

GERMANY

Follow-up - State Reporting

(i) Action by Treaty Bodies, including Reports on Missions

CERD, A/65/18 (2010)

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Chapter IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

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57. At its seventy-sixth and seventy-seventh sessions, the Committee considered the follow-up reports of Austria, Canada, Chile, Germany, Montenegro, Republic of Moldova, Russian Federation, Sweden and Togo and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

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Follow-up - State Reporting
(ii) Action by State Party

CERD, CERD/C/DEU/CO/18/Add.1 (2009)

Information provided by the Government of Germany on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/DEU/CO/18)

[28 August 2009]

Statement by the Federal Republic of Germany regarding the concluding observations of the Committee on the Elimination of Racial Discrimination of 13 August 2008 (CERD/C/DEU/CO/18)

1. The Committee considered the sixteenth to eighteenth periodic reports of Germany, submitted as one document (CERD/C/DEU/18), at its 1886th and 1887th meetings held on 5 and 6 August 2008, and on 13 August 2008 adopted its concluding observations. In paragraph 33 of its concluding observations, the Committee requested that Germany provide, within one year, information on the way it has followed up on the its recommendations contained in paragraphs 16, 17, 22 and 26. The Federal Republic of Germany submits the following in that regard.

Preliminary remarks

2. A copy of the Committee's concluding observations and recommendations plus a German translation thereof were sent to the competent federal ministries, the Bundestag Committee on Human rights and Humanitarian Aid and to the federal *Länder*. The concluding observations and recommendations and the sixteenth to eighteenth periodic reports of Germany are available in English and German on the Federal Ministry of Justice's website (www.bmj.bund.de).

Follow-up events

3. On 18 June 2009 the German Institute for Human Rights held a non-public meeting of experts to discuss the Committee's concluding observations and recommendations. This well-attended event served the exchange of information and opinions between representatives of the competent federal ministries, federal *Länder*, German Bundestag, academics, non-governmental organisations such as amnesty international, the Human Rights Forum, and representatives of the Central council of German Sinti and Roma and the Rhineland-Palatinate Association of German Sinti und Roma. The meeting of experts addressed the following issues; racist propaganda on the internet, racially motivated crimes as an aggravating circumstance for the purpose of sentencing, discrimination on the housing market, the situation of Sinti and Roma in Germany, as well as school access for children seeking asylum, children with tolerated status and children without residence status.

4. In addition, a conference entitled “Conference Against the Dissemination of Hatred on the Internet” was held at the Federal Ministry of Justice on 9 July 2009 as follow-up to the international conference “Dissemination of Hatred on the Internet” held in 2000. The conference on the one hand took stock in regard to the combating of hatred and xenophobia on the internet, the range of legal and technical instruments that had proved their worth in practice, and what difficulties still needed to be overcome. Participants also looked to the future and discussed what approaches to adopt in the years to come.

Paragraph 16

Racist offences on the internet

5. The competent criminal prosecution authorities of the federal L änder collated and passed on to the Federal Criminal Police Office the following statistics regarding the number of cases of racially motivated offences committed on the internet:

	2006	2007	2008
Racist offences committed on the internet (total); of which:	29	35	28
Right-wing politically motivated crime	28	34	28
Left-wing politically motivated crimes	0	0	0
Politically motivated crime against foreigners	1	1	0

Measures to combat racially motivated crime on the internet

6. Because of the difficulties encountered in ascertaining and prosecuting racially motivated offences committed on the internet, there are numerous ways of combating this phenomenon.

7. The extent of the internet and the great fluctuation in items posted on the internet make the ascertainment and prosecution of racially motivated crimes committed on the internet a very complex issue. The comprehensive monitoring of the entire internet with regard to racially motivated and other criminal content is not possible.

8. Punishable content is therefore primarily researched on a case-by-case basis once information has been received. Against that background, it must be assumed that a large number of racially motivated offences committed on the internet go unreported and undetected.

9. One measure is to raise the awareness of internet providers for what content constitutes a punishable offence and to call for them to undertake self-surveillance. This approach has been quite successful with German internet providers, who have been very willing to cooperate.

10. Cooperation with foreign providers, through which the overwhelming majority of content

of a punishable nature is posted on the internet, is, however, very difficult. That applies in particular to countries such as, for instance, the United States and Australia, which do not have definitions of crimes equivalent to incitement to hatred and propaganda crimes.

11. Where content does fulfil the definition of a relevant criminal offence, the offices for the protection of the constitution submit an enquiry to the respective internet provider to ascertain the name of the operator of the homepage.

12. Further procedure is then agreed in close cooperation between the offices for the protection of the constitution and the police. Direct information regarding a newly discovered homepage with possibly punishable, racial motivated content is immediately made available to the security of the federal *Länder*.

13. The police engage in the following activities, among others, to combat racially motivated crime on the internet:

- Case-by-case internet searches,
- Promotion of a self-regulatory procedure adopted by German internet providers and umbrella organisations in the internet and multimedia sector through a general exchange of information,
- Cooperation with the Federal Department for Media Harmful to Young Persons and NGOs such as Jugendschutz.net to develop strategies to combat racially motivated crime on the internet,
- Organisation of conferences involving the competent experts in the security authorities of the Federation and the federal *Länder*
- On the issue of “the internet” during which, for instance, Google’s data protection officer explains the formal and material preconditions for submitting requests for information to the internet service providers,
- Introduction of a system for a covert information-gathering on the internet which enables anonymised access without being able to trace the user.

14. One recent example of measures adopted by the police are the nationwide executive measures taken against users of the online platform *UnserAuktionshaus.de*. The measures involved searching a total of 224 properties simultaneously. Sound carriers (89,784), PCs/laptops (210), weapons (82), publications (552) and devotional objects (162) were confiscated. These executive measures will no doubt permanently unsettle the right-wing extremist scene in regard to internet trading.

Additional Protocol to the Convention on Cybercrime

15. On p.77 of the aforementioned report, the German Government stated the following in

respect of the ratification of the First Additional Protocol to the convention on Cybercrime:

“Germany signed the First Additional Protocol to the Council of Europe’s Convention on cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems in January 2003. Ratification is currently in preparation.”

This statement is still valid. The Additional Protocol is to be ratified when the Council Framework Decision on combating certain forms of and expressions of racism and xenophobia by means of criminal law formally adopted by the Council on 28 November 2008 is implemented, since it provides for similar definitions of crimes as the Council Framework Decision.

Paragraph 17

16. The German Government is aware that the provision of accommodation is an especially sensitive area, also in view of possible discrimination on the grounds of ethnic origin. Nevertheless, it believes that section 19 (3) of the General Equality Act, about which the Committee has voiced concern, is justified so as to be able to take account of the principles of the urban and housing policy that has proved its worth in Germany. Socially stable occupant structures in urban districts are the prerequisite enabling different cultures to live together without mutually excluding each other. Controlling occupancy structure merely serves to create balanced economic, social and cultural conditions and thus the bases for integrating people from diverse backgrounds. The purpose of section 19 (3) of the General Equality Act is not to permit discrimination, but rather to facilitate integration by avoiding, as far as possible, various population groups shutting themselves off in residential districts. The better people from diverse backgrounds can be integrated, the less discrimination occurs. Occupancy management creates the basis for achieving that objective.

17. At the above-mentioned meeting of experts held at the German Institute for Human Rights on 18 June 2009, representatives from the German Government suggested that NGOs should inform the Federal Anti-Discrimination Agency of any cases of discrimination in order to thus be able to better assess the situation and possibly initiate suitable measures.

Paragraph 22

18. Saarland has since amended the legislation in question. The following amendment to the Compulsory School Attendance Act of 21 November 2007 was published in the Saarland Official Gazette on 31 July 2008:

“Compulsory school attendance (...) also applies to foreign children, youth and adolescents with permission to reside or tolerance status. In the case of foreign children, youth and adolescents who are required to leave the country, the obligation to attend school applies up until the enforcement of their requirement to leave the country.”

19. In Baden-Württemberg, compulsory school attendance, including compulsory primary

school attendance, is linked to place of residence or habitual place of residence, i.e. it applies regardless of nationality. Children of those who have been granted asylum are obliged to begin attending school six months after arriving in Germany. They do, however, have the right to attend school prior to that and their attendance must not be linked to any form of discrimination.

20. In regard to Hesse, it must be noted that according to section 3 (1) of the Ordinance on School attendance by Pupils Whose Mother-tongue is Not German of 5 August 2008 (Official Gazette, p.430), those applying for asylum are obliged to attend school if they are assigned to a local authority. In accordance with section 3 (3) of the aforementioned Ordinance, asylum-seekers whose residence is tolerated under foreigners' law have the right to attend school. In Hesse, compulsory school attendance and this legal right are not limited to compulsory primary school attendance. This legal right poses no obstacles to school enrolment.

Paragraph 26

21. Germany takes note of the concerns expressed by the Committee in paragraph 26. The German Government is aware that, particularly in the case of racially motivated offences, great importance is attached to the signal sent by legal judgements. The German Government therefore completely shares the Committee's concern.

22. The German Government is nevertheless of the opinion that this concern has already been appropriately addressed by means of the general provision set out in section 46 of the Criminal Code, according to which the motives and aims of the perpetrator, and the state of mind reflected in the act are to be taken into consideration in determining the sentence for crimes. It is recognised legal practice in Germany that section 46 of the Criminal Code regularly acts as an aggravating circumstance for the purpose of sentencing where the act is racially motivated. Furthermore, the German Government will be forwarding this letter to the *Land* departments of justice in order to take this opportunity to again draw the attention of the relevant offices to the Committee's concern.

23. In addition, reference is again made to the fact that the Federal Court of Justice in 1962 already ruled that racial hatred was to be considered as a base motive within the meaning of the definition of murder in accordance with section 211 of the Criminal Code.

24. It was not possible to conclude consultations on the draft law put forward by the *Bundesrat*, to which the Committee makes reference in its concluding observations, within the sixteenth electoral term of the German Bundestag, which ends in autumn 2009. It remains to be seen whether the draft will be tabled again in the next electoral term.
