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CEACR: Individual Observation concerning Convention No. 111, Discrimination (Employment and Occupation), 1958 Germany (ratification: 1961) Published: 2000

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1. The Committee notes the Government's detailed report and annexed documentation, including data from the Federal Statistics Office and relevant jurisprudence.

2. Discrimination on the ground of sex. The Committee notes that women represent 63 per cent of the total workforce in establishments to which the Federal Public Service Act applies, other than the federal public service. It notes with interest the slow but consistent increase in the percentages of women occupying posts at the highest grades as civil servants and public employees directly employed in the federal public service, with 18 per cent of higher posts being occupied by women in 1996 (up from 16 per cent in 1993), although women are still under-represented in higher posts overall. It notes, for example, that despite the high proportion of women in establishments to which the Federal Public Service Act applies, other than the federal public service, only 24.5 per cent of posts in the highest grades, including senior management positions, were occupied by women in 1996. The Committee notes the Government's statement that the Second Equality Act, which entered into force on 1 September 1994, is making an appreciable contribution to increasing women's participation in senior public administration posts and in facilitating workers' conciliation of professional and family life. The Committee notes that section 2 of the Advancement of Women Act, enacted under the Second Equality Act, provides that, as long as women are employed in individual areas in smaller numbers than men, government departments are required to increase the proportion of women in supervisory and managerial positions as civil servants, judges, employees and workers, and in the promotion or transfer of women to higher level positions. Section 8 of the Second Equality Act also requires departments to promote further job training for women, and provides for special accommodations to be made to facilitate the participation of workers with family responsibilities in additional training. The Government indicates, however, that the Act for the Advancement of Women and the Reconciliation of Family and Work in the Federal Administration and in the Federal Courts, which came into effect under the Second Equality Act, needs to be applied more consistently. The Committee requests the Government to provide information on the impact of these legislative measures on the employment of women in higher-level positions in the federal public sector, as well as information on the measures taken and results achieved in this area at the Länder level.

3. Discrimination on the ground of political opinion. Further to its comments on the conclusions of the Commission of Inquiry, the Committee notes the Government's statement that, with regard to applicants for positions in the public service, loyalty to the Constitution must be checked in each individual case, and that activities for the Ministry of State Security or the Office for National Security of the former German Democratic Republic (GDR) can be grounds for considerable doubts about a candidate's loyalty to the Constitution or other suitability. The Government further indicates that checking must always be carried out on a case-by-case basis. The Committee notes the recent decisions from the Länder courts, which held that civil servants could not be dismissed merely because of past activities for the Ministry of State Security for the former GDR. The courts held that, for a dismissal to be upheld, the individual's past involvement with the Ministry of State Security must have been of a serious nature. The Committee also notes from the decisions that the courts may be disinclined to uphold the dismissal where the individual worked merely as an informal agent, or where there was a long time interval between the past activities and the termination. The Committee notes that these decisions continue to be in accordance with the proportionality rationale proposed by the ILO Commission of Inquiry on the application of this Convention and this Committee on the application of Annex I of the Reunification Treaty. The Committee would be grateful if the Government would continue to provide information on any new court decisions involving terminations or failure to hire a candidate for the public service on the basis of his or her past political activities.

4. The Committee notes the Government's statement that the decision issued by the State Government of Mecklenburg-Vorpommern on 23 February 1999, concerning screening of candidates for civil service positions, could affect the implementation of the Convention's prohibition of discrimination on the ground of political opinion. The Committee notes that the scope of the posts to which the decision applies is quite broad. The decision provides that the possibility that an applicant may have worked officially or unofficially for the Ministry of State Security or the Office for National Security of the former GDR will be considered during the recruitment process, although due consideration must be given to the wider circumstances of a given case. The decision limits the inquiry to activities for the named institutions, which began on or after 31 December 1980, or which began before 31 December 1980, but continued after that date. The Committee notes from the decision that vetting of first-time candidates through the federal commissioner responsible for such matters, entailing an inquiry into past activities, will be carried out where there is concrete evidence of collaboration with the former GDR institutions mentioned, in the case of appointments to higher grades in the civil service, or appointments to sensitive areas, where the position in question imposes particular requirements of trust, or if the position in question is an especially important one. In the latter case, the inquiry need not be time restricted. The Committee asks the Government to provide information on the number of applicants refused employment on the basis of these screening guidelines, and the right of appeal available to the persons affected.

5. Enforcement of equal opportunity provisions. With respect to its previous comments, the Committee notes with interest the Act Amending the Civil Law Code and the Act on the Labour Court, which entered into force on 3 July 1998. The report reflects the fact that the Parliament took into account the verdict of the European Court of Justice of 22 April 1997 (Az. C-180-95) and modified the national legislation (in respect of section 611(a) of the Civil Code) to bring the provisions on

compensation for damages into conformity with the European law. Noting the Committee's earlier concern over the limitations previously placed on damages, it asks the Government to provide information on the application in practice of the new legislation and its impact on eliminating discrimination in employment and promoting equality in employment and opportunity.

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