

Berlin, 25 February 2019

**Re: Review of Germany during the Committee against Torture's 66th session**

Dear Sir or Madam,

With reference to the Committee's list of issues prior to submission of the sixth periodic report of Germany from 16 December 2013, especially issue 19 of that list, and the upcoming hearing of Germany in April 2019 the European Center for Constitutional and Human Rights (ECCHR) is submitting the following information:

Since 2011, ECCHR has inter alia fought to end impunity for torture committed during the dictatorship of Augusto Pinochet in Chile. Within this complex, the focus has especially been on crimes committed in the Colonia Dignidad, where German nationals collaborated with Pinochet's secret police Dirección de Inteligencia Nacional in the detention, torture and murder of regime critics in the 1970ies.

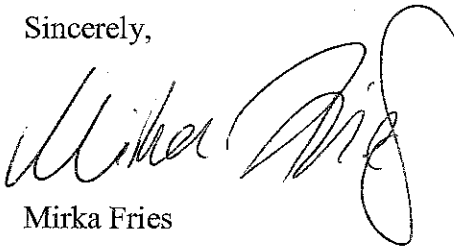
In 2005, the Chilean judiciary issued an arrest warrant against one of those Germans, who evaded his arrest by leaving Chile for Germany. Despite this arrest warrant being disseminated via Interpol, German authorities remained inactive. In 2009, the suspect was heard as a witness in a case investigating six other former members of the Colonia Dignidad by prosecutors in western Germany (file number 555 Js 315/06 K). In that testimony, which is available to the ECCHR, the suspect freely admits to having guarded prisoners on the premises of the Colonia Dignidad. Therewith, he admitted to having participated in the torture of the regime critics, thus to being potentially liable for aiding and abetting the crime of torture. Again, however, German authorities remained inactive.

In July 2016, Chilean authorities turned to Germany with a request to arrest and extradite said German national, so that he could be tried before a Chilean court. The German constitution, however, in its article 16 paragraph 2 prohibits the extradition of German nationals. Thus, the suspect was neither arrested nor extradited. Instead, the competent prosecuting authority in Germany decided to open investigations into the suspect (file number 30 Js 306/16). Because most of the crimes committed in the Colonia Dignidad are barred from investigation and prosecution by the statute of limitation proscribed by German criminal law, however, and because the pending Chilean investigations into the suspect did not suspend that limitation period, the investigating authority refrained from looking into the suspect's potential involvement in torture. Rather, the investigations focused on aiding and abetting the regime critic's murder. Because the prosecutor did not consider the material available to it to constitute sufficient grounds for suspicion, the investigations were closed this January 2019.

As a result, the suspect continues to freely live in Germany, which reinforces the prevailing impunity for the crime of torture committed during the Chilean dictatorship in the Colonia Dignidad. We identified a gap in German legislation with regard to German perpetrators of torture abroad. In Germany, the initiation of criminal investigations would suspend the prescription of the crime. However, this only applies to investigations carried out in Germany; under German law, investigations by foreign authorities do not have the same effect. In addition, because of the lack of the criminalization of the crime of torture under German law as single crime with an appropriate prescription period, German perpetrators will find a safe haven when escaping to Germany after the current low prescription time expanded, as they are protected from extradition by the German Basic Law. By failing to hold said person to account, we submit that Germany breached its obligation under the Convention against Torture.

We respectfully request the Committee to take the above information into account during the upcoming hearing of Germany and the examination of the Germany's report. Should you have any further questions or require further information, please do not hesitate to contact me by [fries@ecchr.eu](mailto:fries@ecchr.eu) or + 49 30 40 04 85 90.

Sincerely,



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