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CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Germany (ratification: 1961) Published: 1994

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The Committee notes the information supplied in the Government's report and appended documentation in reply to its previous observation and direct request.

Discrimination on the ground of political opinion

Public officials from the former German Democratic Republic (GDR)

1. The Committee recalls that the World Federation of Teachers' Unions (FISE) alleged that personnel in the public service education system in the former GDR had been arbitrarily dismissed from their teaching posts in violation of the Convention. From the documentation submitted by FISE detailing individual cases, it appeared that the officials in question had been dismissed or given notices of dismissal pursuant to the German Reunification Treaty, Chapter XIX, Section III, Annex I, paragraphs 4 or 5. The Committee further recalls that the Government had replied that these paragraphs established legal grounds for the dismissal of public servants of the former GDR. Paragraph 4 of the Treaty provides, inter alia, that ordinary termination of a work relationship in the public service is permissible if the worker does not meet the requirements, owing to inadequate specialist qualifications or personal unsuitability. Paragraph 5 provides that extraordinary termination of the 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 or has violated the principles contained in the Universal Declaration of Human Rights; or (2) has been active for the former Ministry for State Security or the Department of National Security, and a continuation of the work relationship thereby appears unacceptable.

2. The Committee had observed that the broad bases for dismissals provided in paragraphs 4, in particular 4(1), and 5(1) and (2) did not appear to lay down sufficiently precise criteria to ensure that there was no discrimination on the ground of political opinion. It also observed that the dismissals of the public servants in question appeared to be based on their 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. The Committee accordingly had previously requested the Government to re-examine its application of paragraphs 4 and 5 of Annex 1 to the Reunification Treaty in order to ensure that only such restrictions on employment in the public service would be maintained as correspond to the inherent requirements of the job. It also requested the Government to provide statistics regarding the number of public officials, including teachers, who have been dismissed from their posts in the new Länder following reunification, the criteria applied, the procedural protections available and the rights of appeal.

3. In its latest report, the Government denies that political opinion has played a role in the dismissal of teachers following reunification. According to the Government, teachers who were dismissed had proved themselves to be unsuitable for continued teaching because they actively contributed, in the former GDR, to supporting the unjust regime to the disadvantage of the children entrusted to them, and to the disadvantage of their parents, in a way that exceeded their duties as public servants (for example: schools were intended to indoctrinate students; teachers had the task of assuring the future military generation; the school management had to give its opinion on applications made by parents for travel; the school management formed part of the reporting apparatus of the Ministry of State Security; teachers had to obtain information from the students about the political attitudes of their parents).

4. With respect to the application of paragraph 5 of Annex I to the Reunification Treaty, the Government emphasizes the extraordinary nature of the provision, and states that it may be implemented only for important reasons on the basis of proof in individual cases. As for the application of paragraph 4, the Government points out that the right of ordinary dismissal for, inter alia, deficient personal suitability, provided by this clause, ceased to have effect on 31 December 1993. According to the Government, prior "political incrimination" had been a reason for deeming a public official of the former GDR unsuitable under this section. In cases involving prior political incrimination, the Government considered that the more the person, by the assumption of certain functions, had identified himself with the unjust regime, the more incriminated he was, and the less reasonable it was for him to hold a position in the current administration.

5. The Government describes the practical implementation of paragraph 4 with reference to the new Land of Thuringia, including the guidelines issued on indicators of personal unsuitability for service as a teacher. According to the Government, in every case of ordinary or extraordinary dismissal, verification of the personal suitability for further employment, or that it is unreasonable to continue the employment, is determined by a hearing of the person concerned. The Government reports that, in the Land of Thuringia, it had to verify the suitability of a total of 36,000 teachers and educators from the former GDR after unification. Following several levels of hearings and personal interviews, 1,406 or 3.91 per cent were dismissed on account of personal unsuitability, under paragraph 4.

6. The Government reports that persons who have been dismissed have the right to bring their cases before the labour courts, the German Constitutional Court and the European Court of Human Rights. The Government also reported to the United Nations Committee on Economic, Social and Cultural Rights (UN document E/C.12/1993/SR.36, 7 December 1993) that, of the teachers who had been dismissed in Thuringia, 1,222 had appealed and 184 had accepted their dismissal. Of

the appeals, 583 had been settled amicably, 87 had been retained and the remaining 736 cases were still pending. One hundred and forty individual cases concerning teachers and public servants have been accepted for consideration by the Federal Constitutional Court.

7. The Committee notes the 31 December 1993 expiration date of the right to dismiss under paragraph 4 of Annex I to the Reunification Treaty. It also notes that the majority of dismissals of public servants from the former GDR, including teachers, had been based on that provision. The Committee must once again refer to its previous comments on the imprecise criteria of paragraphs 4 and 5. In addition, it observes that the indicators contained in the guidelines on how to apply the Treaty provisions in Thuringia also place an emphasis on the official's former position or organizational affiliations rather than on individual conduct. Thus, the Committee finds that use of the guidelines as criteria upon which to base dismissals would be insufficient to protect against discrimination based on political opinion. The Committee must stress the importance it places on objective judicial review available to the public officials. It hopes that such procedural protections will ensure that the dismissals which are affirmed in the public service are only those based on each individual's failure to meet the inherent requirements of the particular job, within the meaning of Article 1, paragraph 2, of the Convention. The Committee asks the Government to confirm that the right to dismiss under paragraph 4 has in fact lapsed, to confirm that the guidelines are no longer being used to determine suitability of teachers, to provide statistical information on the number of officials who have been dismissed in the new Länder other than Thuringia, and on the appeals filed against dismissals made under paragraph 4 of Annex I to the Reunification Treaty, and to supply copies of any court decisions or other rulings issued in such matters.

8. With respect to the continued application of paragraph 5 of Annex I to the Reunification Treaty, the Committee hopes that the Government will ensure that discrimination in dismissals and employment criteria based on political opinion does not occur in violation of Article 1, paragraph 1, of the Convention. It further hopes that only such restrictions on employment in the public service in the new Länder are maintained, as correspond to the inherent requirements of the job, within the meaning of Article 1, paragraph 2, or as can be justified under the terms of Article 4 of the Convention. The Committee requests the Government to keep it informed of any dismissals or refusals to hire based on the application of paragraph 5, in particular subsection 2, of any guidelines developed by the new Länder to implement the section, of the interpretation given to the provision concerning who has been active for the Minister of State Security, as well as of any court decisions in which the application of paragraph 5 has been challenged.

9. Concerning the old Länder in the western part of the country, the Committee notes that section I.2.1.3 of the Bavarian Government's Announcement of 3 December 1991 provides that no one is fit for public service who has violated the principles of humanity or rule of law, or who has been active for the Minister of State Security or the Office of National Security in the former GDR. The Committee notes the similarity of this provision to paragraph 5 of Annex I to the Reunification Treaty. It requests the Government to indicate the manner in which this provision is applied and the interpretation given to the phrase "who has been active for the Minister of State Security". It also requests the Government to indicate whether any other old Länder

have adopted similar policies towards former GDR public officials and, if so, to provide the information requested above.

10. The Committee also notes that section II.1 of the Bavarian Announcement of 3 December 1991 provides that an applicant for public service must fill out the questionnaire in Appendix 2 and sign the declaration in Appendix 3. The Committee requests the Government to supply copies of the questionnaire and the declaration and the list of the most important extremist organizations or extremist-influenced organizations, and of the most important mass or social organizations, of the former GDR up to 1989-90, to which the Announcement refers.

11. The Committee requests the Government to indicate any programmes of vocational training or retraining, or other measures to facilitate employment, which have been provided to those officials who have been dismissed from public service, as a result of the application of paragraphs 4 or 5 of the Annex to the Reunification Treaty, and the results of such programmes.

Duty of faithfulness

12. Recalling its previous comments concerning the follow-up to the recommendations of the 1987 Commission of Inquiry, the Committee notes that, while systematic inquiries concerning the loyalty of applicants for positions in the public service have been abolished in Baden-Württemberg and the Rhineland-Palatinate, public officials are still required to sign the declaration of loyalty. The Committee therefore continues to ask the Government to supply copies of any directives issued by the Länder or federal Government on this topic, and to supply information on any cases in which a public official has been dismissed or denied employment based on breach of the duty of faithfulness.

Equality irrespective of race and national extraction

13. Noting the information on the provision of vocational guidance and training for foreigners, the Committee again requests the Government to provide information on the policies, programmes or other measures taken or contemplated with a view to eliminating discrimination and promoting equality of opportunity and treatment of all persons in employment and occupation irrespective of race, colour or national extraction. It would also welcome information on any measures taken to foster understanding and tolerance among the various ethnic groups of the population.

Equality between men and women

14. The Committee notes with interest the adoption, on 13 July 1993, of the Act on Uniformization and Flexibilization of the Legislation on Working Time (the Working Time Act), which provides for the promulgation of new regulations to replace the prohibition of, and the restriction on, the employment of women in various jobs and sectors, such as in the building industry and on vehicles. It hopes that the new regulations will fully apply the principle of equality of opportunity and treatment, and that any special measures of protection will be adopted after consultation with the representative employers' and workers' groups in accordance with Article 5 of the Convention. The Committee asks the Government to provide information on the contents of such regulations, and to supply copies once they are issued.

15. The Committee notes with interest that commissioners for women's affairs have been appointed in all the highest federal administrations. It would be grateful if the Government would provide information on the duties and activities of these commissioners and an assessment of the impact of their work in relation to promoting the principle contained in the Convention.

16. From the detailed information supplied by the Government, the Committee notes the efforts undertaken in the fields of education, training, occupation and employment to help broaden the spectrum of occupational choice for women workers in both the new and the old Länder. It also notes, however, that in spite of these efforts, the supply of training posts in undertakings lags behind demand, particularly for young women in the new Länder. The Committee requests the Government to continue to provide information, including statistical data comparable by Länder, if possible, on the various measures taken to promote equal opportunity for women in employment through vocational guidance, training and placement, and in particular on the various measures taken to assist young women in the new Länder to obtain training posts.

17. Noting that several drafts of a law to achieve equality between men and women have been prepared, the Committee requests the Government to indicate whether this law has been adopted and, if so, to supply a copy of the text with its next report.