



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva

Ref.: Pol-10 381.70 Special Procedures/ Letzte Gen

(please quote when answering)

Note No. 283 /2024

Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner of Human Rights and has the honour to refer to the letter sent by the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association on 1 October 2024 - JAL DEU 6/2024

The Permanent Mission of the Federal Republic of Germany is pleased to transmit herewith the response of the Government of the Federal Republic of Germany.

The Permanent Mission of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner of Human Rights the assurances of its highest consideration.

Geneva, 21 November 2024

To the
Office of the High Commissioner of Human Rights
Palais Wilson
Geneva

Statement of the Federal Republic of Germany
in response to the letter of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; the Special Rapporteur on the human right to a clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

AL DEU 6/2024

1 The Federal Government hereby submits the following comments in response to the letter of the Special Rapporteurs dated 1 October 2024:

A. Status of the proceedings

2 The current status of the proceedings is as follows:

I. Investigations by Neuruppin Public Prosecutor's Office against Mirjam Herrmann, Henning Jeschke, Edmund Schulz, Lukas Popp and Jakob Bayer:

3 On 17 May 2024, Neuruppin Public Prosecutor's Office brought charges against Mirjam Herrmann, Henning Jeschke, Edmund Schulz, Lukas Popp and Jakob Bayer for the offence of forming a criminal organisation (section 129 (1) of the German Criminal Code – *Strafgesetzbuch*) and for other criminal offences. The competent National Security Division of Potsdam Regional Court has not yet made a decision on the opening of the main proceedings.

4 With regard to the investigation proceedings, the Federal Government would like to add that the only measures carried out were searches of the homes of the indicted accused, which took place on 13 December 2022. No other investigative measures – particularly undercover investigative measures – have been carried out in these proceedings. Once the searches had taken place, the proceedings were conducted openly. Due to the complex factual and legal circumstances of the case, the indicted accused were also assigned court-appointed defence counsel at an early stage in the investigation proceedings. The indicted accused were able to obtain a judicial review of the investigative measures. Two complaints were filed against the searches before Potsdam Regional Court and were subsequently rejected as inadmissible and ill-founded, confirming the initial suspicion of Neuruppin Public Prosecutor's Office concerning the formation of a criminal organisation under section 129 (1) of the Criminal Code.

II. Investigations by Flensburg Public Prosecutor's Office against Miriam Meyer

- 5 On 19 June 2024, Flensburg Public Prosecutor's Office brought charges against Miriam Meyer for the offence of participation in a criminal organisation (section 129 (1) of the Criminal Code) and for other criminal offences. The competent National Security Division of Flensburg Regional Court has not yet made a decision on the opening of the main proceedings.
- 6 The individual offences with which the indicted accused has been charged caused damage in the four to seven-figure range.

III. Investigations by the Office of the Munich Public Prosecutor General

- 7 The proceedings against Miriam Meyer, which were initially pending at the Office of the Munich Public Prosecutor General, have been transferred to Flensburg Public Prosecutor's Office.
- 8 As regards the investigation measures referred to in the letter of the Special Rapporteurs, such as searches and telecommunications surveillance, it should be noted that each of these measures was ordered by the competent investigating judge. Furthermore, the measures have been the subject of multiple immediate complaints (*sofortige Beschwerden*), the majority of which have already been adjudicated by the competent board of appeal at the regional court. The measures have therefore been subject to further judicial review. The relevant court rulings have so far confirmed the presumed and/or qualified initial suspicion of the Office of the Munich Public Prosecutor General (with respect to section 100a (1) of the Code of Criminal Procedure (*Strafprozessordnung, StPO*)) that a criminal organisation had been formed pursuant to section 129 of the Criminal Code (most recently with the order of Munich I Regional Court of 29 July 2024).

IV. Proceedings before the Federal Constitutional Court

- 9 Several constitutional complaints regarding the surveillance of the press hotline of Letzte Generation are currently pending before the Federal Constitutional Court. It is not yet clear when decisions in these proceedings will be handed down.

B. Legal observations

- 10 The Federal Government wishes to point out that the rights to privacy, freedom of expression and freedom of association enshrined in Articles 17, 19 and 21 ICCPR are not granted unconditionally. Any restriction of these rights is considered to be compatible with Articles 17, 19 and 21 ICCPR if it has a statutory basis that meets certain requirements – such as being

limited to a specific purpose – and if the specific restriction is necessary, proportionate and reasonable. In the present case, this statutory basis is provided by section 129 of the Criminal Code and the corresponding enabling provisions of the Code of Criminal Procedure, which were applied during the investigations.

11 The criminal proceedings against the members of Letzte Generation are still ongoing. The outcome of the investigations is solely in the hands of the courts; the Federal Government is not permitted to influence the proceedings (cf. point I). While a final evaluation is not possible at the present time (particularly in relation to individual measures), the Federal Government emphatically rejects the allegation of the Special Rapporteurs that section 129 of the Criminal Code is being misused to sanction legitimate acts of civil disobedience (cf. point II).

I. Independence of the courts

12 Courts in the Federal Republic of Germany are not subject to the influence of the executive branch. According to Article 97 (1) of the Basic Law (*Grundgesetz*), judges are independent and subject only to the law. This is consistent with the requirement of independent criminal proceedings set forth in Article 14 (1) ICCPR. The Federal Government therefore has no influence over the criminal proceedings against Letzte Generation before the relevant courts. Naturally, the Federal Government does not make attempts to exert any such illegitimate influence. Even a public statement by the Federal Government or any other public authority would, in our view, be inappropriate while the proceedings are still ongoing.

13 The criminal prosecution authorities and criminal courts are bound by law and justice. This also includes the ICCPR, which is directly applicable law in Germany. The Federal Government therefore points out that the provisions of the ICCPR and the rights to privacy, freedom of expression and freedom of association enshrined therein are taken into account by the courts in their decisions. Furthermore, the German constitution guarantees the fundamental rights to freedom of expression, association and assembly, as well as the protection of privacy through the general right of personality, the privacy of correspondence, post and telecommunications, and the inviolability of the home. These fundamental rights are binding on the legislature, the executive and the judiciary as directly applicable law.

II. Allegation of misuse of section 129 of the Criminal Code to sanction acts of civil disobedience

14 The offence of forming criminal organisations under section 129 of the Criminal Code is intended to safeguard internal public security and the state order, including the public peace. It also serves to implement international requirements, in particular the United Nations

Convention against Transnational Organised Crime of 15 November 2000 (UNTOC, Federal Law Gazette 2005 II, p. 954, 956) and Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300 of 11 November 2008, p. 42). According to section 129 (1) sentence 1 of the Criminal Code, anyone who forms an organisation or participates as a member in an organisation, the objectives or activities of which are directed at the commission of offences which incur a penalty of a maximum term of imprisonment of at least two years, incurs a penalty of imprisonment for a term not exceeding five years or a fine.

- 15 That the activities of Letzte Generation fulfil the constituent elements of section 129 of the Criminal Code cannot be entirely ruled out, nor is it manifestly true – which is generally the case in criminal proceedings until the matter has been examined by the court. In any event, there is contentious debate surrounding this issue in the legal literature. Ultimately, however, it is the assessment of the courts that counts, and these must take into account Germany's international obligations, including those arising from the ICCPR.
- 16 Due to the principle of mandatory prosecution in section 152 (2) of the Code of Criminal Procedure, German prosecution authorities are obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications. The fact that the prosecution authorities have opened investigations against the actions of Letzte Generation for violations of the law – which are also acknowledged as such in the letter of the Special Rapporteurs – is therefore consistent with the principle of mandatory prosecution. Thus, the investigations are by no means an arbitrary act, but rather a lawful procedure.
- 17 The Federal Government also points out that the charges against members of Letzte Generation referred to by the Special Rapporteurs pertain to serious criminal offences – for example, entering the security areas of airports and blocking runways, planning to disrupt energy supplies, or attempting to damage important works of art. Even if no serious damage were to be caused, these actions carry an inherent risk of damage that is knowingly accepted by the members of Letzte Generation and is only partially within their control. Against this background, the Federal Government strongly disagrees with the Special Rapporteurs' general characterisation of the group's activities as "peaceful assemblies" and the claim that there was no threat to the general public.
- 18 At this juncture, the Federal Government would like to clarify the facts underlying the charges:

The actions described did in fact pose a significant threat to the public. For example, there were several cases where pipelines were shut down, posing a genuine risk to the energy supply of an entire region. Emergency procedures had to be initiated, with all of the

associated risks. Fortunately, the authorities were able to prevent the serious damage that the shutdown could have caused. The amount of damage caused by the actions was considerably greater than EUR 100,000.

As for the incidents at airports, one plane even had to perform an emergency manoeuvre (aborting the landing at the last moment and performing a go-around) when it became clear that the designated runway had been occupied by the group. This represents a considerable danger to the public. Other planes also had to abort landings and be redirected to other airports, with all of the associated risks regarding fuel reserves. Generally speaking, any interference of this kind with airport operations carries a considerable risk to the public and can only be described as reckless.

Finally, the fact that the Claude Monet painting was not damaged can only be attributed to luck. Only the additional layer between the protective glass and the painting – of which the group was not aware – prevented damage to the painting itself. The valuable historic frame, however, was indeed damaged.

In addition, the large number of crimes committed by the group (over 1,000¹), which affected a large number of different collective and individual rights (such as property and the protection of businesses, facilities and installations serving the public good), as well as the resulting unsettling effect on the public, should not be overlooked.

- 19 The Special Rapporteurs state that Letzte Generation is “motivated solely by legitimate, well-founded concerns about climate change and its impact on human rights”. Such motives can be taken into account in the course of the investigations and can affect sentencing in the event of a judicial conviction. Nevertheless, the pursuit of a legitimate aim does not mean that Letzte Generation can use any means possible without facing the consequences provided for by law.
- 20 The Federal Government believes that the German system of rule of law and judicial review makes a reasonable distinction between interference in democratic decision-making and permissible civil obedience in the pursuit of a political goal, while ensuring that international and constitutional requirements are taken into account.
- 21 Against this background, the Federal Government strongly rejects the view of the Special Rapporteurs that the rights of the members of Letzte Generation to freedom of assembly and expression have not been respected. The criminal investigations described under point A. in

¹ For the number of cases, see Section 6.2 of the situation report of the Federal Criminal Police Office “Letzte Generation”, available in German at: https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/bka-lagebild-letzte-generation-fortschreibung1.pdf?__blob=publicationFile&v=2.

particular do not constitute a violation of these rights. In the case of conduct such as that alleged against the members of Letzte Generation in their respective proceedings, an examination of the criminal relevance of the conduct is required by law. To categorically waive such an examination because of the political objectives pursued by the members of Letzte Generation – despite indications that criminal offences have been committed – would constitute an arbitrary exception to the State's right to impose punishment.

22 The Federal Government takes the view that human rights defenders who take peaceful action to promote measures to mitigate climate change and a just transition can carry out their legitimate activities, including the right to demonstrate peacefully, free from fear of threats or violence and thus make an important contribution to policy formulation. Freedom of expression, freedom of assembly, and the right to private life (through the general right of personality, privacy of correspondence, post and telecommunications, and the inviolability of the home) are constitutionally protected assets, and society and state authorities are well aware of their importance. The high standing of these rights is always given special consideration when weighed up against any conflicting rights. With a view to the climate-change crisis, the German legal system provides extensive opportunities to publicly address legitimate concerns through assemblies, expressions of opinion or even legal action and to thereby bring about the adoption of relevant measures. The association “Environmental Action Germany” (*Deutsche Umwelthilfe e.V.*), for example, has successfully taken aspects of the climate-change crisis to the German courts on several occasions.

23 The issue of telecommunications surveillance of members of Letzte Generation, which was specifically addressed in the letter of the Special Rapporteurs, is also currently before the Federal Constitutional Court (see above).

C. Conclusion

24 The Federal Government appreciates that the Special Rapporteurs are paying close attention to this matter; however, it is convinced that the independent judiciary of the Federal Republic of Germany will achieve appropriate outcomes that are consistent with human rights principles.