

Country File
GERMANY



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Region	Europe
Legal system	Civil Law
UNCAT Ratification/ Accession (a)/ Succession (d)	1 October 1990
Relevant Laws	<ul style="list-style-type: none"> • Basic Law of the Federal Republic of Germany of 1949 • Act to Introduce the Code of Crimes against International Law of 2002
Relevant Articles	<ul style="list-style-type: none"> • Prohibition of Torture: Articles 1, 2 and 104 of the Basic Law • Definition of Torture: Sections 7 and 8 of the Act to Introduce the Code of Crimes against International Law • Penalties: Sections 7 and 8 of the Act to Introduce the Code of Crimes against International Law • Others: <ol style="list-style-type: none"> 1. Lawful Sanctions: Section 7 of the Act to Introduce the Code of Crimes against International Law
Languages Available	<ul style="list-style-type: none"> • German (official language) • English • French
Other Relevant Information	

Relevant Articles – GERMANY

GERMAN

Grundgesetz für die Bundesrepublik Deutschland

Artikel 1 Menschenwürde – Menschenrechte – Rechtsverbindlichkeit der Grundrechte

- (1) Die Würde des Menschen ist unantastbar. Sie zu achten und zu schützen ist Verpflichtung aller staatlichen Gewalt.
- (2) Das Deutsche Volk bekennt sich darum zu unverletzlichen und unveräußerlichen Menschenrechten als Grundlage jeder menschlichen Gemeinschaft, des Friedens und der Gerechtigkeit in der Welt.
- (3) Die nachfolgenden Grundrechte binden Gesetzgebung, vollziehende Gewalt und Rechtsprechung als unmittelbar geltendes Recht.

Artikel 2 Persönliche Freiheitsrechte

- (1) Jeder hat das Recht auf die freie Entfaltung seiner Persönlichkeit, soweit er nicht die Rechte anderer verletzt und nicht gegen die verfassungsmäßige Ordnung oder das Sittengesetz verstößt.
- (2) Jeder hat das Recht auf Leben und körperliche Unversehrtheit. Die Freiheit der Person ist unverletzlich. In diese Rechte darf nur auf Grund eines Gesetzes eingegriffen werden.

Artikel 104 Freiheitsentziehung

- (1) Die Freiheit der Person kann nur auf Grund eines förmlichen Gesetzes und nur unter Beachtung der darin vorgeschriebenen Formen beschränkt werden. Festgehaltene Personen dürfen weder seelisch noch körperlich misshandelt werden.
- (2) Über die Zulässigkeit und Fortdauer einer Freiheitsentziehung hat nur der Richter zu entscheiden. Bei jeder nicht auf richterlicher Anordnung beruhenden Freiheitsentziehung ist unverzüglich eine richterliche Entscheidung herbeizuführen. Die Polizei darf aus eigener Machtvollkommenheit niemanden länger als bis zum Ende des Tages nach dem Ergreifen in eigenem Gewahrsam halten. Das Nähere ist gesetzlich zu regeln.
- (3) Jeder wegen des Verdachtes einer strafbaren Handlung vorläufig Festgenommene ist spätestens am Tage nach der Festnahme dem Richter vorzuführen, der ihm die Gründe der Festnahme mitzuteilen, ihn zu vernehmen und ihm Gelegenheit zu Einwendungen zu geben hat. Der Richter hat unverzüglich entweder einen mit Gründen versehenen schriftlichen Haftbefehl zu erlassen oder die Freilassung anzuordnen.
- (4) Von jeder richterlichen Entscheidung über die Anordnung oder Fortdauer einer Freiheitsentziehung ist unverzüglich ein Angehöriger des Festgehaltenen oder eine Person seines Vertrauens zu benachrichtigen.

ENGLISH (Translation)

Basic Law for the Federal Republic of Germany of 1949

Article 1 Human dignity

- (1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.
- (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.
- (3) ...

Article 2 Personal freedoms

- (1) ...
- (2) Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.

Article 104 Legal guarantees in the event of detention

- (1) Freedom of the person may be restricted only pursuant to a formal law and only in compliance with the procedures prescribed therein. Persons in custody may not be subjected to mental or physical mistreatment.
- (2) Only a judge may rule upon the permissibility or continuation of any deprivation of freedom. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The police may hold no one in custody on their own authority beyond the end of the day following the arrest. Details shall be regulated by a law.
- (3) Any person provisionally detained on suspicion of having committed a criminal offense shall be brought before a judge no later than the day following his arrest; the judge shall inform him of the reasons for the arrest, examine him, and give him an opportunity to raise objections. The judge shall, without delay, either issue a written arrest warrant setting forth the reasons therefor or order his release.
- (4) A relative or a person enjoying the confidence of the person in custody shall be notified without delay of any judicial decision imposing or continuing a deprivation of freedom.

Act to Introduce the Code of Crimes against International Law of 2002

Section 7 Crimes against humanity

- (1) Whoever, as part of a widespread or systematic attack directed against any civilian population,
 1. ...

5. tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm does not arise only from sanctions that are compatible with international law,
 6. ... shall be punished, in the cases referred to under numbers 1 and 2, with imprisonment for life, in the cases referred to under numbers 3 to 7, with imprisonment for not less than five years, and, in the cases referred to under numbers 8 to 10, with imprisonment for not less than three years.
- (2) In less serious cases under subsection (1), number 2, the punishment shall be imprisonment for not less than five years, in less serious cases under subsection (1), numbers 3 to 7, imprisonment for not less than two years, and in less serious cases under subsection (1), numbers 8 and 9, imprisonment for not less than one year.
 - (3) Where the perpetrator causes the death of a person through an offence pursuant to subsection (1), numbers 3 to 10, the punishment shall be imprisonment for life or for not less than ten years in cases under subsection (1), numbers 3 to 7, and imprisonment for not less than five years in cases under subsection (1), numbers 8 to 10.
 - (4) In less serious cases under subsection (3) the punishment for an offence pursuant to subsection (1), numbers 3 to 7, shall be imprisonment for not less than five years, and for an offence pursuant to subsection (1), numbers 8 to 10, imprisonment for not less than three years.
 - (5) Whoever commits a crime pursuant to subsection (1) with the intention of maintaining an institutionalised regime of systematic oppression and domination by one racial group over any other shall be punished with imprisonment for not less than five years so far as the offence is not punishable more severely pursuant to subsection (1) or subsection (3). In less serious cases the punishment shall be imprisonment for not less than three years so far as the offence is not punishable more severely pursuant to subsection (2) or subsection (4).

Section 8 War crimes against persons

- (1) Whoever in connection with an international armed conflict or with an armed conflict not of an international character
 1. ...
 3. treats a person who is to be protected under international humanitarian law cruelly or inhumanly by causing him or her substantial physical or mental harm or suffering, especially by torturing or mutilating that person,
 4. ... shall be punished, in the cases referred to under number 1, with imprisonment for life, in the cases referred to under number 2, with imprisonment for not less than five years, in the cases referred to under numbers 3 to 5, with imprisonment for not less than three years, in the cases referred to under numbers 6 to 8, with imprisonment for not less

than two years, and, in the cases referred to under number 9, with imprisonment for not less than one year.

(2) ...

(4) Where the perpetrator causes the death of the victim through an offence pursuant to subsection (1), numbers 2 to 6, the punishment shall, in the cases referred to under subsection (1), number 2, be imprisonment for life or imprisonment for not less than ten years, in the cases referred to under subsection (1), numbers 3 to 5, imprisonment for not less than five years, and, in the cases referred to under subsection (1), number 6, imprisonment for not less than three years. Where an act referred to under subsection (1), number 8, causes death or serious harm to health, the punishment shall be imprisonment for not less than three years.

(5) In less serious cases referred to under subsection (1), number 2, the punishment shall be imprisonment for not less than two years, in less serious cases referred to under subsection (1), numbers 3 and 4, and under subsection (2) the punishment shall be imprisonment for not less than one year, in less serious cases referred to under sub-section (1), number 6, and under subsection (3), number 1, the punishment shall be imprisonment from six months to five years.

FRENCH (Translation)

Loi fondamentale de la République fédérale d'Allemagne de 1949

Article 1 Dignité de l'être humain, caractère obligatoire des droits fondamentaux pour la puissance publique

(1) La dignité de l'être humain est intangible. Tous les pouvoirs publics ont l'obligation de la respecter et de la protéger.

(2) En conséquence, le peuple allemand reconnaît à l'être humain des droits inviolables et inaliénables comme fondement de toute communauté humaine, de la paix et de la justice dans le monde.

(3) Les droits fondamentaux énoncés ci-après lient les pouvoirs législatif, exécutif et judiciaire à titre de droit directement applicable.

Article 2 Liberté d'agir, liberté de la personne

(1) Chacun a droit au libre épanouissement de sa personnalité pourvu qu'il ne viole pas les droits d'autrui ni n'enfreigne l'ordre constitutionnel ou la loi morale.

(2) Chacun a droit à la vie et à l'intégrité physique. La liberté de la personne est inviolable. Des atteintes ne peuvent être apportées à ces droits qu'en vertu d'une loi.

Article 104 Garanties juridiques en cas de détention

(1) La liberté de la personne ne peut être restreinte qu'en vertu d'une loi formelle et dans le respect des formes qui y sont prescrites. Les

personnes arrêtées ne doivent être maltraitées ni moralement, ni physiquement.

- (2) Seul le juge peut se prononcer sur le caractère licite et sur la prolongation d'une privation de liberté. Pour toute privation de liberté non ordonnée par le juge, une décision juridictionnelle devra être provoquée sans délai. La police ne peut, de sa propre autorité, détenir quelqu'un sous sa garde au-delà du jour qui suit son arrestation. Les modalités devront être réglées par la loi.
- (3) Toute personne soupçonnée d'avoir commis une infraction pénale et provisoirement détenue pour cette raison doit être conduite, au plus tard le lendemain de son arrestation, devant un juge qui doit lui notifier les motifs de l'arrestation, l'interroger et lui donner la possibilité de formuler ses objections. Le juge doit sans délai, soit délivrer un mandat d'arrêt écrit et motivé, soit ordonner la mise en liberté.
- (4) Toute décision juridictionnelle ordonnant ou prolongeant une privation de liberté doit être portée sans délai à la connaissance d'un parent de la personne détenue ou d'une personne jouissant de sa confiance.