



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination Eighty-sixth session

### Summary record of the 2337th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 5 May 2015, at 3 p.m.

*Chairperson:* Mr. Calí Tzay

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article 9 of the Convention (*continued*)

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*The meeting was called to order at 3 p.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* (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. **Mr. Fitschen** (Germany) said that the large size of the German delegation was a measure of the importance that Germany attached to the review process and to its reporting obligations, which it had met diligently since ratifying the Convention in 1969. Given the structure of the German State and, by extension, its legal system, the delegation comprised representatives from both the federal and state levels.
3. **Ms. Wittling Vogel** (Germany), introducing her country's nineteenth to twenty-second periodic reports, said that, among the human rights treaties to which it was a party, Germany ascribed particular significance to the Convention. Fighting racial discrimination and prejudice was a task for all of society. Remembrance of the crimes committed by the National Socialist State was an important aspect of the country's approach to combatting racism. Ensuring equal opportunities for all was a key objective of the German Constitution, which established that all persons were equal before the law and prohibited discrimination on account of, inter alia, parentage, race and language.
4. The Government was always looking at ways to improve its anti-discrimination policies and consequently welcomed the alternative reports submitted to the Committee by civil society organizations. Owing to the need to satisfy reporting guidelines, the periodic report was relatively limited in scope and offered only an overview of the most important measures taken by Germany to implement the Convention. The fact that an issue had not been mentioned explicitly did not mean that it was being neglected.
5. Racism was not confined to far-right politics. It existed in all spheres of society, a fact that was recognized by government ministries and acknowledged in discussion platforms such as the Forum against Racism. The Government was keenly aware of criticism of what was perceived to be its overly narrow interpretation of racism and its excessive focus on right-wing extremism and was determined to tackle both explicit and latent forms of racial discrimination.
6. The crimes committed by the National Socialist Underground (NSU) had shaken the country to its core. In 2012, a committee of inquiry had been convened to shed light on the terrorist group and uncover how its members had gone undetected for so long. The committee had recently submitted its final report and recommendations, some of which had already been implemented. In March 2015, the Federal Parliament had adopted legislation establishing racist and xenophobic motives as aggravating circumstances under the Criminal Code, and guidelines for prosecutors and law enforcement officers were being redrafted to ensure that such motives were adequately investigated and documented. Since May 2013, a trial had been ongoing at Munich Higher Regional Court against the last surviving NSU member and four alleged supporters of the group. Victims and their relatives had been given the opportunity to participate in proceedings as co-prosecutors.
7. Although there had been calls for Germany to make greater use of criminal prosecution in combatting racism — including by the Committee in its consideration of the communication concerning Mr. Thilo Sarrazin (CERD/C/82/D/48/2010) — it was important to respect the fundamental principle of freedom of expression. Not all derogatory or abusive statements could be considered criminal offences and the Government had

adopted a prudent approach to avoid stifling public debate. In that connection, she noted that the Special Rapporteur on freedom of religion or belief, Mr. Heiner Bielefeldt, had advocated a focus on discussion rather than criminal law in efforts to counter discrimination. One of the questions currently facing the Government was whether, in some cases involving racist utterances, it was appropriate to take measures that lay outside the criminal justice system, for example by removing election posters bearing racist slogans. The Federal Ministry of Justice and Consumer Protection had commissioned an academic study into how local authorities could use such measures in order to implement the Convention.

8. Another pressing concern was migration, particularly as Germany had fielded roughly a third of all asylum applications submitted within the European Union in 2014. The arrival of migrants had, unfortunately, drawn some shameful reactions, including arson attacks on accommodation reserved for asylum seekers. The attacks, which would be prosecuted to the full extent of the law, had prompted reflection on whether there was a growing climate of intolerance within German society. One piece of evidence to support that notion was the emergence of a movement called Patriotic Europeans against the Islamization of the West (PEGIDA), which was gaining in popularity. The Government, including Chancellor Angela Merkel, had taken a firm stance against the movement, and the Minister of Justice and Consumer Protection had called for it to be discussed openly with a view to debunking the beliefs that it espoused.

9. The Minister of the Interior, meanwhile, had highlighted the need for respect in public debates. With that in mind, the Government had launched a series of programmes to promote social cohesion and prevent radicalization, extremism and hatred towards certain religious or ethnic groups. Some such initiatives were being undertaken in schools, where the Government was endeavouring to enhance the prospects of children from migrant backgrounds, ensure equal educational opportunity for all children, and foster intercultural dialogue. In recent years, the dropout rate among children from migrant backgrounds had fallen and, according to the Programme for International Student Assessment, their academic performance had improved.

10. Although many challenges remained, a number of positive developments had taken place in Germany. Some refugees were actively welcomed and, although demonstrations held by organizations like PEGIDA were garnering unprecedented support, the number of counter-protests was considerably higher. She was therefore confident that Germany could rise to the challenges it faced in implementing the Convention.

11. **The Chairperson** said that it was an honour to welcome a gender-balanced delegation, which was a reflection of German society.

12. **Ms. Crickley** (Country Rapporteur), while acknowledging the State party's efforts to combat racial discrimination, said that she wished to raise some fundamental concerns with respect to information that appeared both in the periodic report and in the reports submitted by other sources. Direct and unambiguous use of the term "racial discrimination" as defined in article 1 of the Convention, which covered effect as well as intent, was key to combating and raising awareness of the problem. The use of terms such as xenophobia, which, along with extremism, appeared frequently in the State party's periodic report, could hinder understanding of racial discrimination and obfuscate its meaning. There did not appear to be a common understanding of racial discrimination, including indirect and institutional discrimination, among public authorities, the private sector and the general public. Moreover, there seemed to be a discrepancy between the Basic Law and the General Equal Treatment Act of 2006 in how racial discrimination was understood, defined and addressed. She wished to know how the State party defined the concept of institutional discrimination and what was being done to address it. She encouraged the Government to favour a structural approach in its new National Action Plan against Racism and suggested

that it might incorporate the Committee's forthcoming concluding observations into the plan.

13. She was concerned about the continued use of terms such as "migration background" and "tolerated foreigner", which were limiting and avoided the institutional dimension of racial discrimination. While she understood the State party's concerns regarding the need for data collection strictly on the basis of voluntary self-identification of ethnic background, she urged it, in its next periodic report, to endeavour to provide disaggregated data, which would enable the Committee to advise the State party more constructively. She also encouraged the State party to complete the updates to its core document (HRI/CORE/DEU/2009) and submit it before the presentation of its next periodic report.

14. Given that the State party's main concern when it came to racial discrimination seemed to be neo-Nazi ideology, it was surprising that it had not been realized much sooner that the National Socialist Underground was a neo-Nazi group engaged in right-wing extremist activities. All of the shortcomings identified in the investigation of that case pointed to the need for mandatory ongoing in-service training on racial discrimination for the police. She would like more information on the practice of racial profiling, particularly by the Federal Police. As a starting point for preventing such unequal treatment, Germany might consider introducing measures in relation to stop and search operations similar to those put in place in the United Kingdom in the aftermath of the Stephen Lawrence case.

15. Although she understood the State party's obligations to report on integration under the European Union framework, she stressed that a parallel should not be drawn between the elimination of racial discrimination and integration performance. Strategies for integration needed to address racial discrimination — which was the chief barrier to integration — and should be specifically linked to the State party's legal and policy frameworks for eliminating racial discrimination. She wondered what progress was being made in incorporating the concepts of inclusion, participation and respect into the State party's strategies, as advocated by Chancellor Angela Merkel.

16. Noting that there was considerable intersectionality between racial discrimination and discrimination against women, she asked how the State party addressed discrimination against women, particularly Muslim women who chose to wear headscarves in the workplace. She expressed concern at the differential educational outcomes for Muslim, black, Roma and Sinti children and the ongoing marginalization of the Roma and Sinti, and asked about measures being taken to address those issues. She also expressed concern about the PEGIDA group and asked how the State party intended to ensure the protection of asylum seekers, especially in their places of residence. She also wondered how Germany planned to support asylum seekers such as those involved in the recent Mediterranean migrant crises.

17. Lastly, she wished to know whether any safeguards were in place to protect persons who spoke out against neo-Nazism and whether the State party was considering any specific measures to ensure that German businesses did not engage in human rights violations or racial discrimination either in or outside the country. She also asked the delegation to comment on concerns expressed by non-governmental organizations (NGOs) regarding the way in which the State party had responded to the Committee's opinion in the Sarrazin case. Noting that some authorities in Germany had suggested that the Committee lacked competence to consider such a case given that some of its members came from countries that did not have very good human rights records, she recalled that members served in a personal capacity.

18. **Mr. Vázquez** said that he welcomed the recognition by the State party that racial discrimination was not simply a matter of right-wing extremism or intentional action by

racists but could also take the form of de facto or subconscious discrimination, which required structural solutions. Under the Convention, one of the responses to subconscious discrimination was the adoption of special measures, but the State party's approach to the collection of disaggregated data could pose an obstacle to the identification of groups that required such measures. The State party could do more to collect data among groups that were willing to provide data on ethnicity.

19. With regard to the definition of racial discrimination, given that the courts did not necessarily apply the Convention, measures should be taken to educate the judiciary in that regard. It might also be beneficial to enact a law that reflected the Convention's definition of racial discrimination. He would welcome confirmation that German law now recognized racial discrimination as an aggravating factor in criminal cases.

20. Although individuals could in theory file complaints of discrimination by public authorities under the Basic Law, in practice there were many obstacles to doing so; it might therefore be beneficial to extend the protections afforded under the General Equal Treatment Act to cover discrimination by public authorities. It was not possible to bring collective actions under the Act, which made it difficult to remedy discrimination affecting large groups. The loopholes exempting certain landlords from the provisions of the Act should be closed. Given that the high costs involved were an obstacle to bringing cases under the Act, the possibility of allowing the Federal Anti-Discrimination Agency to provide assistance with litigation should be considered.

21. With regard to employment, he wondered what use was being made of the results of the project using anonymized application procedures, which had reduced discrimination against applicants with a migrant background. In relation to the NSU killings, he expressed concern that the explanation given for having originally focused on identifying foreign perpetrators was that homicide was alien to the German culture, which could be an indication of institutional racism among the police. He wished to know what action was being taken to address such institutional racism. Lastly, he wondered whether the Government intended to extend an invitation to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to investigate the NSU issue.

22. **Mr. Diaconu** asked whether the 16 million persons with a migration background mentioned in the State party report were German citizens. A distinction appeared to be made between German citizens with a migrant background and other Germans, essentially creating two categories of citizens. Those with a migration background were exposed to discrimination by the State and society and the unemployment rate among that group was double that of other Germans. Did the State party consider that situation acceptable? The report did not include any data on the economic, social and cultural situation of the Roma and Sinti, including their access to housing, employment and education in comparison with the rest of the population. He would be interested to know what was being done to promote their language and culture.

23. On the issue of hate speech, in its report the State party seemed to be confusing article 2, paragraph 1, of the Convention, which referred to the elimination of discrimination as a general principle, and article 4, which referred to the legislative criminalization of acts of discrimination. A clear distinction should be drawn in German law between xenophobia, which could be merely an attitude not manifested in acts, and racism as manifested in hate speech and racist discourse. It was clear that racist comments, such as those made in the Sarrazin case, could not be accepted. As to the NSU case, he wondered why the State party avoided describing the crimes committed against members of different ethnic groups as racism. The Committee endorsed the recommendation of the parliamentary inquiry into the NSU crimes to amend the Criminal Code to ensure due consideration of racist and xenophobic motives in the prosecution of cases. He asked

whether the intersectionality of ethnicity and religion was recognized as a dimension of discrimination and what was being done to address indirect discrimination.

24. **Mr. Murillo Martínez** said that, while he understood the reasons cited by the State party for not collecting statistics on the racial background of the population, it was necessary to be able to easily identify everyday acts of racism in order to effectively address them. He would be interested to know what was understood by the concept of a “black community”, mentioned in paragraph 48 of the State party report, and what it implied in terms of the integration of that population group. As many of the migrants who arrived on the Mediterranean coast went on to Germany, the Afro-descendent population would most likely continue to grow, and he wondered what plans were in place to deal with the situation. He would be interested to know what activities the State party had planned to mark the International Decade for People of African Descent. He also wondered what steps were being taken to address the high unemployment rate among persons of African descent, which was more than twice the national average.

25. **Mr. Avtonomov**, while welcoming the many positive developments outlined in the report, said that it was unfortunate that it did not provide any direct responses to the Committee’s previous concluding observations. He asked what mechanisms and procedures were in place for migrant workers to lodge complaints in the event of violations of their right to equal treatment in relation to working conditions and requested an update on the implementation status and outcome of the projects launched under the XENOS “Integration and Diversity” programme to improve access to training for young people with a migration background. He wished to know whether the 2012 murder of Burak Bektas in Berlin in 2012 had been racially motivated and whether the police had effectively investigated the case. Lastly, he would welcome an explanation of the rules governing random police document checks. He would also like to know whether there were any plans to amend the relevant article of the Federal Police Act to ensure that persons belonging to ethnic minorities were not stopped without justification.

26. **Mr. Lindgren Alves** said that he, too, understood the concerns of the State party about collecting data on ethnicity and did not wish to insist on the collection of disaggregated data if it could have negative consequences. Such data were unquestionably useful, however, and he supported the view of some NGOs that the origin and ethnic background of victims of crime should be recorded. The measures taken to integrate minorities into German society were commendable, in particular the training of Roma mediators, work to prevent the radicalization of young Muslims and the promotion of dialogue through the German Islam Conference. He wondered, however, which Muslim communities were represented in the latter. Despite efforts to address racial discrimination, current events in Germany and across Europe were cause for concern, particularly the rise of PEGIDA, electoral victories for right-wing parties and the growing attraction of the Islamic State in Iraq and the Levant for Muslim youth. It was essential in that context to continue promoting equality and peaceful coexistence.

27. **Mr. Kut**, welcoming the participation of NGOs in the preparation of the State party’s periodic report, said that the inclusion of up-to-date statistical information in the annexes to the report would have been useful. He commended the State party’s understanding of racism as not just a right-wing issue and its awareness of the dangers of electoral support for racism. Although one third of the refugees arriving in the European Union settled in Germany, the number of refugees in Germany was very small in comparison with the numbers flowing into other countries, such as his own country, Turkey. Migration was normal and would continue, and governments should therefore focus on finding solutions that addressed the root causes of the phenomenon, rather than attempting to restrict the flow of migrants.

28. He saw a duality in the State party's approach to racism: it had many policies and programmes for tackling the problem, but at the same time there was a strong reluctance to recognize obvious instances of racism and racially motivated acts and crimes. In the Sarrazin case, for example, the Government saw no obligation to prosecute under the Convention, yet it had acknowledged that some of Mr. Sarrazin's hypotheses had been positively received and in some cases had been used to justify racist statements. Did that not constitute a case of incitement to hatred? He wondered whether any evaluations had been carried out to assess the effectiveness of the various programmes, projects and other mechanisms for combatting racial discrimination. He would also like to know how it was ensured that the Convention was uniformly applied by the Federal Government and the Land governments and what provisions were in place to address any discrepancies.

29. **Mr. Kemal**, drawing attention to recommendations made to the State party by various treaty bodies, noted that discrimination against the Roma and Sinti continued, despite their recognition as national minorities, as did attacks against other minority groups, including Muslims and Jews. He asked what action the State party had taken to prevent discrimination against migrants by landlords and to render such discrimination socially unacceptable. He would also like to know how women of immigrant background were protected against violence. Given reports from NGOs alleging that minorities were subjected to profiling, he wondered how it was ensured that police officers obeyed the letter of the law. He would also like information on efforts to combat trafficking in persons, particularly the trafficking of persons from minorities. Recalling the Committee's general recommendation No. 35 on combating racist hate speech, he asked how the State party balanced the right of freedom of expression against the need to prevent hate speech against minority groups, including Jews, Muslims and immigrants. As to unemployment among migrants, failure to address the discrimination that prevented them from getting jobs would result in greater dependence on public assistance, which would fuel resentment against migrants among German taxpayers.

30. **Ms. Dah** said that, although she understood the State party's hesitancy to collect statistical data on minority groups, it might be able to do so without undermining the principles that it aimed to uphold. She noted that 2015 marked both the fiftieth anniversary of the Convention and the seventieth anniversary of the end of the Second World War and suggested that the State party might seize the occasion to raise awareness of the Convention and educate the general public about racial discrimination.

31. Drawing attention to recent media images of young migrants drowning in the Mediterranean Sea on their quest to reach Europe, she noted that most migrants arriving in Europe wished to settle in Germany or the United Kingdom owing to their positive impressions of those countries. The Government would therefore need to persevere in its efforts to improve the situation for migrants in Germany. Sustainable solutions, including special measures, were urgently needed to help vulnerable members of minority groups, especially women and school-age children.

32. **Mr. Yeung Sik Yuen** recalled that the State party had previously stated that there was no need for a definition of racial discrimination in German municipal law because a definition existed in the Convention, which was applicable by German courts. However, some domestic courts did not consider themselves bound by the Convention. He would welcome comments from the delegation on that situation and on why the State party had not heeded the Committee's opinions that complainants in a number of communications were entitled to compensation for breaches of the Convention.

33. **Mr. Khalaf** said that assessments of integration policies should be carried out in order to gain a better understanding of the progress made, particularly with regard to the integration of young persons. Statistical information on the effectiveness of those policies and of other programmes and plans would be helpful for the development of future

initiatives. Although freedom of expression was an important right that must be respected, the scope of that freedom should be subject to some restrictions, as pointed out in the Committee's general recommendation No. 35 on combating racist hate speech, because total freedom of expression could lead to discrimination.

34. **Mr. Amir** said that the German people of today had nothing to do with the events of the Second World War, and even many of those who had lived through the war had been innocent. It was important to stop living in the past. While a neo-Nazi movement existed in contemporary Germany, the German people were not Nazis. Moreover, such movements were not limited to Germany. Extremist groups and hate-driven movements could be found everywhere and would always exist. The German people had suffered as much as people in other countries during the war and should not be branded as guilty.

35. **Ms. Crickley** asked whether the State party might consider replacing the individual bundles of measures for promoting Roma integration, mentioned in paragraph 32 of its period report, with a comprehensive strategy that was in line with the European Union Framework for National Roma Integration Strategies up to 2020 and that addressed the needs of Roma and Sinti groups who were not designated as a national minority. She stressed the importance of addressing anti-Muslim discrimination and Islamophobia and asked what action the State party was pursuing in that regard. She also asked what steps were being taken to address discrimination against non-Christians in the area of employment. In addition, she would like to know whether a full evaluation of the General Equal Treatment Act of 2006 and the Federal Anti-Discrimination Agency had been undertaken and, if not, whether one was planned. The Agency should be able to investigate cases directly and its services should be available to people throughout the country.

36. **Mr. Vázquez** said that the Committee had received reports from civil society indicating that public money might have been directly or indirectly provided to NSU terrorists. He would like the delegation to comment on those reports. He would also like to know whether neo-Nazi informants had been provided with legal counsel paid for by the State when they had been called to testify as witnesses. Lastly, he would welcome further information on the grounds for the Attorney-General's refusal to disclose NSU-related information and files to attorneys representing families of NSU victims.

37. **Mr. Avtonomov** noted that it had been proposed that a European memorial day should be designated to commemorate the victims of the Roma genocide during the Second World War and asked how the State party viewed that proposal.

*The meeting was suspended at 5.30 p.m. and resumed at 5.40 p.m.*

38. **Ms. Wittling Vogel** (Germany) affirmed that a racist motivation for the commission of a crime was considered an aggravating circumstance under German law. Referring to the concerns raised by Ms. Crickley with regard to discrimination against Muslims in employment, she said that many church-based institutions or organizations required their employees to be Christian. Churches had the right to maintain such requirements based on a provision in the Constitution that established self-determination for churches, and that right had been upheld by the Constitutional Court. However, a recent meeting of Catholic bishops had resulted in a decision to change the criteria for employment. The Government would assist the Church in reviewing those criteria and follow up on the situation.

39. **Ms. Bender** (Germany), responding to questions on training for law enforcement personnel, said that pre-service training for the Federal Police included modules on United Nations conventions, fundamental rights and the prohibition of discrimination, ill-treatment and torture. Such training was not merely abstract; it aimed to ensure the intercultural competence of police officers in practice. Officers learned to recognize prejudice and stereotypes and to understand the situation of migrants and their families. Those skills were reinforced through subsequent in-service training. The Federal Criminal Police Office had



already implemented certain recommendations issued by the NSU inquiry committee, and training on intercultural competence and right-wing extremism had been strengthened. A course on NSU issues was mandatory for all police officers dealing with crimes against the State. Training in anti-discrimination and intercultural competence was also being provided to police officers at the Land level.

40. **Ms. Wittling Vogel** (Germany) said that the delegation recognized that the lack of disaggregated data on ethnicity was a problem; however, it was difficult to collect such data for various reasons.

41. **Mr. Herzog** (Germany) said that the State party considered that every person should have the right to decide whether to disclose his or her ethnicity and did not want to attempt to categorize people. How people identified themselves was a very personal matter and not always a clear-cut one, especially in the case of persons of mixed ethnicity. Moreover, the Government did not see the need to collect such data, as benefits were not dependent on ethnicity. The Roma, for example, enjoyed the same benefits as other persons. Minority groups had been consulted on the matter and were opposed to the collection of data on ethnic background. Attempting to collect such data on a voluntary basis might have the negative effect of reducing the public's willingness to provide even essential basic data. The Federal Anti-Discrimination Agency planned to conduct a comprehensive survey on the question of data collection and on racial discrimination in 2015.

*The meeting rose at 6 p.m.*