and to implement further legislation but often had difficulty getting approval for such measures in the Federal Council. His Government was nevertheless fully committed to the elimination of all types of discrimination and would continue to implement all relevant European Union legislation as well as domestic legislation to eliminate discrimination.

53. **Mr. Mengel** (Germany) said that, to correct a possible misunderstanding concerning the status of the victims of trafficking, he wished to point out that they were often allowed to remain as residents without, however, being granted a full residence permit, in order to protect them against deportation. Turning to the question of the Roma, he said that there was undeniably popular prejudice against the Roma but it was not true that the Roma were systematically deported to Serbia, Montenegro and Kosovo. In 2001, 2002 and 2003 respectively, 573, 3,015 and 2,892 persons had been returned to those areas, including some Roma, but there was no systematic discrimination against the Roma. In addition, up to 1,000 members of ethnic minorities, except for Roma or ethnic Serbs, could be deported to other entities of Yugoslavia.

54. He recognized that there were problems with the integration of third generation ethnic Turks, who faced higher than average unemployment rates and discrimination. Although the Government had attempted to implement rules to ensure protection of their rights, the mindset of the general population had to be changed. Better integration of lawfully resident aliens was one of the aims of the new Immigration Act. One attempt to improve their status had been the application of the right of jus soli to the children of foreigners born in Germany, on condition that the parents had been legal residents for eight years and had enjoyed permanent residence status for three years. When they reached the age of majority, the children had to choose between their parents' nationality and German nationality.

55. In response to concerns about the treatment of followers of Scientology, he said that it was true that Scientology was not recognized as a religion. He recalled that under article 8, paragraph 3, of the Covenant, it was possible to exclude the followers of Scientology from the civil service on the grounds that civil servants had an overriding duty to defend democracy and protect the Constitution, which might pose a problem for some followers of Scientology.

They were not categorically banned from the civil service but a decision would be taken on an individual case basis as to whether or not their adherence to Scientology would be an obstacle to employment in the civil service.

56. **Mr. Rothen** (Germany) said the inclusion of Israel in the Group of Western European and other States was a complicated issue. Such decisions were taken by the members of the Group, including the European Union. Following Israel's admission to the core group in New York, it had immediately requested membership in the Western European human rights group based in Geneva, which attempted to coordinate substantive positions among the members of that group. Its request had been supported by his Government and by the United States, but to date there was no consensus on Israel's membership in the human rights group.

57. **The Chairman** thanked the delegation for the comprehensiveness of its report and written and oral responses and for its frank and open dialogue with the Committee. There had been clear progress since the State party's fourth periodic report, as evidenced by the establishment of an Office of a Commissioner for Human Rights and Humanitarian Aid at the Foreign Office and a National Human Rights Institute as well as efforts to fight xenophobia, anti-Semitism and racism and implement the Durban Declaration and Programme of Action. Progress had also been made in protecting privacy rights and the rights of children, women and foreigners.

58. He expressed concern, however, at continued reservations, both direct and indirect, to the provisions of the Covenant and looked forward to the lifting of those reservations in the near future. While recognizing the problems posed by a federal system of government, he called upon the Federal Government to provide leadership and encourage the Länder to ensure full implementation of those provisions.

59. He said that in the wake of the events of 11 September 2001, care must be taken to ensure that measures to fight terrorism did not single out certain groups for suspicion simply because they were different; care must be taken especially to prevent Islamophobia. Noting the presence of German troops in Afghanistan, he recalled that the provisions of the Covenant also applied to States parties' military forces abroad.

60. Although progress had been made towards the further advancement of women, he expressed surprise at the persistence of discrimination against women in the civil service. The elderly, especially in an ageing population, were especially vulnerable and steps must be taken to protect their dignity and ensure that all elderly persons throughout the country had the right to full and equal benefits. Finally, he pointed out that no State had the right to decide whether any set of beliefs constituted a true religion or not. The law should apply to all without distinction and no one should be deprived of the right to work in the civil service, if qualified, simply on the basis of religion.

61. He said that he looked forward to the presentation of the State party's next periodic report and to continued progress in the State party towards full protection of the civil and political rights guaranteed under the Covenant. The State party's continued dialogue with the Committee would further strengthen the protection of human rights and the elimination of inequality in its territory.

62. **Mr. Stoltenberg** (Germany) thanked the Committee for its substantive discussion of the human rights situation in Germany and for the experts' many suggestions; the Committee's comments and recommendations would be widely disseminated. He expressed regret that, even in Germany, there continued to be violations of human rights, especially on the part of the police and stressed his Government's determination to do everything in its power to eliminate such violations.

The meeting rose at 6 p.m.