

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/DEU/CO/5)**

GERMANY

(...)

C. Principal subjects of concern and recommendations

(...)

Physical restraints (*Fixierung*)

16. The Committee welcomes the information provided by the State party that, since the 2005 visit to the State party by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Federal Police has refrained from utilizing physical restraints (*Fixierung*) and at the Länder level the practice of *Fixierung* has been applied as a measure of last resort. However, the Committee remains concerned by the assertion by the State party that it will not be possible in the long term to abandon the practice of *Fixierung* in all non-medical settings at the Länder level, as recommended by CPT, and the lack of information on the uniform application of CPT principles and minimum standards in relation to *Fixierung* (arts. 2, 11 and 16).

The Committee urges the State party to strictly regulate the use of physical restraints in prisons, psychiatric hospitals, juvenile prisons and detention centres for foreigners with a view to further minimizing its use in all establishments and ultimately abandoning its use in all non-medical settings. The State party should further ensure adequate training for law enforcement and other personnel on the use of physical restraints, harmonization of the permissible means of physical restraints in all the Länder and the observance in all establishments of the principles and minimum standards in relation to *Fixierung* drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

(...)

Detention pending deportation

24. The Committee notes a decrease in numbers and duration of detention of foreign nationals. However, it is concerned at the information that several thousand asylum-seekers whose requests have been rejected and a vast majority of those who

are the subject in so-called “Dublin cases” continue to be accommodated in Länder detention facilities immediately upon arrival, sometimes for protracted periods of time. This practice contravenes Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals which regulates detention pending deportation as a means of last resort. The Committee is particularly concerned at the lack of procedure in a number of Länder for identification of vulnerable asylum-seekers, such as traumatized refugees or unaccompanied minors, given the absence of mandatory medical checks on arrival in detention, with the exception of checks on tuberculosis, and systematic checks for mental illnesses or traumatization. The Committee is further concerned by the lack of adequate accommodation for detained asylum-seekers separate from remand prisoners, especially for women awaiting deportation (arts. 11 and 16).

The Committee urges the State party to:

- (a) Limit the number of detained asylum-seekers, including those who are the subject in “Dublin cases”, and the duration of their detention pending return, while observing the European Union Directive 2008/115/EC;**
- (b) Ensure mandatory medical checks and systematic examination of mental illnesses or traumatization of all asylum-seekers including the “Dublin cases” by independent and qualified health professionals upon arrival in all Länder detention facilities;**
- (c) Provide a medical and psychological examination and report by a specially trained independent health expert when the signs of torture or traumatization have been detected during the personal interviews by asylum authorities; and;**
- (d) Provide adequate accommodation for detained asylum-seekers separate from remand prisoners in all detention facilities, particularly for women awaiting deportation.**

(...)

Exercise of jurisdiction

28. The Committee is seriously concerned at the reported reluctance on part of the State party to exercise jurisdiction over allegations of torture and ill-treatment of persons rendered abroad, including the case of Khaled El-Masri, in violation of article 5 of the Convention. In addition, the Committee is concerned at the absence of information from the State party whether Khaled El-Masri has received any remedies, including compensation, in accordance with article 14 of the Convention (arts. 5 and 14).

The State party is urged to observe article 5 of the Convention which requires that the criteria for exercise of jurisdiction are not limited to nationals of the State party. The State party should also inform the

Committee about the remedies, including adequate compensation provided, to Khaled El-Masri, in accordance with article 14 of the Convention.

(...)

Identification of police officers

30. The Committee is concerned by the State party's information that police officers, except in Brandenburg and Berlin, are not obliged to wear identification badges showing their number or name during the exercise of their functions and that even in those two Länder the wearing of badges might be withdrawn in order to protect the safety and interests of the police officers, according to the State party. This practice has reportedly hindered in many cases the investigation and holding to account of the police officers allegedly implicated in ill-treatment, including the incidents of the excessive use of force in the context of demonstrations. According to a study commissioned by the Berlin Police, some 10 per cent of cases of alleged ill-treatment by the police could not be elucidated or prosecuted because of lack of identification (arts. 12, 13 and 14).

The Committee recommends that the State party:

- (a) Weigh up the interests of both police officers and potential victims of ill-treatment and ensure that members of the police in all the Länder can be effectively identified at all times when carrying out their law enforcement function and held accountable when implicated in ill-treatment; and**
- (b) Assess the cases of lack of investigation raised during the dialogue with the State party and report thereon to the Committee.**

(...)

39. The Committee requests the State party to provide, by 25 November 2012, follow-up information in response to the Committee's recommendations related to (a) regulating and restricting the use of physical restraints in all establishments, (b) limiting the number of detained asylum-seekers including the "Dublin cases" and ensuring mandatory medical checks of detained asylum seekers, (c) exercising jurisdiction in accordance with article 5 of the Convention and providing information about the remedies including compensation provided to Khaled El-Masri, and (5) ensuring that members of the police in all the Länder can be effectively identified and held accountable when implicated in ill-treatment, as contained in paragraphs 16, 24, 28 and 30 of the present document.

(...)
