



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

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**Committee against Torture**

**Concluding observations on the fifth periodic report of  
Germany adopted by the Committee at its forty-seventh  
session (31 October -25 November 2011)**

Addendum

**Information received from Germany on the implementation  
of the Committee's concluding observations  
(CAT/C/DEU/CO/5)\***

[26 November 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

**Reply by the German Federal Government to the four recommendations as formulated in paragraph 39 of the concluding observations to be taken up in connection with the consideration of the fifth periodic report of Germany (CAT/C/DEU/6) adopted by the Committee against Torture at its 1046th and 1047th meetings, held on 18 November 2011.**

**Replies to the recommendations contained in paragraphs 16, 24, 28 and 30 of the concluding observations (CAT/C/DEU/CO/5)**

**Physical restraints (*Fixierung*)**

**Reply to the recommendations contained in paragraph 16 of the concluding observations**

**Regulating and restricting the use of physical restraints in all establishments**

1. In many of the Länder, the practice of “Fixierung”, in other words using restraints to completely deprive detainees of the ability to move such that they cannot change the position in which they are sitting or lying down without help, has been completely abolished in a police context. Insofar as this practice continues to exist, its application is tied to stringent prerequisites and is used only in rare, exceptional cases, with the principle of proportionality being strictly adhered to. Such means of restraint are used only in situations in which the parties affected pose a hazard to themselves or others.
2. By contrast, it is a fundamentally permissible practice in all of the Länder to shackle detainees. However, this is applied only in limited, exceptional situations, in keeping with the principle of proportionality.
3. It remains, however, a fact that situations may arise in day-to-day life at detention facilities and prisons in which all attempts at de-escalation have failed and no less invasive means are available of averting the acute risk of self-harm or harm to others.
4. In all Länder, this means of restraint is used only as a security measure and never as a disciplinary sanction.
5. In this context, all of the Länder observe the requirements stipulated by the CPT. Accordingly, the means of restraint in application in nearly all of the Länder consists predominantly of strap systems. As a matter of principle, a physician is consulted and continuous and direct monitoring is applied. Moreover, the matter is documented in all detail.

**Detention pending deportation**

**Reply to the recommendations contained in paragraph 24(a) of the concluding observations**

6. When an asylum seeker is detained pending deportation, fast-track procedures are carried out in Germany under the Dublin system, as provided for in the Dublin Regulation. Applications for detention pending deportation by the competent authorities are made and the issue of court orders for detention pending deportation are issued in strict application of the statutory provisions, particularly of Section 62 (3) (1) and (5) of the Residence Act

(Aufenthaltsgesetz). This is not in breach of Directive 2008/115, which, in the Federal Government's view, is not applicable to transfers within the context of the Dublin Regulation in any case. The duration of detention pending deportation is also subject to the strict application of the principle of proportionality; it, too, is limited by the courts to the shortest possible period.

7. In applying Section 34a (2) of the Asylum Procedure Act (Asylverfahrensgesetz – AsylVfg), the Federal Constitutional Court's decision of 14 May 1996 is to be taken into account. According to that decision, the exclusion of interim measures in the case of transfers to safe third countries and EU Member States and other European States party to the so-called Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003) is permissible in principle.

8. Interim measures are to be adopted, however, when the person to be transferred demonstrates that there is the danger in his or her individual case in the so-called safe third country or in the State competent under the Dublin Regulation. That may be the case, for example, when there is specific evidence that there is a threat of degrading or inhuman treatment or punishment in breach of Article 3 of the European Convention on Human Rights (ECHR) in the country concerned. According to the judgment of the European Court of Human Rights on the right to an effective remedy under article 13 ECHR (ruling *M.S.S. v. Belgium and Greece* of 21 January 2011), a well-substantiated appeal claiming that deportation to another country would mean exposure to treatment in breach of Article 3 ECHR has to be thoroughly examined.

9. In addition, it is pointed out that under article 19 (2) sentence 4 of Council Regulation (EC) No 343/2003 (of 18 February 2003, known as the Dublin Regulation), an appeal against transfer shall not suspend the implementation of the transfer unless the national legislation of the respective Member State allows for this. The ongoing negotiations on a new version of the Dublin Regulation include provisions concerning the interim measures against transfers under the Dublin Regulation.

10. The number of cases of detention pending deportation in the years 2008 to 2011, broken down according to the Federal Länder, can be seen in the table provided in Annex 1. The total numbers show a significant and continuous decrease in the number of detentions, from 8,805 in 2008 to 6,466 in 2011.

#### **Reply to the recommendations contained in paragraph 24(b) of the concluding observations**

11. It is recognized that there is a need for special attention to be given to vulnerable people within the context of the initial medical check and initial interview and in subsequent interviews with law enforcement personnel. Initial medical consultations take place as quickly as possible. If need be, external (specialist) physicians are called in. As a rule, there is no free choice of physician. In Berlin, Bremen, North Rhine-Westphalia and Thuringia, however, there is the opportunity to be examined by an additional advisory physician at one's own cost with the agreement of the head of the institution or the competent official physician.

#### **Reply to the recommendations contained in paragraph 24(c) of the concluding observations**

12. The Federal Office for Migration and Refugees has employed, "sonderbeauftragte Entscheider" (specially commissioned decision-makers) since 1996 for victims of torture and traumatized asylum applicants. These decision-makers are made acquainted with the special needs of the specified target groups in special training sessions. The staff of the Federal Office are sensitized to signs that asylum-seekers are particularly vulnerable at every stage in the asylum proceedings.

13. At the Federal Office, there are currently approximately 80 special officers for unaccompanied minors, approximately 40 for traumatized asylum-seekers and victims of torture and another 40 for people persecuted on account of their gender.

14. This task requires a high level of sensitivity and psychological skill and awareness. At the same time, these members of staff also need special support.

14. Basic training has been provided in the past by the psychosocial centres for victims of torture in cooperation with the Federal Office for Migration and Refugees. This was supplemented by coaching measures carried out by the Federal Office. All events are carried out by internal practitioners and external experts based on case studies, and focus on specific problems encountered in this field of work. The special officers are required to take on particularly sensitive cases themselves. Their tasks also involve being a contact point for colleagues and superiors. They advise these colleagues about difficult cases and pass on relevant information from the training sessions.

15. A comprehensive programme is available to all asylum officers to help them maintain their standards of performance. In addition there is also the opportunity to further develop professionally and personally in terms of their methodological and social skills and their subject area.

16. In addition, a special training session for the special asylum officers for “victims of torture and traumatized asylum-seekers” has been held as of 2012 within the context of the new asylum training in accordance with the Istanbul Protocol.

The Berlin Centre for Torture Victims (Behandlungszentrum für Folteropfer Berlin – bzfo) also offers relevant training for medical staff in a number of modules on its website.

**Reply to the recommendations contained in paragraph 24(d) of the concluding observations**

17. The concern that the enforcement of detention pending deportation be provided for by special regulations “reflecting the particular status of immigration detainees” has already been met by the transposition into national law of the residence directives of the European Union. Section 62 a of the Residence Act implements articles 16 and 17 of the EU Return Directive. It sets authoritative minimum standards in German law that also govern the enforcement of detention pending deportation, such as the mandatory separation of immigration detainees from sentenced prisoners; the right to contact legal representatives, family members and the competent consular authorities; the obligation of the institutions to notify the persons affected of their rights and obligations as well as of the rules applying in the respective institutions, as well as the participation of minors in detention pending deportation in education programmes and recreation opportunities.

18. It has been ensured in nearly all of the Länder that immigration detainees are kept separate from other prisoners, both in terms of the spaces to which they are allocated and of the organizational structures. In some of the Länder, such as Berlin, Brandenburg, Bremen, Rhineland-Palatinate and North Rhine-Westphalia, detention pending deportation is enforced in entirely separate detention facilities. Moreover, the number of people actually in detention pending deportation is declining. In the prisons, the parties affected have access to various care services such as physicians, psychologists, social welfare staff and pastoral caregivers. They have the opportunity to use recreational facilities such as sports facilities and libraries. Juvenile immigration detainees in particular also have the possibility of participating in education programmes provided by the facilities’ pedagogical staff. Finally, where detention pending deportation is enforced in prisons, the immigration detainees generally can be placed in relative proximity to their previous place of abode, meaning that visits by relatives who have not been detained are significantly easier.

## **Exercise of jurisdiction**

### **Reply to the recommendations contained in paragraph 28 of the concluding observations.**

19. There has been no breach of Article 5 of the Convention. As already noted in the statement on the list of issues, 13 people are under strong suspicion of having been involved in the abduction of Khaled El-Masri. They are imputed to have operated jointly as a group of agents whose tasks included the “extraordinary rendition” of terrorist suspects to third countries for the purpose of unconstitutional imprisonment and of having taken Khaled El-Masri to Kabul on 23/24 January 2004. The Munich I state attorney’s office has submitted an international arrest warrant for these thirteen people to the Regional Court Munich. The personal details of the suspects in the arrest warrants may be false identities of the agents. The arrest and extradition of the wanted individuals was refused by the USA, however. The investigation proceedings of the Munich I state attorney’s office have not yet been completed; the arrest warrants continue to apply. That demonstrates unmistakably that Germany is fully exercising its jurisdiction. It does not lie within the responsibility of the German authorities that extradition of the wanted individuals is not currently possible.

20. The Federal Government is not aware of any claims for compensation made by Khaled El-Masri against the Free State of Bavaria or against the Federal Republic of Germany.

21. On 20 July 2009, Mr El-Masri submitted an appeal to the European Court of Human Rights against the former Yugoslav Republic of Macedonia (appeal number 39630/09). Inter alia, he refers to Articles 3 (Prohibition of torture) and 5 (Right to liberty and security) of the European Convention on Human Rights. A hearing was held by the Grand Chamber of the European Court of Human Rights on 16 May 2012 in these proceedings.

## **Identification of police officers**

### **Reply to the recommendations contained in paragraph 30(a) and (b) of the concluding observations**

22. First of all, the Federal Government would like to underline that police officers are under an obligation under the legislation of the respective Länder to identify themselves upon request. In Berlin, Rhineland-Palatinate, Hesse, Saxony-Anhalt and Thuringia, police officers are required to wear badges indicating their name or identification number on their uniforms when carrying out their duties (excluding situations where operative reasons do not allow this, e.g. covert operations). In future, police officers in Brandenburg will wear badges indicating their name or number when carrying out their duties in accordance with Section 9 (2) of the Brandenburg Police Act (BbgPolG). This provision shall enter into force on 1 January 2013. The police in Land *Lower Saxony* do not have a duty in principle to wear name badges as a means of individual identification. At the same time, provision is made in an administrative regulation that the employer explicitly wishes name badges to be worn as a means of individual identification. The background of this provision is the objective of strengthening trust in the police as an institution through openness, transparency and identification, especially at local level. In most standard situations of everyday service, name badges are worn by police officers in Land Lower Saxony as a means of individual identification.

23. In *North Rhine-Westphalia*, the Land’s governing parties agreed in their coalition agreement for 2012 - 2017 to introduce individual, anonymous identification for riot police, upholding the personal rights of police officers. Its specific implementation is under preparation.

24. In *Rhineland-Palatinate*, the previously exempted members of closed units (with the exception of the German Special Police Force - *Sondereinheitsskommando* - *SEK*) are in future to wear identification in the form of a five-digit number. The implementation of this agreement, particularly the co-determination procedure under police staff council legislation, is not yet complete.

25. Staff on patrol duty in *Schleswig-Holstein* are recommended to wear a name badge. When police officers are on duty at demonstrations, the numbers currently worn allow them to be identified as belonging to a particular group within a closed unit. In cases when complete units are on duty, police officers in *Schleswig-Holstein* are to wear individual numbers by the end of the year under a supplement to a general order currently being prepared.

26. A written response has already been made with regard to the cases referred to by the Committee in the recommendations made in paragraph 30 (b) above.

27. The Federal Government would also like to take the opportunity to underline, in response to the recommendation contained in paragraph 13 of the concluding observations, that the Joint Commission of the Länder and the Federal Agency for the Prevention of Torture are not required to announce their visits or to obtain the prior consent of the respective authorities for the visit. The rights and powers of the National Agency for the Prevention of Torture are regulated in the following Administrative Order and State Treaty:

**Administrative Order of the Federal Ministry of Justice of 20 November 2008**

3. The Federal Agency shall have the rights and powers designated in articles 19 and 20 of the Optional Protocol.

State Treaty of 25 June 2009 on the establishment of a national mechanism of all Länder in accordance with article 3 of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

**Article 2- Tasks and powers**

(2) The members of the Commission, individually or together, shall have the powers named in article 19 of the Optional Protocol. The *Länder* shall grant to them the rights and powers named in article 20 of the Optional Protocol.

**Article 7- Modus operandi and rules of procedure**

The Commission shall issue rules of procedure. It shall be free in determining its strategies and modi operandi.

29. In addition, the Commission of the Länder for the Prevention of Torture has issued rules of procedure, in which Section 8 (1) on the implementation of inspection visits states, "Visits may take place both announced and unannounced."

30. The Federal Government welcomes the invitation of the Committee contained in paragraph 40 of the concluding observations to take part in the optional reporting procedure and declares its willingness to submit the sixth periodic report by 25 November 2015 under its optional reporting procedure.

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