



**Convention on the  
Rights of the Child**

Distr.: General  
21 November 2013

Original: English

---

**Committee on the Rights of the Child**

**Consideration of reports submitted by States  
parties under article 12, paragraph 1, of the  
Optional Protocol to the Convention on the  
Rights of the Child on the sale of children,  
child prostitution and child pornography**

**Reports of States parties due in 2011**

**Germany\***

[23 April 2013]

---

\* The present document is being issued without formal editing.

**Pursuant to article 12, paragraph 1, of the Optional Protocol, the Federal Government of Germany reports that it has implemented the obligations under the Optional Protocol as follows:**

**Article 1**

**Prohibition on the sale of children, child pornography and child prostitution**

1. Article 1 contains the fundamental obligation on the part of the States parties to prohibit the sale of children, child pornography and child prostitution. The Federal Republic of Germany complies with this obligation. In this regard, we refer to the following statements on articles 3 et seqq.

**Article 2**

**Definition of terms**

2. Article 2 of the Optional Protocol defines the terms “sale of children,” “child prostitution” and “child pornography.” In this regard, we refer to the statements on articles 3 et seqq. of the Optional Protocol.

**Article 3**

**Criminal provisions**

3. The Federal Republic of Germany has ensured that the actions described in article 3 of the Optional Protocol are included in their entirety within its criminal law.

**Article 3, paragraph 1 (a) (i) a.**

**Trafficking in children for the purpose of sexual exploitation**

4. The States parties must ensure that offering, delivering or accepting of a child for the purpose of sexual exploitation is punishable under criminal law. Section 233a (Assisting in Human Trafficking) StGB (*Strafgesetzbuch* – German Criminal Code) is primarily applicable to acts of delivering or accepting. Pursuant thereto, criminal liability is incurred by whoever assists in human trafficking by recruiting, transporting, referring, harbouring or sheltering another person. Whoever induces a person under 21 years of age to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person, commits human trafficking for the purpose of sexual exploitation (section 232 (1, second sentence)). The offering of a child fulfils the elements of inducing human trafficking for the purpose of sexual exploitation pursuant to section 232 (1), second sentence, section 26 StGB.

5. Additionally, depending upon the circumstances of the specific case, particularly the age of the victim, the elements of section 235 (1), (2) and (4) StGB (abduction of minors from the care of their parents), section 236 (1), 4 No. 2 (child trafficking) and section 171 (violation of duties of care or education) as well as section 176 (5) StGB (promising to supply a child for sexual abuse) may be fulfilled as well. Possible as well would be

prosecution for participation in criminal offences pursuant to sections 176 et seqq. StGB (sexual abuse of children), sections 177 et seqq. StGB (sexual assault by use of force or threats; rape), section 182 (sexual abuse of juveniles). The above-enumerated criminal offences particularly protect children under 14 and/or 16 years of age. Prosecution might also be possible under sections 239 (unlawful imprisonment) section 240 (using threats or force to cause a person to do, suffer or omit an act) and/or for participation in such offences.

### **Article 3, paragraph 1 (a) (i) b.**

#### **Trafficking in children for the purpose of trade in organs**

6. Trafficking in children for the purpose of trade in organs is included in the criminal law by way of participation in criminal offences pursuant to sections 18 and 19 of the Transplantation Act. Also potentially applicable are the criminal offences of section 235 (1), (2) and (4), second sentence StGB (abduction of minors from the care of their parents), section 236 (1) 4, No. 2 (child trafficking) and section 171 (violation of duties of care or education); to some extent, however, these would apply only if the victim is under the age of 14/16. Prosecution might also be possible under section 239 (unlawful imprisonment) section 240 (using threats or force to cause a person to do, suffer or omit an act) and/or for participation in such offences, as well as for offences under sections 223 et seqq. StGB (causing bodily harm).

### **Article 3, paragraph 1 (a) (i) c.**

#### **Trafficking in children for the purpose of engaging them in forced labour**

7. The States parties shall ensure that offering, delivering or accepting, by whatever means, a child for the purpose of engagement of the child in forced labour is covered under its criminal law. Section 233a StGB (assisting in the trafficking of human beings, see above) is primarily applicable to actions involving delivery or acceptance. Section 233 (1), second sentence, provides that whoever subjects a person under 21 years of age to slavery, servitude or bonded labour or makes him work or continue to work for him or a third person under working conditions that are in clear discrepancy to those of other workers performing the same or a similar activity, shall be subject to criminal prosecution. The offering of a child fulfils the elements of inducing human trafficking for the purpose of exploitation of labour force pursuant to section 233 (1), second sentence, section 26 StGB.

8. Additionally, depending upon the circumstances of the specific case, particularly the age of the victim, the elements of section 235 (1), (2) and (4) StGB (abduction of minors from the care of their parents), section 236 (1), 4 No. 2 (child trafficking) and section 171 (violation of duties of care or education) may be fulfilled as well. Prosecution might also be possible under sections 239 (unlawful imprisonment) section 240 (using threats or force to cause a person to do, suffer or omit an act) and/or for participation in such offences.

### **Article 3, paragraph 1 (a) (ii)**

#### **Trade in adoption**

9. The States parties are to criminalise improperly inducing consent by intermediaries for the adoption of a child in violation of applicable international legal instruments on adoption. In Germany, this is taken into account by sections 240, 235 (1), and 236 (2), second sentence StGB.

10. The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption of 29 May 1993 (Hague Adoption Convention, Federal Gazette 2001 II p. 1034) is relevant in this regard. The circumstances under which consent to adoption is improper are indirectly contained in article 4 (c) (2–3) and (d) (3–4) of the Hague Convention. These provisions require that the authorities of the home State have specifically ensured that the person whose consent for adoption is required has provided consent without any influence and the consent has not been induced by any payment or counter-performance.

11. If the agent for adoption uses force or threat of appreciable harm to induce the consent necessary for adoption pursuant to the respective applicable law, he makes himself criminally liable pursuant to section 240 StGB (using threats or force to cause a person to do, suffer or omit an act). If he uses deception, this would generally fulfil the elements of the offence of abduction of minors from the care of their parents pursuant to section 235 (1) StGB. If the agent for adoption induces the consent of another person for adoption for a fee, he incurs criminal liability pursuant to section 236 (2), second sentence StGB (child trafficking).

12. It should also be pointed out that pursuant to section 1741 (1), second sentence of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), those who take part for the purpose of adoption in a procurement or transportation of a child that is unlawful or contrary to public policy, or have commissioned a third party with this or rewarded him for this should accept a child only if this is necessary for the best interests of the child. This rule makes acceptance, which must otherwise merely serve the child's best interests, more difficult and is designed to take preventive action against child trafficking and comparable practices.

### **Article 3, paragraph 1 (b)**

#### **Child prostitution**

13. Section 180 (2) StGB (causing minors to engage in sexual activity) fulfils the obligation to criminalise offering, obtaining, procuring or providing a child for child prostitution. Pursuant thereto, whoever induces a person under 18 years of age to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person for a financial reward, or encourages such acts by acting as an intermediary, incurs criminal liability.

### **Article 3, paragraph 1 (c)**

#### **Child pornography**

14. Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography is criminalised by section 184b StGB (distribution, acquisition and possession of child pornography) and 184c StGB (distribution, acquisition and possession of juvenile pornography). Distribution and sale of child pornography within the meaning of article 3 (1) (c) of the Optional Protocol is also covered by these criminal provisions and fulfils the elements of the offence variants of "dissemination" or "otherwise make publicly accessible."

## Article 3, paragraph 2

### Attempt

15. The reservation “subject to the provisions of its national law” contained in article 3 (2) of the Optional Protocol absolves the Federal Republic of Germany from an obligation to implement with regard to the criminality of the attempt to commit one of the crimes enumerated in article 3 (1). Nonetheless, German law is consistent with the rules contained in article 3 (2) of the Optional Protocol.

16. The criminal liability for attempts arises from explicit orders (e.g. section 232 (2), section 233 (2), section 233a (3), section 235 (3), 36 (3), 180 (4), 240 (3) StGB), from the character of the serious crime (section 23 (1), 12 (1) in conjunction with section 232 (3) and (4) StGB) or from its character as an undertaking to commit a wrongful act (section 11 (1) No. 6 StGB in conjunction with sections 184 (b) (1) No. 3, (2) and (4), 184c (1) No. 3, (2) and (4)). Criminal liability for accomplices arises from section 25 (2) StGB; for abettors from sections 26 and 27 StGB.

## Article 3, paragraph 3

### Appropriate penalties

17. Sections 232 (1), first sentence, 233 (1), first sentence StGB provide for penalties of between six months and ten years. In the case of section 232 (3) and (4) StGB, the minimum penalty is raised to one year imprisonment. A penalty of between three months and five years is threatened for section 233a (1) StGB. Section 235 (1), (2) and section 236 (1) StGB provide that offenders may be punished with imprisonment of up to five years or a monetary fine. Section 235 (4) StGB provides for imprisonment from one to ten years. The penalty provided for by section 236 (4) StGB ranges from six months’ to ten years’ imprisonment. The threatened penalties for the other offences are appropriate as well, and are consistent with the severity of the respective criminal offences.

## Article 3, paragraph 4

### Liability of legal persons

18. The reservation “subject to the provisions of its national law” contained in article 3 (4) of the Optional Protocol absolves the Federal Republic of Germany from an obligation to implement with regard to taking measures to establish the liability of legal persons for offences established in article 3 (1) of the Optional Protocol. Nonetheless, German law is consistent with the rules contained in article 3 (4) of the Optional Protocol. The liability of legal persons for criminal offences pursuant to article 3 (1) of the Optional Protocol is ensured by section 30 of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten – OWiG*).

## Article 3, paragraph 5

### Adoption

19. The Federal Republic of Germany has complied with the obligation contained in article 3 (5) of the Optional Protocol that all persons involved in the adoption of a child act in conformity with applicable international legal instruments. In this regard, we refer to the implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The Act to Resolve Legal Issues in the Area of

International Adoption and for the Continued Development of Adoption Law (Federal Gazette I 2001 p. 2950), which came into force on 1 January 2002, has set up minimum requirements for intercountry adoption and has improved cooperation among the authorities of the child's home country and the country of residence of the adoption applicants. The goals of the German Adoption Placement Act include state monitoring of independent adoption agencies and a reduction of so-called third-state intermediaries.

## **Article 4**

### **Law governing the applicability of criminal law**

20. The requirements contained in article 4 (1) of the Optional Protocol have been implemented by sections 3 and 4 StGB. Pursuant thereto, German criminal law applies to offences committed on German territory and offences committed on German ships and aircraft.

21. Article 4 (2) of the Optional Protocol does not include an obligation to implement. Nonetheless, German criminal law is applicable to offences committed abroad by or against a German national if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal jurisdiction (section 7 (1) and (2) No. 1 StGB). Furthermore, German criminal law is applicable to offences committed abroad by a foreigner whose usual place of residence is Germany if he is discovered in Germany and is not extradited because a request for extradition within a reasonable period of time is not made, is rejected, or the extradition is not feasible (section 7 (2), No. 2 StGB).

22. The requirement to apply German criminal law pursuant to article 4 (3) of the Optional Protocol is fulfilled primarily by section 7 (2) No. 1 StGB. As already stated, it provides that German criminal law applies to offences committed abroad if the act is a criminal offence at the locality of its commission or if that locality is not subject to any criminal law jurisdiction, and if the offender was German at the time of the offence or became German after the commission. Furthermore, pursuant to section 6 No. 4 and 6 StGB, German law is applicable independently of the law of the locality of commission to offences committed abroad involving human trafficking for the purpose of sexual exploitation (section 232 StGB), for the purpose of work exploitation (section 233 StGB), assisting human trafficking (section 233a StGB) and distribution of pornography under sections 184a, 184b (1) to (3), and 184c (1) to (3) StGB.

23. Article 4 (4) of the Optional Protocol does not include an obligation to implement.

## **Article 5**

### **Extradition**

24. Article 5 (1) of the Optional Protocol is of no relevance for the Federal Republic of Germany. The relevant extradition treaties do not contain a conclusive list of criminal offences.

25. Likewise, article 5 (2) of the Optional Protocol is of no relevance for the Federal Republic of Germany. If there is no bilateral or multilateral extradition treaty, Germany is able to extradite based upon its national law on international legal assistance in criminal matters (*Gesetz über die internationale Rechtshilfe in Strafsachen* – IRG).

26. The Federal Republic of Germany, as a State party which does not make extradition dependent upon the existence of a treaty, complies with the obligation arising from article 5 (3) of the Optional Protocol. Pursuant to section 3 IRG, extradition for prosecution or

enforcement is permissible only if the act is also an unlawful act under German law, which fulfils the elements of a criminal law provision, or if it would be an unlawful act under German law if the facts were converted accordingly. The offences enumerated in article 3 (1) of the Optional Protocol fulfil elements of crimes contained in German law. Pursuant to section 3 (2) IRG, extradition for criminal prosecution is permissible only if the act, under German law, has a maximum penalty of at least one year imprisonment, or if it were punishable as such under German law if the facts were converted accordingly. This is true for the relevant offences. We refer to our statements regarding article 3 (3) of the Optional Protocol.

27. The obligation contained in article 5 (4) of the Optional Protocol to treat offences, for the purpose of extradition, as if they had been committed in the territories of the States required to establish their jurisdiction is covered by section 3 IRG. Pursuant thereto, appropriate conversion of the factual situation is to be undertaken in evaluating the permissibility of the extradition.

28. Germany follows the principle contained in article 5 (5) of the Optional Protocol of “either extradite or prosecute.” Germany’s extradition treaties with Australia (1987, article 6 (3)), Canada (1977, article V (3)), India (2001, article 6 (3)), the United States of America (1978, article 7 (3)), as well as the European Extradition Convention of 1957 (article 6 (2)), all contain relevant provisions, whereby the matter is to be submitted to the competent authorities in the case of non-extradition of own nationals. Furthermore, an incoming request for extradition which deals with a German national will always provide an occasion for German Public Prosecutor’s Offices to evaluate whether a domestic investigation proceeding is to be initiated, in line with the legality principle which applies in Germany. In this context, we refer to the statements made regarding article 4 (3) of the Optional Protocol; specifically to section 7 (2), No. 1 StGB. Furthermore, pursuant to section 80 (1) and (2) IRG, German nationals may be extradited to other member States of the European Union for the purpose of criminal prosecution if in principle a later return for the purpose of executing an imposed sanction involving deprivation of liberty is secured, and the offence does not exhibit any substantial domestic connecting factors as well as either a substantial connection to the requesting State (paragraph 1) or dual criminality is given and following a concrete balancing of competing interests, there is no trust on the part of the person sought requiring protection in his non-extradition (paragraph 2). In contrast, section 80 (3) IRG provides that extradition of a German national for the purpose of execution of sentence is permissible only if the person concerned states his consent on the record in court. If the person concerned fails to consent, the Federal Republic of Germany is obligated, at the request of the other State, to evaluate based upon its national law, to take over execution of the sanction involving deprivation of liberty, and if appropriate, to execute such sanction pursuant to its domestic law.

## **Article 6**

### **Mutual legal assistance**

29. Consistent with the requirements of article 6 (1) and (2) of the Optional Protocol, the Federal Republic of Germany has the possibility of granting a request for extradition or mutual legal assistance in criminal proceedings, both within the framework of existing multilateral and bilateral treaties as well as without a treaty pursuant to the IRG. This also includes investigatory measures to obtain necessary evidence.

## Article 7

### Seizure and confiscation

30. The phrase “subject to the provisions of their national law” contained in article 7 of the Optional Protocol absolves the Federal Republic of Germany from an obligation to implement. Nonetheless, German law is consistent with the rules contained in article 7 (a) and (b) of the Optional Protocol.

31. The requirements of article 7 (a) of the Optional Protocol are met by sections 73 et seqq. StGB (deprivation and confiscation orders) and by sections 111b et seqq. (securing objects by seizure and attachment *in rem*) of the Code of Criminal Procedure (*Strafprozessordnung* – StPO).

32. The requirement of article 7 (b) of the Optional Protocol to execute requests from another State party for seizure or confiscation of goods, materials, assets and proceeds, may be implemented based upon an international law agreement or without a treaty based upon sections 66, 67 and 48 et seqq. IRG. In the case of a request by a member State of the European Union, in accordance with Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, the further procedure will be governed by sections 88a et seqq. and 94 et seqq. IRG.

33. Regarding article 7 (c) of the Optional Protocol (taking measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences), we refer to the instrument of administrative law. For example, pursuant to section 35 of the Act Regulating the Conduct of Trade (*Gewerbeordnung*), traders are prohibited from conducting trade if facts exist which demonstrate their unreliability with regard to that trade, if the prohibition is necessary to protect the general public or the employees of the company; this leads to the results desired by article 7 (c) of the Optional Protocol.

## Article 8

### Protection of child victims in criminal proceedings

34. With regard to article 8 (1) (a–c) of the Optional Protocol, we point out that the position of victims – especially children – in criminal proceedings has been strengthened by the Act for the Protection of Victims (*Zeugenschutzgesetz* – ZSchG), which entered into force on 1 December 1998 (Federal Gazette I p. 820) and additional legal measures which followed it. The Code of Criminal Procedure was expanded to include possibilities for video recording of witness testimony in every phase of the proceedings (section 58a StPO), as well as using the recording as a replacement for witness testimony at trial (section 255a StPO) and/or the simultaneous audiovisual transmission of witness testimony (section 247a StPO). Pursuant to section 168e StPO, judges shall carry out an examination separately from those entitled to be present if there is an imminent risk of serious detriment to the well-being of the witness in the event of his being examined in the presence of persons entitled to be present, and if that risk cannot be averted in some other way. Section 68b (1) StPO provides that witnesses may avail themselves of the assistance of legal counsel, who may be barred from the examination if certain facts justify the assumption that his presence would not only negligibly hinder the orderly taking of evidence (section 68b (1) third and fourth sentences StPO). Pursuant to sections 397a (1), 406g (3) StPO, upon motion, particularly on the part of victims of sex and attempted homicide offences and child victims of sex crimes, or victims of abuse who are placed in the case of another, are to receive appointment of legal counsel at the cost of the State (victims’ counsel). With its draft of a law to strengthen the rights of victims of sexual abuse (*Gesetz zur Stärkung der Opfer sexuellen Missbrauchs* – StORMG), which is currently (as of March 2013) in the

parliamentary process, the Federal Government has proposed that in the future, this rule should also apply to victims who were sexually abused as children or teenagers (i.e. minors at the time of the offence) and do not decide until they are adults to deal with the offences with the criminal law.

35. In the case of particular vulnerability of the part of the injured witness, it is possible to prefer charges at the Regional Court rather than the Local Court (section 24 (1) No. 3 Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*). This can prevent additional trauma for the victim/witness, because judgments by the Regional Court may be appealed on points of law only, where no new evidence is gathered. In proceedings with victims who are minors, charges can also be preferred at the Juvenile Courts, which are staffed with judges who have special experience in dealing with young people. As a general rule, the victim may request that a person of her trust be present at the court examination. The victim must have received information regarding her rights in criminal proceedings and has a right to be informed of an impending release of the offender from prison. Informational brochures are handed out to police officers, public prosecutors and judges, as well as to children and teenagers.

36. Regarding article 8 (1) (d), we point out that the Federal Republic of Germany makes available suitable assistance services to child victims throughout the course of the proceedings. There are broad and differentiated offers of aid and counselling by both state and non-state organisations that are within the competence of the Länder and communities. Some Länder also offer programmes to accompany witnesses in criminal proceedings, which contributes to emotionally unburdening witnesses/victims and leads to a higher evidentiary value being afforded to their statements. Further, witness examination rooms tailored to the needs of children have been furnished at the police stations responsible for investigations in cases of sexual abuse. The police officers working there are specially trained in examining child witnesses and continually receive further training.

37. In terms of implementation of article 8 (1) (e) of the Optional Protocol, sections 171b, 172 GVG are relevant. Pursuant to section 171g GVG, the court may exclude the public from the hearing, if circumstances from the private sphere of a participant in the proceedings, witness or a person injured by an unlawful act are mentioned, the public discussion of which would violate interests that are worthy of protection, unless there is an overriding interest in public discussion of these circumstances. Further, section 172 (4) GVG provides that the public may also be excluded if a person under the age of 18 is being examined (the age limit of 18 has been in place since the second Act to Reform the Rights of Victims dated 29 July 2009 (Federal Gazette I p. 2280); the previous age was 16 years). Another protection in place for the very personal and confidential areas of life is section 203 (1), No. 3 and (2), No. 1 StGB, whereby those who disclose a secret held by another without authorisation, which has been disclosed to him or of which he has become aware as defence counsel in a legally ordered proceeding or as an official, i.e. a judge, are subject to criminal liability. Furthermore, section 353d StGB criminalises disclosing information on court hearings.

38. Consistent with the requirements of article 8 (1) (f) of the Optional Protocol, Germany has taken suitable measures to protect child victims and witnesses testifying for the prosecution from intimidation and retaliation. Section 241a StPO requires that the presiding judge is the only one to conduct the examination of witnesses under 18 years of age. Other participants in the proceedings are to request the presiding judge to ask the child witness questions. Pursuant to section 1 (1) of the Act to Harmonise the Protection of Endangered Witnesses of 11 December 2001 (Federal Gazette I p. 3510), important witnesses may be protected with their consent if they, due to their willingness to testify, are subjected to threats to their person, life, health, liberty or other valuable assets and are suitable for witness protection measures. There is no age limit. Section 1 (2) and (3) of the

Act extend protection to relatives and other persons with a close relationship to the witness. Furthermore, efforts to intimidate and retaliate in specific cases could be criminalised as a violation of section 240 StGB (using threats or force to cause a person to do, suffer or omit an act), section 241 StGB (threatening the commission of a felony), section 239 StGB (unlawful imprisonment), section 257 StGB (assistance after the fact), section 258 StGB (assistance in avoiding prosecution or punishment), section 160 StGB (procuring false testimony) or section 223 et seq. StGB (causing bodily harm).

39. With regard to article 8 (1) (g) of the Optional Protocol, we point out that German law avoids unnecessary delays in the disposition of cases and the execution of orders or decrees granting compensation to child victims. In addition to asserting claims for compensation of damages pursuant to civil law, the possibility exists of bringing a property claim in criminal proceedings against the accused arising out of the criminal offence pursuant to section 403 et seq. StPO (joinder). Child victims may also receive compensation from the state in accordance with the Victims Compensation Act (*Opferentschädigungsgesetz – OEG*), which is applied for in a proceeding under social law before the pensions administration of the Länder. The OEG also makes available health treatment measures, which may be performed even before the final decision regarding the overall application. The respective codes of procedure guarantee that unnecessary delays in dispositions and executions are avoided.

40. The obligation contained in article 8 (2) of the Optional Protocol is fulfilled by section 160 (1) StPO. The public prosecution office is to investigate the facts as soon as it obtains knowledge of a suspected criminal offence – this applies independently of certainty as to the age of the victim.

41. Implementation of the requirement contained in article 8 (3) of the Optional Protocol, that the best interest of the child shall be a primary consideration, is illustrated, for example, in the possibilities to take the child's testimony by video and in excluding the public from the main hearing (sections 58a, 168e StPO and sections 171b, 172 GVG).

42. Germany fulfils the obligation arising from article 8 (4) of the Optional Protocol to take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Optional Protocol. Such measures for the advanced training of judges and public prosecutors regarding the peculiarities (special aspects) of victim protection, victim assistance and proceedings with children take place regularly (e.g. events organised by the German Judicial Academy).

43. Protecting the safety and integrity of those persons and/or organisations involved in the prevention and/or protection and rehabilitation of victims of such offences, which is required by article 8 (5) of the Optional Protocol, is ensured in Germany by sections 211 et seq., 223 et seq. StGB.

44. The rule regarding interpretation of the Optional Protocol, contained in its article 8 (6), is consistent with the rights of the accused to a fair criminal trial.

## **Article 9**

### **Prevention, protection of and assistance to victims**

45. The Federal Government of Germany fulfils the requirement contained in article 9 (1) and (2) of the Optional Protocol to undertake measures to prevent the criminal offences enumerated in article 3 of the Optional Protocol.

46. Since the beginning of 1990, almost 2,000 crime prevention councils and bodies have been formed, most of them at the community and regional levels. There is a national

prevention body titled “German Forum for Crime Prevention” (*Stiftung Deutsches Forum für Kriminalprävention* - DFK), which is characterised by cooperation among the Federation, Länder, communities, religious communities and other forces in society. The body develops strategies against the causes of crime which are interdisciplinary and applicable to the whole of society. It also initiates and promotes actions and projects on crime prevention. It fosters national and international exchanges of opinions and experiences, and provides support to activities of other initiatives as a central information and service office.

47. The Programme of Police Crime Prevention of the Länder and the Federation (*Programm Polizeiliche Kriminalprävention* – ProPK), which has the mission of providing information to the population, multipliers, media and other prevention organisations about manifestations of crime and opportunities to prevent it, is starting in March 2013 a cooperative project with the registered association WEISSER RING, Germany's national victim protection organisation: a campaign titled "Prevent Abuse!" (*Missbrauch verhindern!*). The goals of this preventive project are to reduce the number of abuse cases and to aid victims by early intervention and referrals to assistance organisations. The police are striving to attain these goals by consistently informing the public about sexual violence against minors — among other things, about the actual scope of it, about offender strategies, or recognising signs of abuse. This information should contribute toward recognising abuse of minors at an earlier stage and above all ending it by means of a criminal complaint filed with the police. For that reason, one focus of this preventive project is to inform the population about the work of the police once a criminal complaint has been filed. This is designed to allay fears on the part of parents, those with custody rights and other adults whom minors trust about criminal complaints, thus ensuring consistent and concerted criminal prosecution as assistance to victims.

48. From the outset, the Federal Government has actively participated in combating and preventing the commercial sexual exploitation of children at both the national and international levels. In the follow-up to the World Congress III against Sexual Exploitation of Children and Adolescents (25–28 November 2008 in Rio de Janeiro), the Federal Government continued to develop its Action Plan, submitted in 2003, to protect children and teenagers from sexual violence and exploitation. The “2011 Action Plan of the Federal Government to Protect Children and Teenagers from Sexual Violence and Exploitation” was adopted on 27 September 2011. It combines all measures of the Federal Government for the protection of children and teenagers from sexual violence and exploitation into a multi-departmental overall concept. The Action Plan was worked up with the active involvement of children and teenagers. Also, results and recommendations of the national group titled “Round Table against Child Sex Abuse in Relationships of Dependence and Power in Private and Public Facilities and within the Family,” which met from March 2010 until November 2011, were taken up by the Plan, as were those of the Independent Commissioner for Overcoming Child Sex Abuse. Implementation of the goals formulated in the Action Plan is being monitored by a Federation-Länder working group. Four monitoring working groups have been formed on the topics of intervention, prevention, international cooperation as well as human trafficking and tourism.

49. In February 2013, the Federal Government issued a report on the implementation status of the recommendations of the Round Table against Child Sexual Abuse in Relationships of Dependence and Power in Private and Public Facilities and within the Family, which focused primarily on the areas of prevention, intervention and examination of offences from the past.

50. The Federal Government utilises a variety of measures and events to attain broad-based sensitisation in society and provide information on the issue of sexual violence against children. Preventive measures hope to address the children themselves, but also

their parents and others with close ties to the child, as well as professionals who work with children. Numerous offers which have already proven effective in this regard continue to exist or have been further developed. New measures have been created as well. Increasingly, the focus has been on online offers.

51. A nationwide prevention initiative strives to sensitise and educate girls and boys in a manner proper for their respective ages to the topic of sexual abuse (<http://www.traudich.de>). This campaign, which addresses children from 8–12 years of age, was begun in November 2012. A theatre piece called "Trau Dich!" (Have the Courage!), the core of the campaign, had its premiere in Berlin on 1 March 2013. The initiative is being carried out jointly by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Centre for Health Education.

52. The brochure "Ask courageously — act cautiously" informs parents and others with close links to children, providing answers to many questions on the problem of sexual abuse of girls and boys. The online consulting project of the National Conference for Educational Consulting (*Bundeskonzferenz für Erziehungsberatung – bke*), which was financed with seed funding from the Federal Government and receives continuing support from the Länder, offers individual counselling, one-to-one chats, forums and scheduled group chats on the Internet for parents and minors in crisis situations.

53. The *Nummer gegen Kummer* (Number against Worries) for parents and the children's and teenagers' hotline offers free counselling nationwide.

54. In order to spur on qualification and sensitisation for professionals, the Federal Government provides support to organisations which work in the field of imparting knowledge in professional practice. The Information Centre on Child Abuse/Child Neglect (*Informationszentrum Kindesmisshandlung/Kindesvernachlässigung – IzKK*), affiliated with the German Youth Institute, has been in existence for many years as a national interdisciplinary office for information, counselling and networking for prevention of violence against children. Financial support is provided particularly to the registered association titled National Working Group of Child Protection Centres and the German Society for Prevention and Intervention in Cases of Child Abuse and Neglect (*Deutsche Gesellschaft für Prävention und Intervention bei Kindesmisshandlung und –vernachlässigung e.V. – DGfPI*).

55. Furthermore, in 2010 the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth initiated a nationwide training offensive. These training sessions are carried out by DGfPI and are planned for four years. The aim of the project is to strengthen the skills and possibilities for action among employees of children's and youth assistance offices in order to prevent sexual violence. At the national level, an independent commissioner dealing with issues of child sex abuse has been in office since March 2010. One major task of the commissioner's office is to support implementation of the recommendations made by the Round Table against Child Sexual Abuse, established by the Federal Government in 2010, and to observe developments through nationwide monitoring. The additional tasks of the independent commissioner include operation of a national free telephone line for support of those seeking counselling and assistance, as well as the establishment of an online aid portal specifically to protect those affected by the issue. A campaign titled "Kein Raum für Missbrauch" (No Room for Abuse) has been initiated to sensitise the population and to support the introduction of protection concepts in institutions and facilities ([www.kein-raum-fuer-missbrauch.de](http://www.kein-raum-fuer-missbrauch.de)). The office of Independent Commissioner has initially been established until the end of 2013.

56. Finally, the Federal Government also supports cooperative projects between international organisations and the European Commission. Terre des Hommes is provided with support in developing and producing in-flight advertisements against child prostitution

in tourism, as well as adapting them into film and television versions in order to sensitise travellers on intercontinental flights for the topic. The Internet platform [www.childhood.com](http://www.childhood.com) provides information to travellers and professional groups who are confronted with the problem. The Working Group to Protect Children against Sexual Exploitation (ECPAT Deutschland, registered association) and the German Travel Association agreed in January 2001 on a Code of Conduct to Protect Children from Sexual Exploitation in Tourism. The Code of Conduct provides that employees in both origin and destination countries be trained to work up an ethical corporate policy which is clearly against the commercial exploitation of children, and that they inform and sensitise travellers. The Federal Association of the German Tourism Industry (*Bundesverband der Deutschen Tourismuswirtschaft* – BTW) and the Competence Center Travel & Logistics of the Berlin Trade Fair (ITB) have also obligated themselves to implementing the Code of Conduct.

57. Article 9 (3) of the Optional Protocol obligates the States parties to take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery. Victims of violent crime on the territory of Germany may assert claims for assistance pursuant to the Victims' Compensation Act (*Opferentschädigungsgesetz* – OEG). Persons who have suffered health damage due to a deliberate, unlawful attack have a claim for compensation, as do the survivors of a victim who dies as a result of the attack. The amount of compensation is determined by the rules of the Federal Benefits Act (*Bundesversorgungsgesetz*). Benefits include, in addition to medical treatment, monthly pension payments in the case of long-term health damage, as well as payments to secure livelihood. Also, pedagogical, sports and movement therapy measures are integrated within the catalogue of services of the OEG as a matter of right.

58. With regard to article 9 (4) of the Optional Protocol, we point out that pursuant to German law, all child victims of the criminal offences mentioned in the Optional Protocol have access to procedures that enable them to seek, without discrimination, compensation for damages from those legally responsible. Sections 823 (1) and (2), 825 and 826 of the Civil Code (*Bürgerliches Gesetzbuch* – BGB) cover such cases in terms of substantive law. Furthermore, section 50 of the Code of Civil Procedure (*Zivilprozessordnung* – ZPO) provides that children have the capacity to be parties to an action. The lack of procedural capacity (section 52 ZPO in conjunction with sections 104 No. 1, 106 BGB) is overcome by way of representation by the parents or a guardian or caregiver appointed by the court. Victims that do not have sufficient financial means to carry out proceedings are provided with legal aid upon motion – independently of their nationality or their place of residence – if the planned legal action or defence has adequate chances of success and does not appear to be wanton (section 114 ZPO). If legal counsel during the proceedings is provided for as a mandatory measure or appears necessary, the indigent victim, upon motion, is provided with an attorney who is paid by the State.

59. Article 9 (5) of the Optional Protocol obligates the Federal Republic of Germany to take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the Optional Protocol. In this regard, reference is made to rules for participation (section 26, 27, 30 StGB), to the provisions of sections 111, 184b (1), 184c (1) StGB, section 120 of the Administrative Offences Act (*Ordnungswidrigkeitengesetz* – OWiG) as well as to the confiscation provisions in the criminal law (sections 74 et seq. StGB) and the law of regulatory offences (sections 123, 22 et seq. OWiG). Furthermore, the production and dissemination of advertising for the offences named in article 3 (1) of the Optional Protocol may also constitute incitement if the offences at least fulfil the elements of an attempt. If the criminal offences do not attain the status of an attempt, section 30 StGB (attempted participation) is relevant in the case of felonies, and section 111 StGB (public incitement to crime) could apply to misdemeanours. Section 184b (1), section 184 (1) No. 3 StGB criminalise the

supply of child pornographic written materials. The material may be confiscated pursuant to sections 74 et seq. StGB. Section 120 (1) No. 2 OWiG prohibits advertising for prostitution by disseminating written materials. The materials may be confiscated pursuant to section 123 OWiG, and the equipment used for its manufacture may be made unusable.

## **Article 10**

### **International cooperation**

60. At the European level, Germany fulfils the obligation contained in article 10 (1) of the Optional Protocol to strengthen international cooperation by making arrangements for the prevention, detection, investigation, prosecution and punishment of child prostitution, child pornography, and child sex tourism.

61. Initially, mention should be made of Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Official Journal L 101/1 of 15 April 2011) as well as Directive 2011/93/EU of the European Parliament and the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (Official Journal L 335/1 of 17 December 2011 and L 18/7 of 21 January 2012). In terms of content, respective provisions cover the areas of substantive criminal law, jurisdiction and criminal prosecution, victims' rights in criminal proceedings, support for victims, and prevention. Also, the Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008 (CETS No.: 197), which became valid law in Germany on 18 October 2012 (Federal Law Gazette II p. 1107). This Convention also provides for the establishment of an independent monitoring system. Finally, mention should be made of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.: 201). Germany played an active part in the negotiations on the above-mentioned legal instruments in the bodies of the European Union and the Council of Europe and is currently preparing the implementation of the European Union directives and the Council of Europe Convention No. 201 as well as its ratification. German law, incidentally, is already consistent with most of the requirements imposed by these legal instruments.

62. Germany promotes international cooperation to assist child victims in their physical and psychological recovery, reintegration and repatriation within the meaning of article 10 (2) of the Optional Protocol.

63. A joint educational campaign to protect children from sexual exploitation in tourism has been in place since September 2010 for the Federal Republic of Germany, Austria and Switzerland. In connection with this trilateral campaign, a police registration address has been established in all three countries; travellers can contact this address directly. An in-flight advertisement titled "Witness – Zeugen" is a part of the campaign. France and Luxembourg have become new partner countries to the campaign, and additional countries have also expressed an interest in the partnership.

64. Germany implements article 10 (3) of the Optional Protocol by promoting international cooperation in order to address the root causes, such as poverty and underdevelopment, of the sale of children, child prostitution, child pornography and child sex tourism.

65. Germany also complies with article 10 (4) of the Optional Protocol by providing financial, technical or other assistance through existing multilateral, regional, bilateral or other programs. The Federal Government supports undertakings designed to improve the situation of children and youth in developing countries. The Convention endeavour

"Protection of minors from sexual exploitation" began in 2004 in order to integrate the problem of sexual exploitation of children and youth into German development cooperation work. Also, the Convention endeavour participates intensively on the establishment of national and international networks with authorities, the private sector (especially the tourism industry) and children's rights organisations. The results are made available to the public at [www.gtz.de/Themen/de/6669/htm](http://www.gtz.de/Themen/de/6669/htm). The Convention endeavour also supports updating of the Internet platform [www.child-hood.com](http://www.child-hood.com) of Terre des Hommes, the training of social workers in Cambodia by a local renowned non-governmental organisation (Social Services of Cambodia), advanced training for police in Central America, a police postgraduate course on the topic of "protection and rehabilitation of minor victims of sexual exploitation in tourism" in the context of sustainability, and societal responsibility on the part of companies. Finally, the Federal Government provides support to projects which combat the sale of children in developing countries.

---