

# *Council of Europe contribution for the 30<sup>th</sup> UPR session (April-May2018) regarding Germany*

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## **Prevention of torture (CPT)**

*The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.*

Report on the CPT's 2015 periodic visit: <http://rm.coe.int/168071803e>

Executive summary of the report: <http://rm.coe.int/168071803f>

Government response: <http://rm.coe.int/16807182d1>

## **Council of Europe Commissioner for Human Rights**

*The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.*

On 1 October 2015, the Commissioner published a report following his visit to Germany on 24 April and from 4 to 8 May 2015. The report focused on the legal and institutional framework for the protection and promotion of human rights; the human rights of asylum seekers, refugees and immigrants; and the fight against racism and intolerance.

With regard to the first issue, while welcoming the recent strengthening of the German Institute for Human Rights through the adoption of a law giving it a solid legal basis, the Commissioner calls for the powers of the Institute to be increased. Other institutions for the protection and promotion of human rights in Germany currently have inadequate means and powers and are not sufficiently independent. The Federal Anti-Discrimination Agency should be empowered to investigate complaints brought to its attention and to go to court, and its budget for awareness and research activities and staff should be increased. The National Agency for the Prevention of Torture should also be adequately resourced and the number of its members and support staff should be increased. A fully independent and well-functioning complaints mechanism covering the conduct of all law enforcement officials should be established.

While welcoming the existence of a general framework for the democratic oversight of the intelligence and security services in Germany, the Commissioner considers that the legal framework and remedies should be improved to ensure that human rights are fully protected against any abuse by these services. The parliamentary oversight operated by the Parliamentary Control Panel must be bolstered by strengthening its support staff and technical expertise. The resources and technical expertise available to the G-10 Commission should also be reviewed. All oversight bodies should have access to all information which they deem to be relevant to the fulfilment of their mandates. The question of surveillance operated by the German intelligence services over non-German citizens outside of Germany should be clarified. Adherence to Article 8 of the ECHR, which guarantees the right to private life, should be ensured with respect to all activities of the state parties, including all of their national security and intelligence activities.

As concerns the human rights of asylum seekers, refugees and immigrants, the Commissioner acknowledges the very considerable efforts made by Germany to receive the high numbers of persons arriving. However, with the number of applications steadily increasing, more staff responsible for making asylum decisions are crucial to ensuring that the asylum procedure is both expedient and fair. In spite of the challenges arising from the numbers, reception conditions must remain in line with human rights standards. To this end, nationwide obligatory minimum standards for the operation of reception facilities should be introduced and the Federal Government should better support the Länder and municipalities in shouldering the costs of reception. Further steps should be taken to improve asylum seekers' access to health care, language courses and family reunification. Allegations of ill-treatment of asylum seekers at reception facilities should be effectively investigated.

The Commissioner finds that the figures available on the operation of the Dublin system in Germany, and notably the minimal differential between transfers of asylum seekers from and to the country, provide a powerful illustration of the fact that Europe is maintaining a system which is unfair to asylum seekers without even obtaining the results for which it is purportedly kept alive. Dublin cases are also further aggravating the backlog of cases pending before German courts. The Commissioner believes that there is a pressing need to overhaul the Dublin Regulation and calls on Germany to take the lead in replacing it with a more human rights oriented system.

The Commissioner welcomes the measures the German authorities have taken since 2013 to help Syrian refugees to face the humanitarian crisis. The German authorities should continue to play a leading role in this regard, increase the resettlement quota, and fully align the status of resettled refugees to that of persons granted status after an asylum procedure in the country.

With regard to the fight against racism and intolerance, the Commissioner is concerned that these phenomena are on the rise in Germany, as reflected in an upsurge of attacks against facilities for asylum seekers. The German authorities should broaden their approach to combating racism, from one which focuses almost exclusively on the activities of extremist organised groups to one which recognises that racism, including racially motivated offences, often comes from individuals not at all associated with these groups.

While the NSU affair clearly illustrates the seriousness of hate crimes committed by extreme right-wing movements, the Commissioner believes that the reform efforts it is prompting should have a broader reach. Thus, the welcome amendments introducing the racist motivation as an aggravating circumstance of ordinary offences should be accompanied by both formal guidance for the police and prosecutors and by training of all the actors of the criminal justice system, including judges, on racist offences. The German authorities are also invited to improve their system for recording and following up on hate crime. The Commissioner also urges the German authorities and political leaders to condemn all instances of hate speech and hate crime, and to abstain from using rhetoric that stigmatises particular groups of the population.

Following the NSU affair, the German authorities could look more deeply into the extent to which structural forms of racism may be preventing law enforcement authorities from providing a professional service to Germany's minority groups. Concerned, in particular, at reports of racial profiling practices, the Commissioner invites the German authorities to consider introducing a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation

activities can only be exercised on the basis of a suspicion founded on objective criteria, and to strengthen the training of law enforcement officers on the subject of identity checks. Allegations of racist or racially discriminatory conduct by law enforcement officials should also be effectively investigated and the possible racist motivation of such acts should always be closely examined.

Lastly, the Commissioner calls on the German authorities to keep their legislation against racial discrimination and racist hate speech under review. In particular, he stresses the need to ensure effective legal protection for victims of discrimination by public authorities and the importance of comprehensive data broken down by grounds such as ethnic origin for effective action against racism and discrimination.

### ***Fight against racism and intolerance (ECRI)***

*The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.*

ECRI adopted its [Fifth report](#) on Germany on 5 December 2013.

ECRI adopted its [Conclusions](#) on the Implementation of the Recommendations in Respect of Germany Subject to Interim Follow-Up on 8 December 2016.

### ***Protection of minorities***

#### ***Framework Convention for the Protection of National Minorities***

*The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.*

The Advisory Committee on the Framework Convention adopted the [4th Opinion](#) in respect of Germany on 19 March 2015.

[Resolution CM/ResCMN\(2016\)4](#) on the implementation of the Framework Convention for the Protection on National Minorities by Germany was adopted by the Committee of Ministers on 3 February 2016 at the 1246th meeting of the Ministers' Deputies

### ***European Charter for Regional or Minority Languages***

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

Germany submitted its 5th periodical [report](#) in April 2013. The Committee of Experts adopted its [evaluation report](#) on Germany in November 2013 and the corresponding Committee of Ministers' [recommendations](#) were adopted in May 2014.

The Committee of Experts' evaluation report highlights that the German authorities inform the general public about the Charter and the regional or minority languages used in Germany and that they published a brochure in 2012 on minorities and regional or minority languages. In addition, the Federal Ministry of the Interior organised an implementation conference on the Charter and the Framework Convention for the Protection of National Minorities. The Committee of Experts considers these measures as exemplary and shares the view of the Advisory Committee on the Framework Convention for the Protection of National Minorities that this constitutes best practice to be followed by other states.

The Committee of Experts confirms its readiness to work together with Germany to ensure the application of the Charter in all areas where there are sufficient numbers of speakers of regional or minority languages and appreciates the German authorities' willingness to work on further developments in this field.

### ***Action against trafficking in human beings (GRETA)***

*The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.*

*The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.*

*The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and*

*integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.*

*Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.*

*The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.*

### **[GRETA's page on Germany](#)**

A 2<sup>nd</sup> round evaluation visit to DEU will take place in the 2<sup>nd</sup> quarter of 2018. GRETA's 2<sup>nd</sup> round evaluation report should be published in early 2019, with 2<sup>nd</sup> round CoP recommendations following shortly thereafter.

[GRETA's 1<sup>st</sup> round evaluation report and Government's comments](#)  
[Committee of the Parties' recommendations – 1<sup>st</sup> evaluation round](#) (also available in [German](#))  
[Government's reply to Committee of the Parties' 1<sup>st</sup> round recommendations](#) (also available in [German](#))

## ***Preventing and combating violence against women and domestic violence***

*The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.*

Germany signed the Istanbul Convention on 11 May 2011.

## ***Fight against corruption (GRECO)***

*The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a "horizontal" evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.*

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

GRECO's [Fourth Round Compliance Report](#) on Germany was adopted on 24 March 2017 and made public on 6 July 2017.

## **Execution of judgments and decisions of the European Court of Human Rights**

### **Statistical data**

At 31 December 2016, there were 27 cases against Germany pending before the Committee of Ministers for supervision of their execution (20 at 31.12.2015). 21 of these cases were "leading cases" (17 at 31.12.2015), i.e. raising a new structural / general problem and requiring the adoption of general measures, the other cases being "repetitive cases" (including a number of friendly settlements) concerning issues already revealed by earlier judgments of the European Court of Human Rights.

In 2016, the CM was seized by 10 new cases (5 in 2015) against Germany of which 6 leading cases (5 in 2015) and the sums awarded in 2016 as just satisfaction amounted to 69 368euro .

In 2016, 3 cases (4 in 2015) were closed by the adoption of a Final Resolution, of which 2 leading (3 in 2015).

### **Main cases /groups of cases under Committee of Ministers' supervision**

The main cases presently under the Committee of Ministers' supervision cover notably the issues presented below. For a fuller overview of the situation see the [Country Factsheets](#) available on the website of the Department for the Execution of Judgments of the European Court of Human Rights and in the [Committee of Ministers' Annual Reports](#) on its supervision activity. More detailed information on the status of execution in individual cases can be found through [HUDOC-EXEC](#).

### **Lawfulness of detention and related issues**

*Absence of speedy review of detention orders and unlawful continued detention notwithstanding the expiry of existing orders - [H.W.](#), application No. 17167/11, judgment final on 17/02/2014, standard supervision - [Schönbrod](#), application No. 48038/06, judgment final on 24/02/2012, standard supervision*

*Excessive length of detention on remand on account of the failure of the competent domestic court to act with the necessary special diligence in conducting trial - [El Khoury](#), application No. 8824/09, judgment final on 09/10/2015, standard supervision*

### **Functioning of justice**

*Conviction and sentencing to prison for drug offences committed on incitement by undercover police officers, essentially based on evidence obtained as a result of that entrapment - [Furcht](#), application No. 54648/09, judgment final on 23/01/2015, standard supervision*

*Unjust refusal by an appeal court to deal with the merit of a case on the ground of the defendant's non-attendance of the hearing, despite the fact that his counsel was present and ready to defend him - [Neziraj](#), application No. 30804/07, judgment final on 08/02/2013, standard supervision*

*Violation of presumption of innocence on account of the domestic courts' reasoning when revoking the suspension of a prison sentence imposed earlier on the applicant, by clearly declaring him guilty of a new*

offence before he was proved guilty by a competent trial courts in a final judgment - [El Kaada](#), application No. 2130/10, judgment final on 12/02/2016, standard supervision - [Cleve](#), application No. 48144/09, judgment final on 15/04/2015, standard supervision

### **Protection of private and family life**

Failure by the domestic courts to appreciate the personal interest of a husband when refusing to examine the merits of his complaint against the rejection by the Federal Institute of the request of his deceased wife (a quadriplegic) to acquire a lethal drug to commit suicide at home, in Germany. This refusal forcing the couple to travel to Switzerland to enable the wife to commit suicide - [Koch](#), application No. 497/09, judgment final on 17/12/2012, standard supervision

### **Freedom of expression**

Adoption of civil injunctions unduly limiting freedom of expression following criticisms of doctors carrying out abortion - [Annen](#), application No. 3690/10, judgment final on 26/02/2016, standard supervision

## **Social and Economic Rights (ECSR)**

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

### **[Germany and European Social Charter](#)**

## **Venice Commission**

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

Nothing on Germany