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**Parallel Report to the UN Committee on the Elimination of Racial Discrimination
submitted by the Turkish Union in Berlin-Brandenburg
to accompany the report of the Federal Republic of Germany
pursuant to Article 9 of the International Convention on the Elimination of All Forms of
Racial Discrimination**

**On the implementation of obligations under Article 2 para. 1, Article 4 and Article 6 of
the International Convention on the Elimination of All Forms of Racial Discrimination
by the Federal Republic of Germany**

**Analysis of the implementation of the Recommendations of the Committee in the
Communication No. 48/2010 (Turkish Union in Berlin-Brandenburg vs. Federal
Republic of Germany)**

1 Chronology of Communication No. 48/2010

1. In September 2009, former member of the executive board of Deutsche Bundesbank and former Berlin State Finance Senator Dr. Thilo Sarrazin gave an interview in the cultural magazine „Lettre International“ in which he made racist statements about Berlin’s inhabitants with Turkish or Arab migration history.¹
2. In its function as representative of Berlin’s inhabitants of Turkish nationality or heritage, the Turkish Union in Berlin-Brandenburg (hereinafter: TBB) filed a criminal complaint against Dr. Sarrazin in October 2009, arguing that he had depicted persons with Turkish or Arab migration history as inferior and had denied them any right of belonging to German society.² In November 2009, the Office of Public Prosecution established that there was no criminal liability for Dr. Sarrazin’s statements and terminated the proceedings with reference to the importance of the right to freedom of expression according to Article 5 of the German Basic Law. It stated that the statements amounted neither to a criminal offence (Beleidigung, Article 185 Penal Code), libel or slander (Üble Nachrede and Verleumdung, Articles 186 and 187 Penal Code), nor to an incitement of the people (Volksverhetzung, Article 130 Penal Code), but that Dr. Sarrazin had simply made a public “contribution to the intellectual battle of opinions”.³
3. In December 2009, the TBB filed a complaint against the termination of the proceedings with the General Prosecutor. On the merits, the General Prosecutor found that the Office of Public Prosecution had decided correctly.⁴
4. The TBB filed a petition against the Federal Republic of Germany to the Committee on the Elimination of Racial Discrimination (hereinafter: “UN Anti-Racism Committee” or “Committee”) in July 2010 (file number CERD/C/82/D/48/2010). It argued that Article 2 paragraph 1 (d), Article 4 paragraph (a) and Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) were breached by Germany’s failure to provide adequate legal protection against the racist and highly offensive statements made by Dr. Sarrazin.

¹ In reaction to this interview, the Social Democrat Party (SPD) initiated an inner-party procedure against Dr. Sarrazin. In the course of this procedure, an expertise was being issued which qualified the statements as racist (Botsch 2009).

² Criminal Complaint of the TBB against Dr. Thilo Sarrazin of 23 October 2009.

³ Berlin Office of Public Prosecution, Decision on the Termination of the Investigative Procedure against Dr. Thilo Sarrazin of 16. November 2009, file number 81 Js 4071/09.

⁴ Berlin General Prosecutor, Notification of 24 February 2010, file number 1 Zs 3191/09.

3 Implementation of the Recommendations of the UN Anti-Racism Committee

3.1 Publication of the Opinion of the Committee

7. In its response¹¹ to the Opinion of the UN Anti-Racism Committee, the Federal Republic of Germany stated that it had translated the Opinion of the Committee and the dissenting opinion of Committee member Vazquez into German and sent it to the Ministries of Justice of the federal states, who are responsible for forwarding the Opinion to the courts and Offices of Public Prosecution. Furthermore, according to the response, the Berlin Office of Public Prosecution had been separately informed and asked to review the criminal procedure against Dr. Sarrazin in the light of the Opinion. In addition, the Federal Minister of Justice is said to have met with representatives of the Turkish Community in Germany (Türkische Gemeinde in Deutschland, TGD), to discuss the possible consequences of the Committee's Opinion. It also announced a review of the current laws in the light of the recommendations of the UN Anti-Racism Committee. However, it stressed, in this regard, the enormous importance of the fundamental right to freedom of expression.¹²
8. In a parliamentary Minor Interpellation on the state of implementation of the recommendations of the UN Anti-Racism Committee, the Federal Government contended that it had published the Opinion on the website of the Federal Ministry of Justice. Furthermore, it referred to the publication of the Opinion in the European Fundamental Rights Magazine (Europäische GrundrechteZeitschrift, EuGRZ) and on the website of the German Institute for Human Rights.¹³
9. It should be noted that the Federal Republic has not fulfilled the requirement to give wide publicity to the Committee's Opinion. The publication on the website of the Federal Ministry of Justice is extremely obscure and hard to find. In the EuGRZ, only part of the Opinion has been published and more importantly, it has been published by a private individual, Prof. Dr. Tomuschat. Furthermore, it is the unauthorised translation of an individual. It cannot be ruled out that this translation is influenced by

¹¹ Note Verbale, response of the Federal Republic of 1 July 2013. Similarly: Official Records of Parliament 18/60 of 18 November 2013: Response of the Federal Government to the Minor Interpellation.

¹² Note Verbale, response of the Federal Republic of 1 July 2013. Similarly: Official Records of Parliament 18/60 of 18 November 2013: Response of the Federal Government to the Minor Interpellation.

¹³ Official Records of Parliament 18/60 of 18 November 2013: Response of the Federal Government to the Minor Interpellation.

fact makes it even more important to sensitise the entire population on causes and manifestations of racism and to fight against racist statements and acts.¹⁷

12. The relevant criminal offence provision (Article 185 Penal Code) is currently almost completely ineffective for imposing sanctions for racist statements referring to a (putative) group of people. The current legislation gives a wide scope for interpretation to the prosecution authorities and criminal courts. In view of the lack of sensitisation on contemporary forms of racism, this scope too often leads to the repudiation of a criminal offence due to difficulties in clearly defining the group targeted. It is important to note that it is often through racism that people are made into groups. The question should not be whether a certain group really exists, but whether a statement creates a group, and offends this group and persons who either identify with this group or who are, in their everyday life, identified with this group. This is how racism works.

3.3. Further Measures for Implementing the Convention and the Recommendations of the Committee

13. Beneath the level of legislative amendments, the Federal Republic also seems not to acknowledge any reasons to take measures implementing the Committee's recommendations to ensure a more effective fight against racist statements in judicial practice.

14. Concerning training for judicial staff, the Federal Government refers to optional training on offer at the German Judicial Academy (Deutsche Richterakademie).¹⁸ Given the optional nature of this training, it is however fair to assume that many judges and prosecutors – especially those for whom sensitisation would be most important – will not be reached. The structural character of racist attitudes and racial discrimination should be countered with an equally structural response. The implementation and promotion of opportunities for sensitisation in the regular content of general school education, university education, legal training and judges' training¹⁹

¹⁷ Official Records of Parliament 18/60 of 18 November 2013: Response of the Federal Government to the Minor Interpellation, page 4, question 5.

¹⁸ Official Records of Parliament 18/60 of 18 November 2013: Response of the Federal Government to the Minor Interpellation.

¹⁹ In the educational program and training of newly appointed judges.

racist statements he made against Muslims.²³ The Berlin Office of Public Prosecution terminated the proceedings, emphasising the right to freedom of expression, characterising the statements as “solely personal feelings”, and finding that the individuals’ entitlement to respect had not been abrogated. Despite a reference to the Opinion of the Committee in the complaint, the Office of Public Prosecution makes no mention of the Opinion.²⁴

19. In the German legal academic discussion, the Committee’s Opinion has had little resonance. The few journal articles on the matter express mainly negative critiques. They find fault with the Committee for neglecting the right to freedom of expression and for interfering with a member State’s margin of appreciation by criticising the provision on incitement of the people (Volksverhetzung, Article 130 Penal Code).²⁵

3.5 Conclusion: Insufficient Understanding of the Seriousness of Racial Discrimination

20. Each of these experiences clearly demonstrates that the Federal Republic should have more effectively controlled the extent to which the judicial authorities of the federal states actually disseminated and implemented the Committee’s Opinion. In the above mentioned investigation proceedings in the aftermath of the Committee’s Opinion, the judicial institutions have shown a pattern of reaction which ignores, relativises and tolerates racism that arises from the “centre” of society – such racism often being culturally rather than biologically grounded – as mere expressions of opinion. Again and again, incidents are referred to as deplorable albeit isolated cases. This is further shown in the Federal Government’s response to the parliamentary Minor Interpellation by the parliamentary group DIE LINKE.²⁶ The government states that in the context of the investigations into the murders by the NSU,²⁷ “mistakes by individual administrative staff have contributed to the failure of the prosecution authorities and

²³ In an online commentary, Fest had imputed “ready-to-murder contempt for women and homosexuals” and “imported racism” to Islam and described Islam as an “obstacle for integration”; Fest, Nicolaus: commentary of 27 July 2014 in the Bild.de online magazine.

²⁴ Notification on the termination of proceedings of the Berlin Office of Public Prosecution of 19 November 2014, file number 231 Js 1772/14.

²⁵ Tomuschat, Christian: Der 'Fall Sarrazin' vor dem UN-Rassendiskriminierungsausschuss. In: EuGRZ 2013. Issue 10-12, p. 262-265; Payandeh, Mehrdad: Die Entscheidung des UN-Ausschusses. In: JZ 20/2013. p. 980-990.

²⁶ Official Records of Parliament 18/60 of 18 November 2013: Response of the Federal Government to the Minor Interpellation.

²⁷ The right-wing terrorist group called “National-Sozialistischer Untergrund“.

Committee from the ongoing State reporting process, including information for prosecution authorities and the judiciary

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