



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Comments by the Government of Germany to the conclusions and
recommendations of the Committee against Torture**

[4 August 2005]

1. The Committee examined the third periodic report of the Federal Republic of Germany (CAT/C/9/Add.4) at its 600th and 603rd meetings (CAT/C/SR.600 and 603), which were held on 7 and 10 May 2004, and adopted its conclusions and recommendations (CAT/C/CR/32/7) on 11 June 2004. In paragraph 6 of the conclusions and recommendations the Committee requested that the Federal Republic of Germany to provide information in response to the recommendations in paragraph 5 (a), (b), (e), and (f) within one year. The Federal Republic of Germany herewith submits the following statement.

Preliminary remarks

2. The Committee's conclusions and recommendations were provided to the competent federal ministries and the federal Länder in both the original version and in German translation. They are available together with the third periodic report of the Federal Republic of Germany in German on the Internet site of the Federal Ministry of Justice (www.bmj.bund.de).

3. The German Institute for Human Rights conducted a follow-up event to the Committee's conclusions and recommendations on 1 November 2004. In addition to representatives from the responsible federal ministries, employees of the German Government Representative for Migration, Refugees and Integration (*Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration*), the Office of the United Nations High Commissioner for Refugees (UNHCR), and non-governmental organizations such as Amnesty International, PRO ASYL and Action by Christians for the Abolition of Torture (ACAT) Germany also participated in these expert discussions.

4. The Committee's conclusions and recommendations concerning the third periodic report of the Federal Republic of Germany were addressed by the German Bundestag's Committee for Human Rights and Humanitarian Aid at its meeting on 10 November 2004 together with additional recommendations from United Nations committees.

Recommendation in section D paragraph 5 (a)

5. The Committee recommends that the Federal Republic of Germany

“(a) ... take all appropriate measures to ensure that criminal complaints lodged against its law enforcement authorities are resolved expeditiously, in order to resolve such allegations promptly and avoid any possible inference of impunity, including in cases where counter-charges are alleged;”

6. In its responses to the Committee's questions regarding the third periodic report, the Federal Government has previously stated that the, at times, long duration of investigation and prosecution proceedings against public officials is not due to a fundamental structural defect regarding criminal prosecution in Germany, but rather, to the cumulation of problems specific to the individual cases.

7. Of the approximately 100 cases of ill-treatment that were compiled by NGOs (Amnesty International: “Back in the Spotlight - Allegations of police ill-treatment and excessive use of force in Germany”, January 2004 and AKTION COURAGE: “Police Attacks on Foreigners in

Germany 2000-2003”) for the time periods 1998-2003 and 2000-2003 respectively, the first instance was concluded in 69 cases by May 2004. In 15 of these cases, there were criminal convictions with the imposition of fines or imprisonment as punishment.

8. However, the Federal Government does not ignore that, in addition to the many cases in which the activities of the law enforcement authorities cannot be criticized, investigation and criminal proceedings also exist that in part are concluded only after a significant amount of time, without the reason therefore being comprehensible based on the steps in the proceeding. Although in many cases difficulties regarding proof are also responsible for this, awareness of the problem by the criminal prosecution authorities and the courts must be increased in regard to the fact that the responsible authorities must be held accountable as quickly as possible for their actions concerning such crimes.

9. The responsible federal ministries and the federal Länder (which are responsible for the organization of the police, public prosecution offices, and the courts), therefore, were informed of the Committee’s recommendation and required to work towards the criminal prosecution authorities proceeding resolutely when grounds for ill-treatment or attacks by civil servants become known.

10. In this respect, the Federal Government especially pointed out the following aspects:

(a) If these civil servants are brought before the court based upon their acts or omissions, the unequivocal message is sent that such behaviour is not tolerated. This message has a considerable deterrent effect and, in addition, the public is assured by it that no one is above the law, not even those who are responsible for upholding the law;

(b) Disciplinary offences by the affected civil servants should also be examined on a regular basis;

(c) The fight against cases of ill-treatment must begin within the affected departments. Positive measures are required for this through training and exemplary behaviour to promote a culture in which ill-treatment and attacks are not tolerated and are viewed as unacceptable;

(d) The courts, of course, are independent and, thus, within the framework of the legally prescribed parameters can freely decide on a penalty in each specific case. However, even the most effective criminal law examination has limited usefulness if the punishment imposed is insufficient in regard to the ill-treatment upon which it is based. If ill-treatment is proven, a reasonable punishment must be imposed. Similarly, sanctions imposed after the establishment of a disciplinary offence should also be reasonable in regard to the seriousness of the case;

(e) Finally, the competent federal ministries and the federal Länder have also been notified of the 14th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 21 September 2004. In the chapter “Combating Impunity” the CPT likewise thoroughly addresses the problems raised by the Committee in this recommendation. Federal departments and the federal Länder were sent a German translation of this chapter.

Recommendation in section D paragraph 5 (b)

11. The Committee recommends that the Federal Republic of Germany

“(b) ... create a central point to assemble relevant nationwide statistical data and information on areas covered by the Convention, request such data and information from the Länder authorities or undertake such other measures as may be necessary to ensure that the State party’s authorities, as well as the Committee, are fully apprised of these details when assessing the State party’s compliance with its obligations under the Convention;”

12. The Federal Government is working to comply with this recommendation by an expansion of the existing statistical collection system, particularly in order to make meaningful numbers available regarding the problem of claims of ill-treatment by public officials.

13. A variety of statistics exist in the Federal Republic of Germany that deal with the activities of public prosecution offices and courts, as well as with pending and concluded proceedings. To a large extent it involves the following:

(a) Police crime statistics. In the police crime statistics published at the federal level by the Federal Criminal Police Office, crimes handled by the police, including attempts that carry a criminal penalty, are registered. Administrative offences, security-related offences, and traffic offences are not contained therein. The attributes collected are “cases”, “suspects”, and - as to certain offences - “victims”. The police crime statistics, however, currently do not differentiate among groups of offenders (e.g., police officers or teachers as to bodily injury in the discharge of duties pursuant to section 340 Criminal Code (StGB));

(b) Public prosecution office statistics. The public prosecution office statistics are maintained by the individual public prosecution offices and annually published at the national and Länder level by the Federal Statistical Office. They contain data regarding the completion of cases by the public prosecution offices and differentiate among a variety of attributes, such as, e.g. form of initiation, form of conclusion, and duration of proceedings. The conclusion of investigation proceedings, on the one hand, is evaluated in relation to the proceedings and, on the other hand, in relation to the person as to individual suspects. Since 2004 the subject area: “Proceedings against judicial employees, judges, notaries, other public officials, and attorneys based upon criminal acts in connection with the exercise of their profession (not including corruption offences)” has been included in the catalogue of subject area keys and, accordingly, statistically collected;

(c) Judicial business statistics. The judicial business statistics of the criminal courts are maintained by the various court instances and published annually at the national and Länder levels by the Federal Statistical Office. They contain data regarding the amount and conclusion of criminal proceedings and monetary fine proceedings. As to the proceedings concluded, the form of initiation and completion, along with the number and duration of main hearings and the duration of the entire proceedings are described. Since reporting year 2004, elements of the crime have been included in the data collection cards according to a key based on subject matter

that offers 30 options for thematically categorizing a proceeding. However, neither suspects nor prosecuting parties are more specifically classified in the statistics. Since 2004 the subject area: "Proceedings against judicial employees, judges, notaries, other public officials, and attorneys based upon criminal acts in connection with the exercise of their profession (not including corruption offences)" has been included in the catalogue of subject area keys and, accordingly, statistically collected;

(d) Criminal prosecution statistics. The criminal prosecution statistics published by the Federal Statistical Office include all defendants against whom a final order of summary punishment or a criminal proceeding was finally concluded after initiation of the main proceeding by a judgement or issuance of an order suspending the proceedings. Administrative violations, decisions prior to the opening of the main proceedings, and decisions after the judgement has become final are not included in the statistics. The information for the criminal prosecution statistics are ascertained by the Land statistics agencies and compiled by the Federal Statistical Office to produce national results.

14. The Federal Government takes into account the Committee's recommendation in a first step within the framework of the introduction of the new police crime statistics, which, however, cannot take place before 1 January 2006. In contrast to the current system, the new police crime statistics will contain additional criminal offence keys. Thus, for example, as to the elements of the crime of bodily injury in public office (sect. 340 StGB), inclusion of the location of the offence is also intended. Through specification according to location "public building/police" or "public building/prison" it will be possible to garner more information from the numbers regarding section 340 StGB as to the offender groups.

15. As to a modification or expansion of the criminal prosecution statistics and the judicial business statistics, the Federal Government relies upon the participation of the Länder. The Committee for Judicial Statistics of the Land Justice Administrations, a subcommittee of the Conference of Justice Ministers, decides on modifications. The Federal Ministry of Justice participates in the annual meetings and has a right of recommendation, however, no authority to vote. To the extent the committee agrees with a particular recommendation, the modifications to the data collection card instructions at issue can be implemented at the earliest from the second year after the resolution.

Recommendation in section D paragraph 5 (e)

16. The Committee recommends that the Federal Republic of Germany

"(e) ... provide the Committee with details on how many cases of extradition or removal subject to receipt of diplomatic assurances or guarantees have occurred since 11 September 2001, what the State party's minimum requirements are for the content of such assurances or guarantees and what measures of subsequent monitoring it has undertaken in such cases;"

(a) Preliminary remarks. Retrospective ascertainment of diplomatic assurances or guarantees in all extradition cases since 11 September 2001 is not possible based upon the large number of extradition cases. This is because several hundred extradition cases in regard to

non-EU States alone are handled each year by the Federal Ministry of Justice. Of these, in each of 2002 and 2003 between 80 and 90 extraditions to non-EU States were approved. However, no significant statistical anomalies have been observed in comparison to the years prior to 11 September 2001. In order to provide the Committee with a current picture of the Federal Republic of Germany's approach in regard to the minimum requirements for diplomatic assurances or guarantees as to extraditions, in subsection (c) below April and May 2005 are described as examples;

(b) Distinction between EU States and non-EU States. In principle, there is a distinction between extraditions to States members of the European Union and extraditions to non-EU States. As to extraditions to States members of the European Union, no particular guarantees are required. If a specific extradition treaty exists with a non-EU State, some guarantees are already generally established, so that additional assurances are required or conditions applied only in exceptional cases. Germany has concluded specific extradition treaties with four non-EU States. In dealings with other States, the European Convention on Extradition from 1957 or the German-British Treaty on Extradition from 1872 apply. As to extradition matters with non-EU States without a treaty, the Federal Republic of Germany requires concrete assurances when appropriate in the individual case;

(c) Minimum requirements for diplomatic assurances or guarantees as to non-EU States. The approach taken by the Federal Republic of Germany in regard to the minimum requirements for diplomatic assurances or guarantees in extradition matters is described below on the basis of April and May 2005. During this time period a total of 18 extradition authorizations were granted to non-EU States. Of those, in 10 extradition cases assurances were obtained regarding detention conditions. The contents of the assurances differed depending on whether or not the requesting State had signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In the first case, it is required that the extradited person be housed in a detention facility that comports with the requirements of the ECHR and the European prison rules/minimum rules for the treatment of prisoners dated 12 February 1987. Otherwise, Germany requires an assurance that after his transfer the person is housed in a detention facility that meets or exceeds the United Nations "Standard Minimum Rules for the Treatment of Prisoners." To the extent necessary, an assurance is demanded that German consular officials can visit the extradited person in the detention facility. In extradition matters not governed by treaty, the Federal Republic of Germany requires assurances:

- (i) That the person will only be punished, subjected to a limitation of his personal freedom, or prosecuted by measures that could only take place in his presence as to which the extradition was approved;
- (ii) That he can only be further delivered, transferred, or deported to another country in agreement with Germany;
- (iii) That a court proceeding will be conducted that accords with international standard conditions and fundamental requirements of human rights;

- (iv) That the punishment expected will not be increased based upon political, military, or religious grounds; and
- (v) That the time spent in extradition detention will be accounted for in the punishment.

To the extent necessary in an individual case, the Federal Republic of Germany insists on the assurance that the death penalty will not be imposed on the person after the extradition or, in the event it was imposed, that it will not be carried out. The Federal Republic of Germany requires the assurance in written form as an official statement of the government of the requesting State. The Federal Republic of Germany is in a position to ensure these assurances through embassy and consular personnel. Possibilities include, for example, participation in court hearings as an observer and visits to the detention facilities;

(d) Diplomatic assurances or guarantees in cases of deportation. As to deportations, assurances and guarantees of treatment comporting with human rights only come under consideration in connection with the removal of impediments to deportation and only in certain combinations. The requirements of such diplomatic assurances in cases of deportation are not abstractly established, but rather, depend upon the individual matter. With one exception, since 11 September 2001 there have not been any cases of deportation in which diplomatic assurances were required.

Recommendation in section D paragraph 5 (f)

17. The Committee recommends that the Federal Republic of Germany

“(f) ... clarify for the Committee (i) whether all complaint facilities and avenues of legal redress (including State assumption of responsibility for the acts of its agents) that are available against members of the law enforcement authorities are applicable to the employees of private security companies engaged by the State party; and (ii) what kind of training is provided to such employees on issues arising under the Convention;”

18. In written question No. 7 presented before the presentation of the Republic of Germany's third periodic report and with additional questions at the 600th meeting on 7 May 2004, the Committee requested information about the accommodations for asylum-seekers at the Frankfurt am Main airport. Thereupon, in section C paragraph 4 (e) of its conclusions and recommendations, the Committee expressed its concern regarding the legal controls over and training of private security companies that are used to provide security at certain detention facilities at the Frankfurt am Main airport. The recommendation in section D paragraph 5 (f) is based upon this.

19. The Federal Government correspondingly limits itself in its statement to the accommodations for asylum-seekers (“Hessian initial intake facility”) at the Frankfurt am Main airport. The Federal Government is not aware of other State institutions in which private security companies are employed in a similar way.

Tasks and activities of the security company

20. The private security company active at the Hessian initial intake facility at the Frankfurt am Main airport was commissioned by the federal Land of Hesse on its own authority. The Federal Government did not exert any influence over this. The security company was carefully selected by the federal Land of Hesse. The federal Land of Hesse imposed conditions on the company from the outset and set requirements that had to be fulfilled in order for it to be allowed to exercise the activities. It was made clear that the Hessian initial intake facility at the Frankfurt am Main airport was a sensitive facility with a special status and that the personnel had to act accordingly. These requirements were fulfilled by the company commissioned. The personnel were consciously made up of persons of different nationalities. Written instructions govern the authorities and responsibilities of the employees and establish that only general supervisory functions (e.g., control and accompaniment of visitors, telephone service, inspection rounds in the accommodations area) could be undertaken. The employees of the security company are unarmed and wear regular uniforms.

21. The operations are separated into two shifts: a day shift from 7:00-19:00 with three guards, including a woman, and a night shift from 19:00-7:00 with two guards and a female service employee for care activities. This guarantees that gender-specific needs are taken into account.

22. In addition, the Land of Hesse is represented by its own personnel at the airport accommodations. This includes four trained social workers who guarantee continuous care of the persons housed there. Further, the asylum-seekers are provided medical and pastoral care.

23. During the day the security firm is supervised by the social workers present. After this, unannounced inspections take place at irregular intervals by both the supervisors of the employees as well as the head of the facility (Land employee).

24. Both as to functional matters as well as to disciplinary ones, the private security workers are also under the authority of the head of the Hessian initial intake facility at the Frankfurt am Main airport, so that at all times it is guaranteed that the security services are properly carried out.

25. The agreement between the federal Land of Hesse and the security company also governs qualitative requirements for the security personnel. This particularly includes that the employees are specially trained for their duties in the sensitive area of the initial intake facility.

Possibilities for legal redress against employees of the security company

26. In the case of violations of duty or attacks by employees of the security company, they will be held accountable under criminal law. The protection of the standards of general criminal law are available to the persons affected, as is true in other cases as well. To the extent employees of the security company commit criminal acts, e.g. bodily harm or coercion, against inmates of the Hessian initial intake facility at the Frankfurt am Main airport, they have the

possibility of initiating a criminal prosecution regarding the offence by the public prosecution office through filing for criminal prosecution or filing a report of a crime. If filing for prosecution is not necessary pursuant to the Criminal Code, a criminal law investigation will be initiated ex officio by the public prosecution office.

27. In the assessment of the Federal Government, those belonging to the private security company active at the Hessian initial intake facility at the Frankfurt am Main airport are not public officials within the meaning of section 11 subsection (1) of the Criminal Code (StGB). However, this only has the consequence that the special offences of crimes in public office (sects. 331 et seq. StGB) are inapplicable. However, since, as stated above, the Criminal Code is otherwise applicable without limitation, there is no deficiency regarding criminal prosecutions.
