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## **CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Germany (ratification: 1961) Published: 1993**

Description:(CEACR Individual Observation)  
Convention:C111  
Country:(Germany)  
Subject: **Equality** **of** **Opportunity** **and** **Treatment**  
Display the document in: [French](#) [Spanish](#)  
Published:1993  
Subject classification: Non-discrimination (Employment and Occupation)  
Subject classification: Women

### Communications of FISE concerning discrimination on the ground of political opinion

1. The Committee notes the information contained in the report of the Government for the period ending 30 June 1992. It has also given further consideration to the communications received in February 1991 and December 1991 from the World Federation of Teacher's Union (FISE) concerning the measures taken in regard to personnel in the public service education system in the former German Democratic Republic. The Committee notes that copies of the aforementioned communications had been sent to the Government to enable it to present comments thereon and that in its 1992 observation the Committee had requested the Government to provide detailed information on a number of points raised in the communications.

2. The Committee recalls that in its communications FISE alleged that personnel in the public service education system in the former GDR, through application of the policy which had already been applied in the Federal Republic of Germany, had been arbitrarily dismissed from their teaching posts in violation of the Convention. Personnel in the public service education system in the former GDR were required to complete questionnaires concerning, among other things, their past positions, past national decorations received, whether they had been reproached or suspected of having violated fundamental principles of humanity or of States' rights and whether they were willing to commit themselves to the fundamental liberal-democratic system of the Federal Republic of Germany and to defend its laws. Dismissals of such personnel might result from the nature or content of answers to the questionnaire or from a refusal to answer it.

3. The Committee notes from the documentation submitted by FISE supplying details on 11 individual cases that the officials in question were nine teachers who had been dismissed or had been given notices of dismissal from their positions pursuant to the German Reunification Treaty, Chapter XIX, Section III, Annex 1, paragraph 4 and paragraph 5 (in two cases) and two officials who had been refused appointment to teaching/administrative positions. The information further indicates that most, if not all, of the public officials had filled out questionnaires prior to their termination. There was no indication in the documentation that any of the individuals in question replied negatively to the inquiry on whether they would commit themselves to the

fundamental liberal-democratic system of Germany and defend its laws. The reasons given for the dismissals, notices of dismissals and refusal to appoint were based on former membership and/or position in certain political parties or organizations including positions held as President of the Union of Teachers of the GDR, member of municipal council, school inspector and other more general reasons such as unsuitability to teach in a democratic society. In the two dismissals made pursuant to paragraph 5, one case was based on former employment with the Ministry for State Security and the other gave no reason in the letter of dismissal.

4. Based on the aforementioned information, the Committee, in its 1992 observation, had requested the Government to provide detailed information on the number of public service officials, including teachers, who had been dismissed from their posts following reunification, the criteria applied in determining removal, as well as the procedural protections applicable and followed, and the manner in which the information collected from the personnel questionnaires was reviewed and used to condition continuation of employment in the public service, including teaching.

5. The Government has replied that no figures are available on the number of workers who have been discharged from the public service in the new Länder. It denies any question of arbitrary dismissal of public servants of the former GDR citing the provisions of the German Reunification Treaty, Chapter XIX, Annex I, Topic A, Section III, No. 1, paragraphs 4 and 5, which provide special legal bases for the termination of work relationships in the public administration in the Acceded Area (former GDR). The Government states that the provisions of paragraphs 4 and 5 take account of the special situation at the time of radical change in the State, and are indispensable for the creation in the Acceded Area of a constitutional and effective administration. The Government states that paragraph 4 of the Treaty provides that regular termination of a work relationship in the public service is permissible, if: (1) the worker does not meet the requirements, owing to inadequate specialist qualification or personal unsuitability; or (2) the worker can no longer be employed, owing to lack of necessity; or (3) the former appointment is abolished without replacement or, if the appointment is combined, incorporated or seriously altered, it is no longer possible to offer the previous employment or similar employment. The Government states that paragraph 5 of the Treaty provides that extraordinary termination of a work relationship is permissible based on serious reasons which exist when the worker: (1) has violated the principles of humanity or of the rule of law, especially the human rights guaranteed in the International Covenant on Civil and Political Rights of 19 December 1966 or has violated the principles contained in the Universal Declaration of Human Rights of 10 December 1948; or (2) has worked for the former Ministry for State Security or the Department of National Security, and a continuation of the work relationship thereby appears unacceptable. The Government states that termination under paragraph 5 always implies that an individual investigation has been carried out and that normal recourse to law, to appeal against termination, is available to the person concerned.

6. The Committee regrets that no figures are available on the number of workers who have been discharged from public service in the new Länder following reunification. The Committee has been informed that a number of individual communications alleging arbitrary dismissal on the basis of the Reunification Treaty have been received by the Office, but due to the individual nature of the complaints the Committee was not in a position to examine this information. The Committee also

notes that the Government failed to provide the requested information on the criteria used to determine applicability of the provisions authorizing dismissal, the procedural protections available and the manner in which the information collected from the personnel questionnaires is reviewed and used to condition continuation of employment in the public service. In fact, no mention is made of the questionnaires in the Government's report.

7. In order for the Committee to determine the precise effect of the provisions of paragraphs 4 and 5 in Annex I to the Reunification Treaty, it must draw attention to how these provisions are being applied in practice to condition employment in the public service and how this application relates to the requirements of the Convention. In Article 1, paragraph 1, of the Convention, the term discrimination includes any distinction, exclusion or preference made on the basis of specified grounds including political opinion, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. With respect to the protection of discrimination on the ground of political opinion, the Committee has stated in paragraph 57 of its 1988 General Survey that "the Convention implies (protection) in respect of activities expressing or demonstrating opposition to the established political principles - since the protection of opinions which are neither expressed nor demonstrated would be pointless ... The protection of freedom of expression is aimed ... at giving (an individual) an opportunity to seek to influence decisions in the political, economic and social life of his society". The Committee observes that to be meaningful the protection of political opinion must therefore extend to the collective participation in political parties and organizations.

8. In determining whether there is discrimination under the Convention, account must be taken of Article 1, paragraph 2, concerning the inherent requirements of a particular job, and of Article 4 concerning measures regarding activities prejudicial to the security of the State. It does not appear to the Committee that issues concerning the security of the State are raised in the communications of FISE as they deal with employment in teaching and lower-level administrative positions, therefore the Committee finds it unnecessary to examine the matter in light of the requirements set out under Article 4.

9. As regards the question of the inherent requirements of a particular job in relation to political opinion, the Committee in paragraph 126 of its 1988 General Survey stated that "although it may be admissible, in the case of certain higher posts which are directly concerned with implementing government policy, for the responsible authorities generally to bear in mind the political opinions of those concerned, the same is not true when conditions of a political nature are laid down for all kinds of public employment in general or for certain other professions: for example, when there is a provision that those concerned must make a formal declaration of loyalty and remain loyal to the political principles of the regime in power".

10. With respect to the inherent requirements of teaching positions, the Committee observes that consideration of political opinion is justified only where the opinions are in conflict with the obligations normally attached to teaching duties such as objectivity and respect for the truth, or are in conflict with or prejudice the aims and principles professed by the schools to which the officers belong, such as in an institution for religious studies. In this regard, the Committee would draw the Government's attention to the findings of the 1987 Commission of Inquiry which considered the

special situation of teachers in the Federal Republic of Germany and the requirement of loyalty oaths conditioning their employment, both because the majority of cases brought to the Commission's attention concerned that profession and because of the emphasis placed by the Government of Germany on the special responsibility of teachers to uphold the free democratic basic order and on the vulnerability of pupils to be influenced by teachers. The Commission noted that only exceptionally had teachers been excluded from employment on the ground that they had tried to indoctrinate pupils or had otherwise misconducted themselves in their service. The Commission found that there could be no justification to assume that, because a teacher was active in a particular party or organization, he would behave in a manner incompatible with his duties. The Commission concluded that, in most of the cases concerning teachers brought to its attention, the measures taken in application of the duty of faithfulness to the Constitution had not in various respects remained within the limits of the inherent job requirements exception provided in the Convention.

11. The Committee observes from the information provided by FISE that the dismissals were based on the individual's former membership or position in certain political parties or organizations and not on any conduct falling within the scope of what should reasonably be considered as an inherent requirement of the profession of teaching. Teaching or administrative skills, competence or qualifications were not questioned in any of the cases. The Committee further observes that the broad bases for dismissal provided in paragraphs 4, in particular 4(1), and 5 of the Annex to the Reunification Treaty upon which the Government relies, would not appear to lay down sufficiently precise criteria to ensure that there is no discrimination on the ground of political opinion.

12. The Committee hopes that the Government will re-examine its application of paragraphs 4 and 5 of Annex 1 to the Reunification Treaty and its use of the questionnaires, and that action will be taken to ensure that only such restrictions on employment in the public service in the new Länder are maintained as correspond to the inherent requirements of particular jobs within the meaning of Article 1, paragraph 2, of the Convention or as can be justified under the terms of Article 4 of the Convention. In this respect the Committee invites the Government to refer to the considerations set out in the Recommendations of the 1987 Commission of Inquiry, paragraphs 585 to 593, based on their relevance and applicability to the recent measures taken in the public service in the new Länder following reunification. The Committee requests the Government to report on the measures contemplated or taken to ensure that employment in the public service in the new Länder will be based on the inherent requirements of the job, such as by laying down of guidelines or sufficiently precise and objective criteria. The Committee hopes that the Government will provide statistics or other available information regarding the number of public officials, including teachers, who have been dismissed from their posts in the new Länder following reunification, the criteria applied in determining removal, the procedural protections available and the manner in which the information in the questionnaires is reviewed and used to determine conditionality for employment in the public service. It also requests the Government to indicate the rights of appeal available for the decisions taken under paragraphs 4 and 5 of the Reunification Treaty.

Follow-up to the recommendations of the 1987 Commission of Inquiry concerning

equality of opportunity and treatment irrespective of political opinion

13. The Committee notes that the operation of the above-mentioned paragraphs of the Reunification Treaty has been extended to the end of 1993. It understands that the relevant federal legislation establishing the duty of faithfulness to the Constitution has become applicable in the new Länder. Recalling its direct request of 1991, the Committee hopes that the Government will provide information on the measures taken with a view to ensuring equality of opportunity and treatment in accordance with the Convention in the new Länder, more particularly as regards: (a) employment in the public service in those regions; and (b) access of persons from those regions to the federal public service and to the public service of the previously existing Länder of the Federal Republic.

14. In previous comments, the Committee had requested the Government to continue to supply information on any measures taken by the federal authorities and by the Länder of Baden Württemberg, Bavaria and Rhineland-Palatinate, in response to the recommendations of the 1987 Commission of Inquiry concerning the requirement of loyalty oaths conditioning employment in the public service of the Federal Republic of Germany. The Committee notes with interest from the Government's report that the systematic inquiries concerning the loyalty of applicants for positions in the public service have been abolished in Baden-Württemberg by a directive of the Ministry of the Interior dated 27 October 1990, in Bavaria by an announcement by the Government of the State and Land of Bavaria of 3 December 1991 and in the Rhineland-Palatinate by an administrative provision of the Ministry of the Interior of 27 December 1990. As a result, the Government reports that no systematic inquiries concerning applicants have been made in Germany since 1 January 1992. The Committee requests the Government to provide copies of the above provisions and directives and to continue to supply information on the practical application of the recommendations of the Commission of Inquiry.

Equality of opportunity and treatment on the ground of sex

15. The Committee notes that a draft law to bring about the equal status of men and women is currently being prepared by the Federal Ministry for Women and Young Persons and that, according to the Government, it will further improve sanctions against discrimination on the ground of sex in appointment and promotion in employment. The Committee hopes its previous comments will be taken into consideration in the drafting of the new legislation and that the Government will supply a copy of the text upon its adoption.

Equality of opportunity and treatment on grounds of race and national extraction

16. The Committee requests the Government to provide information on the policies, programmes or other measures taken or pursued with a view to eliminating discrimination and promoting equality of opportunity and treatment of all persons in employment and occupation on grounds of race and national extraction, in regard to access to training, access to and security of employment and terms and conditions of employment.

## **Requests**

The Government is asked to report in detail for the period ending 30 June 1993.

Report date:30:06:1993