



General Assembly

Distr.
GENERAL

A/HRC/11/15/Add.1
20 May 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Eleventh session
Agenda item 6

UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

Germany

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

Germany welcomes the recommendations that were submitted during the course of the Universal Periodic Review process on 4 February 2009. After evaluating the recommendations, its answers are as follows:

1. Germany cannot accept this recommendation. The reasons for this position were already stated in a declaration issued on the occasion of the adoption of the Convention at the United Nations General Assembly in 1990 and remain fully valid:
 - (a) Fundamental human rights are already enshrined in the International Covenant on Civil and Political Rights (Civil Rights Covenant) and in the International Covenant on Economic, Social and Cultural Rights (Social Rights Covenant). These rights apply equally to migrant workers without exception.
 - (b) The main reason for the German Government's decision not to ratify the Convention is that the term 'migrant worker' as used in the Convention is too broad and includes persons who unlawfully reside and unlawfully work in the country. This protects the position of unlawfully resident migrant workers in a way that goes far beyond the unquestionable necessity of granting them all human rights. Also taking into consideration the German Immigration Act, which is aimed at preventing illegal immigration, the ratification of the Convention is not intended.
2. Germany cannot accept this recommendation and refers to its comments on recommendation No. 1.
3. Germany accepts the recommendation. The ratification process is expected to be concluded before the end of the year.
4. Germany cannot accept the recommendation regarding its reservations. Nationally, the Convention on the Rights of the Child also affects areas for which the Länder (federal states) have exclusive responsibility. This means that their position has special influence on the Federal Government's decision-making process. The Länder only agreed to the ratification of the Convention under the condition that the declaration would be submitted. The Federal Government has made repeated attempts, at different political levels, to get the Länder to withdraw the declaration. Currently, the majority of the Länder are not in favour of a withdrawal. However, the Federal Government will continue to try to convince the Länder to withdraw the interpretative declaration on aliens law. Germany accepts the recommendation regarding the optional protocol. The instrument of ratification will be submitted shortly.
5. At this point in time, the German Government cannot make a definitive statement on this recommendation. Germany actively and constructively participated in the Human Rights Council's working group for the elaboration of the Optional Protocol. The Federal Government is currently examining the possibility of signing and ratifying.
6. Germany accepts the recommendation and already submitted the following declaration to the United Nations Human Rights Committee in 2004:

“Pursuant to Article 2 (1), Germany ensures the rights recognized in the Covenant to all individuals within its territory and subject to its jurisdiction.

“Wherever its police or armed forces are deployed abroad, in particular when participating in peace missions, Germany ensures to all persons that they will be granted the rights recognized in the Covenant, insofar as they are subject to its jurisdiction.

“Germany’s international duties and obligations, in particular those assumed in fulfilment of obligations stemming from the Charter of the United Nations, remain unaffected.

“The training it gives its security forces for international missions includes tailor-made instruction in the provisions of the Covenant.”

Germany will continue to assume its ICCPR obligations in this area without restriction.

7. Germany accepts the recommendation and has always acted accordingly.
8. Germany accepts the recommendation and has already partly implemented it. Due to Germany’s federal structure, the national preventive mechanism will consist of a Federal Office and a commission of the Länder. The Federal Office has already been established and begun its work. The agreement on establishing a Länder commission will probably be signed in June so that this commission will also be able to begin working soon.
9. Germany accepts the recommendation. An evaluation is currently being conducted on the issue of adequate resources for the Federal Anti-Discrimination Agency.
10. Germany accepts the recommendation and refers to its standing invitation to Special Procedures.
11. Germany accepts the recommendation.
12. Germany accepts the recommendation. German law already corresponds to the recommendation. Specifically, the German constitution grants everyone equal access to the public service regardless of his or her religion (Article 33 of the Basic Law). To effectively counter discrimination in the labour market, a general ban on discrimination specifically encompassing discrimination based on religion or ideologies was standardized in the General Equal Treatment Act (AGG), which entered into force on 18 August 2006.
13. Germany essentially accepts the recommendation. The German Government is determined to continue its intensive efforts to prevent racially motivated offences. This applies particularly to law enforcement agencies. The children of asylum-seekers enjoy the right to free education under the conditions that apply for all other children, and are subject to compulsory education in accordance with the Länder laws. The German Government takes the recommendations made by the United Nations Committee on the Elimination of Racial Discrimination very

seriously. The German Government will implement the Committee's recommendations to the greatest possible extent. Under German law it is possible to treat candidates for housing differently in order to maintain balanced community structures; this serves to integrate different population groups and therefore aims at reducing discrimination. Applicable German law already stipulates that if an offence was motivated by racism or xenophobia this is to be considered an aggravating circumstance when determining the sentence. In addition, inciting hatred against any specific group in the population is punishable under German law.

14. Germany accepts the recommendation. Diverse approaches to countering racist offences are already being taken.
15. Germany accepts the recommendation. Many of the measures from the National Action Plan against racism are currently being implemented and an evaluation of the best ways to further develop the Action Plan in the future is underway.
16. Germany cannot accept this recommendation. Racist and xenophobic offences are included in the police statistic “politically motivated crime” – under the condition that there are grounds to suspect, after assessing all circumstances and the perpetrator's attitude, that the offence committed against a person was motivated by racism. In contrast, some counselling institutions seem to focus exclusively on the victim's subjective opinion. Accordingly, there are different approaches to recording these offences that are not automatically compatible with each other. However, the police investigate all tips from counselling institutions regarding racist offences. If such a suspected offence is confirmed, it is recorded as an instance of politically motivated crime in the crime statistics. Therefore, through the exchange of information between the police and non-state counselling institutions, it is possible to also include information from victims and witnesses who did not go to the police directly in the crime statistics compiled by the police.
17. Germany accepts the recommendation.
18. Germany accepts the recommendation and will continue its holistic approach to fighting racism and xenophobia with the goal of reaching all levels of society.
19. Germany accepts the recommendation.
20. Germany accepts the recommendation. The programmes adopted in this area since 2001 have a total budget of 166 million euro. Germany played an active and committed role in the preparations for the Durban Review Conference.
21. Germany accepts the recommendation.
22. Germany accepts the recommendation. The Federal Government has already started preparations for making the necessary changes to the law on transsexuality.
23. Germany cannot accept the recommendation in so far as it aims at establishing a separate court for complaints. Cases of ill-treatment by law enforcement officers occur very rarely in Germany. In addition to the possibility of filing a complaint concerning an attack with the authority itself (petition for administrative review),

recourse to independent courts is available in Germany. The German Government sees no added value in a further independent legal remedy in addition to what is already established.

24. Germany accepts the recommendation. It has already been implemented to a large degree. According to the Basic Law, it is always possible to take legal recourse against administrative decisions made by the Jugendamt.
25. Germany accepts the recommendation and has already designed and implemented various measures to ensure that street children's most basic needs are met (in the areas of education, health, nutrition and housing).
26. Germany accepts the recommendation. The Federal Government has already submitted a bill proposing the amendment of various provisions of criminal law to the German Bundestag; this bill is intended to establish the conditions necessary to ratify the United Nations Convention against Corruption.
27. Germany cannot accept this recommendation. Certain infringements on the private sphere are unavoidable when countering potential threats and prosecuting crimes. However, German law requires these infringements to have a legal basis that specifically defines the terms of intervention. In addition, the infringements must be proportionate and allow for judicial review. This ensures that infringements on the private sphere observe rule of law standards. Visual surveillance of a private residence in particular is permitted only for purposes of countering threats and under strict conditions. It may only be used to counter immediate dangers to essential rights, for example if a life is threatened or to protect an undercover investigator. The strict conditions for using visual surveillance of a private residence ensure that a balance between the need to protect the individual against privacy infringements and society's interest in effectively countering threats is maintained.
28. Germany cannot accept this recommendation. Germany, like many other states, avoids allowing the acquisition of multiple nationality through naturalization as a matter of principle. A general exception to this rule is valid only for citizens of other European Union member states and Switzerland. The principle of avoiding multiple nationality applies regardless of the naturalization candidate's nationality and ethnic origin.
29. Germany cannot accept this recommendation. Wearing religious clothing during working hours, particularly in schools, infringes upon students' negative freedom of belief: the freedom from practices and symbols of a faith they do not share. Additionally, the State is obliged to observe the requirement of religious neutrality. Lawmakers can therefore regulate the relationship between the State and religion in schools; in this connection the lawmaker is permitted to limit a civil servant's religious freedom by prohibiting them from openly wearing religious symbols in the classroom. Corresponding laws with varying specifications have been passed in a number of the Länder. Germany believes that these restrictions on religious freedom are compatible with its human rights obligations.
30. Germany accepts the recommendation. Approximately 3.4 million Muslims, who are free to practice their religion, currently live in Germany. It is estimated that

there are around 2600 Muslim places of worship in Germany, including roughly 150 classic mosques; over 100 more mosques are currently being planned or built. In Germany freedom of religion is guaranteed in the constitution as a basic right. Everyone can have restrictions on his or her religious freedom reviewed by the courts; this means laws may also be reviewed by the Federal Constitutional Court and that it is possible to file a complaint with the European Court of Human Rights. The German Government is continuously working to promote respect for people in Germany with different cultural and religious backgrounds as well as for an environment in which all people in Germany can live together peacefully. A national framework for action on fostering relations between the State and Muslims in Germany was created for the first time at the German Islam Conference. The Islam Conference and the National Integration Plan have already served to foster mutual respect, understanding and diversity and have helped rationalize the debate on existing integration problems.

31. Germany accepts the recommendation. It is already being implemented through a number of measures.
32. Germany accepts the recommendation and has already implemented wide-ranging measures to improve educational success among children with a migrant background. School attendance is compulsory for all children and young people whose residence or habitual abode is in Germany. Pupils whose native language is not German are generally placed in the class that corresponds to their age or previous school experience. The transition from primary school to secondary school is contingent on a performance-based recommendation from the primary school and the decision of the child's parents. German language skills are a key qualification for learning and communication and thus a prerequisite for successful integration in school, the labour market and society. As part of the "Skills Development Initiative for Germany", the Länder have pledged to ensure by 2012 that needs-based, intensive language support is available to children before they start school. In the National Integration Plan, the Länder aim to harmonize the school performance of children and young people of migrant background with the average level of all pupils in Germany.
33. Germany accepts the recommendation, and understands it to mean that the school system needs to offer transfer opportunities during the transition from the primary to the secondary level as well as between different types of secondary schools. The decision to attend a vocational school can only be made after completing secondary level I.
34. Germany accepts the recommendation; due to the federal system, the Länder and municipalities have exclusive responsibility for setting specific deadlines. In 2008 the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder decided to update its 1994 recommendations on special educational support by including stakeholders who work for the benefit of people with disabilities. The revision takes into account the developments of recent years and the United Nations Convention on the Rights of Persons with Disabilities, which Germany has already ratified. Considerable resources are allocated to professional support systems at all state levels.

35. Germany accepts the recommendation to the extent that it is aimed at reducing the number of students without school-leaving qualifications. The Federal Government and the Länder have already taken steps to implement it and aim at halving the number of students who leave school without qualifications (7.8 per cent) by 2015.
36. Germany accepts the recommendation and has already taken steps to implement it.
37. Germany accepts the recommendation and is currently in the process of implementing it. Various reports on indicators, which will serve as the basis for further developing integration measures, are currently being prepared at the Federal and Länder levels. In Germany gender equality, religious freedom and the right to freedom of expression are guaranteed in the constitution. Accordingly, the Federal Government is obliged to ensure equal opportunities in training and on the labour market for all men and women. Men and women are also guaranteed equal access to equal educational opportunities. Equal access is granted irrespective of faith or religious beliefs. Attending public schools is free.
38. Germany can largely accept the recommendation. The German legal system guarantees the right to education, basic health care and legal aid also in cases of undocumented immigration. If legal violations are uncovered while carrying out state responsibilities, these must in principle be treated as such. The possibility of declining to subject undocumented migrants to criminal penalties was considered but not implemented out of a desire to effectively manage migration.
39. Germany accepts the recommendation and has already implemented it completely. Germany constantly evaluates its measures for supporting migrants and has expanded them considerably in recent years. The Federal Government spends approximately 750 million euro annually on promoting integration. Germany takes the recommendations of United Nations treaty bodies into account when designing its integration measures.
40. Germany accepts the recommendation to the extent that no form of stigmatization can be allowed to serve as a means of political discourse. Many honours already bring migrants' achievements and outstanding commitment to integration policy to the public's attention.
41. Germany can accept and implement the recommendation according to the following stipulation: Though a specific right to return does not exist for girls and women who were forced to marry, general provisions of aliens law permit return under the following conditions. Women and girls who were forced to marry may return to Germany with their original residence permit within the first six months after leaving. They also have a right to return after the residence permit has expired if they legally resided in the federal territory for eight years prior to leaving and attended a school there for six years, if the request was submitted before they turned 21 and within five years of leaving and if they have a means of supporting themselves.
42. Germany cannot accept this recommendation. Though it is understandable that many people leave their home countries in hopes of better economic and social

prospects, the receiving countries have a justified interest in managing migration. German law therefore determines under which circumstances a person may enter Germany and work there. As a matter of principle, people who have entered the country illegally are therefore told to leave and then deported. In such cases social and humanitarian aspects are examined and taken into account by the German authorities and, if necessary, the courts.

43. Germany accepts the recommendation. Within the framework of the EU, Germany has committed to achieving an ODA ratio of 0.51 per cent by 2010 and 0.7 per cent by 2015. Between 2004 and 2008 Germany increased its ODA ratio from 0.28 per cent to 0.38 per cent. In 2008 Germany ranked as the second largest donor in absolute numbers for the second year in a row.
44. Germany accepts the recommendation.
