

GERMANY

ENFORCED DISAPPEARANCE

RESERVATIONS AND DECLARATIONS

(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)

Declarations:

Article 16

The prohibition of return shall only apply if the person concerned faces a real risk of being subjected to enforced disappearance.

Regarding Art. 17 (2) (f)

Under German law it is guaranteed that deprivation of liberty is only lawful if it has been ordered by a court or - in exceptional cases - subsequently authorized by a court. Article 104 para. 2 of the Basic Law (Grundgesetz) expressly provides: "Only a judge may rule upon the permissibility or continuation of any deprivation of liberty. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay". Article 104 para. 3 of the Basic Law provides that a person who has been provisionally arrested on suspicion of having committed a criminal offence "shall be brought before a judge no later than the day following the arrest".

In the event that a person is being held arbitrarily in contravention of Article 104 of the Basic Law, anyone can bring about a judicial decision leading to that person's release by applying to the competent Local Court for his/her immediate release. If the person concerned has been detained beyond the time limit permissible under the Basic Law, the court has to order that person's release pursuant to section 128 (2), first sentence, of the Code of Criminal Procedure (Strafprozessordnung, StPO).

Article 17 para. 3

In the case of an involuntary placement of sick persons by a custodian or a person having power of attorney, the information required under letters (a) to (h) is known to the court which authorizes the placement. The court can ascertain the information required under letters (a) to (h) at any time through the custodian or person having power of attorney; the information is then included in the case-file. This information is also to be regarded as records within the meaning of article 17 para. 3.

Regarding Article 18

Under German law, all persons with a legitimate interest are entitled to obtain information from the court files. The restrictions provided for in German law for the protection of the interests of the person concerned or for safeguarding the criminal proceedings are permissible pursuant to Article

20 para. 1 of the Convention.

Regarding Article 24 para. 4

It is clarified that the envisaged provision on reparation and compensation does not abrogate the principle of state immunity.