

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 73RD SESSION GERMANY, 16-18TH REPORTS 5-6 AUGUST 2008

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Key facts¹

Date of Ratification	Reservations	Individual Communication Declaration Art 14	Additional ratified core treaties

¹ The information in these two tables is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

1969	No	Yes	CEDAW, ICCPR, ICESCR, CAT, CRC, CMW
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Type of report	Date submitted	Report submitted on time	NGO / NHRI consultation/input	List of issues provided / Written replies to issues rec'd	Last appearance before Committee
16-18 th report	31 January 2007	No	Yes	Yes. Written replies 18 July 2008, not made publicly available until after session.	12 March 2002

Information submitted to the Committee

State report²

On 31 January 2007, Germany submitted its report to the Committee on the Elimination of all Forms of Racial Discrimination (the Committee) detailing its compliance with the *International Convention on the Elimination of all Forms of Racial Discrimination* (the Convention).³ The report was commended by the Committee members as multi-dimensional, self-critical, and indicative of serious efforts by the Government to take initiatives to combat racism.

The report responds directly to the Committee's last set of concluding observations to Germany. The report lacked statistics relating to the five new *Länder*. However, this information was submitted later with an apology for its accidental omission.

List of issues⁴

The Committee's country rapporteur for Germany, Mr Thornberry, submitted a detailed list of issues to the State. Noteworthy issues raised include Germany's National Action Plan against Racism, the Roma and Sinti populations, the Anti-discrimination Office, the lack of statistical information on Germany's ethnic composition, right-wing extremism, compensation for victims, and criminal proceedings. The list of issues was expounded upon by Mr Thornberry during the Committee's dialogue with the delegation.

Germany provided written replies to the list of issues on 18 July 2008. However, these were not made available to the public prior to the session. For this reason, the delegation incorporated much of their written replies into its opening statement to the Committee.

NGO reports⁵

Forum Menschenrechte submitted a 60-page report to the Committee outlining areas of concern in Germany's application of the Convention. This was the only non-governmental organisation (NGO) to submit a report. The report presents 41 recommendations for the Committee to raised with the delegation during the session. Key recommendations included changing the terminology of '*Rasse*' (race) in German legislation,

² CERD/C/DEU/18, 31 January 2008, available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

³ The Convention is available at www2.ohchr.org/english/law/cerd.htm.

⁴ Available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

⁵ Available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

amendments to the National Action Plan, and the collection of data on the ethnic composition of the population so as to fulfil obligations under the Convention. Substantively, the report addressed the same issues as the State report.

Themes and issues

Germany's large delegation was composed of high-ranking ministers, legal advisers, ministry officials, and interpreters. The delegation was headed by Mr Almut Wittling-Vogel, from the Federal Ministry of Justice and an Agent for Human Rights in Germany. The deputy head of the delegation was Ms Siefker-Eberle. The rest of the delegation was composed of representatives of the Federal Ministry of Justice, Ministry of Interior, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Permanent Conference of Education Ministers, Prosecutor General of Brandenburg, Federal Anti-discrimination Office, and Federal Foreign Office.

In his opening statement, Mr Wittling-Vogel, expressed his Government's eagerness to embrace constructive criticism as well as its willingness to engage in a fruitful dialogue with the Committee. The delegation conceded the constant challenge of fighting racism and their determination to persevere in their efforts. Issues highlighted by the delegation in its opening statement included the National Action Plan against Racism, federal initiatives such as the Integration Summit and the German-Islam Conference, law enforcement, racism as an aggravating circumstance to crimes, and the new compulsory citizenship test. The delegation also provided an extensive overview of the recently created Anti-Discrimination Office.

Germany largely responded thoroughly to remarks made by the Committee. Its diligent adherence to time constraints ensured sufficient time for the Committee members' questions and a detailed opening presentation by the country rapporteur, Mr Thornberry. Each question was replied to comprehensively by the delegation member with expertise in the particular area.

Status of the Convention under domestic law

The Convention is applied in domestic legislation through the *General Equality Act* 2006. Furthermore, the Criminal Code criminalises racially motivated crimes in accordance with the Convention. Mr Thornberry expressed his concern about the use of the term 'races' in Germany's legislation. He requested the modification of legislation to bring them in line with the Convention.

National Action Plan against Racism

The National Action Plan against Racism, which is currently being drafted, was presented by the delegation as a means of combating racism with a focus on human rights policies, protecting minorities, immigration, and fostering cooperation in civil society. The National Action Plan was described as a living document that is subject to change and adapt to future needs and requirements. The German Institute for Human Rights, founded in 2001, conducted research and surveys which have been instrumental in the drafting of the Action Plan.

The drafting process has been slow and the Committee inquired as to why consultations with NGOs regarding the National Action Plan have been so contentious and have yielded so few results. The delegation was unable to provide extensive detail in response, as Germany is awaiting a Cabinet decision that will implement the Action Plan; until such decision is made, no substantive information can be provided. The Committee expressed keen interest in following up on the National Action Plan, particularly as it has the potential to

establish a framework that can be followed by other States. The Committee's concluding observations also praised the National Action Plan.⁶

Roma and Sinti

Mr Thornberry and other Committee members⁷ raised concerns regarding two national minorities, the Roma and the Sinti. The State report referred to the full application of the Council of Europe *Framework Convention for the Protection of National Minorities* 1997,⁸ which applies directly to the German Sinti and Roma populations. The granting of minority rights is contingent on citizenship; consequently, the rapporteur pointed out the need for pragmatic mitigation of the gap that is opening up between citizens and non-citizens. The delegation gave weak responses on this issue, merely reiterating Germany's reliance on individual rights to ensure basic protection irrespective of citizenship, including for individuals belonging to minorities that are not officially recognised and thus are not afforded group rights.

Mr Thornberry brought the stigmatisation of Roma and Sinti minorities in the media to the attention of the delegation. He noted that, particularly in East Germany, the Government is placing too much emphasis on providing *ex post facto* responses, and suggested that more emphasis be placed on preventative measures such as media censorship.

Anti-discrimination Office

The Anti-discrimination Office was created in early 2007 as an independent federal authority to protect against discrimination, as outlined in the *General Equality Act* 2006. Delegation member Ms Koeppen provided a thorough presentation on the work of the newly created body. The Anti-discrimination Office provides help and counselling free of charge to those who feel disadvantaged by discrimination. Emphasis is placed on in-house mediation and avoiding litigation and, consequently, no sudden wave of court proceedings resulted after the creation of the Office. The delegation explained that research and awareness-raising form key aspects of the work of the Office. It is supported by an advisory council with 16 representatives from civil society and provides reports and recommendations on discrimination cases. As part of the work of its work, the Office publishes a report every four years, detailing progress and recommendations in the field of anti-discrimination. The regularity of these reports and their potential utility was questioned by Mr Sicilianos, who pointed out that there are often significant changes over a four-year period. The delegation underlined that the Anti-discrimination Office itself does not have the power to take action; rather, it informs individuals of the relevant avenues to pursue a discrimination claim if necessary.

Committee member Mr Sicilianos raised further questions as to the extent to which the mediation framework of the Office is adequate in affording compensation and damages to victims. This issue was not addressed by the delegation. This omission, however, did not appear to be of grave concern to the Committee. Overall, the Office was commended in the Committee's concluding observations.

Statistical information

Germany does not collect statistical information on the ethnic composition of its population, as stipulated by the Committee's reporting guidelines.⁹ The Committee articulated its dissatisfaction with Germany's non-compliance and reiterated the necessity of such data in combating racial discrimination. The ability of Germany to measure progress without such information was questioned. This point was also raised by Forum Menschenrechte. The delegation stated that the possibility of data-collection is under discussion and defended the lack of data-collection up to now on the grounds of potential stigmatisation.

⁶ Available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

⁷ Mr Diaconu, Mr Peter, Mr de Gouttes.

⁸ Available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>.

⁹ Available at www2.ohchr.org/english/bodies/cerd.

The delegation presented the newly introduced collation of statistics on racially discriminatory acts by on-duty police officers. From 2009, this will form a separate category of information collected as part of existing criminal statistics.

Right-wing extremism

Right-wing extremism and right-wing extremist organisations were a central issue in the dialogue between the Committee and the delegation. Upon the Committee's request, the delegation clarified the definition of right-wing extremism as an act committed on a racist motivation. It is not necessary for the perpetrator to be a member of a right-wing organisation; the key is that act itself is racially motivated. Germany has implemented bans on right-wing extremist organisations. In 2000, for example, it banned the national neo-Nazi skinhead association, Blood and Honour Division Deutschland, and its youth organisation, White Youth.

A study assessing the attitudes of youths and young adults and right-wing extremist and xenophobic tendencies was carried out and presented in the State report. It found that, among those questioned, 16 to 29 year-olds are less likely to have right-wing extremist attitudes than older age groups. At the same time, those who identify with right-wing extremist groups is twice as high in east Germany as in west Germany.¹⁰ Questions raised by the Committee concerned the reasons behind this discrepancy and plans for moderating extremist views in east Germany.

Delegation member Mr Rautenberg, attributed the higher crime rates in eastern Germany to the vulnerability that this region experienced with the collapse of Communist rule. He recounted that the disintegration of State authorities, and State-organised leisure activities were replaced by boredom, and disorientated youth were attracted to right-wing extremism. Mr Rautenberg asserted that the high crime rate and dissatisfied youth are a result of poor socio-economic living conditions.

Citizenship test

Germany introduced a new citizenship test in January 2008. During the test, 33 questions are selected from a pool of 310 and 17 must be correctly answered to pass. The delegation alleged that once the list of questions was made public, concerns of its discriminatory nature subsided. It affirmed that the test should not to act as a deterrent. The central issues raised by Mr Thornberry and Mr Peter, concerned the tailoring of questions to specific *Länder* and whether suitable training is available to prepare for the test. In response, the delegation asserted that the *Länder*-specific questions are necessary because integration takes place 'on the spot'. It also informed the Committee that classes are available to prepare for the test. Some concerns prevailed on the part of the Committee that there is insufficient transparency at the *Länder* level. The Committee was also doubtful of the relevance of *Länder*-specific questions, given that a person who passes the test becomes a citizen of Germany, not of a *Länder*. This issue was again highlighted as an area of concern in the Committee's concluding observations.

Compensation

Country rapporteur Mr Thornberry raised concerns about compensation payments by the State for racially discriminatory attacks as covered by the *Act on Compensation for Victims of Acts of Violence* (OEG). The rate and types of compensation payable by the State for racially discriminatory attacks are determined by the victims' citizenship status or duration and legality of stay in Germany . The written report and the replies by the delegation provided a clear explanation of the varied tiers of compensation, but neither adequately justified the reasons behind these. The delegation made clear that the 'one-off' financial hardship payments are to cover individuals who are unfairly disadvantaged by the structured compensation requirements. The

¹⁰ Para 171, State report.

Committee expressed its dissatisfaction with the justifications and reasoning behind the OEG both during its dialogue with the delegation and in its concluding observations.

Criminal proceedings

Committee members raised questions about the racial motive of crimes being taken into consideration by judges in sentencing, and also requested statistics on racial motivation in criminal convictions. The delegation stressed that the attitude apparent from the crime is taken into account by judges when sentencing, and from 2009, further specificity will be introduced in criminal statistics so as to include racist motives. The Committee indicated its desire for a clearer provision in the Criminal Code which encompasses the specific motive of racial discrimination. This recommendation was one made by Forum Menschenrechte in its report.¹¹

Other issues

Education

The Committee also engaged the delegation in discussion on the overrepresentation of immigrant children in special schools, and questioned if it is due to German language deficiencies. The delegation disputed these assertions, stating that pupils are not assigned to schools for underachievers on the basis of lack of German language skills. It explained that such decisions are the result of lengthy consultations with parents and teachers.

Non-recognised minorities

The status of non-recognised ethnic minorities such as Germany's Turkish population was an issue raised by several members of the Committee. Mr Diaconu indicated the impossibility of assimilating one million Turks in Germany, and the need for greater protection of this group. Likewise, Mr Lahiri flagged concerns over the under-protected Turkish migrant guest-worker community and the need for affirmative action, particularly in education. The delegation skirted the issue of non-recognised ethnic minorities in their responses.

Conclusions and next steps

The delegation was receptive to the recommendations of the Committee and responded thoroughly to questions posed. In their concluding comments, both the Committee and the delegation expressed their satisfaction with the dialogue that had taken place.

A number of other treaty bodies have made recommendations relating to issues raised by the Committee. For example, in 2001, the Committee on Economic, Cultural and Social Rights¹² stipulated that Germany address the inequalities that exist between the new and old *Länder*. The Human Rights Committee in 2004¹³ stressed the need for greater attention to and support for Germany's Roma population. It placed particular emphasis on respect for cultural identity and improving housing and employment.

The Committee on the Elimination of Racial Discrimination requested that Germany submit its combined 19th to 22nd report 15 June 2012.

Last revised and updated: 15 September 2008.

¹¹ Forum Menschenrechte report, p. 59

¹² E/C.12/1/Add.68 , available at www2.ohchr.org/english/bodies/cescr/cescrs25.htm#26th.

¹³ CCPR/CO/80/DEU, available at www2.ohchr.org/english/bodies/hrc/hracs80.htm.

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