



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
31 October 2016

Original: English
English, French and Spanish only

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany

Addendum

Information received from Germany on follow-up to the concluding observations^{*,**}

[Date received: 13 September 2016]

Statement by the Federal Republic of Germany on the Concluding Observations under Margin Numbers 10 and 19 on the Combined 19th-22nd Periodic Report Submitted by the Federal Republic of Germany Pursuant to Article 9 para. 1 of the Convention (CERD/C/DEU/19-22)

I. Introduction

1. On 13 May 2015, the Committee on the Elimination of Racial Discrimination (hereinafter: CERD Committee) adopted its Concluding Observations on the Combined 19th-22nd Periodic Report submitted by Germany pursuant to Article 9 of the Convention (CERD/C/DEU/19-22). In margin number 26 of those Concluding Observations the Committee, pursuant to Article 9 para. 1 of the Convention and Article 65 of its amended Rules of Procedure, requests the State Party to provide information within one year of the adoption of the present Concluding Observations, on its follow-up to the recommendations contained in margin numbers 10 and 19. The Federal Government hereby submits its statement.

* The present document is being issued without formal editing.

** The annexes are on the file with Secretariat and are available for consultation.

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II. Information on margin number 10 of the Concluding Observations

On the remarks preceding the recommendations

2. We categorically reject the blanket accusation of institutional racism. With its lack of nuance, a generalised view of this sort fails to account for the complexity of the issue at hand and overlooks the processes of critical inquiry underway in Germany. These processes are still ongoing (see page 4 onwards for more details).

3. With reference to the case of the National Socialist Underground (NSU), the 2nd Committee of Inquiry of the 17th legislative term of the German Bundestag adopted 47 cross-party recommendations for police, the domestic intelligence community and civil society in order to rectify shortcomings identified at the security agencies. These recommendations have now been largely implemented — at least at the federal level. This includes recommendations on “strengthening inter-cultural competence”, “working with victims and relatives” and raising awareness on issues of right-wing extremism and right-wing terrorism; it has also included reforming the system of definitions for politically motivated crime and the catalogue of “thematic fields” used to categorise it.

4. Further, it is not correct to assert that the 2nd Committee of Inquiry of the 17th legislative term of the German Bundestag omitted all reference in its concluding report to racial discrimination and the racist motives behind the murders committed. Rather, in its joint evaluations, the Committee made repeated reference to the recognisably racist features of the murders and concluded, *inter alia*, that the investigations were not sufficiently focused on these lines of inquiry (e.g. Bundestag Printed Paper 17/4600, p. 844): “In this connection, for future investigations, the Committee would like to see [investigators showing] more courage at the right stage to embark on new approaches, as well as a less stubborn, unbiased view of the facts — in particular by considering racist motives where this would be a reasonable thing to do given the circumstances of the offence and considering the victims involved. The fact that [investigators] clung to conventional experience despite indications to the contrary must be the subject of critical scrutiny within the police.”

Despite this criticism and corresponding recommendations, the concluding report does not contain any findings in the cross-party conclusions of alleged institutional racism.

5. On the preceding remark: “The Committee is alarmed at the information provided by civil society that [...] one particular witness who clearly indicated his support of that movement received government legal counselling during the proceedings.”[...]

6. It is unclear what is meant by the assertion that a certain witness who had admitted supporting the movement was granted government legal counselling during the proceedings. If this refers to the fact that a witness — who had evidently also been accused of involvement, which would potentially make him guilty of a criminal offence — was assigned legal counsel as a witness in investigation or criminal proceedings, it must be pointed out that a legal basis for this exists in section 68b of the Code of Criminal Procedure (*Strafprozessordnung*, StPO), section 161a (1), second sentence, and section 163 (3), second sentence, StPO — each in conjunction with section 68b StPO (for the exact provisions see Annex 1). These provisions serve to implement the jurisprudence of the Federal Constitutional Court on the principle of a fair trial in criminal proceedings; this principle is also guaranteed under human rights law (cf. Article 6 of the European Convention on Human Rights).

On the recommendations under margin number 10

10 (a) (i)

Committees of inquiry

7. The process of critical scrutiny concerning how the authorities handled investigations into the National Socialist Underground terrorist organisation (NSU) is not over. On the contrary, the German Bundestag convened a second Committee of Inquiry into the NSU case in November 2015. Furthermore, five parliamentary committees of inquiry at the *Länder* level (Brandenburg, Hesse, North Rhine-Westphalia, Saxony and Thuringia) are currently examining the failings of their respective regional authorities. The criminal proceedings before Munich Higher Regional Court against alleged NSU member Beate Zschäpe, and the four accused NSU supporters standing trial alongside her, are also ongoing. Therefore, a conclusive appraisal of the overall situation cannot be given at present.

On the committees of inquiry at *Länder* level

8. Hesse: On 1 July 2014, a committee of inquiry was convened by the Hessian *Landtag* (parliament). The mandate of this committee is to conduct a thorough investigation into how, at the *Land* level, the Hessian courts, investigating authorities and security agencies cooperated with the federal authorities and other *Länder* agencies in connection with the investigation into the murder of Halit Yozgat and the series of murders carried out by the NSU, as well as into the mistakes made in solving the NSU murders in Hesse in terms of investigative work and cooperation between the security agencies. The committee is currently in the process of taking evidence.

9. North Rhine-Westphalia: In its session of 5 November 2014, the *Landtag* resolved to convene a committee of inquiry on the issue of NSU terror in North Rhine-Westphalia. The committee's mandate is to investigate potential misconduct on the part of North Rhine-Westphalia's security agencies and criminal justice authorities, including the relevant ministries, the State Chancellery and other responsible bodies. The following areas are subject to scrutiny:

- The activities of the NSU and potential supporters of this right-wing terrorist group, especially among North Rhine-Westphalia's far right, between October 1991 and the time the committee of inquiry was convened;
- The investigation into the perpetrators of the bomb attacks of 19 January 2001 and 9 June 2004 in Cologne, and the murder on 4 April 2006 in Dortmund — all of which, based on the current evidence, are attributed to the NSU;
- Further criminal offences suspected to have been committed with far-right political motives in North Rhine-Westphalia, e.g. the murder of three police officers in Dortmund and Waltrop on 14 June 2000, and the bomb detonated at Düsseldorf-Wehrhahn S-Bahn station on 27 July 2000.

The committee will draw up conclusions for the benefit of the actors involved, including the security agencies and criminal justice authorities, but also for the purposes of preventing right-wing extremism.

10. Saxony: The 11th plenary session of the 6th Saxon *Landtag* set up a further committee of inquiry (*Committee of Inquiry into Neo-Nazi Terror Networks in Saxony*) on 27 April 2015 to investigate the possible failings of the authorities in handling the NSU terror group.

11. **Thuringia:** The last legislative term in Thuringia already saw the creation of a parliamentary committee of inquiry to reveal the scale and scope of the movement, its connections and any ongoing threat. On 27 February 2015, the Thuringian *Landtag* set up a new committee of inquiry “for the continuation of the critical investigation into the crimes attributed to the National Socialist Underground (NSU) and the networks cooperating therewith, considering the responsibility of Thuringia’s security agencies and criminal justice authorities, the responsible ministries and their political leadership with regard to the failed search for members of the NSU in hiding”. The committee of inquiry held its inaugural session on 22 April 2015.

12. **Baden-Württemberg:** The concluding report of the committee of inquiry (bearing the acronym: *UA NSU BW*) set up by Baden-Württemberg’s *Landtag* was acknowledged by the *Landtag*’s plenary session of 18 February 2016. One of the report’s key recommendations is for the *Landtag* to convene a further committee of inquiry following the *Land* parliamentary elections on 13 March 2016 for the “further clarification of remaining or newly raised issues in connection with right-wing terrorism in Baden-Württemberg and the National Socialist Underground”. The new committee will additionally focus, *inter alia*, on the question of further NSU targets in Baden-Württemberg, and will examine media assertions that foreign intelligence agents were present in Heilbronn on 25 April 2007.

13. **Brandenburg:** On 29 April 2016, the *Landtag* of Brandenburg unanimously approved the appointment of (and allocation of resources to) a committee of inquiry on “organised right-wing extremist violence and the actions of the authorities, above all in the case of the NSU”. The committee of inquiry will conduct a thorough investigation into whether the formation of and offences committed by the NSU terror group and their supporters were facilitated — or whether the prosecution of the criminal offences perpetrated by the terror group was hindered — by any action or omissions on the part of Brandenburg’s security agencies and criminal justice authorities, including informants, under-cover agents and other human intelligence sources, or on the part of the *Land* government, encompassing the political leadership of the responsible ministries and the authorities subject to the substantive, legal and administrative supervision of the ministries — including the way in which these bodies interacted with the federal authorities and the authorities of other *Länder*. It will also examine whether Brandenburg’s security agencies and criminal justice authorities exhausted all options available, *de facto* and *de jure*, in order to solve and prevent the commission of criminal offences.

On the criminal proceedings still under way

14. On 8 November 2012, the Federal Prosecutor General at the Federal Court of Justice (*Generalbundesanwalt beim Bundesgerichtshof*, GBA) filed an indictment before Munich Higher Regional Court against Beate Zschäpe, alleged member of the NSU, and four persons who allegedly supported and assisted the group. So far, the trial has lasted over 290 days. Further, the Federal Prosecutor General is investigating a total of eight additional suspected NSU supporters, and has launched an investigation into persons unknown on suspicion of supporting a terrorist group. The latter investigation focuses on uncovering any further supporters of this terrorist organisation and seeks to establish whether the group committed any further criminal offences. Law enforcement agencies have taken all necessary measures in order to identify any perpetrators, participants and structures that have so far eluded detection.

15. The Federal Prosecutor General has incorporated its experiences in connection with the NSU investigations into information for prosecutors on how to identify potential right-wing terrorist circumstances; this information has been distributed to all prosecutor’s offices. Moreover, with the regional conferences it initiated in 2015, the Office of the Federal Prosecutor General has created a new platform for improving the exchange of

information between prosecutor's offices and security agencies of the federation and *Länder* in the field of right-wing extremism/right-wing terrorism. Considering regional particularities and the many different manifestations of the far right, the aim of these conferences is to reinforce analytical competence within the justice systems of the *Länder* and facilitate early recognition of criminal and, where applicable, terrorist structures.

10 (a) (ii)

From the investigative work of the German *Länder*

16. **Baden-Württemberg**: On 5 November 2014, the Baden-Württemberg *Landtag* set up a committee of inquiry to critically examine the contacts and activities of the NSU in Baden-Württemberg and the circumstances surrounding the murder on 25 April 2007 of police officer M.K. on the "Theresienwiese" in Heilbronn. In 39 sessions, the committee conducted a thorough inquiry into how the criminal justice authorities and security agencies of Baden-Württemberg cooperated with federal and other *Länder* authorities in solving the murder of M.K., the attempted murder of her police-officer colleague and the series of murders perpetrated by the NSU. Further, the committee examined potential failings in the investigations and scrutinised the NSU's connections, as well as those of its supporters, in the South West of Germany.

17. The committee of inquiry's concluding report (see *Printed Paper 15/8000*, p. 899) states the following: "In its inquiry, the committee also addressed the accusation of 'structural' or 'institutional racism' in the investigations and examined whether there were any indications of systematic prejudice or anti-ziganism/xenophobia in investigations by the *Parkplatz* special investigation team. This accusation was deemed unfounded by the commission following an inspection of the files and the taking of evidence. In particular regarding investigations into certain members of travelling families near the 'Theresienwiese', it must be maintained that these were not based on the ethnicity of the persons concerned, but rather on specific indications from individuals which the police were obliged to pursue in accordance with the mandatory-prosecution principle". No specific steps therefore needed to be taken against members of the law enforcement agencies.

18. **Bavaria**: The NSU working group (bearing the acronym: *AG NSU*) has examined the conclusions of the committees of inquiry of both the Federation and the Bavarian *Landtag*, as well as those of the commission of experts on right-wing terrorism and the resulting recommendations for the police. These did not include any conclusions/recommendations implying "institutional racism" or punishable conduct on the part of members of the law enforcement agencies during the investigations. The *AG NSU* did not become aware of any specific criminal acts on the part of the individuals tasked with the investigations at the time.

19. **Hamburg**: On 29 April 2014, in *Printed Paper 20/11661*, the Hamburg Senate published a report entitled "The National Socialist Underground (NSU) — Investigations, Critical Scrutiny and Consequences in Hamburg and in the Cooperation between the Security and Law Enforcement Agencies of the Federation and *Länder*", which included the following statement: "A further point of criticism which directly pertains to Hamburg's security agencies concerns how family members were treated immediately after the offence and in the subsequent course of investigations. Although the relatives of the victim in Hamburg may have had cause to feel generally aggrieved at how the investigations pursued a line of inquiry that focused on organised crime and other criminal links, Hamburg's police generally endeavoured to approach the family with both criminological professionalism and respect at all times. This was reaffirmed following a fresh, targeted review of the proceedings and contacts between 2001 and 2011. (...) Nevertheless, here too it remains the rule that, in cases of unclear motives, basic criminological principles dictate

that investigations must always be conducted into the victim's environment; however, in the context of such lines of inquiry in the present case — even following renewed, targeted investigations — no allegations were made against the family itself”.

20. Lessons learned from the NSU case have been absorbed into general awareness-raising about racism and discrimination throughout the ranks in Hamburg's police. Further, there is no specific evidence from the NSU case of discriminatory action on the part of staff at Hamburg's prosecution offices or courts.

21. Hesse: There are no indications of discriminatory action on the part of staff at Kassel public prosecutor's office or the Hessian police authorities in connection with the investigations concerning the murder of Halit Yozgat. In order to raise awareness throughout the police services, however, comprehensive measures have been taken in the area of initial and further training and by implementing guidelines for all authorities; these serve to draw attention to problematic case scenarios of this sort.

10 (b) (i)

Police service regulations

22. As of summer 2015, following a resolution of the Conference of German Interior Ministers, the nationally applicable Police Service Regulations (*Polizeiliche Dienstvorschriften*, PDV 100) on the gathering of evidence now include a provision stipulating that investigations into violent crime must generally include an examination of whether the offence was driven by racist, xenophobic or other motives evidencing contempt for humanity, or motivations that are otherwise political in nature; furthermore, the results of this examination must be documented.

23. Point 2.2.5 — Presentation of evidence, reconstructing the offence — includes the following information: “Investigating the suspect's motives or obtaining indications as to the motives of unknown perpetrators, e.g. gathering information from victims or witnesses, is of particular importance. It allows conclusions to be drawn, for example, on the causes, occasion and sequence of the act, and allows predictions to be made with regard to future offences. In cases of violent crime, an examination is to be conducted in order to establish whether racist, xenophobic or other motives evidencing contempt for humanity, or motivations that are otherwise political in nature, were a factor in the offence. The results of this examination are to be documented”.

Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine

24. On 24/25 February 2015, the following amendments to the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*, RiStBV), which entered into force on 1 August 2015, were adopted by the responsible sub-committee of the Conference of German Justice Ministers.

- (a) *Inclusion of the wording “racist, xenophobic or other motives evidencing contempt for humanity” in Nos. 15, 86 and 234 RiStBV*

25. No. 15 RiStBV explicitly provides that, when an offence is committed, investigators are to consider racist, xenophobic or other motives evidencing contempt for humanity. With the inclusion of these motives in No. 86 RiStBV, it is further provided that investigators are generally to assume a public interest in prosecuting these cases, even where the offence committed could otherwise be left to private prosecution; with the amendment of No. 234 RiStBV, the same applies for the criminal prosecution of bodily harm (for exact provisions, see Annex 1).

- (b) *Amendment of No. 205 and No. 207 RiStBV to improve the mutual exchange of information between domestic intelligence agencies and public prosecutors*

26. The catalogue of offences in No. 205 RiStBV requiring notification of the domestic intelligence agencies by prosecutors has been significantly extended. In addition, more comprehensive arrangements have been set out for the exchange of information. In summer 2015, a provision was included in No. 207 RiStBV that in cases of politically motivated arson and homicide offences, files are to be forwarded to the Federal Criminal Police Office (*Bundeskriminalamt*, BKA) once proceedings are concluded in order for the outcome of these proceedings to be analysed (for the exact provision, see Annex 1). In the RiStBV Committee, the Federal Government advocates extending this forwarding obligation to include all politically motivated violent crime in order to scale up the exchange of information between police and justice authorities in this sensitive area.

Further measures at the Land level

27. Baden-Württemberg: Once the crimes of the NSU came to light, work was undertaken in Baden-Württemberg to revise the “Criminal Police Special Commission Command and Operations Order” (*Führungs- und Einsatzanordnung Sonderkommissionen bei der Kriminalpolizei*, FEA). In particular, the FEA governs the standards applicable in processing the most serious of offences, and incorporates the lessons learned from the NSU case.

28. Brandenburg: With the “Concept for Action on Politically Motivated Crime”, the pre-eminent importance of fighting such crime is established at the *Land* level in binding terms for all police in Brandenburg. This means effective action in the face of such offences; the biggest issue in the Land of Brandenburg is the fight against right-wing extremism. Furthermore, comprehensive documentation duties for such cases exist on the basis of a supplementary decree (e.g. the obligation for officers first responding to an offence to demonstrate that they have examined the possibility of a politically motivated offence). In cases where there is a suspicion of politically motivated crime — and this includes all cases of hate crime, e.g. offences with racist or other discriminatory motives — the investigations are carried out by specialised police officers dealing with crimes against the state. The motivations for the offence are significant in the investigation proceedings.

29. Since April 2016, police in Bremen have been subject to a directive on the fight against homophobic crime.

30. Hamburg: In connection with the lessons learned from the NSU case, Hamburg’s police service regulation has been amended to ensure that special significance is afforded to the investigation of suspects’ motives or the gathering of leads on the motives of unknown perpetrators, and that police are provided with more detailed information on the overall issue of hate crime.

31. Hesse: Based on a decree of 30 June 2014, a detailed examination is carried out in all cases of violent crime in Hesse in order to establish whether there are any racist or other political motives behind the offence. This must be documented, and in cases of unclear motives, the locally responsible expert commissariat for crimes against the state and, if applicable, the Hessian *Land* Criminal Police Office are to be involved.

32. Thuringia: Based on the amendment of section 46 of the Criminal Code (*Strafgesetzbuch*, StGB), a concept has been issued for combating politically motivated crime by the far right. Further, the *Land* Police Directorate and the *Land* Criminal Police Office of Thuringia have issued a joint service order “on the compulsory examination of potential political motives for the offence in all cases of violent crime”.

33. Pursuant to the latter, the possibility of political motives is generally to be examined at the time the act is reported/when case work begins on investigation proceedings — irrespective of the underlying offence. This examination must be particularly rigorous in the case of violent crime and must be subsequently documented in the investigation file.

10 (b) (ii)

Statistical recording of violent crime

34. Since the launch of the nationwide “Criminal Police Reporting Service — Politically Motivated Crime” (*Kriminalpolizeilicher Meldedienst Politisch motivierte Kriminalität*, KPMD-PMK), hate crime has been recorded as a separate statistical category. Furthermore, for a nuanced recording of the motives behind the offence, these crimes are further broken down into the following subcategories:

<i>Thematic Field/General Category: Hate Crime</i>	<i>Subcategories:</i>
	Anti-Semitic
	Disability
	Xenophobic
	Social status
	Racism
	Religion
	Sexual orientation

(In addition, the offences can be further categorised within the KPMD-PMK system according to phenomenon — right-wing politically motivated crime, left-wing politically motivated crime, politically motivated crime by foreigners, other politically motivated crime — and by offence pursuant to the Criminal Code. Additionally, from 1 January 2017, Islamophobic, anti-Christian and anti-ziganist criminal offences will also be recorded as separate subcategories.)

35. The regulations of the KPMD-PMK are very clear in defining any case of hate crime as concurrently being politically motivated. This is because the definition of politically motivated crime set out in these regulations describes hate crime as one of the variants in which politically motivated crime may appear. A deed is considered “politically motivated” within the meaning of “politically motivated crime”, *inter alia*, if it targets a person on the basis of that person’s political views, nationality, ethnic origins, race, skin colour, religion, beliefs, origins, or because of that person’s external appearance, disability, sexual orientation or status in society, and the offence is causally related to this or if it is committed in this context against an institution or object.

36. The police officers recording such crimes use this “Catalogue of Thematic Fields for Politically Motivated Crimes” (*Themenfeldkatalog PMK*) in reviewing whether or not an offence was underpinned by political motivations; this catalogue applies uniformly throughout Germany. In this way, the police officers recording criminal offences are made aware in their day-to-day practice that hate crimes are to be recorded in the KPMD-PMK, and that they must be reported to the Federal Criminal Police Office via the specialised units for crimes against the state and via the *Land* Criminal Police Offices.

37. This means that contrary to its designation, the term “politically motivated crime” includes more than just offences that are “political” in the narrower sense. Rather, all crimes motivated by racism, xenophobia, homophobia, and transphobia are recorded as hate crimes in the KPMD-PMK, independently of whether the respective deed was characterised by a firm ideological attitude and/or by a firm political stance.

38. The public prosecutor’s offices compile a nationwide set of statistics on investigation proceedings for right-wing extremist/xenophobic criminal offences, which includes their data on investigation proceedings initiated, arrest warrants issued and the conclusion of investigation and criminal proceedings.

39. The Federal Government constantly reviews the set of instruments available to the criminal justice system (public prosecutor’s offices and courts) for recording hate crime in statistics in order to see where improvements can be made.

40. For example, on 17 March 2016, the Federal Minister of Justice and Consumer Protection, Heiko Maas, invited all of his counterparts from Germany’s 16 Länder to attend a conference in Berlin to discuss how the prevention of xenophobic and racist crimes might be improved, how these offences can be investigated and solved more quickly, and how they can be punished more effectively. The topic of the statistical recording of these offences featured among the matters discussed (also see III, margin no. 88). The Final Declaration of the Justice Summit of 17 March 2016 is enclosed as Annex 2.

41. A cross-Länder working group is currently examining how to achieve timely and meaningful data collection on hate crime in the form of judicial statistics and by using other models of representation; this follows discussions on the same issue in the criminal law committee of the Conference of German Justice Ministers, which brings together Federation and Länder.

42. Furthermore, in November 2015, the Conference of German Interior Ministers acknowledged a report by the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*, ADS) on “Options for Effective Prosecution of Hate Crime — Recommendations for Action from the Legal Opinion of the Federal Anti-Discrimination Agency”, and recognised the need for further joint discussions with representatives of the justice system. This led to the creation of a joint working group to discuss recommendations for action.

10 (b) (iii)

Indicator-related data collection

43. Länder police report politically motivated crimes via the Land Criminal Police Offices to the Federal Criminal Police Office, where the data is collected and analysed. These reports to the Federal Criminal Police Office contain information on the victim’s sex, nationality, asylum status, status as a victim or injured party, and, where relevant to the offence, other victim-specific characteristics (although it should be noted that political views, nationality, ethnicity, race, skin colour, religion, beliefs, origin, external appearance, disability, sexual orientation and social status are already listed as examples under “victim status”). In the case of hate crimes, because these pertain to a certain group, victim status is usually considered relevant to the offence.

44. The system used for defining politically motivated criminal offences and the Catalogue of Thematic Fields for Politically Motivated Crimes are regularly reviewed and, where appropriate, adjusted to bring them in line with current developments. This was most recently the case given the situation in Germany whereby, over the past few months, refugees and those providing them with support and assistance have increasingly been targeted by perpetrators of violence. Offences committed against properties, in this case

accommodations for asylum seekers, have been recorded as a separate subcategory since 2014. However, since 1 January 2016, the same now applies, *inter alia*, to offences committed in asylum-related contexts against politicians, volunteer helpers, and journalists.

45. Moreover, a working group comprised of federal and Länder representatives (and also involving experts from academia and civil society) has reviewed the system used for defining politically motivated crimes in order to establish whether fundamental changes are required. It concluded its work in November 2015. Agreement was reached, *inter alia*, that Islamophobic, anti-Christian, and anti-ziganistic offences should be recorded as separate subcategories of politically motivated crime in future. These changes were adopted by the Conference of German Interior Ministers and will enter into force on 1 January 2017.

46. The Federal Government would also like to point out that government agencies are in dialogue with organisations and representatives of civil society in order to explore both the potential and the risks involved in the types of data collection covered by the recommendation. There are no easy answers to these extremely sensitive issues of data protection law, not least given Germany's history.

10 (b) (iv)

Studies and training

47. The recommendation largely coincides with the requirements set out by the NSU Committee of Inquiry of the German Bundestag, i.e. to ensure that any right-wing extremist or xenophobic motives are recognised in the prosecution of the offence in cases where those from a migrant background fall victim to violent crime.

Police

48. The Federation and *Länder* have taken up the Committee of Inquiry's recommendations for the police on "strengthening inter-cultural competence", "working with victims and relatives" and raising awareness on issues of right-wing extremism and right-wing terrorism, and have either incorporated these into their education and training programmes — sometimes as compulsory modules — or have made them the subject of dedicated courses.

49. Federation: In addition to this, the Federal Criminal Police Office (*Bundeskriminalamt*, BKA) will place even more emphasis on encouraging a culture of constructive criticism and promoting inter-cultural competence. Studies for the federal higher-intermediate criminal police service include inter-cultural competence as one of the key skills of the profession (e.g. through inter-cultural communication training in the higher-intermediate and higher service,¹ or "inter-cultural week" for students of the higher-intermediate service). Furthermore, since March 2013, the Federal Criminal Police Office has worked with the Fritz Bauer Institute in Frankfurt am Main.² This cooperation has included organised visits to mosques and synagogues, and workshops to reflect on police action during National Socialism.

50. During their training for the federal higher-intermediate criminal police service, officers deepen their knowledge of these issues even further by examining them in the

¹ Service grades: A "Kriminalkommissar" is in the higher-intermediate criminal police service and holds a Bachelor of Arts; a "Kriminalrat" is in the higher criminal police service and holds a Master of Arts.

² The Fritz Bauer Institute is an independent, interdisciplinary research, documentation and education institute, focusing on the history of the mass crimes perpetrated under National Socialism — particularly the Holocaust — and the impact that these crimes have had right up until the present day.

context of the relevant offences (e.g. politically motivated crime, human trafficking) and in additional practice-oriented learning, e.g. on caring for the victims of crime, interviewing special groups of victims and conducting searches. Studies for a Master's Degree at the German Police University (*Deutsche Hochschule der Polizei*, DHPol) include a module on "Leadership in Complex and Inter-cultural Communication Processes", which also focuses on this issue.

51. Learning events are also offered on violent crime, terrorism, terrorist attacks and the threat of terrorist attacks.

Relevant further-training courses include:

- Two-week basic training course on politically motivated crime;
- Obligatory special courses on inter-cultural communication;
- Further training: "The NSU Case and Findings of the NSU Committee of Inquiry";
- Lectures on topics such as "Legal and Psychological Aspects of Crime-related Radicalisation" and "Right-wing Radicalism".

52. In addition to providing university instruction, criminal police experts from the Federal University of Applied Administrative Sciences hold a series of lectures entitled "Spectrum" at the Federal Criminal Police Office, offering a number of talks on "Migrants in Germany/Migrants in the Police" which incorporate a range of different viewpoints from research and academia, culture, politics, justice and the police.

53. Social and inter-cultural competence is taught as part of career training at the Federal Police (*Bundespolizei*, BPol). Corresponding further-training courses dealing with aspects of equality and adherence to the principle of non-discrimination are offered in-service by the Federal Police Academy (*Bundespolizeiakademie*).

54. Länder: The complex issues of right-wing extremism and xenophobia, as well as the corresponding approaches to prevention, are dealt with comprehensively and on an interdisciplinary basis in the initial and further training provided for police in the *Länder*. During their initial training, officers are not only taught about legal issues and provided with the necessary background knowledge — they also attend modules aimed at developing personal awareness. In this context they are taught the basic principles of social coexistence and learn about the development of prejudice.

55. Courses of both initial and further training place great emphasis on the latest trends and developments. This applies in particular to issues such as the crimes committed by the NSU and the process of critical scrutiny that has followed. In Bavaria, for example, expert units — in particular those such as the Bavarian Information Service for Extremism (*Bayerische Informationsstelle für Extremismus*, BIGE) — are involved in initial and further training courses, where they provide participants with the latest insights in the field.

56. With new e-learning applications, knowledge portals and a range of information offered via internal police media, all police officers are informed about right-wing extremism and, in particular, the latest manifestations of right-wing extremism (e.g. Baden-Württemberg, Bavaria, Brandenburg, Thuringia).

57. Courses are held at the further training institutes of the *Länder*; lectures, workshops and multiplier training seminars are also provided. To increase awareness throughout the police, learning programmes and seminars are offered on various levels for beginners and experienced specialists (e.g. Brandenburg). In addition to the courses offered, staff are provided with written training materials and journals (e.g. Saxony-Anhalt). Furthermore, specialist conferences are organised involving academics and civil society organisations (e.g. Saxony-Anhalt, Bremen).

58. At the Land level, numerous measures are taken to promote inter-cultural competence: Inter-cultural competence is included in training courses (Bremen) or as a separate obligatory module on the international and inter-cultural syllabus for the bachelor's degree (Rhineland-Palatinate). Events, courses and seminars are offered with a direct focus, *inter alia*, on ethics and inter-cultural skills (Brandenburg, Lower Saxony, Rhineland-Palatinate). These play a key role in imparting competence in an environment increasingly characterised by religious and cultural diversity. Others focus intensively on police ethics, human rights and hate crime (Hamburg).

59. In terms of further training, this issue is an integral part — for example — of the concept for decentralised leadership qualification programmes at the police authorities of Lower Saxony. The Police Academy of Lower Saxony has trained approx. 80 multipliers from all police authorities; these multipliers currently provide decentralised further training throughout the forces. Over 1,500 officers in police leadership roles have been trained/participated in awareness-raising via this method.

60. Programmes are academically verified — e.g. when learning applications are developed, or through the appraisal of training concepts (this is done in Rhineland-Palatinate, for example, by the Institute for Organisational Psychology at the University of Mainz).

61. In Thuringia, a “Task Force for Police Prevention of Extremism” (*Stabstelle Polizeiliche Extremismusprävention*) was set up at the *Land* Police Headquarters in 2013 with the aim of using police intelligence and experience in the fight against extremism, utilising insights from academia and research, and boosting commitment to police prevention work in the long term, especially against the extremist right.

The aims of extremism prevention by the police are as follows:

- Strengthening police confidence in Thuringia in dealing with political extremism and fighting politically motivated crime; awareness-raising within the police to ensure that officers approach the victims of these crimes appropriately;
- Strengthening victim protection following criminal offences with extremist motives;
- Supporting institutes of initial and further police training, in particular by sending staff from the Task Force for Police Prevention of Extremism to speak at courses focusing on particular issues;
- Organising in-house further training events, including on the following topics: hostility towards specific groups, right-wing extremism, victim protection in cases of right-wing extremist crime, inter-cultural competence/inter-cultural understanding; courses take place both within the Thuringian police and at external institutions (e.g. schools, *Land* and local authorities, etc.);
- Organising and holding expert conferences focusing on different issues (in 2015 these included the following: “Political Extremism — Select Points of Focus” and “Hostility Towards Specific Groups in Times of Flight and Asylum”).

62. Seminars within the framework of the “Thuringian *Land* Programme for Democracy, Tolerance and Openness” (*Thüringer Landesprogramm für Demokratie, Toleranz und Weltoffenheit*) are organised especially for the police:

- “Perceive*Understand*Respond — Dealing with Right-wing Extremism and Contempt for Humanity in Police Practice”;
- “Recognising Criminal Offences with Rightwing Motivations — Strengthening the Confidence of Minority Groups in the Police”;
- “Inter-cultural Learning — Basic Skills with Major Potential”.

In addition, a concept has been developed for providing instruction about the joint service directive of the *Land* Police Headquarters and the Land Criminal Police Office of Thuringia “on the compulsory examination of potential political motives for the offence in all cases of violent crime”, and this instruction is offered as a one-day further training seminar.

63. Furthermore, in-service police operations training regularly focuses on the inter-cultural characteristics of those potentially on the receiving end of police action; different inter-cultural aspects are dealt with in the context of practical scenarios as part of operations training.

Justice

64. Federation: Further-training for judges and prosecutors regularly focuses on the complex issue of political extremism as a challenge for society and the justice sector. The German Judicial Academy (*Deutsche Richterakademie*, DRA) — a cross-regional educational facility jointly funded by Federation and *Länder* to provide in-service training for judges and public prosecutors from throughout Germany — offers regular interdisciplinary courses focusing in detail on a wide range of issues revolving around right-wing extremism, xenophobia and anti-Semitism.

65. The German Judicial Academy offers a large number of courses offering behavioural training. For example, it offers courses on inter-cultural communication in the court room and on communication skills as a mark of judicial quality, as well as providing communication training and courses on forensic rhetoric. Furthermore, the German *Länder* also offer a large number of their own further-training events.

66. In addition to these courses, which are ongoing, the Federal Ministry of Justice and Consumer Protection is planning a further-reaching initial and further training project; the German Bundestag will decide on funding for this project when adopting the next Budget Act. The idea behind the project is to develop further training modules on racism, incorporating the legal framework on human rights; these modules will then be tried and tested and made available for inclusion in the established initial and further training structures of the German *Länder*. This will help judges and prosecutors respond appropriately to crimes motivated by racism and hatred, and enable them to cope in criminal proceedings with the experiences of those who have been affected by racism. The responsible ministers of the *Länder* welcomed this project unanimously at the Justice Summit (see page 13 above).

67. Länder: Thanks to obligatory modules on its further training programme, Bavaria has already addressed this recommendation (introductory seminars for prosecutors and judges). In order to achieve a broad impact and, in particular, to reach all new recruits, including those outside the relevant special divisions, introductory seminars impart a considerable amount of core knowledge for the criminal prosecution of offences with extremist motives. The introductory presentation on “Select Problems from Public Prosecution Practice” raises awareness of this issue and equips participants so that they can recognise the signs of relevant leads and, where necessary, involve specialised staff from the police or their own authority. Further, this ensures compliance with reporting duties applicable in the case of offences with an extremist background.

68. Criminal court judges also learn about this issue in the obligatory introductory seminars for all newly appointed members of the judiciary, in particular in the regularly offered part on main hearings, writing judgments and sentencing. Topics include the amendment — in force since 1 August 2015 — of section 46 (2), second sentence, of the Criminal Code (Strafgesetzbuch, StGB), pursuant to which racist, xenophobic or other motives evidencing contempt for humanity on the part of the perpetrator are to be given particular consideration during sentencing.

69. In Brandenburg, the justice administration offers courses and further training events on right-wing extremism and on acquiring inter-cultural competence. The 2015 and 2016 further training programmes at the *Land* of Brandenburg's judicial academy feature seminars on right-wing extremism and right-wing terrorism for judges and prosecutors. In March/April 2016 and in May 2016, Brandenburg's *Land* Academy for Public Administration offered two seminars, each consisting of two modules on "Inter-cultural Competence and Welcoming Culture".

70. Bremen offers a number of relevant introductory seminars and further training courses. These include "Diversity Management for Leaders" and "Diversity and Processes of Perception in the Context of Jurisprudence", as well as a further training course on inter-cultural competence for staff in charge of receiving petitions at court registries, and a related course for criminal court judges.

71. In the last few years, Hamburg has offered its own further training courses on "Inter-cultural Communication in the Court Room". One of the aims of the courses was to ensure that victims from other cultural backgrounds are seen in their own context, and to make judges and prosecutors aware of the characteristics of different cultures. Seminars on right-wing extremism and right-wing terrorism are regularly offered to judges, prosecutors and prison staff in order to continue raising awareness among those working in these areas.

72. Lower Saxony offers its own further training seminars on "Inter-cultural Competence in the Justice System", conceptualised on an inter-service basis for inter-service use. There has recently been a significant increase in the number of courses available. Braunschweig Higher Regional Court also runs central courses for the whole of Lower Saxony in order to boost inter-cultural competence on the part of guards and staff in charge of receiving petitions at court registries. These measures make authorities more accessible for ethnic minorities.

73. Saxony has the following seminars planned for 2016:

- Dealing with persons traumatised by grief or shock, 15 May 2016;
- Inter-cultural competence, September 2016;
- Dealing with victim witnesses, 22 November 2016.

Measures on reporting and investigating complaints of hate crime

74. Lower Saxony: Justice Complaints Service: Complaints about hate crime addressed to the public prosecutor's offices are examined by the offices to establish whether a crime may have been committed; where this is found to be the case, investigation proceedings are launched. Pursuant to the Justice Ministry's executive provision of 23 October 2015 on "Reporting Obligations in Criminal Proceedings and Proceedings for the Imposition of a Regulatory Fine" (4107-402.27), all prosecutor's offices in Lower Saxony are also obliged to report to the Justice Ministry of Lower Saxony in criminal matters of extraordinary legal or factual significance. This reporting duty is further specified as coming into effect in cases of violent offences with religious, anti-Semitic, xenophobic or other extremist motivations. In these cases, prosecutors must report both the opening and closing of investigation proceedings, as well as the decision issued by the criminal court.

75. Police Complaints Service: On 1 July 2014, a "Complaints Service for Citizens and Police" (*Beschwerdestelle für Bürgerinnen und Bürger und Polizei*) was opened at the Lower Saxony Interior Ministry. This service is responsible for complaints and submissions made directly or via the ministry, including those against individuals for whom the ministry is responsible in disciplinary terms; it is also responsible for "follow-up complaints", i.e. complaints about the way in which an original complaint was handled at the station. A key aspect of this work includes complaints filed by the affected citizens as well as by police

officers and administrative officials themselves — including from beyond the Interior Ministry’s remit and area of activity. The Complaints Service is immediately subordinate to the State Secretary, independent of the ministry’s usual hierarchy.

76. Thuringia: The joint service directive of the *Land* Police Headquarters and the *Land* Criminal Police Office of Thuringia of 13 August 2015 “on the compulsory examination of potential political motives for the offence in all cases of violent crime” includes *inter alia* the following provisions:

- All offences (not only violent crime) are to be examined in order to establish whether they were underpinned by any political motivations;
- In cases of violent crime, this examination must be particularly rigorous and must be subsequently documented;
- This examination is to include not only information about the offender, but also information about the victim, as well as the specifics of the time and location of the offence and all circumstances surrounding the offence;
- This examination is to be conducted throughout the entire investigation — and should definitely feature during initial police measures and when handing the case over to the prosecutor’s office;
- A special form entitled “Examining Possible Political Motives in the Case of Violent Crime” has been created and included in the investigation file;
- Regular instruction is provided and checks are made in the course of disciplinary and technical oversight.

10 (b) (v)

General

77. For 2016, the Federal Government Commissioner for Migration, Refugees and Integration, Minister of State Aydan Özoğuz, has made “participation” the focus of her work with the slogan: *Teil haben, Teil sein. Partizipation in der Einwanderungsgesellschaft* — a slogan encouraging people to “take part” and “be part” of society in a country that is open to immigration. The aim is to actively raise awareness in a range of areas and take measures, *inter alia*, to make the authorities more open and inter-cultural.

78. Building on the operational goals and programmes set out in the National Action Plan on Integration, the Commissioner for Migration, Refugees and Integration has worked alongside the Federal Ministry of the Interior to initiate a survey of employees in the federal administration; this is the first study of how many people from migrant backgrounds work for the federal authorities. This will raise awareness of where improvements need to be made. Between December 2014 and October 2015, a total of 24 authorities of the federal administration took part in this survey, including 13 federal ministries, the Federal Chancellery and the office of the Federal Government Commissioner for Culture and the Media, the Bundeswehr (Federal Armed Forces) and eight further subordinate authorities (including the Federal Criminal Police Office).

79. The results were published in a report by the Federal Institute for Population Research on 26 May 2016. Based on voluntary survey participation, the average share of staff members in the federal administration from a migrant background was calculated at 14.8 percent and is thus considerably higher than the figure of 6.7 percent yielded by the 2013 micro-census for the public administration in general. This study delivers empirical evidence that persons from a migrant background are under-represented in the federal administration. The exact percentage varies considerably between different authorities.

80. With more being done to make job advertisements appeal to those from immigrant backgrounds and with targeted training for human resources decision makers, the aim is to achieve the Federal Government's stated goal of hiring more people from migrant backgrounds into public service.

81. At *Länder* level, *Land* governments have also made it their political goal to boost diversity in hiring for positions in the *Länder* administrations. The Hessian *Land* government and the *Land* of Berlin, for example, are aiming to achieve the same diversity in the composition of their personnel as in the *Land* population itself.

Justice and police authorities

82. The justice and police authorities at *Länder* and federal level are especially committed to increasing the share of staff from migrant backgrounds working in the various law enforcement agencies. There is an emphasis on staff diversity in the hiring procedure; after all, the language skills and cultural background knowledge offered by staff with migrant backgrounds has repeatedly proven valuable in these agencies' day-to-day work.

Justice

83. Federation: The Office of the Federal Prosecutor General (*Generalbundesanwalt*, GBA) is committed to increasing its share of staff from migrant backgrounds. In the case of civil servants of the higher, higher-intermediate and intermediate service, however, staff can be recruited only by way of secondment and transfer from the justice administrations of the *Länder*. To date, only one application has been received from a public prosecutor from a migrant background. This candidate was transferred to the federal service for a position at the Office of the Federal Prosecutor General.

84. Länder: The Hessian justice system has been working to promote inter-cultural openness in the administration for some time. In Hamburg, a number of successful campaigns have been launched and the justice authority has designed job advertisements for judges and prosecutors to appeal in particular to applicants from migrant backgrounds and actively encourage such candidates to apply. These and other measures have resulted in a tangible increase in the share of hitherto under-represented groups at Hamburg's prosecution authorities and courts. In Lower Saxony, more and more human resources development courses are being offered for managerial staff; these are provided on an inter-departmental basis, but some courses are specially organised by the Justice Ministry in cooperation with the Lower Saxony Study Institute (SIN). The aim of these courses is to increase inter-cultural competence — especially among staff with human resources responsibilities. This includes measures to strengthen inter-cultural awareness within the Lower Saxony Land administration's leadership and human resources culture; there are also programmes with a focus on non-discriminatory personnel selection — inter-cultural schooling for selection boards and staff with human resources responsibilities. These courses are equally aimed at prosecutors.

Police

85. Considerable efforts have been made at federal and *Land* level to ensure that diversity in society is also reflected among police ranks. In particular, recruitment campaigns have targeted young people from migrant backgrounds, encouraging them to sign up for the police.

86. Federation: At the federal level, the Federal Criminal Police Office (*Bundeskriminalamt*, BKA) and Federal Police (*Bundespolizei*, BPol) have executed a range of programmes to increase their share of employees from a migrant background. In two projects to attract new recruits at the Federal Police Department at Frankfurt (Main)

Airport and the Federal Police Department in Munich, the Federal Police has worked successfully on the ground with organisations responsible for integration, migrant interest groups and select schools with large percentages of children from a migrant background. At the same time, advertising has been considerably increased (e.g. radio adverts, posters) and the number of career advisers increased in order to reach this target audience.

87. Länder: At the *Land* level, in Baden-Württemberg for example, the police careers website and advertising brochures have been overhauled and the value of diversity explicitly addressed (<https://nachwuchswerbung.polizei-bw.de/web/index.php/kulturelle-vielfalt/#intro>). In this connection, the Integration Ministry and the Interior Ministry together launched a pilot diversity scheme for police in Karlsruhe (*Polizei Karlsruhe — breit gefächert* — “Police in Karlsruhe — Multifaceted!”) which, since October 2013, has taken a range of measures to attract new recruits and to increase diversity awareness in the Karlsruhe force. Approximately 20 percent of trainees are now from a migrant background.

88. A number of projects have been carried out in Bremen and are beginning to take effect (job advertisements in Turkish, involvement in the “Stadium School” project for fans of *Werder Bremen*, career information events in cooperation with the Turkish parents’ association in Bremen and the local German Turkish community organisation). For the 2015 recruitment year, a total of 347 young people from migrant backgrounds originating in 49 different countries applied. Applicants either indicated their origins, or those of their parents, on their application forms, or this information became evident when they submitted their birth certificates or at the interview stage. This puts the share at approximately 20.2% of the overall number of applicants, signifying an increase of 4% compared to the previous year and representing the highest percentage figure for the last 6 years — with an increase in the number of applicants from 11.18% (2010) to 20.15% (2015). A total of 436 applicants passed the general recruitment procedure for police in Bremen and Bremerhaven for 2014/2015. Of the successful applicants, 57 or approx. 13% were from a migrant background. After the selection of the best candidates, 20 new trainees from migrant backgrounds were hired with origins in a total of 10 non-German nations. This corresponds to a sixth of all trainee inspectors (*Polizeikommissaranwärter*) hired in 2015.

89. In Hamburg, the share of persons from a migrant background has steadily increased over the last few years among both applicants and new recruits. The figure now lies between 10 and 20 percent for new recruits (2015: 18% for the intermediate service, 13.3% for the higher intermediate service).

90. For a number of years, police in Lower Saxony have seen an increase in the number of applicants and new recruits from migrant backgrounds, not least thanks to intensive advertising to this effect. While in 2008 the share of applicants stood at around 9%, this has now increased to over 19%. Whereas, in 2008, only approximately 4% of police trainees were from migrant backgrounds, this share has now more than tripled, and currently stands at 13.1%.

91. In Rhineland-Palatinate, it has long since been the declared aim of the *Land* government to recruit foreign nationals and Germans from migrant backgrounds into the police service. This is communicated in particular in the form of multi-lingual information brochures displayed in schools, job centres and police stations, and offered at police information events. Furthermore, information events are offered and recruitment forms are supplied to foreign institutions. The pilot project “Diversity in the Police”, carried out jointly by the Police Headquarters in Mainz and the Institute to Promote Education and Integration (*Institut zur Förderung von Bildung und Integration*, INBI), was aimed at attracting more people from migrant backgrounds to the apply for the police service, and to increase this group’s chances of being hired. Information events were held at schools and migrant organisations, applicants were provided with guidance and support, and seminars were provided for police recruitment advisers. The share of candidates from migrant

backgrounds hired by Rhineland-Palatinate's police forces was 12.44% in 2014 and 13.5% in 2015.

92. The Land police of Saxony-Anhalt is also committed to increasing its share of staff from migrant backgrounds. The careers information website and job advertisements in the media are especially geared to ensure that their target audience includes young candidates from migrant backgrounds who might be interested in joining up (including those without German citizenship). Furthermore, the career information service makes use of events which large numbers of young people from ethnic minorities are expected to attend, e.g. the cultural event organised by Saxony-Anhalt North Police Headquarters, "Inter-Cultural Week" at the Police Headquarters for Saxony-Anhalt South, or the citizenship festival organised by the Ministry for the Interior and Sport of the *Land* of Saxony-Anhalt. School events and career fairs are also used to inform people with a foreign background about the prospects of a career with the police.

III. Information on margin number 19 of the Concluding Observations

93. By verbal note of 1 July 2013, and additionally of 3 February 2015, the Federal Government responded to the Committee's opinion of 26 February 2013 (on Communication No. 48/2010) and provided information on implementation. In order to avoid repetition, reference is first of all made to these verbal notes.

94. In its concluding observation under no. 19 on the Federal Republic of Germany's Combined 19th-22nd Periodic Report, the Committee makes the following remarks:

The Committee recommends that the State party act upon and provide information on follow-up measures to give effect to the recommendations of the Committee in Communication No. 48/2010, TBB-Turkish Union in Berlin/Brandenburg v. Germany (so-called "Sarrazin case"). The Committee reminds the State party of the need for effective responses to racist hate speech in accordance with the Committee's general recommendation No 35.

95. The Federal Government shares the Committee's opinion that effective responses to hate speech are required in accordance with the Committee's general recommendation No. 35. However, freedom of expression is also a central human right. In order to preserve a democratic culture of debate, it is vital to strike a balance between conflicting interests, i.e. between the right to freedom of expression on the one hand and the right of individuals and society to protect themselves against harmful attacks on the other.

96. Freedom of opinion is indispensable not only for exercising and protecting all human rights, but also for the functioning of a democratic state based on the rule of law. It is protected by various international human rights treaties, in particular Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights. The need to protect freedom of opinion is also reflected in Article 4 of ICERD, which stipulates that the States parties' obligations under Article 4 are to be exercised "with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention". This (also) refers to Article 19 of the Universal Declaration of Human Rights, which lays down the right to freedom of opinion and information.

97. Furthermore, there is another point to consider in establishing the extent to which racist utterances must be prosecuted under criminal law. The Federal Government believes that criminal law mechanisms should generally be the ultima ratio, i.e. the "sharp edge of

the sword”, in the State’s arsenal of responses. While certain limitations must apply even in the battle between different opinions, and criminal law may provide the necessary tools to defend these boundaries, racism and discrimination in society can only be reduced with an holistic approach. Looking beyond the criminalisation aspect, special importance must therefore be attached to debate and activities originating from mainstream society, particularly with regard to statements of opinion that fall below the criminality threshold.

98. It must be taken into account that, in the battle of public opinion, criminal sanctions always have the potential to produce a *chilling effect*, i.e. they may also deter people from expressing opinions that would actually fall within the right to freedom of opinion. For this reason, criminal law is not always the right approach (see also *Human Rights Committee, general comment no. 34 from 2011, margin nos. 21, 34, 47; Action Plan of the expert workshop organised by OHCHR on 5 October 2012 [“Rabat Plan of Action”: criminal sanctions should be seen as last-resort measures]; European Court of Human Rights [ECtHR], Judgment of 10 October 2008, Soulas and others v. France, Application no. 15948/03; ECtHR, Grand Chamber Judgment of 15 October 2015, Perincek v. Switzerland, §196, 198; European Commission against Racism and Intolerance [ECRI], General Policy Recommendation No. 15 of 8 December 2015).*

99. Accordingly, the Convention does not require the criminal prosecution of every expression of ideas of racial superiority or every statement stirring up racial discrimination. Rather, the Convention leaves States parties with discretion to determine when criminal prosecution would best serve the goals of the Convention. In its opinions in *L.K. v. The Netherlands* (Communication No. 4/1991 of 16 March 1993, margin no. 6.5) and *Yilmaz-Dogan v. The Netherlands* (Communication No. 1/1984 of 10 August 1987, margin no. 9.4) CERD recognised the “principle of expediency”, which it defined as “the freedom to prosecute or not prosecute”. In these opinions, the Committee has explained that this principle ‘is governed by considerations of public policy’ and that ‘the Convention cannot be interpreted as challenging the *raison d’être* of [this] principle’.

100. In this context the Federal Government believes that, with sections 130 and 185 et seq., German criminal law contains adequate provisions which also allow the Federal Republic of Germany to meet its obligations under international law. No amendment of these provisions of substantive law is therefore envisaged.

101. Independently of this, the Federal Government believes that constant scrutiny is absolutely vital in order to ascertain whether measures are required to combat the expression of racist opinions, and what form these measures will take. This is an ongoing task for society as a whole and on all levels within the Federal Republic of Germany.

102. The Federal Government itself has recently initiated a series of reforms designed to enable the phenomenon of racism to be tackled more effectively under general criminal law, and to strengthen the protective rights of (potential) victims. With the Act of 12 June 2015 to Implement the Recommendations by the Committee of Inquiry into the National Socialist Underground of the German Bundestag (*Gesetz zur Umsetzung von Empfehlungen des NSU-Untersuchungsausschusses des Deutschen Bundestages*), which took effect on 1 August 2015, the Criminal Code now expressly includes “racist, xenophobic, or other motives evidencing contempt for humanity” in the catalogue of circumstances to be considering during sentencing (section 46 (2), second sentence, of the Criminal Code). These motives are generally to be considered as aggravating circumstances.

103. Concurrently, a new provision has been included in the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (*Richtlinien für das Strafverfahren und das Bußgeldverfahren*, RiStBV), which are binding for police and public prosecutors, stipulating that racist, xenophobic or other motives evidencing contempt for humanity are to be given particular consideration. This applies not only to investigative

work in general, but also to those cases that are prosecuted under criminal law only where it is in the public interest in doing so. The Federal Government is confident that this has improved the legal situation within the spirit of the Committee's opinion.

104. On 17 March 2016, the Federal Minister of Justice and Consumer Protection, Heiko Maas, invited all of his counterparts from Germany's 16 *Länder* to attend a conference in Berlin to discuss how the prevention of xenophobic and racist crimes might be improved, how these offences can be investigated and solved more quickly, and how they can be punished more effectively (see page 13, margin no. 35 above and the Final Declaration of the Justice Summit, Annex 2). The justice ministers agreed to prosecute extremist offences more rigorously and to take a more coordinated approach in doing so. They announced a number of different measures focusing on a more thorough exchange of information between Germany's *Länder* and the Office of the Federal Prosecutor General (see page 7, margin no. 15 above), and better recording of hate crime in statistics. Further, those *Länder* that have created special divisions within their prosecution offices to fight politically motivated crime have had positive experiences in doing so. Moving forward, these specialised prosecutors in particular can play an even greater role in ensuring that such offences are investigated more effectively.

105. In order to ensure that hate crime on the Internet is effectively prosecuted, the Federal Ministry of Justice and Consumer Protection has provided clear and easy-to-understand information explaining how to report Internet hate crime to the authorities. This has taken the form of an information sheet, entitled *Anzeigenerstattung — gemeinsam gegen Hassbotschaften* ("Reporting Criminal Offences — Fighting Hate Crime Together"), which the Federal Ministry of Justice and Consumer Protection has published on its website (www.bmjbv.de) http://www.bmjbv.de/DE/Themen/FokusThemen/TaskForce_Hatespeech/TaskForce_Hatespeech_node.html.

106. Just like other members of the Federal Government and the German Chancellor Dr. Angela Merkel herself, Federal Minister of Justice Heiko Maas has spoken out publicly on many occasions, condemning the incitement of racial hatred. In doing so, Federal Minister Maas has also drawn particular attention to the racism that is rife on the Internet. For example, he initiated the process that has resulted in Facebook working more closely and intensively than ever before with private hotlines in order to ensure that the content reported by these bodies is dealt with quickly and on a priority basis. At his invitation, a Task Force of tech companies, civil society organisations, NGOs and politicians was convened to devise further proposals for a sustainable and effective approach to tackling hate speech on the Internet.

107. Federal Interior Minister Dr. Thomas de Maizière is also taking a resolute approach towards tackling racism and hate speech. On 27 January 2016, he banned the online platform "Altermedia Deutschland". Altermedia Deutschland was one of the most important online information platforms of the far right in the German-speaking world. The website was visited several million times per year. The team running Altermedia Deutschland disseminated racist, xenophobic, anti-Semitic, homophobic and Islamophobic content. On behalf of the Federal Prosecutor General, the Federal Criminal Police Office additionally conducted an investigation into the team running "Altermedia Deutschland" on suspicion of forming a terrorist organisation pursuant to section 129 of the Criminal Code.

108. The Federal Ministry of the Interior and the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*, BfV) are doing everything within their power to support the petition submitted by the Bundesrat (the chamber of parliament representing the German *Länder*) to the Federal Constitutional Court to initiate proceedings to ban the National Democratic Party of Germany (*Nationaldemokratische Partei Deutschlands*, NPD). The NPD is the most significant right-wing extremist party in Germany. Based on its dogma of a community of the "Volk", it pursues an aggressive,

racist, discriminatory agenda of agitation against foreigners and other minorities. At the beginning of March, the Federal Constitutional Court ruled that proceedings to ban this party would not be subject to any procedural impediments; this means that a closer substantive examination will now be carried out in order to establish whether the criteria to impose a ban have been met.
