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Initial reports of States Parties due in 1977

Addendum

FEDERAL REPUBLIC OF GERMANY*/

[25 November 1977]

A. General Comments

1. Guarantee of Protection of Human Rights in the Basic Law

(a) Most human rights laid down in the Covenant concur with the basic rights in the Constitution of the Federal Republic of Germany, i.e. the German Basic Law enacted in 1949. The human rights under the Covenant thus enjoy simultaneously with the basic rights under the German Basic Law the special guarantees set forth in that Law. These rights being constitutional law, they rank before any other domestic law of the Federal Republic of Germany. As a result, the human rights under the Covenant enjoy, to that extent, also the procedural guarantees serving the implementation and effective observance of the basic rights in the Federal Republic of Germany.

(b) In Germany just as in other states of the West efforts to safeguard human rights go back to the 18th and 19th centuries. The first catalogue of basic rights on German soil was promulgated by the Parliament in Frankfurt immediately after the revolution of 1848. The Republican Constitution of the Reich of 1919 also contained a comprehensive catalogue of human and civil rights. That constitution, however, did not make any effective provisions to protect the liberal and democratic structure of the state established by it. This contributed to the fact that during the world economic crisis beginning in 1929 the liberal constitutional order of 1919 was crushed between radical political groups of the left and the right and that, finally, in 1933, it ended with the dictatorship of the Hitler Regime. Only the termination of the Second World War, a result of that development, allowed in the Federal Republic of Germany the return to a constitutional order based on respect for human rights.

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*/ Copies of the European Convention for the Protection of Human Rights and Fundamental Freedoms and an English translation of the Basic Law of the Federal Republic of Germany appended to this report are in the files of the Secretariat and available for consultation.

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(c) The Basic Law of the Federal Republic of Germany was drawn up in 1947/48, at a time when, as a consequence of the Second World War, in Germany a disastrous economic situation prevailed. The architects of the Basic Law nevertheless set about rebuilding the state with great idealism and were guided by the Universal Declaration of Human Rights of the United Nations proclaimed on 10 December 1948. The supreme value under the constitutional system of the Federal Republic of Germany is human dignity. Art. 1, para. 1, of the (German) Basic Law therefore provides: "The dignity of man shall be inviolable. To respect and protect it shall be the duty of all state authority". This declaration in favour of the inviolable value of the individual person expressed here is connected with a firm renouncement of any totalitarian opinions for which the law is merely an instrument of politics which can be handled arbitrarily. It is the German experience of the doctrines and practices of totalitarism which show that they carry the seeds of permanent and serious violations of human rights.

(d) The Basic Law contains a comprehensive catalogue of basic rights which are guaranteed partly as general human rights and partly as rights reserved for Germans. In particular, the following should be mentioned: The right to the free development of the personality (Art. 2, para. 1, of the Basic Law), the right to life and inviolability of the person and the right to liberty of person (Art. 2, para. 2, of the Basic Law), the right to equal treatment including equal rights for men and women in all fields of law (Art. 3 of the Basic Law), freedom of faith, conscience and religion (Art. 4 of the Basic Law), including the right to refuse war service on grounds of conscience, as well as the right to freedom of expression and freedom of information which include the freedom of the press (Art. 5 of the Basic Law). Special guarantees in favour of the family and the school system are provided for in Arts. 6 and 7 of the Basic Law. Freedom of assembly and freedom of association - supplemented by the right to found political parties - are guaranteed to all Germans by Arts. 8, 9, 21, para. 1, second sentence, of the Basic Law, just as the right to freedom of movement under Art. 11 of the Basic Law, and the basic right freely to choose one's occupation and place of work under Art. 12. Art. 10 of the Basic Law ensures privacy of mail, posts and telecommunications and Art. 13 the inviolability of the home.

Property enjoys protection under Arts. 14 and 15 of the Basic Law. Pursuant to Art. 16 no German may be deprived of his nationality or extradited to a foreign country. Persons persecuted on political grounds enjoy the right of asylum under Art. 16, para. 2, first sentence. Furthermore, Art. 17 gives everyone the right to address requests or complaints to the appropriate agencies or to parliamentary bodies.

In addition to the codified rights in Arts. 2 to 17 of the Basic Law, which in Art. 1, para. 3, are expressly designated as "basic rights", some other rights are protected in the same way as the basic rights. These rights include the right to resist attacks on the constitutional order (Art. 20, para. 4, of the Basic Law), the enjoyment of political rights under Art. 33, the right to vote and the right to be eligible for election (Art. 38) as well as the elementary guarantees for court proceedings: the right to have a lawful judge (Art. 101), the right to be heard in all questions of fact and law during court proceedings (Art. 103), the legal guarantees in the event of deprivation of liberty (Art. 104). In respect of many

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of the rights mentioned a parallel may be found only in the Universal Declaration of Human Rights but not in the Covenant (e.g. protection of property, right to asylum), others - such as the right of conscientious objection - go beyond the Covenant and the Universal Declaration of Human Rights.

(e) Experience with the German Constitution of 1919 had shown that it was not sufficient to include a catalogue of basic rights in the text of a constitution if they did not acquire legally binding force. Art. 1, para. 3, of the Basic Law drew the necessary conclusion by stipulating that the basic rights under the Basic Law are binding as directly enforceable law on the legislature, the executive and the judiciary.

This binding force is not only of a moral nature; it is also of legal relevance: it implies that the deputies may not enact laws and that judges and administrative officials, notwithstanding the necessity of obtaining a decision from the Constitutional Court, are not allowed to apply any legal provisions that are inconsistent with the basic rights guaranteed in the Basic Law.

The Basic Law can be amended only with a qualified majority. In the light of what happened under the Hitler Regime, the authors of the Basic Law of the Federal Republic of Germany took precautionary measures so as to prevent the legislator from abolishing the liberal democratic basic order. Accordingly, an amendment of the Basic Law is declared to be inadmissible in Art. 79, para. 3, of the Basic Law, inter alia, insofar as "the basic principles laid down in Articles 1 and 20" are affected. These basic principles include, inter alia, the basic and human rights which the Federal Republic of Germany considers to be inalienable rights of the individual under the constitution and which, as a result of this special legal guarantee, cannot be disposed of by state authority. The basic rights, moreover, may be restricted only in cases and to an extent expressly admitted by the Basic Law itself. Even then restrictions under Art. 19 of the Basic Law are admissible only by or pursuant to a law. In any case, the legislator is prohibited by Art. 19, para. 2, from encroaching upon the essential content of a basic right. The principles of the republican, democratic and social state based on the rule of law, of parliamentary democracy and of separation of powers mentioned in Arts. 20 and 28 of the Basic Law also belong to that part of the constitution which is unalterable and protected even against encroachments by the legislator.

2. How are the Basic Rights protected in the Federal Republic of Germany?

Since the Federal Republic of Germany came into existence the German people have in numerous free and secret elections and with overwhelming majorities decided in favour of the liberal constitutional order of this state based on respect for the basic rights. Radical groups of the right and of the left which threatened this order have remained insignificant splinter parties whose total number of votes in the last elections for the German Bundestag were considerably below the 5 per cent which, according to the Federal Electoral Law, are required for one party alone to be represented in parliament. This stability of the liberal democratic order, unprecedented in German history, is mainly due to the fact that in the Federal Republic of Germany respect for human rights is a reality: in the daily life of the individual citizen as well as in politics, where the basic and human rights

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under Art. 1, para. 3, of the Basic Law come first. In practice it is essential for the protection of human rights to be in the hands of independent judges. A central task in the protection of human rights falls to the Federal Constitutional Court.

The basic rights in the Federal Republic of Germany are protected in different ways. The following should be mentioned in particular.

(a) The most important instrument is the constitutional complaint under Art. 93, para. 1, No. 4 a, of the Basic Law. Everyone, after having exhausted all normal remedies, may lodge such a complaint by claiming that his basic rights guaranteed by the constitution or one of his rights laid down in Arts. 20, para. 4, 33, 38, 101, 103 and 104, of the Basic Law have been violated. Since the establishment of the Federal Constitutional Court (1952), up to the end of 1976, 33,707 constitutional complaints had been lodged. Four hundred of those complaints were successful and in some cases had far-reaching effects on the legislation.

(b) Holders of public office working in the field of legislation, administration or judicature are directly bound by the basic rights, Art. 1, para. 3, of the Basic Law. This implies that every judge must examine ex officio whether the legal provisions to be applied by him are consistent with the basic rights guaranteed by the Basic Law. If a court considers that a legal provision the validity of which is relevant for the decision to be taken is unconstitutional, it is bound to stay the proceedings and obtain a decision of the Federal Constitutional Court. As Art. 1, para. 3, of the Basic Law is furthermore binding upon the legislator, he must examine whether the bill is constitutional and whether the Federal Constitutional Court would endorse it. Sometimes government and opposition disagree on this point. Then the matter is decided by the Federal Constitutional Court if the Federal Government, the Government of a federal state ("Land") or one third of the members of the German Bundestag ask the Court to do so.

Up to 1976 such compatibility proceedings were carried out or initiated in 1,599 cases, either upon request of one of the last-mentioned bodies or following the submission of a case by a court. Decisions rendered by the Federal Constitutional Court in such cases have the force of law.

(c) The Federal Constitutional Court further decides, inter alia, on certain disputes between state organs - Federal President, Federal Government, Bundestag etc. - (Art. 93, para. 1, Nos. 1 and 4 of the Basic Law) as well as on the ban of parties which, by reason of their aims or the behaviour of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany (Art. 21, para. 2, of the Basic Law). Respect for human rights, which are an integral part of the constitutional order of the Federal Republic of Germany, is guaranteed only if the persons acting on behalf of the state feel bound by that order. The Basic Law therefore offers the possibility to ban parties hostile to the constitution and thus to prevent them from influencing public matters and thereby prejudicing the guarantee of human rights. For the same reason, as decided by the Federal Constitutional Court, the civil servant, as laid down in Art. 33, para. 4, of the Basic Law, is required to take an active part in the defence of the free democratic order, in particular by respecting and acting in accordance with the existing constitutional and legal provisions, and to perform his functions in the spirit of those provisions (Decisions of the Federal Constitutional Court,

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vol. 39, pp. 347 et seq.). To confer upon someone the status of civil servant therefore requires that the candidate undertakes to defend at all times the free democratic basic order (Decisions of the Federal Constitutional Court, vol. 39, p. 352).

(d) The basic rights are primarily rights to freedom protecting the citizen against encroachments by public authority. But they also develop a great effect on the application of the laws as a result of the fact that the legal provisions, to the extent to which they leave room for interpretation, are to be interpreted in the light of the basic rights protected by the constitution. As this applies to any law, courts and authorities are, in the application of the laws, permanently and directly confronted with the enforcement of basic rights. Respect for the basic rights, therefore, is not only central to the written constitution but also to government action. It is for this reason that the basic rights in the Federal Republic of Germany achieved an unusually high degree of effectiveness. The line of decisions of the Federal Constitutional Court makes a contribution in this respect by securing the standard of basic rights and developing it further by interpreting the constitution.

3. Acknowledgement of the Principle of International Control

The protection of human rights is not only a domestic matter but, as Art. 1, para. 2, of the Basic Law in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and the United Nations International Covenants on Human Rights expresses it, it is the basis of peace and justice in the world. Peace and justice consequently depend on an effective international control of the protection of human rights. For this reason, the Federal Republic of Germany was one of the first states to ratify as early as 1952 the European Convention for the Protection of Human Rights and Fundamental Freedoms and to subject itself to international control which is exercised by the European Commission and the European Court of Human Rights in accordance with the Convention. The Federal Republic of Germany, moreover, made a declaration under Art. 25 of the Convention thereby subjecting itself to supranational control which may be put into operation by anyone who feels his rights under the Convention have been violated, through individual petitions and after having exhausted all domestic remedies. Since the Commission took up its activities, about 7,500 individual petitions have been received by it, about one third of which are directed against the Federal Republic of Germany. So far no violation of the Convention by the Federal Republic of Germany has been established. In a case some years ago concerning the length of detention on remand (WEMHOFF case), the European Court of Human Rights reversed a decision by which the European Commission of Human Rights had originally held that the Convention had been violated. A similar case (KÖNIG) is still pending before the Court and concerns the duration of proceedings in an administrative dispute.

It is in accordance with the policy of the Federal Republic of Germany supporting international protection of human rights that, in 1973, it ratified also the United Nations International Covenants on Human Rights. In making the declaration under Art. 41 of the International Covenant on Civil and Political Rights, it furthermore recognized international control of its practice of human rights in cases of complaints by states.

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B. Individual Provisions of the Covenant

Article 1

(a) Paragraphs 1 and 3

The Federal Republic of Germany regards the right of self-determination of the peoples and observance thereof as integral parts of the international order of law and peace.

In the national sphere, this right was laid down in the Basic Law of the Federal Republic of Germany. It is stated therein: "The entire German people are called upon to achieve in free self-determination the unity and freedom of Germany."

Internationally, it was sanctioned in particular in the Charter of the United Nations as well as in Art. 1 of this Covenant and of the Covenant on Economic, Social and Cultural Rights. By joining the United Nations and ratifying both Covenants on Human Rights, the Federal Republic of Germany again confirmed that it supports the right of self-determination. In accordance with the definitions made in this Covenant as well as in the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations" of 24 October 1970 (United Nations Res. 2625 [XXV]), the Federal Republic of Germany proceeds on the assumption that the right of self-determination is a universal right which is valid for all human beings irrespective of colour, race, religion or regional origin. The right of self-determination is a right to determine one's own status in domestic and foreign politics as well as in an economic and structural respect and as such is a right of the peoples. It can be fully realized only where the people is given the possibility freely to express its will in votes and elections. On the other hand, the Federal Government is of the opinion that the right of self-determination being a universal right may be implemented only without violence. To that effect, the right of self-determination was also described by the participating States of the Conference on Security and Co-operation in Europe (Principle VIII of the Final Act).

To remove the remains of colonialism is, in the opinion of the Federal Government, an important case for the realization of the right of self-determination. It has therefore always supported the idea that this right should also be put into effect in Southern Africa. Decolonization, however, is not the only field in which the realization of the right of self-determination is of importance. The Federal Government is indeed convinced that it is of importance also in other parts of the world and has a bearing on the further development of relations in Germany.

(b) Paragraph 2

Any nation has the right, for its own ends, freely to dispose of its natural wealth and resources in the way described in Art. 1, para. 2.

The Federal Republic of Germany respects that right.

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Article 2

(a) Paragraphs 1 and 2

Art. 2, paras. 1 and 2, creates in respect of the States parties to the Covenant the international obligation to enforce within their respective territories the rights recognized in the Covenant. Below it will be set out in detail how these rights are protected within the Federal Republic of Germany. This protection covers all individuals in the Federal Republic of Germany subject to its jurisdiction without any distinction being made of the kind described to be inadmissible under Art. 2, para. 1, of the Covenant.

(b) Paragraph 3

Judicial remedy against violations of the rights recognized in the Covenant, an undertaking of the States parties imposed by Art. 2, paragraph 3, is ensured in the Federal Republic of Germany by the constitution. Pursuant to Art. 19, para. 4, of the Basic Law any person whose rights were infringed by public authority may appeal to the courts. Acts of public administration infringing the recognized rights and freedoms may - as all illegal administrative acts - be revised following a complaint to the administrative courts, the person concerned having previously addressed a request to that effect to the administrative authority. If the authority fails to take a decision within a certain time-limit, he may bring an action for inactivity. If the person concerned suffered damage as a result of unlawful violation of his rights and freedoms, he may, moreover, sue the State or entity of public law on whose behalf the responsible civil servant was acting for damages in the civil courts (Art. 34 of the Basic Law). For constitutional and international legal protection which the person concerned may claim in addition, reference is made to the general comments (above, A 2 (a) and A 3).

Article 3

Equal rights for men and women are set forth in Art. 3, para. 2, of the Basic Law. They refer to all fields of law and therefore are not restricted to the civil and political rights guaranteed in the Covenant (cf., moreover, the comments on Art. 26 of the Covenant).

Article 4

The Federal Republic of Germany has made special provision for cases of public emergency which threaten the life of the nation assumed under Art. 4, para. 1, of the Covenant. But considering the central position of the basic rights in its constitutional order it ensured that basic rights, even in cases of emergency, will be subject to restrictions only where this is unavoidable. The Federal Republic of Germany therefore does not avail itself of the possibility given under Art. 4 to restrict the rights guaranteed in the Covenant more than in the Covenant itself, as indicated by the following:

In a national emergency the basic right of freedom of movement under Art. 11, para. 2, of the Basic Law may be restricted to the extent necessary. Such restrictions are admissible also under Art. 12, para. 3, of the Covenant in order "to protect national security". Interferences in the privacy of the mail as well as the privacy of posts and telecommunications under the special conditions of Art. 10, para. 2, of the Basic Law serve the protection against

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attacks on the constitutional order or the security of the Bund (Federation) or of a Land (federal state); they are consequently not of an "arbitrary" nature and thus in accordance with Art. 17, para. 1, of the Covenant.

In the case of defence three basic rights or rights on an equal footing with them may be restricted beyond the extent admissible in normal times. In the first place, the basic right guaranteed under Art. 12, para. 1, of the Basic Law freely to choose one's occupation, place of work, and place of training is affected. It may be restricted according to a detailed provision under Art. 12a of the Basic Law; this is in accordance also with Art. 8, para. 3, sub-para. (c)(iii) of the Covenant. Furthermore, the right under Art. 104, para. 3, first sentence, of the Basic Law may be restricted, i.e. the right according to which a detained person must be brought before a judge at the latest on the day following the arrest: Pursuant to Art. 115c, para. 2, No. 2, of the Basic Law that time-limit may, in the case of defence, be extended in derogation thereof but at the utmost to four days provided it was not possible for any judge to act within the time-limit fixed for normal times. In such circumstances, the arrested person will still be brought before a judge "without delay" and in conformity with Art. 9, para. 3, first sentence, of the Covenant. The third restriction concerns the right to property not guaranteed in the Covenant (cf. Art. 115c, para. 2, No. 1, of the Basic Law), and therefore it is of no interest in this context.

Article 5

In Art. 1, para. 2, of its constitution the Federal Republic of Germany acknowledges human rights as the basis of peace and justice in the world. The Federal Government therefore considers that the protection of human rights must be made as effective as possible. For this reason, the Federal Republic of Germany created a system of domestic control not only through the Federal Constitutional Court but through international legal controls, thus, for instance, within the framework of Arts. 24 and 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and under Art. 41 of the Covenant. It therefore has the best possible safeguards against abuse of the Covenant in the way described in Art. 5, i.e. to do away with or invalidate human rights.

Article 6

(a) Paragraph 1

The right to life acknowledged in Art. 6, para. 1, of the Covenant is guaranteed in the Federal Republic of Germany as a basic right by virtue of the Constitution, i.e. by Art. 2, para. 1, of the Basic Law. In particular the provisions of criminal law concerning offences against life, i.e. murder and manslaughter (Sections 211 and 212 of the German Penal Code), serve to protect life. In Art. 2, para. 1, of the European Convention on Human Rights the Federal Republic of Germany assumed an international obligation to protect life, which is to a large extent analogous to that in Art. 6, para. 1, of the Covenant.

(b) Paragraphs 2, 4 and 6

In the Federal Republic of Germany capital punishment has been abolished by Art. 102 of the Basic Law. To that extent, Art. 6 of the Covenant is therefore irrelevant for the Federal Republic of Germany.

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(c) Paragraph 3

This provision does not affect the obligations of the Federal Republic of Germany under the Convention on the Prevention and Punishment of the Crime of Genocide dated 9 December 1948 and ratified by it. In fulfilment of that obligation the Federal Republic of Germany introduced a special criminal provision against genocide, namely Section 220a of the German Penal Code, providing for life imprisonment.

Article 7

It would be incompatible with the dignity of man to apply torture or to subject a human being to "cruel, inhuman or degrading treatment or punishment" within the meaning of Art. 7 of the Covenant or to subject such human being without his free consent to medical or scientific experimentation. The legal system of the Federal Republic of Germany guarantees this by making the dignity of man the main element of the system of values under the constitution (Art. 1, para. 1, of the Basic Law). Moreover, Art. 104, para. 1, second sentence, of the Basic Law expressly prohibits physical or mental ill-treatment of detained persons. Section 136a of the Code of Criminal Procedure specifies the forbidden methods of interrogation to the effect that the free will of the accused and the free expression of that will may not be impaired by ill-treatment, fatigue, surgical intervention, drugs, torment, deception or hypnotism. A special provision against the extortion of testimonies (Section 343 of the German Penal Code) ensures additionally the observance of the prohibition of torture by state organs. Testimonies obtained in violation of Section 136a of the Code of Criminal Procedure may not be used even if the accused consents to using them, Section 136a, para. 3, of the Code of Criminal Procedure.

An international obligation corresponding to Art. 7 of the Covenant was entered into by the Federal Republic of Germany in Art. 3 of the European Convention on Human Rights. According to the decisions of the European Commission of Human Rights, the transfer of a person into another state in which he is treated inhumanly constitutes in itself inhuman treatment prohibited by Art. 3 of the European Convention on Human Rights. For this reason, it happens not infrequently that persons who are refused asylum in the Federal Republic of Germany because the information given by them concerning an imminent political persecution in their native country proves to be incorrect apply to the European Commission of Human Rights in order to avoid being deported. However, in none of these cases of individual complaint has the Commission established any violation of the Convention by the Federal Republic of Germany.

Article 8

(a) Paragraphs 1 and 2

The observance of the prohibition of slavery and slave-trade in all their forms as well as that of servitude expressed in Art. 8, paras. 1 and 2, of the Covenant is guaranteed in the Federal Republic of Germany. Slavery as a legal institution has never existed in German law; servitude was abolished at the beginning of the nineteenth century. The German Reich had introduced special legal provisions for the punishment of slave-taking and the slave-trade and ratified the Slavery Convention of 25 September 1926. The Federal Republic of Germany also ratified the Protocol of 7 December 1953 amending that Convention and assumed in Art. 4 of the European Convention on Human Rights an international obligation corresponding to

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Art. 8, paras. 1 and 2, of the Covenant. In domestic law, slave-trade is prohibited in particular by Section 234 of the German Penal Code, which provides for terms of imprisonment of one to fifteen years for those who seize a human being by guile, threat or force, in order to deliver him into slavery, servitude or into foreign armed or maritime service.

(b) Paragraph 3

As far as forced labour is concerned, the domestic law of the Federal Republic of Germany is fully based on the Covenant. In conformity with the fundamental prohibition of forced labour expressed in Art. 8, para. 3 (a), of the Covenant, Art. 12, para. 2, of the Basic Law likewise stipulates that no specific occupation may be imposed on any person except within the framework of a traditional compulsory public service that applies generally and equally to all. This restriction is compatible with Art. 8, para. 3 (c)(iv), of the Covenant. The other compulsory public services provided for in the Federal Republic of Germany are equally admissible from the point of view of human rights. This applies to the duty to work in prison (Art. 8, para. 3 (c)(i), of the Covenant), which is admissible under Art. 12, para. 3, of the Basic Law and exists under Sections 41 and 42 of the Prison Act, as well as to the military service or, in the case of conscientious objectors, to the corresponding substitute service. Pursuant to Art. 8, para. 3 (c)(ii), of the Covenant, the last-mentioned obligations do not violate any international human rights provisions and are provided for also in the Federal Republic of Germany, i.e. under Art. 12a of the Basic Law. Particular civilian service obligations within the meaning of Art. 8, para. 3 (c)(iii), of the Covenant exist in a state of tension or defence under Art. 12a, read in conjunction with Art. 80a of the Basic Law.

As far as the prohibition of forced labour is concerned, the Federal Republic of Germany, moreover, assumed international obligations within the framework of ILO Convention No. 105 of 25 June 1957 Concerning the Abolition of Forced Labour by ratifying it.

Article 9

(a) Paragraph 1

The right to liberty of person granted under Art. 9, para. 1, first sentence, of the Covenant corresponds to Art. 2, para. 1, of the Basic Law, according to which everyone shall have the right to the free development of his personality in so far as he does not violate the rights of others or offend against the constitutional order or the moral code. Pursuant to Art. 2, para. 2, second sentence, of the Basic Law the liberty of the individual shall be inviolable. This right may consequently be encroached upon only pursuant to a law as laid down in Art. 2, para. 2, third sentence, of the Basic Law. Art. 104, para. 2, first sentence, of the Basic Law in this connexion specifies that only judges may decide on the admissibility and continuation of any deprivation of liberty. Where such deprivation is not based on the order of a judge - which is admissible under Section 127 of the Code of Criminal Procedure as provisional arrest provided the person arrested was caught red-handed - a judicial decision must be obtained without delay (Art. 104, para. 2, second sentence, of the Basic Law); any person provisionally detained on suspicion of having committed an offence must, under Art. 104, para. 3, first sentence, of the Basic Law, be brought before a judge not later than the day following the day of apprehension.

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The Federal Constitutional Court has ruled that the law must make deprivation of liberty calculable and controllable (Decisions of the Federal Constitutional Court, vol. 29, pp. 195/96). The reasons for which a person may be deprived of his liberty in the Federal Republic of Germany correspond to the catalogue in Art. 5, para. 1, second sentence, of the European Convention on Human Rights (conviction by a competent court, custody awaiting trial, detention to secure the fulfilment of any obligation prescribed by law, detention for the purpose of deportation, detention of minors in need of education, or detention of persons suffering from specific diseases). The sole fact that someone is a vagrant (cf. Art. 5, para. 1 (e), of the European Convention on Human Rights) is insufficient to deprive the person concerned of his liberty. On the other hand, there is, beyond the reasons mentioned in the catalogue quoted, the possibility under police law to take a person into temporary custody if that person represents a particularly serious danger to public security or order, especially to human life or limb. It is thus ensured that within the meaning of Art. 9, para. 1, second sentence, of the Covenant no one will be subjected to "arbitrary" arrest or detention and that deprivation of liberty within the meaning of para. 1, third sentence, is permissible only on the grounds and in accordance with the procedure established by law.

(b) Paragraph 2

It corresponds to the obligation to inform provided for in Art. 9, para. 2, of the Covenant that in the Federal Republic of Germany the warrant of arrest must be made known and a copy thereof handed (Section 114a, para. 2, of the Code of Criminal Procedure) to the accused upon his arrest under Section 114a, para. 1, first sentence, of the Code of Criminal Procedure. If this is not possible he must be informed provisionally of the offence he is suspected to have committed. The warrant of arrest must be made known to him immediately thereafter, Section 114a, para. 1, second and third sentences, of the Code of Criminal Procedure. If the accused is caught in the act and is temporarily arrested without warrant for arrest (Section 127 of the German Code of Criminal Procedure, cf. on paragraph 1 above), the person concerned will know from the circumstances why.

(c) Paragraphs 3 and 4

As already explained in respect of paragraph 1, an arrested person has a constitutionally guaranteed right to be brought before a judge at the latest on the day following the arrest, Art. 104, para. 3, first sentence, of the Basic Law. The fulfilment of the obligation to bring such an accused person before a judge provided for in Art. 9, para. 3, first sentence, of the Covenant and likewise laid down in Art. 5, para. 3, first sentence, of the European Convention on Human Rights, is thus guaranteed.

Internally, a general obligation resulting from the principle of a state governed by the rule of law laid down in the Basic Law, as well as the need to accelerate proceedings in conformity with the German Code of Criminal Procedure and put into effect in a series of individual provisions corresponds to the right of the accused under Art. 9, para. 3 first sentence, of the Covenant - and analogously under Art. 5, para. 3, second sentence, of the European Convention on Human Rights - to trial within a reasonable time or to release. Art. 104, para. 3, second sentence, of the Basic Law makes it binding upon the judge before whom the person arrested is brought either to issue a warrant of arrest setting out the reasons therefor or to order his release. A person held in custody awaiting trial may, under Section 117, para. 1, of the Code of Criminal Procedure, at any

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time ask the court to examine whether the warrant of arrest is to be cancelled or whether the execution thereof should be stayed. Such an examination is made ex officio at the latest every three months pursuant to Section 117, para. 5, of the Code of Criminal Procedure. If the grounds for custody are no longer valid or if detention is out of proportion to the actual offence or, in particular, to the penalty expected, the warrant of arrest must be cancelled pursuant to Section 120, para. 1, first sentence, of the Code of Criminal Procedure. Under Section 121, para. 1, of the Code of Criminal Procedure, custody for the same act may, moreover, be extended beyond six months only where the investigations prove to be particularly difficult and extensive or where a judgment is held up on other important grounds and continued detention is justified. The effect of these provisions is that in accordance with Art. 9, para. 3, second sentence, of the Covenant, custody awaiting trial is not the general rule but an exception. The provisions also guarantee the fulfilment of the conditions under Art. 9, para. 4, of the Covenant.

In several cases accused persons have lodged individual complaints under Art. 25 of the European Convention on Human Rights against the Federal Republic of Germany because of excessively long proceedings (or custody awaiting trial). In these cases the proceedings had been delayed because of the complexity of the facts and in particular because the complainants themselves, by exhausting all procedural possibilities and means of defence, had been a major cause of the delay. In no case has a violation of the Convention been found so far by the European Court of Human Rights. The Federal Government proceeds on the assumption that such circumstances must also be taken into consideration when interpreting the term "within a reasonable time" also within the framework of Art. 9, para. 3, first sentence, of the Covenant.

(d) Paragraph 5

Anyone who has been the victim of unlawful arrest or detention may demand compensation according to the general provisions concerning the liability of the state in cases in which official obligations were unlawfully and negligently violated (Art. 34, first sentence, of the Basic Law, read in conjunction with Section 839 of the Civil Code). Compensation may also have to be paid where the person concerned was formally and lawfully deprived of his liberty. In this connexion, reference is made to the statements made on Art. 14, para. 6, of the Covenant.

Article 10

(a) Paragraph 1

In the Federal Republic of Germany it is the constitutional guarantee of protection of the dignity of man generally acknowledged in Art. 1, para. 1, first sentence, of the Basic Law, as the supreme value of the constitutional order of the Federal Republic of Germany which corresponds to the right of the prisoner to be treated with humanity guaranteed in Art. 10, para. 1, of the Covenant. The German Prison Act ensures this in the respective field by its provisions concerning the aims of the penitentiary system and the treatment of prisoners.

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(b) Paragraph 2

The segregation of accused persons from convicted persons required under para. 2 (a) is, in the Federal Republic of Germany, prescribed by Section 119, para. 1, second sentence, of the Code of Criminal Procedure. The right of a prisoner on remand to be treated as an unconvicted person (Art. 10, para. 2 (a), of the Covenant) is defined in Section 119, paras. 3 and 4, of the Code of Criminal Procedure. According to these paragraphs, only such restrictions may be imposed on arrested persons as are required by the object of the custody awaiting trial or by the prison order; furthermore, prisoners on remand may procure conveniences at their own cost and occupy their time to the extent to which these are compatible with the purpose of the imprisonment and do not disturb prison life. In case of juveniles - where detention on remand is allowed only where the aim of detention cannot be achieved by any other temporary educational measures - the segregation from adults prescribed by Art. 10, para. 2 (b), of the Covenant, is guaranteed by the fact that Section 93, para. 1, of the German Juvenile Court Act prescribes that juveniles should be detained, if possible, in a special institution or at least in a special department of the prison or, provided imprisonment is not to be expected, in a detention centre for juveniles. If the juvenile is in custody awaiting trial, the proceedings under Section 72, para. 4, of the Juvenile Court Act must be speeded up to ensure the earliest possible adjudication according to Art. 10, para. 2 (b), of the Covenant.

(c) Paragraph 3

In accordance with Art. 10, para. 3, first sentence, of the Covenant, social rehabilitation of the offender is the essential aim of the penitentiary system in the Federal Republic of Germany under Section 2, first sentence, of the Prison Act. Accordingly, Section 3 of that Act makes it binding upon the prison authorities to adapt prison life as far as possible to general standards of living and to counteract damaging effects of imprisonment.

In accordance with Art. 10, para. 3, second sentence, of the Covenant and pursuant to Section 92, para. 1, of the Juvenile Court Act youth imprisonment imposed on juveniles is executed in respect of juveniles under 18 without exception - and in respect of juveniles of more than 18 and up to the age of 24 as a rule - in special prisons for juveniles. The education of the juvenile offender is in the foreground of the penitentiary system, Section 91 of the Juvenile Court Act. Juvenile offenders thus are accorded treatment appropriate to their age and legal status as minors as required in Art. 10, para. 3, second sentence, of the Covenant.

Article 11

A prohibition corresponding to that in Art. 11 of the Covenant was accepted by the Federal Republic of Germany in Art. 1 of Protocol No. 4 to the European Convention on Human Rights. The fulfilment of that obligation is guaranteed because the domestic legislation of the Federal Republic of Germany does not allow the arrest of a person on the sole ground that he is unable to fulfil his contractual obligations. Reference is made to the statements made on Art. 9, para. 1, of the Covenant.

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Article 12

(a) Paragraph 1

Freedom of movement is guaranteed in the Federal Republic of Germany to all Germans as a basic right under Art. 11, para. 1, of the Basic Law. The right to freedom of movement includes the right freely to choose one's residence. Foreigners who are staying lawfully in the Federal Republic of Germany enjoy this right under the provisions of the Law on Aliens. The right to move freely - which is also contained in Art. 2, para. 1, of the Basic Law - may be exercised within the scope of the restrictions admissible under Art. 12, para. 3, of the Covenant.

(b) Paragraph 2

The freedom to emigrate is constitutionally protected (Decisions of the Federal Constitutional Court, vol. 6, pp. 41/42) as a basic right by Art. 2, para 1, of the Basic Law. In respect of foreigners, it is, in addition, stipulated in Section 19 of the Law on Aliens that they may freely leave the country. Restrictions are provided for only within the scope of Art. 12, para. 3, of the Covenant.

(c) Paragraph 3

In conformity with Art. 12, para. 3, of the Covenant - and with Art. 2, para. 3, of Protocol No. 4 to the European Convention on Human Rights ratified by the Federal Republic of Germany - the constitution of the Federal Republic of Germany restricts as a precautionary measure the basic right of liberty of movement where overriding interests so demand: thus, under Art. 11, para. 2, of the Basic Law, for the purpose of integrating refugees, for reasons of national security, for combating epidemics, disasters and misfortunes as well as for the protection of juveniles and the prevention of criminal acts. In practice, however, these restrictions are of little significance.

(d) Paragraph 4

The right to enter one's own country may easily be made illusory by depriving unwelcome persons of their nationality. This was done in Germany under the Hitler regime when such persons were expatriated. This explains the provision of Art. 16, para. 1, first sentence, of the Basic Law that no one may be deprived of his German nationality. This absolute prohibition of expatriation implies that a German national who can prove his German nationality cannot be refused a German passport for his return to the Federal Republic of Germany, Section 7, para. 3, of the Law on Passports. In enacting these provisions the Federal Republic of Germany went, in the interest of the persons concerned, substantially beyond its obligations under Art. 12, para. 4, of the Covenant. In addition, it assumed the obligation under Art. 3, para. 2, of Protocol No. 4 to the European Convention on Human Rights according to which no one may be deprived of the right to enter the territory of the state whose national he is.

Article 13

Aliens who have been persecuted on political grounds enjoy the right of asylum in the Federal Republic of Germany (Art. 16, para. 2, second sentence, of the

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Basic Law). Where the prerequisites for asylum are not met, an alien may be expelled from the Federal Republic of Germany for reasons provided by law, in particular if he has committed a criminal offence in Germany. The expulsion must be pronounced in a formal procedure which allows the person concerned, in accordance with Art. 13 of the Covenant, to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority. Against the decision of the administrative authority ordering expulsion, the person concerned may lodge an appeal to the administrative courts. For, the guarantee under Art. 19, para. 4, of the Basic Law according to which recourse to the courts shall be open where any person's rights were infringed by public authority, fully applies also to aliens (Decisions of the Federal Constitutional Court, vol. 35, p. 401). Where, by way of exception, a compelling public interest requires immediate execution of the expulsion order under the provisions of the Administrative Courts Rules, legal protection within the meaning of Art. 13 of the Covenant exists even against that order. By means of a constitutional complaint the alien concerned may refer the case also to the Federal Constitutional Court.

Supplementary legal protection may be had by the persons concerned also by filing an individual petition with the European Commission of Human Rights. In this connexion, reference is made to the observations on Art. 7 of the Covenant.

In the Federal Republic of Germany, the procedural possibilities at the disposal of an alien threatened with expulsion consequently go considerably beyond the scope of Art. 13 of the Covenant.

Article 14

(a) Paragraph 1

The rule of law is a fundamental principle of the constitution of the Federal Republic of Germany. This principle establishes the primacy of law; it is laid down in Art. 20, para. 3, of the Basic Law in general, and as a basic right in Art. 1, para. 3, of the Basic Law in particular. According to these provisions the law ranks before all other standards of valuation. It is binding even if this might be inconvenient or if political necessity or expediency appear to demand circumvention. This binding force would, however, remain theoretical if the state authorities themselves had to determine whether they have respected the binding force of the law. For this reason, Art. 19, para. 4, of the Basic Law grants against all acts of public authority an effective control by opening recourse to the courts. This guarantee of recourse to the courts granted to everyone means that in the Federal Republic of Germany all persons are equal before the courts and tribunals within the meaning of Art. 14, para. 1, first sentence, of the Covenant. This is confirmed by the absolute prohibition of extraordinary courts (Art. 101, para. 1, first sentence, of the Basic Law). In particular, however, equal treatment is ensured by the general principle of equal rights under Art. 3, para. 1, of the Basic Law which plays a central role in the line of decisions of the Federal Constitutional Court.

The primacy of law applies not only to the criminal charges and rights in a suit at law mentioned in Art. 14, para. 1, second sentence, of the Covenant. The Federal Republic of Germany ensures its extensive application by giving its citizens access to the courts - of which there are five branches - which guarantee

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legal protection. The ordinary courts which are competent for the "classical" spheres of criminal and civil law decide on disputes mentioned in Art. 14, para. 1, second sentence, of the Covenant (and, analogously, in Art. 6, para. 1, first sentence, of the European Convention on Human Rights). The labour courts decide in disputes arising out of working relations, in disputes between partners of collective agreements, and in similar matters. The administrative, finance and social courts are competent for matters of public law; the finance courts deal in particular with disputes in tax matters and the social courts with disputes concerning matters of social security, while the administrative courts are competent in the remaining field of administrative acts.

In respect of court proceedings falling within the provisions of Art. 14, para. 1, first sentence, of the Covenant, the rules of fair trial have been put into effect. Under Art. 97, para. 1, of the Basic Law the judges are independent and subject only to the law. The right to a "lawful judge" (Art. 101, para. 1, second sentence, of the Basic Law) is achieved by the fact that the distribution of business at the courts and the choice of lay judges is regulated by law in a way that the judges who are to decide on a concrete case are certain persons who are competent from the very outset according to objective criteria. If the court is not composed as provided for, this is a ground for appeal which, in the case of appeal proceedings, leads to a reversal of the decision of the court not composed as required irrespective of whether that court, in addition, failed to apply legal provisions or applied them incorrectly. The hearing as well as the pronouncement of the judgments and decisions rendered in proceedings under Art. 14, para. 1, of the Covenant are normally public, Section 169 of the Judicature Act. The exceptions allowed in Sections 170 et seq. of the German Judicature Act, correspond to those mentioned in Art. 14, para. 1, third sentence, first half-sentence, of the Covenant. The pronouncement of the operative part of the judgment is in any case public (Section 173 of the Judicature Act) even where the hearing was not public. Only in juvenile criminal proceedings is the judgment not made public for educational reasons (Section 48, para. 1, of the Juvenile Court Act); this is in accordance with Art. 14, para. 1, third sentence, second half, of the Covenant. Moreover, written proceedings are admissible under certain conditions in civil cases, for instance, where the parties agree to written proceedings or where disputes are economically insignificant and a party cannot reasonably be expected to appear because he lives too far away or for any other important reason, or where the defendant acknowledges the cause of action or indicates that he does not wish to oppose the suit. In the two latter cases the public pronouncement is replaced by the service of the judgment. The Federal Government proceeds on the assumption that these provisions, which are designed to accelerate civil proceedings, are compatible with Art. 14, para. 1, of the Covenant. For, the supreme principle underlying that provision is that the proceedings are carried out in an equitable way, a principle which in the special cases mentioned has not been violated considering the attitude of the parties or of the defendant or the fact that the case is economically insignificant.

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(b) Paragraph 2

The presumption of innocence established in Art. 14, para. 2, of the Covenant - and analogously in Art. 6, para. 2, of the European Convention on Human Rights is part of the rule-of-law principle and as such, according to the line of decisions of the Federal Constitutional Court, guaranteed by the domestic constitutional order of the Federal Republic of Germany (Decisions of the Federal Constitutional Court, vol. 19, p. 347). It means not only that a person charged with a criminal offence whose guilt cannot be established has a right to acquittal: a principle which is quite natural for the law of criminal procedure of the Federal Republic of Germany. It should be stressed in particular that from the analogous presumption of innocence in Art. 6, para. 2, of the European Convention on Human Rights the German legislator has taken consequences as to costs and fees. According to that provision, in the case of an acquittal not only the costs of the proceedings but also the expenses necessary for the defence of the person charged with a criminal offence are met from public funds, irrespective of whether the innocence of the person concerned is proved or whether the suspicion remains.

(c) Paragraph 3 (a)

Sections 200 and 201 of the Code of Criminal Procedure take account of the requirement to inform the accused "in detail" of the nature and cause of the charge against him. According to those provisions the presiding judge must have the charge sheet, which must disclose in detail the criminal charge brought against him, served on the accused person.

If the accused person obviously does not sufficiently understand the German language the judge who has to have the charge sheet served on him will - as is the criminal law practice in the Federal Republic of Germany - simultaneously order a translation to be made into the language which the accused understands. This legal obligation is deduced from the analogous provision of Art. 6 (3) (a) of the European Convention on Human Rights and from the right to proper legal hearing guaranteed in Art. 103 (1) of the Basic Law (cf. Decisions of the Federal Constitutional Court, vol. 40, pp. 95 et seq.).

(d) Paragraph 3 (b)

Pursuant to Art. 14 (3) (b) of the Covenant, the accused is given "adequate time and facilities for the preparation of his defence" prior to the trial, for when he is told of the charges he is asked to state within a certain time-limit "whether he wants individual items of evidence to be taken prior to the decision on the opening of the main proceedings"(Section 201 of the Code of Criminal Procedure). Moreover, pursuant to Section 217 (1) of the Code of Criminal Procedure, there must, in principle, be a period of not less than one week between the service of a summons for the trial and the date on which the trial takes place.

In the Federal Republic of Germany it is in particular Section 148 (1) of the Code of Criminal Procedure, under which the accused is entitled to communicate with counsel of his own choosing, which corresponds to the right of the accused set forth in Art. 14 (3) (b) of the Covenant. According to that Section the accused, even if he is not at large, is guaranteed written or oral communication with counsel.

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(e) Paragraph 3 (c)

The requirement that criminal proceedings must be carried out with adequate speed is, as has already been explained in respect of Art. 14 (3) (a) of the Covenant, an element of the rule-of-law principle laid down in the constitution of the Federal Republic of Germany. The judges dealing with criminal proceedings are, accordingly, bound within the scope of their official duties to fulfil their tasks within a reasonable period of time. There are, moreover, rules of procedure to the effect that the decision may not be unduly delayed, thus, for instance, Section 229 (1) of the Code of Criminal Procedure, according to which a trial, in principle, may not be interrupted for more than ten days. There are nevertheless occasional criminal proceedings which extend over several years. This happens where investigations prove to be particularly difficult or the accused exhaust their means of defence excessively. Where such circumstances delay the judgment, the delay cannot be considered undue.

(f) Paragraph 3 (d)

The trial shall, in principle, not be conducted against an accused who fails to appear or is absent (Sections 230 and 285 (1), first sentence, of the Code of Criminal Procedure). Exceptions to the rule are allowed if the accused, in spite of having been cautioned accordingly, fails to appear for the trial in a petty cause (Section 232 of the Code of Criminal Procedure), if, upon request, he has been released from his duty to appear at the trial (Section 233 of the Code of Criminal Procedure), if he left the trial without authority, or if he fails to reappear when the trial, after interruption, is resumed (Section 231 (2) of the Code of Criminal Procedure), and further, if he intentionally and culpably caused his unfitness to stand trial and thereby knowingly prevented the trial from being conducted in his presence (Section 231a of the Code of Criminal Procedure), or if the accused, on the ground of misconduct, was removed from the court room or into custody (Section 231b of the Code of Criminal Procedure).

These restrictions are compatible with Art. 14 of the Covenant because the right of the accused to be present at the trial granted in para. (3) (d) is to be understood only as the expression of his right to a "fair trial" guaranteed in para. (1), second sentence. From this aspect, the accused must put up with restrictions of his right to be present at the trial if he expressly or implicitly indicates that he does not wish to exercise this right or if he abuses it in an attempt to prevent the trial.

It may be doubtful whether Section 350 (2), second sentence, of the Code of Criminal Procedure is compatible with the Covenant. It stipulates that an accused who is not at large has no right to be present at the trial before the court of appeal. In such a case he may only arrange to be represented by counsel who, if the accused does not have any, must be appointed for him (Section 350 (3) of the Code of Criminal Procedure). This provision takes account of the fact that the appeal court deals only with points of law. The Federal Republic of Germany therefore made a reservation in respect of Art. 14 (3) (d) of the Covenant that this provision will be applied to the effect that the personal presence of the accused, who is not at large, at the trial before the appeal court is left to the discretion of the court.

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For the rest, the requirements of Art. 14 (3) (d) of the Covenant have been met by the fact that the accused may at any stage of the proceedings - in particular also insofar as the trial may exceptionally take place in his absence - avail himself of the assistance of up to three defence counsel of his own choice (Section 234 of the Code of Criminal Procedure). If he has no chosen counsel the court will appoint official defence counsel for him in accordance with Sections 140 to 142 of the Code of Criminal Procedure. In certain cases this is obligatory, for instance, if the accused is charged with a major crime (i.e. an offence under Section 12 (1) of the Criminal Code which carries a minimum prison sentence of one year and more). In other cases counsel is appointed for the accused "if the assistance of counsel appears to be necessary because of the gravity of the act or because of the difficult situation in point of fact and law, or if it is obvious that the accused cannot defend himself" (Section 140 (2) of the Code of Criminal Procedure). The costs are not charged to the accused, which is consistent with para. (3) (d) providing that where the accused is without means legal assistance should be provided "without payment". If he is convicted, however, he has to bear the cost of both the proceedings and court-appointed counsel. These provisions concerning costs are in accordance with the Covenant because the guarantees under Art. 14 (3) of the Covenant apply only to the criminal proceedings as such; the settlement of the costs after the criminal proceedings have been completed is not the subject of paragraph (3). The Covenant, moreover, exempts the accused from defence counsel costs only where he does not have sufficient means. In the Federal Republic of Germany the appointment of counsel by the court is not made dependent on any proof of lack of means admissible under the Covenant; in that respect, the German law goes beyond the Covenant. It is therefore assumed that it is not in contradiction with the Covenant if a person able to pay for court-appointed counsel is required to do so if convicted.

An obligation in accordance with para.(3) (d) to inform the accused of his right to have legal assistance, is provided in the Code of Criminal Procedure for various stages of the proceedings (thus in Section 117 (4), second sentence, Section 136 (1), second sentence, Section 163a (3), second and fourth sentences, of the Code of Criminal Procedure).

(g) Paragraph 3 (e)

The right of the accused to examine, or have examined, the witnesses against him provided for in para. (3) (e) is guaranteed in Section 240 of the Code of Criminal Procedure, according to which the presiding judge must allow the accused, upon request, to put questions to witnesses and experts.

The accused is, moreover, entitled to obtain the examination of witnesses on his behalf. Pursuant to Section 219 of the Code of Criminal Procedure, the accused has to submit a request to that effect to the presiding judge of the court indicating the facts in respect of which evidence should be taken.

The equality of conditions for the attendance and examination of witnesses against the accused and of witnesses on his behalf required by the Covenant is, moreover, guaranteed by the ex officio principle governing the German law of criminal procedure: That principle implies that the court, pursuant to

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Section 244 (2) of the Code of Criminal Procedure, in its search for the truth, must ex officio extend its taking of evidence to all the facts and means of evidence which are important for the decision, i.e. also to those in favour of the accused.

(h) Paragraph 3 (f)

Section 185 of the German Judicature Act corresponds to the right of an accused who does not understand the language used in court to have the free assistance of an interpreter, as set forth in para. 3 (f) and which is granted in a similar way by Art. 6 (3) (e) of the European Convention on Human Rights. According to that provision the assistance of an interpreter is obligatory if persons are involved who do not understand the German language.

In the Federal Republic of Germany the cost of providing the assistance of an interpreter is borne by the accused if convicted. The Federal Government feels that this provision is not inconsistent either with Art. 14 (3) (f) of the Covenant or with Art. 6 (3) (e) of the European Convention on Human Rights since the respective minimum guarantees granted for the criminal proceedings apply only to the execution thereof and consequently imply only the obligation of a provisional exemption from the payment of interpreter's fees. This question of interpretation, which is answered in a similar way also by other European states, is at present the subject-matter of three individual petitions against the Federal Republic of Germany filed under Art. 25 of the European Convention on Human Rights.

(i) Paragraph 3 (g)

When being examined for the first time and, again, when examined at the trial, the accused is to be informed that under the law he is free to express his opinion on the charges brought against him or to refuse to testify in the case (Section 136 para. (1), second sentence, Section 243 (4), first sentence, of the Code of Criminal Procedure). Testimonies obtained by illegal methods of examination may not be used even if the accused agrees to it (Section 136a (3), second sentence, of the Code of Criminal Procedure). The requirements of Art. 14 (3) (g) of the Covenant have thus been complied with.

(j) Paragraph 4

In the Federal Republic of Germany criminal proceedings against juveniles are conducted in accordance with Art. 14 (4) of the Covenant in a way taking account of the age of the juveniles. In the proceedings and in the fixing of the penalty educational aspects rank foremost. The judges and public prosecutors at juvenile courts should therefore, under Section 37 of the German Juvenile Court Act, have knowledge and experience as regards education. In proceedings before juvenile courts educational and social aspects as well as the aspect of social welfare are taken into consideration in particular at the suggestion of representatives of juvenile court aid (youth offices in co-operation with non-governmental associations for youth aid).

(k) Paragraph 5

Everyone convicted of a crime in the Federal Republic of Germany has under Art. 14 (5) of the Covenant, the right to his conviction and sentence being reviewed by a higher court. Judgments passed by a judge sitting alone in a criminal

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matter or by a court composed of professional and lay judges (Schöffengericht) (both at the Local Court (Amtsgericht)) can be challenged by lodging an appeal (Berufung) which will lead to retrial before the Criminal Chamber of the Regional Court (Landgericht) (Sections 312 and 323 of the Code of Criminal Procedure; Section 74(3) of the Judicature Act); the judgments passed by this latter court can then be challenged by lodging a petition for review (Revision). Judgments passed by a Criminal Chamber or by a Higher Regional Court (Oberlandesgericht) as court of first instance can only be challenged by lodging a petition for review. This will lead to a review of the impugned judgment on points of law only (Sections 333 and 337 of the Code of Criminal Procedure). In such a case it may happen that an accused who in the first instance was wholly or partly acquitted will be convicted by the court of review on the basis of a petition for review lodged by the public prosecutor (Section 354 (1) of the Code of Criminal Procedure. The Federal Republic of Germany, therefore, made a reservation in respect of Art. 14 (5) of the Covenant to the effect that a further remedy need not be made available solely on the ground that the accused was first convicted in the appeal proceedings.

(l) Paragraph 6

The requirements of Art. 14 (6) of the Covenant are met by the Law concerning Compensation in respect of Criminal Prosecution Measures of 8 March 1971 (Federal Law Gazette I, p. 157). A person who suffered damage as a result of conviction for a criminal offence is entitled to compensation from public funds if and to the extent to which his conviction, after having become final, is reversed or reduced following a retrial or otherwise. Compensation may, moreover, be requested for having been in custody awaiting trial, provided the accused was acquitted, the proceedings were discontinued, or the opening of the main proceedings was refused. Compensation will be denied if and to the extent to which the accused caused criminal prosecution measures with intent or by gross negligence, but not on the sole ground that the accused availed himself of his right to refuse to testify or that he failed to lodge a remedy. This provision exceeds, in favour of the accused, the provision of Art. 14 (6) of the Covenant.

(m) Paragraph 7

In the Federal Republic of Germany the principle "non bis in idem" is constitutionally guaranteed in Art. 103 (3) of the Basic Law.

Article 15

The prohibition of criminal laws with retroactive effect expressed in Art. 15 (1) of the Covenant is the basis of criminal proceedings in a state governed by the rule of law. In the constitution of the Federal Republic of Germany the principle "nulla poena sine lege" has been laid down in Art. 103 (2) of the Basic Law and given concrete form in Sections 1 and 2 of the Criminal Code.

Article 16

Pursuant to Section 1 of the German Civil Code, the legal capacity of a human being begins with the completion of birth. The right granted under Art. 15 of the Covenant to recognition everywhere as a person before the law is guaranteed comprehensively in the Federal Republic of Germany also by Art. 1 (1), first sentence, of the Basic Law, because the inviolable dignity of man implies that he is recognized as holder of rights and obligations of his own.

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Article 17

(a) Paragraph 1

Art. 17 of the Covenant prohibits arbitrary or unlawful interference with a person's privacy, family, home or correspondence as well as unlawful attacks on his honour and reputation. In the Federal Republic of Germany this is ensured by the fact that these rights in law are also guaranteed by the constitution. Interferences with these rights are, therefore, allowed only within the scope of the constitution and subject to the laws based on the constitution. In detail, the following should be stated:

(aa) Privacy

It is the consistent practice of the Federal Constitutional Court to deduce from Article 1 of the Basic Law, according to which the dignity of man shall be inviolable, and from Art. 2 (1) of the Basic Law entitling everyone to free development of his personality, that everyone is entitled to his own private life (Decisions of the Federal Constitutional Court, vol. 35, p. 220). However, the boundaries of the protected private sphere are fluid. The rights protected by law which are covered by the term "privacy" may conflict, inter alia, with the freedom of opinion - equally protected by Art. 10 of the Covenant - as well as with the freedom of the press, freedom of information and freedom of science guaranteed by Art. 5 of the Basic Law. All these basic and human rights will not simply be put aside for the purpose of protecting privacy. The Federal Constitutional Court rather makes the answer as to which conflicting rights and interests should be given priority dependent on the weighing up of the pros and cons in the light of the actual situation.

(bb) Family

Under Art. 6 (1) of the Basic Law marriage and family have the special protection of the State. This means an institutional guarantee prohibiting the State from interfering with the structural principles of marriage and family. This provision, moreover, imposes an obligation on the State to take positive measures for the protection and promotion of marriage and family, for instance, in social and tax legislation. Finally, Art. 6, (1) of the Basic Law includes an individual right of protection insofar as husband and wife, who also in their married lives hold equal rights (Art. 3 (2) of the Basic Law), have a certain scope within the sphere of their marriage and family to shape their private lives free from State interference.

(cc) The home

Under Art. 13 (1) of the Basic Law a man's home is inviolable. Searches may be made only under the conditions specified in Art. 13 (2) of the Basic Law and if ordered by a judge and carried out in pursuance of that order. For the rest, Art. 13 para.(3) of the Basic Law allows interventions and restrictions only to avert certain dangers. The home is protected against arbitrary and unlawful interference.

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(dd) Correspondence

The individual is protected against arbitrary and unlawful interference with his correspondence under the provisions of Art. 10 para. (1) of the Basic Law guaranteeing secrecy of mail. This right may be restricted under specified legal provisions in order to avert serious dangers to the security of the State (Art.10 (2) of the Basic Law).

(ee) Honour and reputation

The right of personal honour is recognized, inter alia, in Art. 5 (2) of the Basic Law. It is not easy to determine the boundaries between lawful freedom of opinion and unlawful attack on a person's honour. This is also indicated by Art. 17 and Art. 19 (3) (a) of the Covenant. In that respect, the decisions of the Federal Constitutional Court determine for the Federal Republic of Germany that the provisions under criminal and civil law which protect a person's honour are to be interpreted in the light of the basic right to liberty of opinion and in consideration of the special importance to be attributed to the public functions of the press. It may therefore happen in individual cases that in the Federal Republic of Germany a person's honour enjoys less protection than in States in which no freedom of the press exists. However, this does not mean an arbitrary or unlawful reduction of the protection of honour but a restriction resulting from the task of the press to control public authority.

(b) Paragraph 2

Legal protection against arbitrary or unlawful interference with or attacks on the rights guaranteed by paragraph (1) may be obtained in the Federal Republic of Germany preferably in criminal or civil proceedings. The unauthorized tape-recording of private conversations, using such recordings or making them available to third persons, or the tapping of private conversations, is a punishable act under Section 201 of the Criminal Code. The unauthorized violation of the privacy of correspondence as well as the unauthorized disclosure of a personal secret is a punishable act under Sections 202 and/or 203 of the Criminal Code. Violations of the secrecy of posts and telecommunications will, moreover, carry heavier penalties under Section 354 of the Criminal Code. The home is protected against unlawful intrusion by the penal provisions concerning breach of the domestic peace (Sections 123 and 124 of the German Criminal Code), a person's honour by Sections 185 et seq. of the Criminal Code, according to which libel and slander are punishable. The offended person may not only bring a criminal charge but also sue the person responsible for damages or apply for revocation or an injunction. For the protection of privacy, German civil jurisdiction has, under the influence of Art. 1(1) and of Art. 2(1) of the Basic Law, and by means of court decisions entailing a further development of the law, created a "general right to personality" which, if violated, entitles the person affected to claim compensation even for non-material damage.

Pursuant to Art. 10 (2), second sentence, of the Basic Law and pursuant to the "Law on Article 10 of the Basic Law" of 13 August 1968 (Federal Law Gazette I, p. 949) no appeal is possible against interference with the privacy of correspondence, posts and telecommunications which is meant to protect the free democratic basic order or the security of the Federation or of a Land; instead parliament exercises a control function for the sake of secrecy, which is essential in such cases. These

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provisions are consistent with Art. 17 (1) of the Covenant, which prohibits "arbitrary" interference. The person affected could, however, complain to the Federal Constitutional Court on the ground that his right had been violated.

Article 18

(a) Paragraph 1

The right to freedom of thought, conscience and religion, i.e. the freedom to have or adopt a religion or belief of one's own choice or to have neither, is guaranteed in the Federal Republic of Germany by Art. 4 (1) of the Basic Law as an inviolable freedom of faith and conscience. This means that everyone in the Federal Republic of Germany is free to defend the ideas corresponding to his conviction, whether it be a religious denomination, a non- or anti-religious ideology. This basic right binds the State to remain neutral in an ideological and religious respect; it implies a denial of totalitarian systems and forms the basis of a liberal pluralistic society in the Federal Republic of Germany.

The freedom of faith and of ideological profession covers not only the internal freedom to believe or not to believe but also the external freedom to manifest, profess and to propagate one's faith. The text of Art. 4 (1) of the Basic Law concurs in substance with Art. 18 (1), second sentence, of the Covenant. Undisturbed religious worship is expressly guaranteed by Art. 4 (2) of the Basic Law. It is an unquestioned reality in the Federal Republic of Germany. The majority of the population are members of the Christian churches, i.e. of the Protestant or Roman Catholic faith. Civil and political rights and obligations are, however, neither conditioned nor limited as a result of a person exercising his right of religious worship; nor is the enjoyment of civil and political rights or admission to public office affected by a person's religious faith. This was expressly stipulated in Art. 136 (1) and (2) of the Constitution of 1919 which, under Art. 140 of the Basic Law, is an integral part of the Basic Law.

(b) Paragraph 2

A concrete prohibition corresponding to that in Art. 18 (2) follows from the guarantee of the freedom of faith (Art. 4 of the Basic Law) as such. In supplementation, reference should be made to Art.140 of the Basic Law read in conjunction with Art.136 (4) of the Constitution of 1919. According to those Articles no one may be compelled to perform a religious act or celebration or to participate in religious practices or to use a religious form of oath. It follows as a matter of course that coercion to promote an ideological view is likewise prohibited.

(c) Paragraph 3

In the Federal Republic of Germany, the freedom of religion and belief is not subject to any specific restrictions.

(d) Paragraph 4

In the Federal Republic of Germany the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions follows from the right of parents to the care and upbringing of their children guaranteed in Art. 6 (2), first sentence, of the Basic Law. Those entitled to bring up the child in particular have the right under Art. 7 (2) of the Basic Law to decide whether the child shall receive religious instruction at school.

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Conflicts may arise where parents between each other do not agree on the religious or ideological education of their child or where such a difference of opinion exists between one parent and the appointed legal guardian or administrator or where the child itself feels attracted by a religion which does not correspond to the belief of the persons entitled to bring up the child. These questions are dealt with in the Law concerning the Religious Education of Children of 15 July 1921 (Reich Law Gazette, p. 939). According to that Law a child, upon reaching the age of twelve years, cannot be brought up against its will in another religion than heretofore; at the age of fourteen the child may itself decide as to its religion or creed. This provision is not incompatible with Art. 18 (4) of the Covenant because it takes account of the degree of maturity reached by an adolescent, who himself has the right to freedom of religion under Art. 18 (1), first sentence, of the Covenant.

Article 19

Paragraphs 1 and 2

In accordance with Art. 19 (1) and (2) of the Covenant the Federal Republic of Germany confers in Art. 5 (1), first sentence, of the Basic Law upon everyone the basic right "freely to express and disseminate his opinion by speech, writing and pictures and freely to inform himself from generally accessible sources". Special importance is given to this right in the Federal Republic of Germany. It emanates directly from the personality of the human being and is thus one of the principal human rights, as found by the Federal Constitutional Court (Decisions of the Federal Constitutional Court, vol. 7, p. 208; vol. 12, p. 125). This basic right is the basis of any freedom because only the freedom of expression allows a permanent spiritual discussion without tutelage and without fear of reprisals, which is a characteristic of a liberal democracy. Freedom of opinion in the form of free reporting by press, radio and television guarantees, moreover, criticism and control of all exercise of power through public opinion. Freedom of the press is therefore a constituent part of the free and democratic order of the Federal Republic of Germany (Decisions of the Federal Constitutional Court, vol.20, pp. 97/98). For this reason, Art. 5 (1), second sentence, of the Basic Law guarantees in addition to freedom of expression in particular freedom of the press and freedom of reporting by means of broadcasts and films. The third sentence furthermore prohibits any censorship, i.e. no one requires government permission to publish an opinion. Consequently, there is no State-controlled press in the Federal Republic of Germany. Every newsstand offers a great variety of German and foreign publications representing differing political views and ideological attitudes.

In the case of radio and television the situation is somewhat more complicated since, for technical reasons, the number of radio and television stations must remain relatively small. However, this must not lead to a State monopoly of opinion in this sphere. The Federal Constitutional Court therefore found that radio and television institutions should not be under the direct influence of the State and that their organizational structure should guarantee that their organs are proportionately composed of representatives of all important political, ideological and social groups (Decisions of the Federal Constitutional Court, vol. 12, pp. 261 et seq.; vol. 31, pp. 327/328). The respective institutions in the Federal Republic of Germany fulfil these conditions. By guaranteeing, in addition, freedom of the press, radio and television, the Federal Republic of Germany goes substantially beyong the obligations imposed on it by Art. 19 (1) and (2) of the Covenant.

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Paragraph 3

The basic right freely to express one's opinion is, under Art. 5 (2) of the Basic Law limited by the provisions of the "general laws", by the legal provisions for the protection of juveniles (in particular against dangers through pornography, incitement to violence, and racial hatred) and by the right to personal honour. These restrictions are less far-reaching than those of Art. 19 (3) of the Covenant since, according to the decisions of the Federal Constitutional Court, the "general laws" which restrict the basic right to freedom of opinion are to be interpreted themselves in the light of the basic right of the freedom of opinion and of its fundamental importance for the liberal democratic order (Decisions of the Federal Constitutional Court, vol. 7, pp. 207 et seq.; vol. 12, pp. 124 et seq.).

Article 20

Paragraph 1

In accordance with Art. 20 (1) of the Covenant, Art. 26 (1) of the Basic Law provides that "acts tending to and undertaken with intent to disturb peaceful relations between nations ...", shall be unconstitutional and be made a punishable offence. Accordingly, everyone who in public, at assemblies or by distribution of pamphlets incites to aggressive war will be liable to imprisonment from three months to five years pursuant to Section 80a of the Criminal Code.

Paragraph 2

In the Federal Republic of Germany the acts described in Art. 20 (2) of the Covenant are punishable under the penal provisions relating to demagogy (Section 130 of the Criminal Code), incitement to racial hatred (Section 131 of the Criminal Code) and disturbance of religious peace (Section 166 of the Criminal Code). The Federal Republic of Germany assumed international obligations by accession to the International Convention for the Elimination of all Forms of Racial Discrimination. Reference is made to the four reports of the Federal Republic of Germany submitted pursuant to Arts. 16 and 17 of the said Convention. (United Nations - Printed Matters: First Report - CERD/C/R.3/Add.29 of 12 August 1970; Second Report - CERD/C/R.3/Add.41 of 24 March 1971; Third Report - CERD/C/R.70/Add.24 of 31 July 1974; Fourth Report - CERD/C/R.90/Add.26 of 18 November 1976.)

Article 21

Political and social groups in the Federal Republic of Germany may assert their claims publicly at assemblies, demonstrations and processions. In conformity with Art. 21, first sentence, of the Covenant, Section 1 of the Law on Assemblies provides that everyone - whether a national or alien - is entitled to organize public assemblies or processions and to participate in such activities. The right to assemble peacefully and unarmed in closed premises, without prior notification or permission is, moreover, guaranteed as a basic right to all Germans in Art. 8 (1) of the Basic Law.

Under Art. 8 (2) of the Basic Law and under the Law on Assemblies the freedom of assembly is subject to restrictions of the kind described in Art. 21, second sentence, of the Covenant. These restrictions concern, inter alia,

(a) assemblies in closed premises, which may be prohibited in individual cases if armed participants are admitted, or where the assembly takes a violent or rebellious course, as well as

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(b) open-air assemblies or processions. These must be notified in each case 48 hours in advance - if only in order to make execution of the assembly or procession possible or to protect it. They may be prohibited if, according to the circumstances, public order or security is directly threatened.

In the case of aliens whose political activities in the Federal Republic of Germany are restricted or prohibited, such restrictions or prohibitions may, in certain circumstances, apply even to participation in political assemblies. This is not incompatible with Art. 21 of the Covenant, since the Federal Republic of Germany, in respect of Art. 21 - as well as in respect of Articles 19 and 22 of the Covenant - made the reservation that these provisions are applied only within the scope of Art. 16 of the European Convention on Human Rights.

Article 22

Paragraphs 1 and 2

The Federal Republic of Germany fulfils Art. 22 (1) of the Covenant by protecting in Art. 9 (1) of the Basic Law the individual right to form an association. It goes beyond the Covenant by protecting, to a certain extent, the existence of the associations themselves. The following distinctions must be made:

(a) Political parties. Under Art. 21 (1), first sentence, of the Basic Law they participate in forming the political will of the people. In this capacity they are links and mediators between the individual and the State. For this reason, the parties, as found in the consistent practice of the Federal Constitutional Court, rank as constitutional institutions (cf. for instance, Decisions of the Federal Constitutional Court, vol. 20, pp. 56, 100, 108; vol. 24, pp. 260, 264; vol. 40, pp. 287, 292; vol. 41, pp.399, 416). They may be formed freely. But since they are a constitutionally necessary part of the free and democratic basic order (Section 1 (1) of the Law on Parties), they are also bound by this order. Parties which, according to their aims and the behaviour of their members, seek to impair or abolish the free and democratic basic order or to jeopardize the existence of the Federal Republic of Germany are, therefore, unconstitutional pursuant to Art. 21 (2), first sentence, of the Basic Law.

A decision on this issue is, however, reserved exclusively to the Federal Constitutional Court. In the past - namely in 1952 and in 1956 - the Federal Constitutional Court took decisions to that effect only in two cases, i.e. in respect of a right-wing and a left-wing radical political party: in respect of the Socialist Reich Party (Sozialistische Reichspartei - SRP) and the Communist Party (Kommunistische Partei - KPD) (Decisions of the Federal Constitutional Court, vol. 2, p. 1 and vol. 5, p. 85). As the small percentages of votes obtained during the elections show, left-wing and right-wing radical parties no longer play a political rôle in the Federal Republic of Germany.

(b) Associations for safeguarding and improving working and economic conditions (mainly trade unions and employers' associations). These are subject to special guarantees under Art. 9 (3) of the Basic Law.

(c) Other associations. Pursuant to Section 1 of the Law on Associations, these may be formed freely. The Germans are guaranteed this right additionally as a basic right in Art. 9 (1) of the Basic Law.

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The restrictions on the freedom of association provided for in the Federal Republic of Germany are less far-reaching than those permitted in Art. 22 (2), first sentence, of the Covenant. Pursuant to Art. 9 (2) of the Basic Law associations, the objects or activities of which conflict with the criminal laws or which are directed against the constitutional order or the concept of international understanding, are prohibited. The reservation made on Art. 22 of the Covenant (cf. on Art. 21 of the Covenant, above) ensures that in conformity with Art. 16 of the European Convention on Human Rights associations of aliens and alien associations are subject to specific restrictions, in particular, that they may be prohibited if, as a result of their political activities, they violate or endanger the internal or external security, the public order or other substantial interests of the Federal Republic of Germany or of one of its Laender (Section 14 (1), Section 15 (1) of the Law on Associations).

In the Federal Republic of Germany the basic right of freedom to enter into coalitions is protected by Art. 9 (3) of the Basic Law. This right implies that everyone and all professions - including, for instance, members of the armed forces and of the police who, under Art. 22 (2), second sentence, of the Covenant are subject to special restrictions - are guaranteed the right to form associations to safeguard and improve working and economic conditions. This basic right is merely subject to the restriction - already mentioned - of Art. 9 (2) of the Basic Law according to which associations, the objects or activities of which conflict with the criminal laws or which are directed against the constitutional order or the concept of international understanding, are prohibited. These restrictions are substantially tighter than those admissible under Art. 22 (2) of the Covenant.

Paragraph 3

Since 1958 the Federal Republic of Germany has been a party to ILO Convention No. 87 of 9 July 1948 concerning Freedom of Association and Protection of the Right to Association. In conformity with Art. 22 (3) of the Covenant it is a matter of course for the Federal Republic of Germany that its obligations under the Covenant do not affect its obligations to fulfil the ILO Convention.

Article 23

Paragraph 1

The guarantee given in Art. 6 (1) of the Basic Law, according to which marriage and family have the special protection of the State, is almost identical with that in Art. 23 (1) of the Covenant. Art. 6 (1) of the Basic Law, just as the other basic rights, constitutes an individual right the violation of which may be made the subject of a constitutional complaint. Comprehensive legislation, which has been amended in the light of the dictates of the constitution, takes account of the particular protection enjoyed by the family under the constitution. Tax and social law but also a great number of political measures concerning the

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family take into consideration the legal interests of the family. These measures include, for instance: Children's allowance payable to families with children irrespective of their individual need, and rent allowance depending on the respective income but taking the number of family members into consideration. Both allowances help to ease the burden on families with children and stress the importance of the family as the "natural and fundamental group unit of society".

Paragraph 2

Art. 6 (1) of the Basic Law includes, as confirmed by the Federal Constitutional Court (Decisions of the Federal Constitutional Court, vol. 36, p. 161), the basic right to marry a partner of one's own choosing. This right is a human right and as such possessed by everyone (Decisions of the Federal Constitutional Court, vol. 31, p. 67). The State being neutral in an ideological and religious respect, it is not allowed to prevent a marriage, for instance, for reasons of social care or on exclusively religious grounds even if its durability may appear doubtful, for instance, because of a great disparity of age, different nationalities or religion, or weaknesses in the characters of the partners (Decisions of the Federal Constitutional Court, vol. 31, p. 84). On the contrary, the State must be extremely cautious in setting up impediments to marriage (Decisions of the Federal Constitutional Court, vol. 36, p. 163).

Consequently, in the Federal Republic of Germany, in principle, everyone may marry who under his national law is of age and capable of contracting, i.e. German nationals from the age of eighteen. The age requirement may be dispensed with if the applicant is at least sixteen years old and provided his future spouse is of age. A minor who intends to marry needs, moreover, the consent of his legal representative and of the person entitled to care for him, which may be replaced by a decision of the guardianship court if refused without reasonable causes.

Paragraph 3

The right to enter into marriage only with "the free and full consent" of the intending spouses guaranteed in Art. 23 (3) of the Covenant is protected by the Constitution of the Federal Republic of Germany under Art. 6 (1) of the Basic Law within the scope of the liberty to marry; to that extent, reference is made to the comments regarding Art. 23 (2) of the Covenant. International obligations in this field were assumed by the Federal Republic of Germany also by the ratification of the Convention on Consent to Marriage, the Minimum Age for Marriage and Registration of Marriages, of 10 December 1962.

Paragraph 4

Ever since it came into existence the Federal Republic of Germany has made great efforts to reduce the traditional discriminatory treatment of women, which in Germany just as in other States had been maintained especially in marriage and family law.

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Art. 3 (2) of the Basic Law, according to which men and women shall have equal rights, forms the basis of national measures in the Federal Republic of Germany. Pursuant to Art. 117 (1) of the Basic Law, the law conflicting with this basic law remained in force for the time being in order to enable the legislator to find possibilities of adaptation. However, the duration of the continued validity of the law conflicting with Art. 3 (2) of the Basic Law was limited to 31 March 1953. That law consequently became invalid on 1 April 1953 irrespective of the fact that it had been impossible to pass a law of adaptation by this date. The resultant lacunae in the law were first filled by judicial decisions. Subsequently, the legislator then gradually realized the equal rights of the sexes in accordance with the progressive opinions on the tenor and meaning of Art. 3 (2) of the Basic Law in particular by the Law on Equal Rights of 18 June 1957 (Federal Law Gazette I, p. 609), the Law amending Family Law of 11 August 1961 (Federal Law Gazette I, p. 1221), and by the First Law for the Reform of Marriage and Family Law of 14 June 1976 (Federal Law Gazette I, p. 1421). By taking these measures, the Federal Republic of Germany has fully met the requirements of Art. 23 (4) of the Covenant. Reference is also made to the following:

Entry into marriage, as stated on Art. 23 (2) of the Covenant above, is governed by the basic right to marry which man and woman can equally invoke. Equal rights are ensured also in the choice of name. Spouses may take the name of the man or the woman as the name to be used after marriage. If the woman marries a foreign national, this is no longer prejudicial to her nationality. The woman remains a German national even if she acquires automatically upon her marriage the foreign nationality of her husband. International efforts made in this field were supported by the Federal Republic of Germany in particular by its accession to the Convention of the United Nations concerning the Nationality of Married Women of 20 February 1957.

In the case of an existing marriage the basic right of equality of rights of the sexes has different effects in the Federal Republic of Germany: Thus, the property of husband and wife, unless expressly stipulated otherwise by marriage contract, does not become common property; in fact, each manages his property independently - irrespective of whether it was acquired before or after the marriage (Section 1363 (2), first sentence, Section 1364 of the Civil Code). If they have children, both exercise parental care on equal terms, each on his own responsibility and in mutual agreement for the welfare of the child (Section 1627 of the Civil Code). The law no longer fixes one certain role, for instance that of a housewife, for the woman. The spouses rather determine the conduct of their household in mutual agreement, both spouses having the right to be gainfully employed (Section 1356 (1), first sentence, and (2), first sentence, of the Civil Code). In fact, about 42.5 per cent of all married women up to the age of 65 in the Federal Republic of Germany are gainfully employed.

Upon the dissolution of the marriage the equality of rights of the spouses is realized by the fact that either spouse may on equal legal conditions petition for divorce after the breakdown of the marriage (Sections 1564 et seq. of the Civil Code).

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The law governing the consequences of divorce, moreover, tries to settle actual inequalities existing in cases in which one spouse is gainfully employed while the other - mostly the wife - takes care of the children and the house. The spouse in a better position economically must, therefore, provide maintenance for the other to a reasonable extent as long as the latter is unable to provide for himself (Sections 1569 et seq. of the Civil Code). If the spouses had a statutory matrimonial regime, the spouse who increased his property in marriage loss may claim compensation for the accrued gains from the other party (Sections 1372 et seq. of the Civil Code). There is also a pension splitting (Sections 1587 et seq. of the Civil Code). This implies that the contingent rights acquired under the social security system for old age and invalidity during the marriage are equally divided between the spouses according to the principle of splitting of accrued gains.

Protection of the children in the case of a dissolution of the marriage, an obligation imposed by Art. 23 (4), second sentence, of the Covenant, is provided for in that the family court pronouncing the divorce, pursuant to Section 1671 of the Civil Code, ex officio awards custody to the parent with whom the child is best looked after. The parents may make suggestions on this point.

Article 24

Paragraph 1

Pursuant to Section 1 (1) of the Civil Code, the legal capacity of a human being begins with the completion of birth. Accordingly, also the children are entitled to enjoy the basic and human rights. The child itself, as the Federal Constitutional Court emphasizes, is vested with the dignity of man (Art. 1 (1) of the Basic Law) and is entitled to free development of its personality (Art. 2 (1) of the Basic Law) (Decisions of the Federal Constitutional Court, vol. 24, p. 144). Art. 6 (2) of the Basic Law confers upon the parents the right and the duty to care for and bring up the child. The right concerned is not a right conferred upon the parents for their personal profit but, as pointed out by the Federal Constitutional Court with reference to the United Nations Declaration Concerning the Child of 20 November 1959, a responsibility incumbent upon them in the interest of the child (Decisions of the Federal Constitutional Court, vol. 24, p. 144). The right of the child to protection guaranteed under Art. 24 (1) of the Covenant, is a constitutionally protected right of the child in the Federal Republic of Germany, the fulfilment of which is, in the first place, incumbent upon the parents. These exercise their parental right under Section 1627 of the Civil Code, "on their own responsibility and by mutual consent for the welfare of the child".

Illegitimate children require special protection. Pursuant to Art. 6 (5) of the Basic Law they must, through legislation, be given the same conditions for their physical and spiritual development and their position in society as legitimate children. This equal treatment of illegitimate children under the constitution ranks pari passu with Art. 6 (1) of the Basic Law according to which

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marriage and family receive the special protection of the State; the equal status of illegitimate children consequently does not impair marriage and family. By the Law concerning the Legal Position of Illegitimate Children of 19 August 1969 (Federal Law Gazette I, p. 1243), the legislator of the Federal Republic of Germany complied with the constitutional requirement of Art. 6 (5) of the Basic Law. This law also abolished, inter alia, the former discrimination of the mother of an illegitimate child; Section 1705 of the Civil Code confers upon her full parental rights.

The right of the child to protection guaranteed under Art. 24 (1) of the Covenant implies that the State may interfere in the parental right where parents grossly fail to do their duty. In such cases the State's "watchdog" role under Art. 6 (2), second sentence, of the Basic Law, is significant. According to the decisions of the Federal Constitutional Court the welfare of the child should be the guiding principle: Not every failure or negligence entitles the State to exclude the parents from the care and upbringing of the child - the manner and degree of intervention are rather determined by the extent of the failure of the parents and by what appears necessary in the interest of the child (Decisions of the Federal Constitutional Court, vol. 24, pp. 144-145). Anyway, the guardianship court may, under Section 1666 of the Civil Code, and in accordance with Art. 6 (3) of the Basic Law order the separation of the child from the family if the conditions for such an extreme measure are fulfilled. Minors under 17, if they are neglected or if a danger of the children being neglected arises, may, according to Sections 62 et seq. of the Children and Young Persons Act, also be transferred to a welfare home.

In the Federal Republic of Germany such measures are taken under national law and in accordance with Art. 24 (1) of the Covenant irrespective of the national origin of the child requiring protection. The Federal Republic of Germany, moreover, assumed an international obligation in this connexion within the framework of the Hague Convention of 5 October 1961 concerning the Competence of Authorities and the Law to be Applied in the Field of the Protection of Minors ratified by it.

Paragraph 2

Pursuant to the provisions under the Law on the Registration of Births, Deaths, and Marriages applicable in the Federal Republic of Germany, the registrar has to enter every birth together with the name of the child in a public register, the register of births. He has to be notified of the birth of the child at the latest within one week.

Paragraph 3

The German law on nationality is governed by the principle of descent (ius sanguinis). Accordingly, a legitimate child acquires under Section 4 of the Reich and Nationality Law (Reichs- und Staatsangehörigkeitsgesetz) German nationality if one parent - only the father or only the mother or both parents - is German. In the case of an illegitimate child by a non-German mother and a German father, the child may be naturalized under favourable conditions (Section 10 of the Reich and Nationality Law). Children further acquire German nationality simply by legitimation

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or adoption (Sections 5 and 6 of the Reich and Nationality Law). In applying these provisions, the Federal Republic of Germany goes, in the interest of the children concerned, considerably beyond the obligations incumbent on it under Art. 24 (3) of the Covenant.

Article 25

(a) letter (a)

The right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives of the people, is guaranteed by the constitution of the Federal Republic of Germany. Pursuant to Art. 2 (1) of the Basic Law everyone has, within certain limits, the right to the free development of his personality; this includes the right to engage in political activity. In particular, everyone is free, within the scope of free speech guaranteed by Art. 5 of the Basic Law, to state his position on political matters or to influence political events within the scope of the freedom of assembly (Art. 8 of the Basic Law) or through a freely formed association within the meaning of Art. 9 of the Basic Law. The parties, which may be freely founded according to Art. 21 (1), second sentence, of the Basic Law, offer themselves to the individual as instruments for continued political activity. Pursuant to Art. 21 (1), first sentence, of the Basic Law, they participate in forming the political will of the people.

(b) letter (b)

The Federal Republic of Germany is based on a pluralistic society which, in its constitution, upholds the free democratic system. Under Art. 20 (2) of the Basic Law all State authority emanates from the people and is exercised by the people in elections and referendums by means of separate legislative, executive and judicial organs. Within the scope of these provisions, the right to vote and the right to be elected, guaranteed in Art. 25 (b) of the Covenant, is a basic right of the citizen which, in Germany, has also been enjoyed by women since 1919. The Federal Republic of Germany, moreover, acceded to the United Nations Convention of 31 March 1953 concerning the Political Rights of Women. Pursuant to Art. 38 (1), first sentence, Art. 39 (1), first sentence, of the Basic Law the deputies of the German Bundestag - i.e. the central parliament - are elected in universal, direct, free, equal and secret elections for a term of four years. Eligible to vote is any person who on the day of election has reached the age of 18, who is a German within the meaning of Art. 116 (1) of the Basic Law, who lives in the electoral territory, and who is not excluded from the right to vote by a court decision. Eligible to be elected is any person who on the day of the election has reached the age of 18, who has been a German national for at least one year, and who is not excluded from the right to vote or to be elected by a court decision. Analogous guarantees are provided for in the constitutions of the Federal Laender and in the electoral laws for elections to the Landtage (regional parliaments) and municipal representative corporate bodies. The elections carried out in the Federal Republic of Germany thus meet all the requirements under Art. 25 (b) of the Covenant. They are not only "periodic, universal, equal and secret" but, within the meaning of that provision, also genuine. For, it is the voter who determines

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the composition of the parliaments of the Bund (Federation), Laender (member States of the Federation), and Gemeinden (Communities). There are no unitary lists or similar practices which limit the voter to simply confirming or rejecting a parliament the composition of which was determined beforehand. The elections carried out in the Federal Republic of Germany rather show, as is typical in the case of free elections, fluctuating numbers of voters and differing percentages of votes in favour of the parties and candidates standing in the election. The Bundestag decides on the validity of federal elections if an objection is raised by a voter; an appeal against the decision of the Bundestag can be made to the Federal Constitutional Court under Art. 41 (2) of the Basic Law. This procedure for the review of elections is an additional guarantee of the fulfilment of the requirements of Art. 25 (b) of the Covenant.

(c) letter (c)

In the Federal Republic of Germany the constitutional provision of Art. 33 (2) of the Basic Law, according to which every German shall have equal access to any public office "in accordance with his suitability, ability and professional achievements", corresponds to Art. 25 (c) of the Covenant.

In the Federal Republic of Germany the exercise of State authority is normally assigned as permanent functions to members of the public service who - as civil servants - are in a status of service and loyalty under public law (Art. 33 (4) of the Basic Law). At present, about 1,970,000 persons, among them 303,000 women, are working as civil servants for the Bund, the Laender and Gemeinden as well as for public corporations. It is, in the first place, with the assistance of these civil servants - but also with that of the approximately 2.5 million workers and employees in the public service who, under collective agreements, have duties similar to those of the civil servants - that the Federal Republic of Germany fulfils the duties incumbent upon it under the national Basic Law and under international agreements. Professional achievements alone are not sufficient to give the person concerned access to the public service; as stated in detail under A . 2 (c) above, the candidate must also acknowledge the constitutional order of the Federal Republic of Germany. Whoever is supposed not to do so - for instance, because he is an active member of organizations hostile to the constitution - consequently cannot become a civil servant. This is also in conformity with Art. 25 (c), Art. 5 (1) of the Covenant. Candidates who are refused access to the public service are not subject to any other professional restrictions. If a candidate believes his rejection to be unjust, he can have the legality of the decision against him reviewed in proceedings before an administrative court.

Article 26

An international obligation similar to that under Art. 26 of the Covenant has already been assumed by the Federal Republic of Germany under Art. 14 of the European Covention on Human Rights.

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Internally, the request under Art. 26 of the Covenant is complied with in Art. 3 of the Basic Law. That provision reads as follows:

"Article 3

(1) All men shall be equal before the law.

(2) Men and women shall have equal rights.

(3) No one may be prejudiced or privilged because of his sex, descent, race, language, homeland and origin, faith or his religious and political opinions."

The scope of this constitutional provision is not limited to the fundamental rights of the Basic Law but covers the whole legal system of the Federal Republic of Germany. According to the decisions of the Federal Constitutional Court, the general principle of equal rights (Art. 3 (1) of the Basic Law) imposes restrictions on legislation in particular. It is true that the Federal Constitutional Court allows the legislator extensive freedom but it considers Art. 3 (1) of the Basic Law to be violated if a reasonable cause resulting from the nature of the matter or an otherwise plausible reason for the differentiation or inequality of treatment exercised by the legislator in the light of justice cannot be found and the legal provision must be designated as arbitrary (cf. for instance, Decisions of the Federal Constitutional Court, vol. 1, p. 52; vol. 12, p. 348). This prohibition of arbitrary action and control thereof through the Federal Constitutional Court have extraordinary and far-reaching consequences for the development of the whole domain of law in the Federal Republic of Germany, but especially for tax and social security law.

While Art. 3 (1) of the Basic Law lays down the general principle of equal rights, Art. 3 (2) thereof, by comparison, is specific so that considering the binding constitutional dictate of equal rights for men and women the legislator of the Federal Republic of Germany has no freedom to form the law in that respect (Decisions of the Federal Constitutional Court, vol. 31, p. 4). The prohibitions of discrimination under Art. 3 (3) of the Basic Law, which are substantially in conformity with Art. 26, second sentence, of the Covenant, mean that the reason for the special treatment of a particular group of persons may not be one of those mentioned in the said Article (Decisions of the Federal Constitutional Court, vol. 2, p. 286).

Article 27

The only "minority" within the meaning of Art. 27 of the Covenant existing in the Federal Republic of Germany is the Danish ethnic group in Schleswig-Holstein, the northernmost Land of the Federal Republic of Germany. This group comprises about 60,000 persons. The constitution of Land Schleswig-Holstein allows a free choice as regards membership of this national minority, and leaves it to the parents to decide whether or not to send their children to a school of the Danish minority. In 1974, this group ran 63 nursery schools, 59 schools, one further education centre,

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one central library, and two Danish churches. It has one daily newspaper in the Danish language, the "Flensborg Avis". Special provisions in the electoral law ensure that in spite of its small number this ethnic group is politically represented. This is done through the "Südschleswigsche Wählerverband" which has one deputy in the Parliament of Land Schleswig-Holstein. The Federal Republic of Germany has, moreover, concluded agreements with Denmark under which those who wish may identify with their and the Danish way of life. Discrimination against members of the Danish minority and its organizations is prohibited. The requirements of Art. 27 of the Covenant have thus been fully met.

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