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Summary record of the 2930th meeting

Held at the Palais Wilson, Geneva, on Thursday, 18 October 2012, at 3 p.m.

Chairperson: Ms. Majodina

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Sixth periodic report of Germany (CCPR/C/DEU/6; CCPR/C/DEU/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Germany took places at the Committee table.*
2. **Mr. Giesler** (Germany) said that the significant increase in the number of judicial decisions making reference to the core human rights instruments and the many debates held in Parliament on the concluding observations of the treaty bodies demonstrated to what extent awareness of the obligations stemming from those treaties had increased in the State party.
3. Since the submission of the sixth periodic report of the State party, Parliament had been examining a bill to allow parents to legally consent to the circumcision of their child, provided that the procedure was carried out skilfully; the practice would thus no longer be criminalized. Another bill, to tighten up the conditions for pretrial detention, had been put before Parliament.
4. Major efforts were being made to ensure universal access to housing without discrimination. Article 19, paragraph 3, of the General Equal Treatment Act aimed to promote allocation of housing that would encourage diversity within districts. The Federal Government maintained its view that such a provision was appropriate and vital for successful integration.
5. Women had come to represent a third of parliamentarians and 40 per cent of judges. There was still room for progress in management posts, in both the private and the public sector.
6. The crime of torture was codified in the Criminal Code under the offence of forced extraction of a statement. Since 2009, statistics on investigations and prosecutions of police officers had been compiled separately. Lastly, there was continuing political debate regarding the wearing of identification badges by police officers, which was currently obligatory only in four Länder, and in any case not for the federal police.
7. From the start of 2011, Germany had decided of its own accord to suspend expulsions to Greece under the Dublin II Regulation and, furthermore, continued to view the use of diplomatic assurances, under the strict conditions set out by the European Court of Human Rights, as prudent and necessary.
8. **Mr. Behrens** (Germany) said that the Federal Government was aware that considerable efforts were still required to improve facilities and increase staffing levels, in order to reduce the number of people kept under restraint in medical establishments. It would continue to monitor the situation.
9. On the elimination of slavery and servitude, there were no indications that rates of trafficking were rising in the country.
10. The Federal Government deplored the persistence of anti-Semitic or racist crimes but had noted no real upward trend in the number of such cases. To complement action on prevention and suppression, it supported programmes to

combat racist and anti-Semitic mindsets. Lastly, thorough investigations would be carried out on the circumstances of the terrorist murders committed by the extreme right-wing National Socialist Underground (NSU) movement; and the launch in 2011 of a joint protection centre against right-wing extremism would strengthen police cooperation with federal and regional intelligence services.

11. **Mr. Kälin** asked whether there was a procedure in the State party to ensure the implementation of recommendations made by the Committee and the other treaty bodies. He wished to know whether, when the provisions of the Covenant were cited before the courts, the judgements simply made reference to the Covenant or whether they also considered the rights enshrined in it, their substance and their relevance to the case in question.

12. **Mr. Neuman** asked whether the Ministry of Justice, which would thenceforward bear primary responsibility for following up the Committee's findings, had established written procedures and, if it had, whether the delegation could communicate them to the Committee so that they could potentially serve as a model.

13. The delegation should explain why the State party had ultimately decided not to withdraw its reservation to article 15 of the Covenant, given that the principle of *lex mitior* set out in the article was also enshrined in the Charter of Fundamental Rights of the European Union and in Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, instruments to which the State had issued no reservations. With regard to the reservation under which the State party did not recognize the Committee's jurisdiction to consider communications claiming a violation of article 26 of the Covenant, that seemed to contradict the State party's acceptance of the obligations stemming from the article and might not be valid. Dialogue with the delegation on those issues would be welcome.

14. **Mr. Flinterman** hoped to see additional information on the General Equal Treatment Act of 2006, particularly with regard to its scope, the authority it bestowed upon the Federal Anti-Discrimination Agency, the Agency's composition and the possible establishment of similar agencies at the Land level.

15. It would be useful to know whether similar progress to that made at federal level on women's representation in the legislature and the judiciary had been observed at the level of the Länder. Whether it had or not, it seemed that the fundamental goal of effective equality between men and women had not yet been reached. The delegation should explain whether that was due to the persistence of traditional gender-role stereotypes or to other obstacles. It would also be useful to find out about the measures taken to help men and women to achieve a work-life balance.

16. According to the non-governmental organization (NGO) the Open Society Institute, the children of immigrants were very clearly underrepresented in secondary education. That could be viewed as a form of indirect discrimination and the State party should not ignore it. Information on existing or planned countermeasures would be useful. According to the same NGO, some primary and secondary schools separated children from German and immigrant families on the grounds that the latter did not have sufficient German-language skills. The

delegation was invited to comment on those reports in the light of articles 2 and 26 of the Covenant.

17. **Ms. Motoc** said that the proportion of female teaching staff at universities was very low — only 5 per cent of law professorships were held by women — and wanted to know what measures had been taken to ensure better representation of women in the profession.

18. **Mr. Bouzid** asked whether the Committee's concluding observations had been discussed in Parliament on Parliament's own initiative or after they had been referred to Parliament by the Government. He also wanted to know whether the discussions had led to bills that would implement the Committee's recommendations.

19. **The Chairperson** thanked the members of the Committee and said that she would suspend the meeting for a few minutes to allow the German delegation to prepare its responses.

The meeting was suspended at 4.05 p.m. and resumed at 4.20 p.m.

20. **Mr. Behrens** (Germany) said that the Committee's concluding observations were translated into German and sent to Parliament (Bundestag), the Federal Council (Bundesrat), all federal ministries and the Länder administrations. At the Federal Council, where all of the Länder administrations were represented, the observations were not debated as a matter of course, except where there were issues specifically relating to the implementation of the Convention at local level.

21. **Ms. Dahs** (Germany) said that race, ethnic origin and sex were not the only reasons for discrimination that were forbidden by the anti-discrimination law, which also mentioned age, sexual orientation and disability. The law provided for compensation to victims. The Federal Anti-Discrimination Agency offered assistance to victims, carried out studies and gathered statistics. Legal rulings in discrimination cases were recorded in a database.

22. Progress observed at federal level in women's representation in the public sector was reflected at the level of the Länder. In Berlin, for example, 25 per cent of management posts were currently held by women — compared to only 9.8 per cent in 2002 — and 15.1 per cent of judges and prosecutors were female. Nonetheless, sexual equality had not yet been achieved. That would require a change in mentality, which would involve much awareness-raising and educational work. It would also be necessary to give women the means to combine their professional and family lives more effectively — for example, by developing childcare services and opportunities for part-time work. Efforts were being made in that direction. Among other special interim measures, the General Equal Treatment Act stated that, provided that she was equally qualified, a woman applying for a job in a field where women were underrepresented must be given priority over male candidates.

23. **Ms. Hentschel** (Germany) said that, in 2007, at national level, the proportion of university professorships held by women was on average 16.2 per cent. Berlin Land, where the proportion was as high as 29.5 per cent, stood out, thanks to its active policy of increasing the number of women teaching at universities through measures including a quota system. Knowing the language was a key element of access to education and it was often due to insufficient knowledge of German that children with other mother tongues had lower levels of attainment at school.

Improving attainment among such children was a priority, and programmes focused on language learning were being implemented to achieve that goal.

24. **Ms. Behr** (Germany) said that article 19, paragraph 3, of the General Equal Treatment Act was in no way intended to be discriminatory and, on the contrary, promoted integration by preventing ghettoization, which was often the cause of inter-community tensions.

25. **Mr. Kälin** said that article 19, paragraph 3, of the General Equal Treatment Act could nonetheless lead to the exclusion of certain categories of people from some districts on the basis that their presence might give rise to unrest. It would be interesting to know how that provision was interpreted by the courts.

26. **Mr. Flinterman** asked why it appeared that, in spite of the delegation's recognition that efforts still had to be made to bring about sexual equality in practice, special interim measures authorized by law were being used only in exceptional circumstances. In the report on his visit to Germany in 2009 (A/HRC/14/43/Add.2), the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had observed that the Federal Anti-Discrimination Agency should be strengthened so that it could be effective in promoting equality between the sexes. Had any measures been taken in that regard? The Special Rapporteur had also noted that the goal of article 19, paragraph 3, of the General Equal Treatment Act had not been achieved in practice. It would be interesting to know what the current situation was.

27. **Ms. Chanet** asked, with reference to the State party's reservation on article 15, paragraph 1, of the Convention, what the exceptional circumstances consisted in when, where a case was in progress and more lenient legislation came into force, the courts continued to prosecute and sentence according to the previous legislation. She noted with satisfaction that the State party had taken account of the Committee's decision of March 2012 on a communication relating to it and was willing to consider the possibility of withdrawing its reservation regarding the Optional Protocol. Under that reservation, it refused to recognize the Committee's jurisdiction in considering reports of violations of article 26 of the Covenant, if the reported violation concerned rights other than those guaranteed under the Covenant. She strongly encouraged the State party to lift its reservation.

28. **Ms. Behr** (Germany) said that she doubted that there was any jurisprudence concerning article 19, paragraph 3, of the General Equal Treatment Act, but she would seek confirmation from the competent authorities. She added that the Act had been recognized as being in line with European anti-discrimination directives and that, to the best of her knowledge, no cases of discriminatory exclusion resulting from the application of article 19, paragraph 3, had been reported to date.

29. **Ms. Dahs** (Germany) said that special interim measures could be taken to promote women under article 5 of the General Equal Treatment Act, which allowed for differential treatment on the basis of sex in order to redress inequalities. Furthermore, reports that were regularly drawn up on the status of the Act's application meant that progress could be measured, areas requiring additional work identified and the necessary measures taken.

30. **The Chairperson** thanked the delegation for its follow-up replies and invited the members of the Committee to move on to the next set of questions.

31. **Mr. Sarsembayev** requested clarification on the measures taken to combat gender-based violence, and particularly on the many agencies involved, the various training and awareness-raising initiatives, the financing and construction of refuges and any improvements planned and the types of assistance offered to victims of domestic violence. Did the problem of female genital mutilation exist in the State party?

32. With regard to torture and ill-treatment, there were many other points that called for further explanation: there did not seem to be a definition of torture in the country's legislation, there were no national statistics on complaints against prison staff, victims of police brutality were not informed of the complaints mechanisms in place and the federal police itself carried out investigations into allegations of torture or ill-treatment made against its personnel. In some Länder, police officers were advised, but not obliged, to wear badges. A university study had shown that such identification did not improve the effectiveness of the police's work. The study had, however, been commissioned by police senior management rather than, for example, the public prosecutor and was therefore questionable.

33. **Mr. Kälén** hoped that the provisional suspension of transfers to Greece under the Dublin II Regulation would be extended beyond January 2013. Regarding suspension orders in general, it was true that some courts interpreted article 34a, paragraph 2, of the Asylum Procedures Act in the light of the Covenant and the European Convention on Human Rights, forbidding deportation as soon as a "real risk" arose, while others followed the jurisprudence of the Federal Constitutional Court and applied the stricter criterion of an "exceptional situation". That created legal uncertainty and reduced protection from deportation, contrary to article 7 of the Covenant.

34. Statistics on the "fast-track" asylum determination procedure used in airports showed that 90 per cent of applicants had been granted a residence permit in recent years, compared to less than 50 per cent in previous years. That trend, which was both encouraging and troubling (in that it might indicate inadequacies in the processing of previous applications), should be investigated. The two-day deadline for rejected applicants to lodge appeals seemed very short, especially if they were not given help in navigating the complex procedure. The delegation was invited to provide further explanations of the criteria for granting refugee status to conscientious objectors. It would also be useful to obtain clarification on diplomatic assurances. In particular, he asked which authority in the country of destination was requested to provide such assurances and what action the State party took if they were not honoured.

35. The State party had not explained why some decisions to place persons with dementia under physical restraint did not adhere to the required conditions (10 per cent of cases, according to some sources), or how such irregularities were being resolved, given that victims were clearly unable to pursue the available legal remedies themselves.

36. **Mr. Neuman** noted that the State party had analysed the reasons for rising levels of criminal behaviour among young people — and taken a number of measures in that regard — but not the reasons for the high incidence of detention of people from immigrant families, as the Committee had requested. If the level was also higher among persons held in pretrial detention, then it could not be explained

by offending behaviour that was alleged to be more frequent within that category. Information provided by the State party on preventive detention appeared to focus on instances where it was applied retroactively at the end of a sentence, but such a measure could also be imposed at the time of sentencing. Did the explanations provided, and the announced changes to legislation, cover both situations? Would the principle of “distinction” used with regard to ordinary detention be applied in both cases? He would welcome clarification on how such detention was imposed in practice, what the decision-making authority was, how often the detention was reviewed, the possibilities for legal review, the burden of proof and the dual criteria of mental disturbance and risk-level.

37. **Mr. Behrens** (Germany) said that a decision on preventive detention could indeed be made at the time of sentencing or retroactively at the end of a sentence. All the same, the two forms were implemented in very similar ways. The delegation would provide more details on the issue at the next meeting.

The meeting rose at 6 p.m.