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## **CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Germany (ratification: 1961) Published: 1991**

Description:(CEACR Individual Observation)  
Convention:C111  
Country:(Germany)  
Subject: **Equality of Opportunity and Treatment**  
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Subject classification: Women

### **I. Equality of opportunity and treatment irrespective of political opinion**

1. Further to its previous comments, the Committee notes with satisfaction the following developments:

(a) On 26 June 1990 the Land Government of Lower Saxony decided to revoke the decree against radicals and to discontinue systematic inquiry from the authority for the protection of the Constitution in regard to applicants for employment in the public service. It also decided to offer renewed opportunities of employment in the public service to persons who had previously been refused admission to such employment under the aforesaid provisions, to discontinue proceedings against officials or salaried employees in pursuance of those provisions that were still pending, and to offer reinstatement to persons against whom final court decisions of dismissal or demotion had already become effective. Following these measures, problems in the application of the Convention of the kind examined by the ILO Commission of Inquiry in its report of 1987 do not exist anymore or are in the course of being resolved in most of the Länder of the Federal Republic, namely: Berlin, Bremen, Hamburg, Hessen, Lower Saxony, North Rhine-Wesphalia, Saarland, Schleswig-Holstein.

(b) In July 1990, the President of the Federal Republic granted a pardon to Herbert Bastian (an official in the Federal Postal Service who had appeared as a witness before the Commission of Inquiry and whose dismissal had subsequently been ordered by the Federal Administrative Court, principally on account of his exercise of an elective mandate as a town councillor on behalf of the German Communist Party), enabling him to resume service as from 1 August 1990.

2. The Committee has also taken note with interest the judgements rendered by the Federal Labour Court on 28 September 1989 and 14 March 1990 in the cases of Heinrich-Udo Lammers and Thomas Weber. In the former case the Court held that the attempted termination of a contract of employment on account of the employee's political activities was not socially justified. In the latter, it held refusal of employment to be contrary to the constitutional guarantee of the right to equal access to the public service according to ability, qualifications and occupational performance. The Court distinguished between the duties incumbent upon officials and upon persons

employed in the public service under a contract of employment and observed that, in considering the justification for exclusion from the public service on account of political activities of contractual employees, regard must be had to the duties to be discharged, the nature of the functions performed by the employing authority and the field of work in which the employee would be engaged. These judgements applied, in the case of persons employed in the public service on the basis of a labour contract, criteria corresponding to those stated by the Commission of Inquiry in its recommendations with regard to persons in the public service generally.

3. The Committee notes that in cases concerning officials, the administrative courts, in contrast to the labour courts, still do not differentiate in the application of provisions on the duty of faithfulness, according to the nature of the functions performed. The Committee notes that, in August 1990, the Federal Constitutional Court, following earlier decisions to like effect noted by the Commission of Inquiry in paragraph 456 of its report, declined to accept for hearing, on the ground of insufficient prospects of success, a complaint arising out of the dismissal of a lifetime official on account of political activities ordered by the administrative courts of Lower Saxony.

4. The Committee would accordingly appreciate information on any measures which may be contemplated by the federal authorities and by the Länder of Baden-Württemberg, Bavaria and Rhineland-Palatinate, in response to the recommendations of the Commission of Inquiry, with a view to ensuring full compliance with the Convention.

## II. Effective remedies in cases of sex discrimination

5. The Committee has noted the two judgements rendered by the Federal Labour Court on 14 May 1989 concerning compensation in cases of sex discrimination in respect of employment, the texts of which were communicated by the Government with its last report. Although in both cases there was found to have been unlawful discrimination, the Court held that, apart from recovery of any actual expenses incurred by the worker, compensation for immaterial damages might be awarded only where there was serious infringement of the worker's general rights as a human being. Accordingly, in one of the cases, no award of damages was made, whereas in the other the award was limited to one month's wages. It follows that in many cases of discrimination in employment on the ground of sex, the worker will not be able to obtain any compensation, and in others only nominal compensation may be obtainable. The Committee would, therefore, appreciate information on the further measures which it is proposed to take with a view to providing effective sanctions or remedies in cases of discrimination in employment on the ground of sex.

6. The Committee is raising other points in a request directed to the Government.