



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/CO/80/DEU
4 May 2004

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Eightieth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

GERMANY

1. The Committee considered the fifth periodic report of Germany (CCPR/C/DEU/2002/5) at its 2170th and 2171st meetings (CCPR/C/SR.2170 and 2171), on 17 March 2004, and adopted the following concluding observations at its 2188th meeting (CCPR/C/SR.2188), on 30 March 2004.

A. Introduction

2. The Committee welcomes the timely submission of the report by the State party which was drafted in accordance with its guidelines. The Committee notes with appreciation that the report contains useful and detailed information on developments since the consideration of the fourth periodic report and makes reference to previous concluding observations. The Committee also welcomes the responses to the list of issues in written form, which greatly facilitated the dialogue between the delegation and the Committee members. In addition, the Committee appreciates the delegation's oral responses given to the questions raised and the concerns expressed during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the measures taken to improve the protection and promotion of human rights, namely:

(a) In 1998, the establishment by the German Federal Parliament of a Committee on Human Rights and Humanitarian Aid;

(b) On 8 March 2001, the creation of a new National Human Rights Institute entrusted with the task of monitoring the internal human rights situation and generating public awareness in that area;

(c) The submission by the Federal Government of a biannual human rights report to the German Federal Parliament, which, for the first time in 2002, dealt in detail with the internal human rights situation.

4. The Committee appreciates the measures taken to improve the protection of children, in particular legislation granting children a right to education in a non-violent environment, the removal of remaining differences in the legal status of children born in and out of wedlock, and the introduction of elements of jus soli for children born in Germany to foreign parents.

5. The Committee welcomes the progress made in the area of human rights education, in particular for police officers, soldiers and youth.

6. The Committee notes with satisfaction the State party's measures and the progress made, despite continuing problems, in combating xenophobic and anti-Semitic violence.

7. The Committee welcomes the State party's clear and unambiguous position that torture is never acceptable, whatever the circumstances.

8. The Committee commends the continuing positive role of the Federal Constitutional Court in safeguarding fundamental rights, e.g. through its decisions to strengthen the protection of religious liberties and to improve the protection of privacy in the area of audio surveillance of residential premises.

9. Lastly, the Committee takes note with appreciation of the involvement of Parliament and non-governmental organizations in the preparation of the report and the planned follow-up to the concluding observations.

C. Principal subjects of concern and recommendations

10. The Committee regrets that Germany maintains its reservations, in particular regarding article 15, paragraph 1, of the Covenant, a non-derogable right, and those made when the Optional Protocol was ratified by the State party which partially limits the competence of the Committee with respect to article 26 of the Covenant.

The State party should consider withdrawing its reservations.

11. The Committee notes with concern that Germany has not yet taken a position regarding the applicability of the Covenant to persons subject to its jurisdiction in situations where its troops or police forces operate abroad, in particular in the context of peace missions. It reiterates that the applicability of the regime of international humanitarian law does not preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of its agents outside their own territories.

The State party is encouraged to clarify its position and to provide training on relevant rights contained in the Covenant specifically designed for members of its security forces deployed internationally.

12. The Committee notes that owing to the State party's federal structure, in exercising its overall responsibility for compliance with the Covenant it may encounter acts and omissions of the authorities of the Länder in areas of their exclusive competence that are not consistent with the Covenant.

The State party is reminded of its responsibilities in relation to article 50 of the Covenant; it should establish proper mechanisms between the federal and Länder levels to further ensure the full applicability of the Covenant.

13. While the Committee appreciates progress made in practice in the area of equality for men and women in the public service, it notes with concern that the number of women in senior positions is still very low. It is also concerned about wide disparities, in the private sector, of remuneration between men and women (arts. 3 and 26).

The State party should ensure equal treatment of men and women at all levels of the public service. Furthermore, it should continue to take necessary measures so that women enjoy equal participation in the labour market, in particular in terms of equal wages for work of equal value.

14. The Committee notes with concern the persistence of domestic violence despite legislation adopted by the State party (arts. 3 and 7).

The State party should reinforce its policy against domestic violence and, in this framework, should take more effective measures to prevent it and assist the victims.

15. While the Committee notes with satisfaction that the use of firearms by the police is restricted by law to a measure of coercion in extremis and that the number of persons killed or injured by the use of such force has declined in recent years, it is concerned that in some of these cases the use of firearms might not have been justified (art. 6).

(a) The State party should ensure prompt, thorough and impartial investigation of all cases of persons killed or injured as a consequence of the use of firearms by police forces, bring to justice those responsible for violations of the law, and grant full reparation, including fair and adequate compensation, and rehabilitation to victims and their families.

(b) The State party should also provide training to police in methods of controlling difficult situations without using firearms.

16. While appreciating the reduction in the number of complaints made public in recent years, the Committee expresses its concern about continuing reports of ill-treatment of persons by the police, including foreigners and members of ethnic minorities. It is concerned that despite the previous concluding observations of the Committee, the State party has not found ways to monitor the situation effectively and still lacks the necessary statistical information on police misconduct (art. 7).

(a) The State party should promptly, thoroughly and impartially investigate all allegations of police ill-treatment and, where appropriate, bring those responsible to justice.

(b) The State party should protect persons who bring complaints of ill-treatment against police officers against intimidation and provide full reparation, including fair and adequate compensation, and rehabilitation to victims and their families.

(c) The State party should improve monitoring of police misconduct by designating a central governmental agency to maintain and publish comprehensive statistics on ill-treatment and other relevant misconduct, including racist abuse, the measures taken in such cases and the results of investigations and disciplinary or penal proceedings. Furthermore, the State party should establish independent bodies throughout its territory to investigate complaints of ill-treatment by the police.

17. The Committee notes the vulnerable situation of elderly persons placed in long-term care homes, which in some instances has resulted in degrading treatment and violated their right to human dignity (art. 7).

The State party should pursue its efforts to improve the situation of elderly persons in nursing homes.

18. The Committee is concerned that, despite positive measures adopted by the State party, trafficking in human beings, especially women, persists within the territory of Germany (art. 8).

The State party should strengthen its measures to prevent and eradicate this practice, as well as to protect victims and witnesses.

19. The Committee reiterates its concern that adherence to certain religious organizations or beliefs constitutes one of the main grounds for disqualifying individuals from obtaining employment in the public service and that this may in certain circumstances violate the rights guaranteed in articles 18 and 25 of the Covenant.

The State party should comply fully with its obligations under the Covenant in this respect.

20. While it takes note of the firm stance of Germany in favour of respect for human rights within the framework of the anti-terrorism measures it adopted subsequent to the events of 11 September 2001, the Committee expresses its concern regarding the effect of those measures on the situation of human rights in Germany, in particular for certain persons of foreign extraction, because of an atmosphere of latent suspicion towards them (arts. 17, 19, 22 and 26).

(a) The State party should ensure that anti-terrorism measures are in full conformity with the Covenant. The State party is requested to ensure that the concern over terrorism is not a source of abuse, in particular for persons of foreign extraction, including asylum-seekers.

(b) The State party is also requested to undertake an educational campaign through the media to protect persons of foreign extraction, in particular Arabs and Muslims, from stereotypes associating them with terrorism, extremism and fanaticism.

21. The Committee is concerned that the Roma continue to suffer prejudice and discrimination, in particular with regard to access to housing and employment. It also expresses its concern at reports that Roma are disproportionately affected by deportation and other measures to return foreigners to their countries of origin (arts. 26 and 27).

(a) The State party should intensify its efforts to integrate Roma communities in Germany in a manner respectful of their cultural identity, in particular through the adoption of positive action with regard to housing, employment and education.

(b) The State party should guarantee the principle of non-discrimination in its practice relating to deportation and return of foreigners to their countries of origin.

22. The State party should disseminate widely the text of its fifth periodic report and the present concluding observations.

23. In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, the relevant information on the implementation of the Committee's recommendations in paragraph 11. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 April 2009, information on the other recommendations made and on the Covenant as a whole
