



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 80th meeting

Held at the Palais Wilson, Geneva, on Monday, 17 March 2014, at 3 p.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Report of Germany (CED/C/DEU/1; CED/C/DEU/Q/1; CED/C/DEU/Q/1/Add.1)

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

1. **Ms. Wittling Vogel** (Germany) said that although Germany was now a stable democracy, it knew from experience how quickly lawless regimes could seize power and that it was important to establish structural safeguards against violations of human rights. The German Constitution, or Basic Law, the very first clause of which emphasized the paramount importance of human dignity, stipulated that freedom of the person was inviolable except pursuant to a law and expressly set out fundamental guarantees where deprivation of liberty was concerned. Those constitutional principles formed the basis of all public action, and the education on offer in the country, including occupational training, was steeped in them.
2. The German Government did not consider it necessary to make enforced disappearance a new criminal offence in national law, as existing norms made it possible to prosecute and sanction the perpetrators of that offence and to invoke different criminal provisions for the elements that constituted the crime of enforced disappearance. It was nevertheless, aware of the discussion that had unfolded since the ratification of the Convention, particularly the arguments advanced by civil society regarding the statute of limitations. Her Government had not yet formed a definitive opinion on the subject and looked forward to initiating a dialogue with the Committee and would carefully consider all arguments put forward.
3. Germany believed that its legal system was capable of responding adequately to the international dimension of enforced disappearances, as it could both offer legal assistance to every country in the world, independently of any bilateral or multilateral agreement, and exercise its jurisdiction in every case listed in article 9 of the Convention, with no exceptions applicable in practice.
4. As the German State viewed its own legal system with a critical eye, it had learned from the decision of the European Court of Human Rights in *Storck v. Germany* and overhauled the procedural regulations governing the deprivation of liberty in psychiatric institutions in all of the Länder. Finally, although Germany's federal structure meant that the country had no single unified register of detainees, its information systems were sufficiently standardized to allow quick and reliable access to data.
5. **Mr. Corcuera Cabezut** asked the delegation to clarify the status of the Convention within the internal legal order and to state whether the provisions of the Convention could be directly invoked by the competent authorities at both the federal and Land levels. He also wished to know how Germany interpreted article 4 of the Convention. He asked what measures the executive branch of the German Government could take to ensure that enforced disappearance constituted a specific offence in national legislation and whether a specific provision would need to be included in the Military Criminal Code in order to invoke the responsibility of members of the Armed Forces, or whether the inclusion of such a provision in the federal Criminal Code would suffice. Similarly, if enforced disappearance should be made a specific offence, would it be possible to prosecute offences that might have begun before the entry into force of the new provision?
6. He wished to know whether the acts referred to in article 3 of the Convention were dealt with under German law in exactly the same way as those mentioned in article 2. He pointed out that the definition of enforced disappearance, in the German Code of Crimes

against International Law, drew on the definition set out in the Rome Statute of the International Criminal Court, but that the words “upon inquiry” had been added to it, and he asked the delegation to explain the reasons for that addition. Did Germany foresee aligning section 7, subsection 1, paragraph 7, of the Code of Crimes against International Law with article 2 of the Convention?

7. **Mr. Al-Obaidi** asked whether under German law the criminal responsibility of military commanders and hierarchical superiors in cases of enforced disappearance was the same for cases involving crimes against humanity as it was for isolated cases. Paragraph 47 of the report submitted by the State party indicated that the court could reduce sentences or order an acquittal in the event of disclosure of information; he therefore wondered whether the perpetrator of an enforced disappearance could, in certain circumstances, avoid punishment, be granted an amnesty or be pardoned. Did the delegation consider that the lengths of prison sentences and the statute of limitations for offences equivalent to enforced disappearance were commensurate with the seriousness of the offence? He invited the delegation to provide additional information relating to the explanations given in paragraph 52 of the State party report and in paragraph 21 of the replies to the list of issues concerning the statute of limitations.

8. He asked the delegation to comment on the way in which the State party understood its extraterritorial jurisdiction and on the possible repercussions of article 6, paragraph 9, of the German Criminal Code, which Amnesty International had drawn to the attention of the Committee. He would welcome additional information on the following points: whether it was possible to suspend an entire police unit, for example, to prevent some of its members from interfering with investigations into acts committed by their colleagues; the nature of the protection afforded not only to victims but also to family members, counsel and any other persons taking part in an investigation; the legal basis for and definition of political offences; and the cooperation that could be offered to other countries under article 15 of the Convention.

9. **Mr. Camara** wished to know whether the Länder could adopt laws that were applicable solely within their borders.

10. **Mr. López Ortega** wished to know how many proceedings had been initiated and how many convictions had been handed down for crimes of enforced disappearance committed in the 1930s and 1940s, and whether the State party believed that the reparations that had been made were sufficient. He also wished to know whether crimes of enforced disappearance had been committed in the more recent past by the regime of the former German Democratic Republic. If so, had responsibilities been determined, and with what difficulty? Additional information would also be welcome on the measures taken to prevent any enforced disappearance that might take place in the context of the war on terrorism, and in particular any illegal transfers, or “extraordinary renditions”, and to bring such incidents to light when they did occur.

11. **Mr. Hazan** asked whether there was a prosecutor or a prosecutor’s office tasked specifically with dealing with enforced disappearances. He wished to know whether Germany had mechanisms for witness protection. As for enforced disappearances of minors, he asked whether the principle of proportionality was in fact applied, as the penalties for child abduction were imprisonment for a term of at most 5 years as well as fines, and whether there was a judicial mechanism given the specific aim of dealing with this offence or with concealment of birth, as in the case of unlawful adoptions, for example.

The meeting was suspended at 4 p.m. and resumed at 4.30 p.m.

12. **Ms. Wittling Vogel** said that the Convention had been fully incorporated into domestic law. The German Constitution took precedence over it, but the Convention was

directly applicable by all federal courts no less than by those of the Länder. A Land could promulgate a law only if it related to an area that was not covered by federal law.

13. **Mr. Behrens** (Germany) explained that although enforced disappearance might not exist as a specific offence in German law, it was not because the crimes it encompassed did not exist; rather, at the time the Convention was being drafted, the general belief was that the individual elements that constituted the crime of enforced disappearance were already sufficiently punishable under the law in force. For enforced disappearance to have been made a specific offence, the Government would have had to introduce a relevant bill in both houses of parliament.

14. **Mr. Boehm** said that if enforced disappearance had been made a distinct offence in the Criminal Code, it would not necessarily have been made part of the Military Criminal Code, nor could it have been made punishable retroactively. Reduced sentences were available to any person guilty of an offence who helped to resolve the case, and a sentence of less than three years, including for an enforced disappearance, could even be cancelled. That principle would remain applicable if enforced disappearance became a separate offence under criminal law, regardless of whether the perpetrator was an ordinary citizen or an agent of the State. Under German law, crimes committed abroad had to be liable to prosecution in the country where they had been committed if they were to be prosecuted in Germany, even if the sanctions provided for in the country in question were not exactly identical. That principle would continue to apply if enforced disappearance itself was made an offence under the German Criminal Code. The State party could agree to certain changes regarding statutes of limitations and length of sentences following its dialogue with the Committee and with non-governmental organizations (NGOs). The seriousness of the crime would have to be reflected in the statute of limitations. In the former German Democratic Republic, enforced disappearances had not been prosecuted because of the absence of the rule of law. The German Criminal Code already contained a number of the provisions of the Convention pertaining to extraterritorial jurisdiction, since it criminalized unlawful acts committed aboard German vehicles or aircraft, regardless of whether such acts were committed in Germany or by Germans abroad, including when the perpetrator was on German soil and was not extradited.

15. **Ms. Bender** (Germany), replying to a question on the possibility of temporary suspensions for State agents implicated in cases of enforced disappearance, said that German law provided for suspensions of individual civil servants but not of units as a whole; a collective suspension would require a decree from the Ministry of the Interior. Asked if the police could investigate cases in which they themselves were implicated, she said that civil servants did not investigate their own cases. Complaints were dealt with by a single unit, and in the most serious cases they could be dealt with at the highest level, by the Federal Police. Legal proceedings could be initiated and disciplinary measures taken.

16. **Mr. Behrens** (Germany) said that it was not easy to investigate the use of German airports and German airspace for extraordinary renditions but that Germany, relying on diplomacy and bringing criminal proceedings against those responsible who had been identified, was making every effort to prevent any recurrence of such events. As those responsible had not been extradited, no sanction had been imposed. Awareness was the best means of combating such practices.

17. **Ms. Wittling Vogel** (Germany) said that protection of victims was governed not by specific provisions but by general provisions that applied to all offences. Assistance was available for injured parties.

18. **Mr. Boehm** (Germany) said that the many court cases brought against those responsible for crimes committed during the Nazi regime had begun a relatively long time after the Second World War, in particular those initiated in the 1960s against the personnel

of Auschwitz. Enforced disappearances had not always been in the foreground in those cases, since, in the context of the Nazi regime, they were considered to be the same as homicide or genocide.

19. **Mr. López Ortega** stressed the importance of the notion of tacit consent where the liability of State agents was concerned; that notion was founded on the idea that the agent in question had failed to take the necessary measures. With regard to the large-scale crimes and systematic violations of human rights during the Nazi period, he asked what approach the German courts had taken to determine who had been responsible and who had not, given that many people had played largely secondary and passive roles, all the while having been aware of the crimes that had been committed. Such lessons could be of use to the Committee when considering possible large-scale crimes.

20. **Mr. Boehm** (Germany) said that it was hard for him to address the subject of responsibility in all its complexity, as it had been a subject of study for more than 40 years. Some crimes had been committed by people, often at the bottom of the chain of command, who had been held individually responsible for their acts. However, the courts had also created the notion of the perpetrator behind the perpetrator (*Täter hinter dem Täter*) to make it possible to bring cases against all members of the hierarchy, including very senior members of the organization that prompted the commission of crimes. That notion transcended traditional conceptions of the judicial system.

21. **Ms. Wittling Vogel** said that a special, 500-strong unit of the Berlin Police had been created to investigate financial crimes and State crimes, in particular crimes pertaining to the activities of the Sozialistische Einheitspartei Deutschlands (SED) in the former German Democratic Republic. A federal institute had been created to study the causes and consequences of authoritarian regimes in Germany, including the former German Democratic Republic, and around the world. In addition, a federal commissariat analysed the activities of the former Stasi and reported its findings to the public, in particular by allowing citizens to consult the files that had been created by the Stasi.

22. **Ms. Mielenz** (Germany) said that the removal of a child from the care of one or both of its parents was punishable under German criminal law, and she described the different cases and sanctions provided for in the Criminal Code.

23. **Ms. Ley** (Germany) said that in cases involving minors the courts could rely on videoconferencing or deliberate in camera.

24. **Mr. Garcé García y Santos** asked whether the provisions of the Convention would take precedence over federal law in the event of a conflict between the two. Recalling that, under the Convention, the crime of enforced disappearance did not necessarily imply the death of the victim, he wondered whether the German Criminal Code provided for sanctions that took the seriousness of that crime into account even when the victim did not die.

25. **Mr. Al-Obaidi** expressed the hope that the dialogue between the Committee and the German delegation would lead to a change in the Criminal Code whereby enforced disappearance was defined as a separate offence. He asked whether there had been any discussion of the provisions of articles 2 and 3 of the Convention. He also wished to know what provisions of law were applicable to crimes committed by members of the Armed Forces, crimes that were often committed abroad. He also wished to know if there were any laws pertaining specifically to crimes against humanity.

26. **Ms. Wittling Vogel** (Germany) said that Germany had not reported any cases of enforced disappearance because there had not been any, and that situation had nothing to do with the absence of a definition of the offence of enforced disappearance in the Criminal Code. Homicide was not the sole component of the offence of enforced disappearance.

Unlawful detention was punishable by imprisonment for a term ranging from 5 to 10 years. The constituent parts of the offence and the sanctions by which they were punishable could lead to a very long prison sentence. The prison terms provided for in German law were somewhat less severe than in other countries.

27. **Mr. Boehm** (Germany) said that, under the Military Criminal Code, the provisions of German law were applicable, particularly if the guilty party was a German citizen or a German soldier, regardless of the place in which the offence was committed. All offences committed by a German soldier were tried under the provisions of the German Criminal Code.

28. **Ms. Wittling Vogel** (Germany) said that if a group of civil servants or an entire unit of the police were suspected of the crime of enforced disappearance, the suspects could be suspended from their positions in their individual capacity, regardless of how many of them there were. There was no provision for the suspension of an entire unit of State agents. It was to be hoped that the preventive measures taken by Germany were effective and made it possible to ensure respect for the law in State bodies.

29. **Ms. Bender** (Germany) said that there had been cases of corruption involving individual civil servants but not involving entire units. Nevertheless, a distinction could be drawn between the complaint procedure intended for members of the police forces, which took place at the Land level, and the investigations that could be carried out by the prosecutor's office.

30. **The Chairperson** announced that the dialogue with the German delegation would resume at the next morning's meeting.

The meeting rose at 6 p.m.