



International Convention on the Elimination of All Forms of Racial Discrimination

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Summary record of the 2338th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 6 May 2015, at 10 a.m.

Chairperson: Mr. Calí Tzay

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Nineteenth to twenty-second periodic reports of Germany (continued)
(CERD/C/DEU/19-22; CERD/C/DEU/Q/19-22)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*
2. **Ms. Folmar-Otto** (Germany), speaking as a representative of the German Institute for Human Rights, said that the Government must take action against the racist views increasingly being voiced in the public sphere, which were often not viewed as racist, in part because racism was not clearly defined. The definition in article 1 of the Convention was not well known in Germany. Racism continued to be equated with violent right-wing extremism, and its effects on victims were underestimated. The failure of the police and security forces to identify the perpetrators of the murders and attacks by the National Socialist Underground was indicative of systemic shortcomings in the handling of racially motivated crimes, which could be attributed in part to attitudes rooted in racist stereotypes. The federal Government and the *Länder* must ensure that racist offences were handled properly by the police and the judiciary, in particular by providing appropriate training.
3. The Federal Police often used physical appearance as grounds for stop and search checks; such practices were discriminatory. Legislation authorizing those checks should be repealed and racial profiling prohibited. There remained gaps in legal protection and access to justice for victims of discrimination, who rarely sought legal assistance. Anti-discrimination legislation should therefore be evaluated and human rights training given to legal professionals and public officials. Lastly, the legal provisions in force in some *Länder* obliging refugees to remain in shared housing should be repealed.
4. **Ms. Wittling Vogel** (Germany) said that the Government would submit an updated version of the core document (HRI/CORE/DEU/2009) as soon as possible. Regarding discrimination against Muslims in the workplace, she said that while some *Länder* prohibited Muslim teachers from wearing headscarves while teaching, the Federal Constitutional Court had ruled that a general ban was not permissible, although individual schools might ban headscarves if deemed necessary.
5. Given that the Convention was applicable federal law, a definition of racism was unnecessary; both deliberate and non-deliberate discrimination were explicitly prohibited. The General Equal Treatment Act contained a definition of indirect discrimination. The Federal Ministry of Justice ensured that all proposed legislation complied with the country's international commitments, and education was provided for judges and legal professionals on the Convention and the work of the Committee. The German Academy of Judges held courses on human rights for the judiciary. The Committee's concluding observations would be transmitted to all judges, prosecutors and law enforcement personnel.
6. The Government believed that the understanding of racial discrimination under the Basic Law was fully consistent with the Convention. The term "xenophobia" had been used to align German legislation with the European Union framework decision on combating racism and xenophobia. In Germany, "racism" was often understood to refer to biological traits, whereas "xenophobia" had a wider interpretation. The concept of "group-related xenophobia" also existed. There had been discussion in some *Länder* regarding the removal of the term "race" from their constitutions, and Brandenburg had already done so, but no significant discussion in that regard had taken place at the federal level.

7. **Mr. Otto** (Germany) said that the National Action Plan against Racism was being amended so as to make it more comprehensive and address a wider range of issues, including diversity in the workplace, cultural competency and access to services and housing. Civil society, *Land* governments and local governments were involved in the formulation of the new plan.

8. **Mr. Weidner** (Germany) said that the Federal Police were required to prevent persons from entering Germany illegally and the Federal Police Act therefore allowed the police to stop and question individuals. The number of stops was very low. They were done on the basis of officers' experience and the information available to them and did not constitute racial profiling; physical appearance was used as grounds only in isolated cases, and ethnicity, religious affiliation or skin colour alone were not sufficient reason to stop someone. There were no plans to amend those regulations. The public could make complaints against the police, including through a website, and any accusations of racial profiling were investigated.

9. Training for police officers covered human rights, anti-discrimination and racial profiling. Memorandums were circulated regularly to officers; one had addressed human rights and another had clarified that gender, ethnicity, religion or skin colour were not admissible grounds for police action. Officers participated frequently in training programmes, which were regularly reviewed and updated. Efforts to recruit police officers with migration backgrounds had been increased, including through specific programmes in urban areas.

10. **Ms. Wittling Vogel** (Germany) said that *Land* police forces were also endeavouring to recruit more officers from migration backgrounds.

11. **Mr. Rütten** (Germany) said that integration policy had previously focused on the assimilation of immigrants, but it was now based on the principles of diversity and mutual adaptation by migrants and the rest of German society. Discussions had taken place regarding the recognition of foreign vocational qualifications and the development of cultural competence among public servants. A conference for integration ministers was held annually in order to develop federal structures and coordinate integration policy between the federal and *Land* governments. Monitoring and evaluation of integration was coordinated between the federal and *Land* levels so as to collect data on education, housing and employment. Legislation had been adopted at the *Land* level with the explicit aim of preventing discrimination and promoting social cohesion and mutual respect.

12. **Ms. Ryberg** (Germany) said that measures to improve the quality of education had focused on improving migrant children's language skills, which were assessed between the ages of 4 and 6, with additional tuition provided if necessary. Migrant children in secondary schools also received language support. Several programmes aimed to improve integration in schools, prevent dropout among migrant children, improve contact with parents and provide vocational training. Some *Länder* had programmes aimed specifically at strengthening the language skills of Sinti and Roma children and of their parents.

13. **Mr. Herzog** (Germany) said that the federal Government had signalled its support for the designation of a European day of commemoration for the Roma and Sinti victims of the Second World War. Germany already observed two national days of remembrance for the victims of National Socialism, which included the Roma.

14. The federal Government's efforts to provide Roma and Sinti language courses, in accordance with the European Charter for Regional or Minority Languages, were hindered by regional variations in the languages spoken and by reluctance of the Roma and Sinti to have their language taught to outsiders, which made it difficult to train teachers to impart such courses. Nevertheless, at the *Land* level, some successful programmes had been established to provide language instruction to Roma children.

15. In keeping with European Commission Communication COM (2011) 173 on national Roma integration strategies, Germany had opted to institute an integrated package of measures aimed at improving the situation of the Roma living in the national territory. As the Government did not collect statistical data on specific ethnic groups, he could not comment on the academic performance of Roma children. However, poor academic performance might in some cases be attributable to the fact that newly arrived Roma children had never attended school and could not speak German. Programmes had been set up to provide language instruction and increase school attendance among such children. Vocational guidance for Roma young people was provided under the “XENOS – Integration and Diversity” programme.

16. Roma migrants enjoyed the same benefits as all other migrants. They could attend language and integration courses for a minimal fee or, for those lacking the means to pay, free of charge. Special measures to encourage new migrants to attend those courses had been adopted in several parts of the country. A large number of sporting and leisure activities had also been organized to promote the social integration of the Roma and other migrant groups.

17. **Mr. Van der Cammen** (Germany) said that a pilot project wherein job applications were anonymized had been launched several years previously with the aim of reducing discrimination against persons with a migration background and enhancing their chances of finding employment. The project had been successful in helping several hundred such persons find work. That initiative had led to adoption of the anonymized approach in some federal ministries and in various *Länder* and to the development of guidelines for employers on how to handle anonymized applications. The XENOS programme had comprised hundreds of projects, many of which had been very successful. The federal Government would continue those projects under a new programme covering the period from 2015 to 2020.

18. Education, including acquisition of German language skills, was considered the key to successful integration into the labour market for migrants. Nevertheless, with a view to reducing barriers to employment, the government employment services provided assistance in various languages, making use of the linguistic diversity of their staff with a migration background. Germany now recognized all secondary school leaving certificates and university or vocational qualifications obtained by migrants in other countries. Even those without documentary evidence of their qualification could obtain such recognition. A strategy was in place to encourage small and medium-sized enterprises, which were the mainstay of the German economy, to train and employ persons from a migrant background.

19. **Ms. Wittling Vogel** (Germany), responding to questions about the investigation of crimes committed by the National Socialist Underground (NSU), said that the federal Government strongly condemned the racist remarks made by a police detective to the effect that murder was alien to German culture and therefore the perpetrators of the crimes must be foreign.

20. **Ms. Bender** (Germany), noting that inquiries into possible wrongdoing in the NSU matter were still being conducted at the *Land* level, said that the federal inquiry into the investigative work carried out by the police and the national security agencies had revealed serious shortcomings within those institutions. The Government supported the conclusions of the inquiry and had given effect to the majority of the recommendations for improvement. Among other measures, security personnel had received additional training and intelligence strategies were being improved. The Federal Parliament had set up a special committee to gather information on the NSU members and the crimes committed and to ascertain why the organization had been able to operate for so long undetected. A working group had been set up to review how racially motivated hate crimes were investigated and how information on such crimes was recorded. The Federal Police had

launched an investigation into the existence of other right-wing terrorist groups and were revisiting unsolved murders and following up on outstanding arrest warrants to ascertain whether they involved such groups. The criteria for recruiting and dismissing informants had also been revised following the inquiry. The Government remained committed to remedying any further shortcomings in the investigative work of the police and national security agencies.

21. **Mr. Herzog** (Germany) said that, in the wake of the tragic deaths of the refugees who had drowned in the Mediterranean Sea, the Government had called for greater efforts to protect the lives of migrants attempting to reach Europe via that route. Expediting procedures for dealing with asylum seekers and cracking down on human traffickers were priorities. The Government planned to hold national consultations on how best to deal with the ever-growing number of asylum seekers arriving in Germany. However, the challenges posed by large influxes of migrants and asylum seekers into Europe could only be addressed through concerted action among the countries of the region. Germany had already provided human and material resources to assist Italian and Greek authorities in dealing with large influxes of migrants.

22. **Ms. Bender** (Germany) said that there were no specific statistics on attacks against asylum seekers, but data were available on where such hate crimes had been committed. Those data revealed a significant increase between 2012 and 2015 in the number of attacks occurring in housing occupied by asylum seekers. Regrettably, the number of racist and xenophobic crimes in Germany appeared to be on the rise, a trend that must be stopped. The Federal Police had launched investigations to identify the perpetrators of such crimes and to ascertain whether they were affiliated with banned right-wing associations. At the *Land* level, a number of measures to deter further attacks, such as increased police surveillance in the vicinity of asylum seekers' accommodation, had also been adopted.

23. **Ms. Choi** (Germany) said that the federal Government monitored right-wing extremism and hate crimes on the Internet and, when necessary, launched prosecutions. The authorities sought to identify websites which could be harmful to young people, and agreements had been reached with Internet service providers to filter those websites out of search results. The Press Code of the German Press Council had been adapted to accommodate the new situation presented by the availability of information online, particularly user-generated content.

24. **Ms. Wittling Vogel** (Germany) said that the Foreign Ministry and the German Institute for Human Rights were preparing an action plan on human rights and business, which would address the issue of racism. Like others, she had been shocked by the offensive comments made by a public prosecutor about the Committee's opinion in respect of the communication concerning Thilo Sarrazin (CERD/C/82/D/48/2010). The official concerned had been reprimanded and removed from the case and the federal Government had distanced itself from the remarks, which were in no way indicative of prevailing views among prosecutors in Germany.

25. **Ms. Behr** (Germany) said that the General Equal Treatment Act implemented the European Union Anti-Discrimination Directive in German law. People's rights were protected by the Basic Law, and they had easy access to justice as legal costs in Germany were relatively low. Although the German legal system contained no specific provision for collective actions, under the General Equal Treatment Act anti-discrimination organizations could act on behalf of groups of disadvantaged persons in court proceedings. The Government therefore saw no need to amend the Act. Different treatment in access to accommodation was permissible under the Act if the aim was to favour integration by creating and maintaining stable social structures and balanced economic, social and cultural conditions. That provision, although it could not be used to justify racial discrimination, had drawn considerable criticism; however, the authorities had no information to suggest it

was being applied inappropriately. The European Commission had also concluded that the provision was consistent with European Union law, and no changes to the Act were currently envisaged.

26. Following an evaluation in 2011, the Government had allocated greater resources to the Federal Anti-Discrimination Agency. That Agency was to undertake an evaluation of the General Equal Treatment Act.

27. **Ms. Wittling Vogel** (Germany) said that the 2012 murder of Burak Bektas was still being investigated; it had not been established whether it had been racially motivated and the identity of the perpetrators remained unknown.

28. **Ms. Crickley** (Country Rapporteur) noted that the delegation had continued to refer to “integration”, although she had understood from a statement made by Chancellor Merkel in 2013 that Germany had intended to replace the idea of integration with the concepts of inclusion, participation and respect. The delegation had also persistently used the term “migration background” and she wished to know to whom it referred. Were persons whose families had been German citizens for several generations still regarded as having a migration background?

29. She would like examples of instances in which the definition of racial discrimination found in the Convention had been referred to in judgements and clarification about how the definition of indirect discrimination was applied in practice, particularly in the implementation of the General Equal Treatment Act. She remained concerned about intersectionality in racial discrimination and wished to reiterate her suggestion that the National Action Plan against Racism should incorporate the State party’s responses to the Committee’s concluding observations. In addition, she wondered how training for law enforcement officials was to be institutionalized and incorporated into exams and promotion criteria. She was also concerned by some of the delegation’s responses to questions about the Roma and Sinti peoples. She wished to know if there were any targets for inclusion, participation and respect with regard to the Roma and Sinti peoples and how, in the absence of a comprehensive integration strategy, the State party addressed discrimination against Roma and Sinti groups who were not designated as a national minority.

30. **Mr. Avtonomov** said that he would be grateful if the State party would include in its next periodic report responses to any of the Committee’s questions that had gone unanswered. He would like information about the structures in place to help minority groups such as the Sorbs to maintain their language and culture. In particular, were any such measures in place for Slavic peoples who had moved to Germany?

31. **Ms. Wittling Vogel** (Germany) said that the terminology surrounding the idea of integration was currently evolving. The Government was keenly aware that the term “migration background” did not cover everyone who faced discrimination; however, it continued to be used because statistics had been collected using that categorization. As had been explained, it would be difficult to collect data on the basis of ethnic origin, physical traits or other criteria. Moreover, there was no guarantee that data collected on a different basis would be any more reliable.

32. The Federal Court of Justice had issued a judgement in which it had attempted to define racial discrimination, although without reference to the Convention. The Convention was binding in German law, and efforts to make it better known would continue. Experience had shown that legal provisions became better known if they were relevant to issues being discussed in the public arena, such as a current debate about election posters with racist slogans. The question of indirect discrimination would be included in the evaluation of the General Equal Treatment Act. The Committee’s concluding observations

would certainly be borne in mind in the development of the National Action Plan against Racism.

33. **Ms. Bender** (Germany) said that law enforcement personnel were required to know about human rights as part of their core competencies. Human rights were part of officers' initial legal training and the subject was included in the exams they had to sit.

34. **Mr. Weidner** (Germany) added that human rights were also part of further in-service training for police officers. Officers with international duties, such as border liaison officers, were also trained and tested on intercultural competence. Enhanced training in intercultural competence had been one of the outcomes of the NSU inquiry.

35. **Ms. Choi** (Germany) said that the Federal Ministry for Family Affairs was funding a programme to combat discrimination against the Roma and Sinti peoples. The aim of the programme was to study incidents of discrimination, to empower the Roma and Sinti and, with the help of teachers and journalists, to make the public aware of their history. The Ministry was also implementing programmes to empower victims of racism and to strengthen action against xenophobia and racism.

36. **Ms. Wittling Vogel** (Germany) said that information on the Sorbs would be included in the next periodic report. She noted, also, that the Foreign Ministry was supporting a project to encourage networking among people of African descent in Germany and the rest of Europe.

37. **Mr. Herzog** (Germany) said that the support that Sorbs living in Brandenburg and Saxony received from the federal and state budgets was based on an agreement which was currently being renegotiated.

38. **Mr. Kut** said that the State party's restrictive interpretation of the terms "racism" and "racial discrimination" remained a serious concern, especially with regard to their application in legal cases. He found it puzzling that the State authorities would consult with linguists on the meaning of such terms when they were clearly defined in the Convention, which, as the delegation had stated, formed an integral part of the national legal system. He wondered why the authorities had referred to the National Socialist Underground merely as a new terrorist dimension of right-wing violence and had not used the term "racist" to describe that organization. He asked the delegation to comment on reports claiming that, while arson attacks against synagogues were automatically assumed to be racially motivated, the same was not true of attacks against mosques. Lastly, he asked how the federal Government ensured that the Convention was applied at the *Land* level.

39. **Mr. Vázquez** said that, while he welcomed the fact that the delegation had distanced itself from the racist comments made by a public official in connection with the National Socialist Underground case, those comments nevertheless indicated the existence of institutional racism. One way of combating that problem would be to establish an independent mechanism to receive complaints against police officers. Would the Government consider taking such a measure?

40. The criteria used by the police to decide whom to stop and search seemed rather subjective and could leave the door open for racial profiling. More and better police training was therefore needed. He wondered whether the delegation was aware of criticisms by civil society about the focus on intercultural competence in police training and the lack of specific training on racial discrimination, and whether the delegation shared those concerns. He found it troubling that the General Equal Treatment Act did not cover discrimination practised by public authorities, and he wished to know whether victims of such discrimination had access to the same remedies as other victims, including compensation. While he understood the State party's reluctance to collect data on race and ethnicity, the lack of such data posed a significant problem, and he wondered whether the

Government could find a way to address it. Lastly, he asked whether the National Action Plan against Racism addressed the intersectionality between homophobia and racism.

41. **Mr. Murillo Martínez** asked whether Germany would be willing to address the structural causes of migration and their effect on persons of African descent when engaging in bilateral discussions with States that wished to join the Organisation for Economic Co-operation and Development (OECD).

42. **Ms. Wittling Vogel** (Germany) said that she would pass on that suggestion to the working group within the Federal Foreign Office responsible for OECD matters. The reason the Government had consulted language experts on the meaning of the terms “racism” and “xenophobia” as they were understood in Germany was because it wished to draft its criminal legislation in a way that would be clearly understood by the general public.

43. **Mr. Otto** (Germany) said that, rather than focusing on what they were fighting against, such as racism, the German authorities instead chose to focus on what positive values they should promote, such as democracy and participation, in order to create the right conditions for peaceful coexistence.

44. **Ms. Bender** (Germany) said that, when determining whether a crime should be considered a hate crime, the police examined all of the surrounding circumstances, and crimes could be classified in multiple ways; for example, an attack might be classified as both racist and Islamophobic. In the wake of the NSU inquiry, police procedures were being reformed in order to put in place more precise reporting requirements.

45. **Mr. Otto** (Germany) said that the National Action Plan against Racism did address the intersectionality between homophobia and racism and offered strategies for preventing and dealing with those phenomena.

46. **Mr. Weidner** (Germany) said that all complaints against police officers were investigated, and disciplinary action was taken in the event of misconduct. If there was evidence of criminal wrongdoing, the offence would be reported and prosecuted. As no complainants had expressed dissatisfaction with the outcome of the investigations conducted under the current system, he saw no reason for an independent complaint mechanism.

47. **Ms. Bender** (Germany) said that the *Länder* had established various types of mechanisms to receive complaints involving the police. Most *Länder* shared the views of the federal authorities and believed that the procedures already in place were sufficient.

48. **Ms. Wittling Vogel** (Germany) said that both the federal and *Land* governments were legally required to implement all international treaties to which Germany was a party, and that there were many indications to show that the *Länder* recognized and accepted that fact. The contributions made by the *Länder* to the current dialogue were one such example.

49. Victims of discrimination practised by public authorities could file a complaint with any administrative court in order to access the available remedies, which was in fact an easier process than bringing a suit in a civil court. Like all victims of discrimination, those who had suffered racial discrimination at the hands of the police were entitled to compensation. With regard to data collection, one way of addressing the problem was by gathering data on persons’ migration background rather than on their racial or ethnic origin, although admittedly it was not a perfect solution. The Government would continue striving to find better ways of obtaining statistical information on various groups.

50. **The Chairperson** asked the delegation to provide written answers within 24 hours to any questions still pending.

51. **Ms. Crickley**, expressing thanks to the delegation for being forthright about the challenges Germany was facing, said that the Committee’s task was to help the State party

remove the barriers posed by racial discrimination. The Committee believed that doing so required naming those barriers in the first place. The issue of terminology would therefore be addressed in the Committee's concluding observations, as would the issue of increasing awareness about the Convention at all levels of German society. The Committee was cognizant of the complexities involved in tackling racial discrimination, and it acknowledged the Government's proactive approach aimed at achieving inclusion, participation and respect. The concluding observations would focus on using the Convention to create the conditions to make that possible.

52. **Ms. Wittling Vogel** (Germany) said that her delegation greatly appreciated the opportunity to learn from the Committee through the dialogue. Her Government was ready and willing to tackle any issues that arose in relation to the Convention and would work jointly with other stakeholders to seek solutions to those issues.

The meeting rose at 1 p.m.