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CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Germany (ratification: 1961) Published: 1998

Description:(CEACR Individual Observation)
Convention:C111
Country:(Germany)
Subject classification: Non-discrimination (Employment and Occupation)
Subject classification: Women
Subject: **Equality of Opportunity and Treatment**
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1. The Committee takes note of the Government's reports and of the numerous documents annexed to them.

2. Discrimination on the ground of sex. Further to its previous observation requesting information on the implementation (in access to vocational training, access to employment and terms and conditions of employment in the federal administration) of the Second Equality Act, in particular on section 14 (three-yearly report to be tabled in Parliament documenting progress on the situation of women in the federal administration and public undertakings), the Committee notes that the first report under section 14, for the period 1996-98, will be transmitted as soon as it is available. It notes with interest from the Government's third report (1992-94) on the situation of women in the federal administration (presented to Parliament under the former legislation in November 1996) that, while the actual total number of civil servants has diminished, the trend to increased percentages of women in higher grades and posts of responsibility continues. At the same time, it notes with concern that, while the actual number of public officials has slightly increased, the percentage of women in the highest band (Höherer Dienst) has dropped from 51.4 per cent in 1990-91 to 39.1 per cent in 1993-94, implying that men are filling the new higher level public employee (Angestellte) posts. The third report shows that family-friendly policies continue to expand with a view to enabling women's career progression, and states that the next report will be tabled in accordance with the Second Equality Act. The Committee looks forward to receiving, with the Government's next report, the document tabled in Parliament on the impact of the Second Equality Act and any other information on its application in practice.

3. Following the European Court of Justice decision in *Kalanke v. City of Bremen*, the Committee had requested information on how the ruling affected government policies in the area of affirmative action for the elimination of discrimination against women. It notes the Government's statement that there has been no impact on its policies since the Second Equality Act contains no provisions on automatic quotas for women, which was the subject-matter of that case. Moreover, the Government confirms that other affirmative action measures are not affected and remain both necessary and possible.

4. Discrimination on the ground of political opinion. Following up on the

recommendations of the 1987 Commission of Inquiry report and the provisions in Annex I of the German Reunification Treaty, the Committee has been requesting the Government to ensure that, in relation both to applicants for government jobs and stability of employment in the public service, particularly for teachers, legislative requirements of questioning as to faithfulness to the free and democratic order be applied restrictively having regard to the nature of the job. The aim of this request was to ensure that restrictions on employment in the public service correspond to the inherent requirements of particular jobs within the meaning of Article 1, paragraph 2, of the Convention, or can be justified under Article 4. The Committee notes that the Government supplies data on the number of terminations made under the provisions of Annex I and appeals lodged against them in the various Länder, which appear to have mixed results (roughly two-thirds of the appeals upheld the terminations and one-third of the appeals were dismissed, with a number of agreed settlements or withdrawals).

5. The Committee notes with interest from the Government's most recent report that, on 8 July 1997, the Constitutional Court delivered four fundamental decisions regarding special cases of dismissal pursuant to the provisions of the Reunification Treaty, upholding their constitutionality. It is in principle admissible to ask questions regarding the individual's previous activity in the state security apparatus, but situations should be examined on a case-by-case basis. Activities "in the distant past" (in the cases in question, activities which ended before 1970) could have no or very little relevance to the current employment relationship or candidature. In this connection, the Committee had also asked for information on the impact of the European Court of Human Rights decision in *Vogt v. Germany* on the re-employment opportunities of civil servants dismissed under these provisions, provided that they satisfy the recruitment and qualification requirements. It notes that, according to the Government, this case gave important guidance on the principle of proportionality (whether removal from service of a permanent civil servant is proportional or not depends on the circumstances of the individual case) and that all other cases of dismissed teachers are closed. Its impact can be seen in the jurisprudence of the Land-level Labour Court of Chemnitz to the effect that "a dismissal from the public service can no longer be based on the holding of specific functions, for instance in the former German Democratic Republic. Account must also be taken rather of the service record of the dismissed person as well as any possible orientation following the collapse of the Socialist Unity Party, towards the free political order".

6. The Committee welcomes these jurisprudential developments, which reflect the recommendation of the Commission of Inquiry and its own previous comments, to the effect that it is important not to attribute excessive importance to activities undertaken at a time when applicants for civil service jobs were not bound by any public service relationship and to provide an opportunity for them to demonstrate, once they are in such a relationship, that they will respect the obligations attached thereto. The Committee would appreciate receiving information from the Government in future reports on any new court challenges to refusal to hire or to termination of employment in the public service on the basis of past political activities.

7. Observing that criteria similar to that for "extraordinary termination" of the work relationship set out in Annex I to the Reunification Treaty had been adopted in various Länder in the form of announcements and guidelines for civil service employment, the Committee had also requested the Government to supply

information on how the specific Land-level texts are being implemented in practice. It notes the Government's indications that each case is examined on an individual basis, and that the Länder themselves supply general information on the procedure for interviews. The Committee asks the Government to inform it, in future reports, of any changes to the Länder announcements and guidelines that might affect the application of the prohibition on discrimination in employment on the basis of political opinion contained in the Convention.

8. The Committee is addressing a request directly to the Government on other matters.