



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Committee on the Elimination of Racial Discrimination

**Reports submitted by States parties under article
9 of the Convention**

**Nineteenth to twenty-second periodic reports of States parties
due in 2012**

Germany* ** ***

[8 April 2013]

* This document contains the nineteenth, twentieth, twenty-first and twenty-second periodic reports of Germany due on 15 June 2012, submitted in one document. For the sixteenth to eighteenth periodic reports and the summary records of the meetings at which the Committee considered this report, see documents CERD/C/DEU/18, CERD/C/DEU/CO/18 and CERD/C/SR.1886, 1887 and 1998.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited.

*** Annexes can be consulted in the files of the Secretariat.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. General	1–5	3
II. Compliance with and implementation of articles 1 to 7 of the Convention	6–166	3
A. Article 1: Definition of racial discrimination.....	7–10	3
B. Article 2: Condemnation of racial discrimination and protection of certain ethnic groups.....	11–48	5
C. Article 3: Condemnation of segregation and apartheid	49–54	12
D. Article 4: Combating racist propaganda and organisations	55–96	13
E. Article 5: Comprehensive human rights protection	97–136	22
F. Article 6: Protection against acts of racial discrimination	137–151	30
G. Article 7: Measures in the fields of teaching, education, culture and information.....	152–166	33
III. Conclusion	167	36

I. General

1. The protection of all people against racial discrimination is an objective of outstanding importance to German law and German politics. The Federal Republic of Germany therefore ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966 (ICERD) in 1969. Since then, the German Government has regularly submitted periodic reports to the Committee on the Elimination of Racial Discrimination (CERD) (hereinafter, the Committee) in which it has provided the Committee with information on the measures taken by official agencies in the Federal Republic of Germany to prevent and eliminate racial discrimination.

2. The Federal Republic submitted its last report in 2007. In its concluding observations of 13 August 2008 on that report, the Committee permitted Germany to present the 19th, 20th and 21st reports together with the 22nd report. The period under review is from January 2006 to November 2012. The report will be posted on the Federal Ministry of Justice's website (www.bmj.bund.de) (cf. concluding observation No. 31 on the last periodic report). The report and the observations will not be translated into the minority languages since it is certain that they will also be disseminated among the minorities in German and English.

3. The Common Core Document of the Federal Republic of Germany for the periodic reports on the human rights Conventions of the United Nations, containing the general information on the country and its people, is likewise available on the aforementioned website and is included in the annexes to this report (German version, Annex 1; English version, Annex 2). An updated version which is already being worked on (cf. concluding observation No. 34) will be submitted subsequently.

4. In line with concluding observation No. 35 on the last periodic report, this report addresses all points raised in those concluding observations. An overview of which concluding observation is addressed in which paragraph is enclosed as Annex 3.

5. While drafting this report, the representatives of organisations of civil society working in the area of human rights protection, in particular in combating racial discrimination, were consulted at an expert meeting that was held on 6 June 2012. This procedure, which corresponds to concluding observation No. 32 to the 16th-18th periodic reports, has already proven its worth in the past periodic reports, and is now the Federal Government's constant practice.

II. Compliance with and implementation of articles 1 to 7 of the Convention

6. Rejection of all conceivable forms of racism and extremism is a fundamental principle of all legislative, judicial and administrative activity. Articles 1 to 7 of the Convention are consistently complied with and implemented in accordance with this principle.

A. Article 1: Definition of racial discrimination

7. German law covers all forms of discrimination which fall under racial discrimination in accordance with Article 1 of the Convention. This already follows from the right of all people to respect for and protection of human dignity. Human dignity is entrenched in the Basic Law for the Federal Republic of Germany as the highest legal interest. Article 1

para. 1 of the Basic Law (Grundgesetz – GG) reads as follows: “Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.” Article 3 of the Basic Law is also a central provision here. In accordance with Article 3 para. 1 of the Basic Law, all persons are equal before the law. This right to demand equal treatment on the part of the State takes on a particular distinctness in para. 3 as a result of specific bans on drawing a distinction. Article 3 para. 3 sentence 1 of the Basic Law reads as follows: “No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions.” According to the case law of the Federal Constitutional Court, the attributes listed in Article 3 para. 3 of the Basic Law may not be “used as the occasion for unequal treatment before the law. That also applies when a provision is not geared to that unequal treatment which is prohibited under Article 3 para. 3, but when it is primarily pursuing other objectives” (Decisions of the Federal Constitutional Court (Entscheidungen des Bundes – verfassungs – gerichts – BVerfGE) 85, 191 <206>). The equality principles expounded in Article 3 of the Basic Law are equally binding on the executive, the judiciary and the legislative bodies, and protect not only natural persons, but also legal persons and associations of individuals to the extent that the individual guarantees are applicable to them in terms of their nature (Article 19 para. 3 of the Basic Law). Comparable provisions can also be found in the constitutions of the Länder.¹ This is a fundamental principle prohibiting both direct and indirect discrimination in all public life, and it also affects the legal relationship between private individuals.

8. The General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG), which came into force on 18 August 2006, is proof of this. The Act is to guarantee protection against ethnically-motivated discrimination which is as seamless as possible. Reference is made to the observations on paragraph 129 et seqq. for further details on the content of the Act.

9. The above provisions provide a legal framework in which to take a broad approach in combating racial discrimination in all its forms. These provisions do not need to explicitly define racial discrimination since Article 1 para. 1 of ICERD already contains such a definition which is hence valid law in Germany (re concluding observation No. 15 on the last periodic report). It naturally remains a constant task both of all state agencies and of civil society to ensure the implementation of this legal framework in legal reality.

10. It should be pointed out at this juncture that the term “race” is the subject of some contention in the Federal Republic of Germany. Other alternative terms have been suggested as a replacement.² The removal of the term would create a gap when it comes to protection. Racism creates race, and not the other way around. Racism can therefore be combated most effectively by starting with the term “race” and banning discrimination on

¹ Article 2 of the Constitution of the Land Baden-Württemberg in conjunction with Article 3 para. 3 sentence 1 of the Basic Law; Article 10 of the Constitution of Berlin; Article 12 para. 2 of the Constitution of the Land Brandenburg; Article 2 para. 2 of the Land Constitution of the Free Hanseatic City of Bremen; Article 1 of the Constitution of the Land Hesse; Article 5 para. 3 of the Constitution of the Land Mecklenburg-Western Pomerania in conjunction with Article 3 para. 3 sentence 1 of the Basic Law; Article 3 para. 3 of the Constitution of Lower Saxony; Article 4 of the Land Constitution of North Rhine-Westphalia in conjunction with Article 3 para. 3 sentence 1 of the Basic Law; Article 17 para. 4 of the Rhineland-Palatinate Land Constitution; Article 12 para. 3 and 4 of the Saarland Land Constitution; Article 18 para. 3 of the Constitution of Saxony; Article 7 para. 2 of the Constitution of the Land Saxony-Anhalt; Article 2a of the Constitution of the Land Schleswig-Holstein; Article 2 para. 3 of the Constitution of Thuringia; Art. 119 of the Bavarian Constitution contains an explicit ban on racial and ethnic hatred.

² cf. the motion Bundestag printed paper 17/4036, retrievable on the Internet: <http://dipbt.bundestag.de/dip21/btd/17/040/1704036.pdf>.

this precise basis. The term “skin colour” is not synonymous with this, and would for example not encompass all forms of racist discrimination. The Federal Republic would hence like to point out once more that it explicitly rejects theories attempting to prove that there are different human races.³

B. Article 2: Condemnation of racial discrimination and protection of certain ethnic groups

11. The Federal Republic of Germany condemns all forms of racial discrimination at all levels and ensures that endangered groups of the population are protected against racial discrimination by the State and by civil society organisations.

1. Article 2, paragraph 1 (a) and (b): Obligation of public agencies not to engage in racial discrimination

12. The entire public power is bound by Article 1 para. 1 of the Basic Law and by Article 3 para. 3 of the Basic Law. All public agencies are hence banned from engaging in any discrimination directed at a person on account of his/her race.

2. Article 2, paragraph 1 (c): Mechanisms for reviewing procedures applied by public agencies and legislation which have the effect of racial discrimination

13. The implementation of the Convention is monitored at various levels in the Federal Republic of Germany. Draft federal legislation is subject to a legal examination in accordance with section 46 of the Joint Rules of Procedure of the Federal Ministries (Gemeinsame Geschäftsordnung der Bundesministerien – GGO). The Länder have corresponding regulations.⁴ The Federal Government Commissioner for Migration, Refugees and Integration also endeavours to ensure within legislative procedures and political processes that structural discrimination is recognised and reduced. Germany is also involved in controls at European level, such as through the European Commission against

³ See also the reasoning of the Act to Support European Guidelines on the Realisation of the Principle of Equal Treatment (Gesetz zur Unterstützung europäischer Richtlinien zur Verwirklichung des Grundsatzes der Gleichbehandlung), Bundestag printed paper 16/1780, pp. 30 et seq.; retrievable on the Internet: <http://dipbt.bundestag.de/dip21/btd/16/017/1601780.pdf>.

⁴ For instance, section 6 of the Rules of Procedure of the Bavarian State Government; section 22 subs. 4 of the Rules of Procedure of Brandenburg; section 10 of the Rules of Procedure of the Hamburg Senate; sections 58 and 67 of the Rules of Procedure of Hesse; section 4 subs. 4 of the Rules of Procedure II of Mecklenburg-Western Pomerania; sections 40 and 41 of the Rules of Procedure of Lower Saxony; section 110 of the Rules of Procedure of North Rhine-Westphalia; section 8 subs. 2 of the Rules of Procedure of the Senate of the Free Hanseatic City of Bremen; section 30 of the Rules of Procedure of Rhineland-Palatinate; section 12a subs. 1 of the Rules of Procedure of the Government of the Saarland; section 5 subs. 4 sentence 1 of the Rules of Procedure of Saxony-Anhalt; No. 5 of the Administrative Provision of the Saxon State Government on the Issuance of Legal Provisions and Administrative Provisions (VwV Normerlass); section 10 a of the Rules of Procedure of the Land Government of Schleswig-Holstein; section 24 of the Rules of Procedure of Thuringia; cf. also Number 4.3 of the Baden-Württemberg Administrative Provision of the Land Government and of the Ministries to Draft Provisions of 27 July 2010, Die Justiz 2010, p. 317, in accordance with which planned legislation is also to be examined for the impact of the project on social change, such as on the integration of people with a migration background. In Berlin, the Senate Administration for Justice and Consumer Protection carries out an appropriate check in constant administrative practice within the joint signing procedure in accordance with section 10 subs. 3 and 4, as well as 39, of the Rules of Procedure II.

Racism and Intolerance (ECRI). The European Union Agency for Fundamental Rights (FRA) has replaced the European Monitoring Centre on Racism and Xenophobia (EUMC), which operated until 2007. It draws up annual reports which also address racism and ethnic discrimination in the Member States.

14. Central importance in monitoring state activity is attached to the legal protection afforded by the courts. In accordance with Article 19 para. 4 sentence 1 of the Basic Law, anyone whose rights are violated by public authority may have recourse to the independent courts. In accordance with Article 93 para. 1 No. 4a of the Basic Law in conjunction with section 90 subs. 1 of the Federal Constitutional Court Act (Bundes – verfassungsgerichts – gesetz – BVerfGG), any person alleging that one of his basic rights – that is also his/her right to equality – has been infringed by public authority may lodge a constitutional complaint with the Federal Constitutional Court. Additionally, the Federal Constitutional Court also reviews legal provisions within the abstract or concrete review of statutes as to their compatibility with Article 3 of the Basic Law – and hence also for content constituting racial discrimination. Such proceedings also exist before the Constitutional Courts of the Länder. Once the domestic legal remedies have been exhausted, the individual can have recourse to the European Court of Human Rights and complain of a violation of Article 14 of the European Convention on Human Rights if he/she considers his/her “enjoyment of the rights and freedoms set forth in this Convention” to have been discriminated against. Impermissible grounds for discrimination include race, skin colour, language, religion, national or social origin or association with a national minority.

3. Article 2, paragraph 1 (d): Prohibition and elimination of racial discrimination among private individuals

15. Article 4 of the Convention covers criminal law aspects of the fight against racism (*please refer to paragraphs 56 et seqq.*). *Action against organisations with racist goals* (prohibition of associations and parties) is also dealt with under Article 4 of the Convention (paragraphs 89 et seqq.). Please refer to paragraphs 129 et seqq. regarding activities under civil law to end racial discrimination by private individuals.

4. Article 2, paragraph 1 (e): Combating racism and promoting integration, especially by encouraging integrationist organisations and movements

16. The Federal Republic of Germany unrestrictedly acknowledges its responsibility both to combat racism and also for the success of integration. The fight against racism is a major concern of foreign policy (see at a) on this). Additionally, civil society organisations are promoted which oppose racism (see at b) on this).

(a) Combating racism in the context of foreign relations

17. The Durban Review Conference against racism, racial discrimination, xenophobia and related intolerance took place in Geneva from 20-24 April 2009. In compliance with the recommendation contained in concluding observation No. 30 on the last periodic report, the Federal Government gave considerable encouragement in the run-up to the Conference to the broadest participation in the Review Conference, and took an active part in the negotiations on the outcome document, which was later accepted by consensus.

18. The Federal Government provided financial support for the work of the Office of the United Nations High Commissioner for Human Rights. The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, was a guest of the Federal Republic of Germany from 22 June to 1 July 2009, and then published a report on his visit.

19. The Federal Government works closely with the Council of Europe within the “European Commission against Racism and Intolerance” (ECRI). An ECRI Commission visited the Federal Republic of Germany in September 2008 and published its report on this in May 2009. ECRI organised a conference in Berlin in May 2010 in cooperation with the German Institute for Human Rights and with representatives of the Federal Government to discuss the outcome of the evaluation report. In particular the good experience which Germany had with this led the Federal Foreign Office to fund similar roundtables in other states. ECRI was provided with an amount of 50,000 Euro to this end in 2011. Moreover, the Federal Republic of Germany promoted the work of the Council of Europe in the field of basic and further training of Roma mediators with a subsidy of 50,000 Euros in 2011.

20. The Organisation for Security and Co-operation in Europe (OSCE) has significantly stepped up its activities to combat racially-motivated discrimination in the period under review. The focus is now no longer on drawing up fundamental resolutions as in the previous period under review, but on specific implementation. The Federal Republic of Germany also regards this progress as a result of its consistent emphasis on these topics when working in the bodies of the OSCE.

21. Germany also works in its bilateral relations to counter racism and xenophobia. For instance, by providing a subsidy in 2011, the Federal Republic of Germany promoted a project in cooperation with the Romanian Government in which a non-governmental organisation is drawing up a database on the residential situation, work, education and health of the Roma in Romania and preparing recommendations for the Romanian authorities.

22. The Federal Government continues to consider it to be inappropriate to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (cf. the concluding observation No. 29 on the last periodic report). The primary reasons for the position of the Federal Republic of Germany were expressed as early as 1990 in a declaration submitted when the Convention was accepted at the United Nations General Assembly, and these continue to apply. Amongst other things, in the view of the Federal Government, the term “migrant worker” as used in the Convention does not serve to draw a sufficiently precise distinction. It also includes persons who are in the Federal Republic of Germany without permission and who engage in employment without authorisation. Their position is protected in a manner which goes far beyond the non-contentious need to grant them comprehensive human rights. It is not intended to ratify the Convention given that the Federal Government aims to step up the fight against illegal employment and that it has adopted the objective of the fight against illegal migration with the Immigration Act (Zuwanderungsgesetz).

(b) Promotion of organisations which combat racism

23. The Federal Government’s National Action Plan against Racism⁵, drawn up in consultation with non-governmental organisations – in compliance with concluding observation No. 30 on the last periodic report – is an example of the Federal Government’s on-going commitment to improve the human rights situation. Support for civil society is a major element here, since racism cannot be successfully countered without its valuable contribution. The programmes and measures described below only provide an overview of support for civil society, but are not exhaustive (which is not possible given the restricted volume of this report). Please refer to the Action Plan for more details.

⁵ retrievable on the Internet: http://www.bmi.bund.de/cae/servlet/contentblob/150674/publicationFile/18318/Nationaler_Aktionsplan_gegen_Rassismus.pdf.

24. The Federal Government regularly exchanges information amongst others in the Forum against Racism with roughly 55 non-governmental organisations on questions and possibilities concerned with the fight against racism and xenophobia. The Forum was established in 1998 following on from the European Year against Racism, and has been used by its members since then as a platform for dialogue.

25. The National Integration Plan was drawn up in 2007 in compliance with the obligation under Article 2 para 1 (e) of ICERD to also promote “racial integration”⁶. This was further developed in 2012 to become the National Integration Action Plan⁷. The Plan brings together the integration initiatives of the Federation, the Länder and the municipalities and stresses that integration requires efforts on the part of all, by the State as well as by society, and by people with and without a migration background. It includes measures on the part of the Federation and the Länder, as well as contributions from the municipalities and voluntary commitments on the part of non-governmental organisations and stakeholders.

26. The purpose of the Alliance for Democracy and Tolerance is to network civil society commitment and to make it public. This alliance was established in 2000 by the Federal Ministries of the Interior and of Justice. Its office was integrated into the Federal Agency for Civic Education (bpb) in 2011 as an independent organisational unit in order to integrate and achieve synergy effects between the two facilities. The Alliance deliberately supports civil society partners with a commitment to democracy and to promoting tolerance.

27. The “XENOS – Integration and Diversity” programme promotes measures to combat marginalisation and discrimination in the transition between school, training and the world of work. XENOS is a part of the Federal Government’s National Integration Action Plan, and is promoted by the Federal Ministry of Labour and Social Affairs and the European Social Fund (ESF). The focus is particularly on juveniles and young adults with and without a migration background who are at a disadvantage as concerns access to school, training and jobs. XENOS aims to impart special qualifications and to strengthen structures which reduce discriminatory and racist attitudes, and in particular to support migrants when entering the labour market and in becoming sustainably integrated into society.

28. The Federal programme entitled “Promoting Tolerance – Enhancing Competence” promotes and supports initiatives, organisations and networks at local, regional and national level in strengthening democracy and taking a stand against right-wing extremism, xenophobia and anti-Semitism. This is carried out by supporting locally-developed strategies to promote the juveniles in local action plans, by means of regional model projects in which project-organising institutions trial new ideas and methods in prevention work with children and juveniles, and through national advice networks against right-wing extremism.

29. Additionally, there are large numbers of projects organised by the Länder and local authorities with which civil society is strengthened and both racism and discrimination are countered. For instance, five anti-discrimination projects have been promoted in North Rhine-Westphalia since 2009 focussing on advising, networking, providing information and

⁶ Available on the Internet: http://www.bundesregierung.de/Content/DE/Archiv16/Artikel/2007/07/Anlage/2007-07-12-nationaler-integrationsplan.pdf;jsessionid=6050CCD32CF7696CC8FC2C8CA8917E26.s2t1?__blob=publicationFile&v=3.

⁷ Available on the Internet: http://www.bundesregierung.de/Content/DE/_Anlagen/IB/2012-01-31-nap-gesamt-barrierefrei.pdf;jsessionid=FBBC578F65DDB5E655F72372F065175E.s4t1?__blob=publicationFile&v=5.

skill-building within anti-discrimination work. A project will be implemented in 32 rural districts in Lower Saxony by 2014 which seeks to remove the barriers and obstacles preventing people with a migration background from using self-help facilities.

5. Article 2, paragraph 2: Protection of individual population groups

30. The Federal Republic of Germany takes very seriously concluding observation No. 14 on the most recent CERD report to expand the collection of data in order to evaluate the composition of the population and its situation in economic, social and cultural fields. Having said that, no demographic statistical and socio-economic data have been collected in Germany on an ethnic basis since the end of the Second World War. This is amongst other things because of Germany's historical experience, in particular in connection with the persecution of minorities under National Socialism. Moreover, there are legal arguments against the collection of ethnic data: People are free as to whether they commit to a national minority in accordance with Art. 3 of the Council of Europe Framework Convention for the Protection of National Minorities. Membership of a minority is the personal decision of each individual, and is not registered, verified or disputed by the State. For these reasons, also no data are collected on indicators of ethnic diversity such as the use of mother tongues and languages commonly spoken (cf. concluding observation No. 14). Finally, the national minorities themselves have reservations with regard to collecting ethnic data on the situation of national minorities in Germany.⁸

31. On individual population groups:

(a) Sinti and Roma in Germany

32. The Federal Republic of Germany supports the measures to improve the situation of the Roma in Europe that were initiated within the Hungarian Council Presidency.⁹ The Federal Government portrayed the national strategies on the integration of the Roma up to 2020 in an extensive report to the European Commission. This contains measures on the elimination of discrimination in all areas listed in concluding observation No. 21 on the latest periodic report, and goes beyond this. Reference is made to the report (enclosed as Annex 4) in respect of the individual bundles of measures.

33. Furthermore, the Committee recommended in concluding observation No. 21 the conclusion of framework agreements between the Länder and the respective Land associations of the Central Council of German Sinti and Roma, like the one which was concluded in Rhineland-Palatinate back in 2005. A comparable framework agreement was signed in Bremen on 17 July 2012. More concrete negotiations are to take place in Baden-Württemberg in the near future. In Bavaria, a Joint Declaration was signed on 16 May 2007 between the Bavarian State Government and the Bavarian Land association of German Sinti and Roma in which the State Government confirmed its particular historical responsibility towards the members of this national minority living in Bavaria. In North Rhine-Westphalia, the advisory work of the Land association of the Central Council of German Sinti, and in Lower Saxony that of the Lower Saxon Advisory Agency for Sinti and Roma, has received financial support for years.

⁸ e.g. the Lusatian Sorbs association Domowina-Bund Lausitzer Sorben e. V., as well as the Danish minority, cf. Third Report of the Federal Republic of Germany under Article 25 paragraph 2 of the Council of Europe Framework Convention for the Protection of National Minorities, para. 04045 et seq.

⁹ Commission Communication of 5 April 2011; Council conclusions of the Employment, Social Policy, Health and Consumer Affairs Council meeting 19 May 2011 and approval by the European Council on 23/24 June 2011.

(b) *The Jewish community in Germany*

34. The Jewish community in the Federal Republic of Germany defines itself as a community of faith, even if not all Jews belong to religious organisations. The Jewish community had roughly 110,000 members in 2010. The political representation of most of the communities (108 communities) is the Central Council of Jews in Germany, which receives annual financial support from the Federation for its national tasks. The “Union of progressive Jews in Germany” additionally represents 22 Jewish communities within a liberal-progressive tendency of Judaism. Religious freedom applies to all Jewish organisations, as it does to the other religious communities in Germany (Article 4 of the Basic Law, Article 9 of the ECHR and Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Additionally, the communities, Land associations and Central Councils are recognised as public-law corporations in all the Länder. This is a special constitutional status which is suited to guarantee specific priority rights, such as the possibility to collect church taxes with the aid of state agencies, and the Jewish community makes some use of this. The relations between the Land associations of the Jewish communities and the Länder are regulated by contracts in which, amongst other things, regular financial promotion of the Land associations is established.

35. Unfortunately, anti-Semitic criminal offences do occur in the Federal Republic of Germany again and again. They are however becoming less common: The smallest number for ten years was registered for 2011, at a total of 1,239 anti-Semitic criminal offences. As a rule, more than 90 % of these criminal offences (2011: 1,188) can be attributed to right-wing politically motivated crime. The Federal Government nonetheless shares the concerns of international Jewish organisations regarding these incidents.

36. With the resolution of the German Federal Parliament of 4 November 2008, the Federal Government was called upon to increasingly combat anti-Semitism and to further promote Jewish life in Germany. This also involved the establishment of an independent group of experts with logistic and financial support of the Federal Ministry of the Interior.

37. After working for two years, the experts (practitioners and academics) have completed their report including recommendations.¹⁰ The latter contains amongst other things information on manifestations of anti-Semitism and on conditions and prevention methods in Germany. It illustrates the highly-varied spheres of anti-Semitism, and hence creates a basis for further discussions on methods which are now to be introduced to Parliament.

38. Furthermore, the dialogue on xenophobia and anti-Semitism in Germany, initiated in 1993 between the German Government and the Jewish World Congress and other organisations, is to be continued.

39. Academic research at almost all Universities and many specialist institutes covers the history of the Jews in Germany and the history of the Holocaust. Supra-regional and regional monuments and documentations commemorate former Jewish life in Germany and the crimes committed by the National Socialists.

(c) *Muslims in Germany*

40. Approx. 4 million Muslims (74% Sunnis, 13% Alevis and 7% Shiites) live in the Federal Republic of Germany. 63% of the Muslims in Germany come from Turkey. Almost half of them have German nationality (as per 2009). Approx. 20% of the Muslims are

¹⁰ Available on the Internet: http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/Politik_Gesellschaft/EXpertenkreis_Antisemitismus/bericht.pdf?__blob=publicationFile.

members of religious organisations. There is no uniform overall religious organisation, nor is there a uniform umbrella association able to speak on behalf of all groups. Most Islamic associations have the legal status of registered associations. There are roughly 2,350 Islamic communities in Germany.

41. The Muslims living in the Federal Republic of Germany do not form a homogeneous ethnic group. The link between the Muslims is their shared faith. Muslims are not threatened or affected solely by discrimination on the basis of the migration background the majority of them has, but also on the basis of their religious affiliation (Islamophobia).

42. The Federation and the Länder consider the dialogue with the Muslims living in Germany as a focus of their integration policy. With the “German Islam Conference”, which was established in 2006, the Federal Ministry of the Interior has sustainably institutionalised the dialogue between the State (the Federation, the Länder and the municipalities) and representatives of the Muslims in Germany. The goal is to improve the integration of Muslims in Germany both institutionally (under the law on religion) and in societal terms. Furthermore, the dialogue in the German Islam Conference also serves to improve the relationship between the majority society and Muslims. The outcome of the conference is amongst other things the adoption of various recommendations for reporting on Muslims and Islam in the media that is free of prejudice and differentiated, for the introduction of Islamic religious instruction as a standard subject of instruction at schools and the establishment of Islamic theology at Universities, on the construction and operation of mosques in the Federal Republic of Germany, on Islamic burials, as well as on dealing with questions of practice in school with a religious background. In the current phase, the German Islam Conference is tackling basic and further training of imams and the promotion of equality between the sexes. At the same time, it has established a working party also dealing with questions related to the prevention of Islamophobia, amongst other things.

43. The German Islam Conference has set the stage in an important way for public Islamic education. By means of its broadly-accepted recommendations, it has helped ensure that the Länder introduce Islam instruction at schools in accordance with the tenets of the religious community concerned, something which has for example been rolled out area-wide in the Länder Lower Saxony and North Rhine-Westphalia.

44. On the basis of recommendations from the German Islam Conference (2009) and of the German Council of Science and Humanities (2010), four University Centres for Islamic Theology are currently being established, or have already been established, these being at the locations Erlangen-Nuremberg, Frankfurt-Gießen, Münster-Osnabrück and Tübingen. The Federal Ministry of Education and Research is promoting these four centres for a period of five years with a total of approx. 20 million Euros.

45. In order to counter the Islamist radicalisation of juveniles and young adults, the Federal Ministry of the Interior launched the “Security Partnership Initiative – Together with Muslims for Security” in June 2011. This was triggered by the circumstances surrounding the fatal attack on US soldiers at Frankfurt Airport on 2 March 2011. This made it clear that it is also possible to mobilise, emotionalise and radicalise people without their being a member of an organisation. This danger is currently revealing itself in particular through the increased activities of Salafist hate preachers.

46. One goal of the Security Partnership Initiative is to enhance cooperation between security authorities and Muslims. Cooperation takes place by means of a regular exchange between the partners and the implementation of a variety of joint projects and activities. For instance, an “Advice centre on radicalisation” was established at the Federal Office for Migration and Refugees which operates as a first port of call for those associated with

radicalising juveniles and builds up an advice network of experienced civil society partners with specially-developed assistance services for personal advice and guidance.

(d) *Black people in Germany*

47. People are particularly at risk of falling foul of racism if it can be recognised by their appearance that they belong to a minority. This particularly applies to black people. Black people are therefore unfortunately repeatedly victims of everyday racism or indeed of xenophobic and racist crimes. The members of the black community are estimated to number at least 200,000 to 300,000 persons. A precise number of racially-motivated criminal offences concerning this population group is not known since these are not separately listed in the statistics. Reference is made to paragraphs 10 and 30 in this context.

48. An insight into the discussions and debates leading to the formation of a “black community” in the Federal Republic of Germany is provided by the dossier entitled “The black Community in Germany”, published by the Heinrich Böll Foundation in 2006.¹¹

C. Article 3: Condemnation of segregation and apartheid

49. The goal of the integration policy of the Federal Republic of Germany is to effectively counter social, ethnic and economic segregation. The design of the residential environment and of public spaces, as well as of both public and private infrastructural services, and the housing on offer, constitute a major framework for social co-existence and for the chances for integration in situ.

50. Some German cities do have a higher concentration of residents with a migration background, but ethnic segregation of residential areas is however rather slight in a European comparison, ethnic segregation largely corresponding to social segregation. What brings the residents of these districts together is hence more their social environment than their origin.¹²

51. The spatial mix of various population groups has a long tradition in the Federal Republic of Germany. A mix, for instance of young and older residents, as well as of low-income and higher-income households, is the best way to guarantee social stability in the neighbourhoods. The funding of social housing makes a major contribution to this. Care is taken when planning measures and approving subsidies to ensure that social housing is geographically spread over the districts of a town in order to avoid segregation.

52. Problematic occupancy structures in individual neighbourhoods can furthermore be prevented or changed by taking care when allocating housing to achieve a certain mix of the population groups. This is however contingent on there being a corresponding latitude in choosing tenants. Creating this latitude is a matter for the exceptional provision contained in section 19 subs. 3 of the General Equal Treatment Act. In accordance with this provision, it is possible to treat population groups differently when allocating housing if this is necessary in order to create socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions. This is not to promote discriminatory practices in the placement and letting of residential space (this danger was mentioned in concluding observation No. 17 to the last report). Furthermore,

¹¹ Available on the Internet: http://www.migration-boell.de/web/diversity/48_583.asp.

¹² Einwanderungsgesellschaft 2010 (Immigration Society 2010), 2010 Annual Report of the Expert Council of German Foundations for Integration and Migration, pp. 193 et seqq. with further references.

unequal treatment, which the provision permits in strictly-defined cases, is justified in order to avoid ghetto-formation.

53. With regard to the combination of urban, economic, social and ecological measures, the Federation-Länder “Social City” programme takes on a prominent position, in particular also with regard to the promotion of the integration of people with a migration background. The Länder and municipalities are responsible for the implementation of the programme, and hence also for the selection of the fields. This is to guarantee that decisions on the necessary demand are taken locally. The project stresses the particular significance of educational and community facilities as “places of integration” in the neighbourhood. By providing trans-generational services and being located in the neighbourhoods, they make a major contribution towards strengthening communities and establishing sustainable grassroots structures.

54. To date, approx. 600 overall measures have been promoted in about 375 municipalities. Financial assistance of 40 million Euro is to be provided in 2012.

D. Article 4: Combating racist propaganda and organisations

55. The Federal Republic of Germany counters all forms of racist propaganda by consistently applying criminal law (cf. at 1.). Moreover, it is attentively and carefully observed whether organisations and associations have racist tendencies or adopt such tendencies. If this is the case, steps are taken against them (cf. at 2.). A special concern of the Federal Republic of Germany is to rule out all forms of racial discrimination in all public authorities (cf. at 3.).

1. Article 4 (a): Criminal provisions and their effectiveness

56. Comprehensive criminal provisions (a) are available for the fight against racist crime which are implemented in court proceedings (b) and investigation proceedings (c). The Federation and the Länder are very much interested in taking decisive action against racially-motivated criminal offences. This is also shown in the critical debate with the investigative work in the proceedings against members of the “National Socialist Underground” terrorist group (NSU, cf. on this (d)).

(a) Legal basis

57. Section 86 of the Criminal Code (Strafgesetzbuch – StGB) criminalises the dissemination of propaganda material of unconstitutional organisations. In accordance with section 86a of the Criminal Code, using symbols of certain parties and associations that have been banned by final decision by the Federal Constitutional Court or by the authorities that are responsible for this, in particular former National Socialist organisations, is punishable. The offence of incitement to hatred (section 130 of the Criminal Code), which includes incitement to racial hatred, also remains one of the most important criminal provisions of the German Criminal Code in the fight against right-wing extremist and xenophobic propaganda. With effect as per 22 March 2011, the typical cases to which the provision is applied, namely incitement against “national, racist, religious or groups determined by their ethnic origin”, were particularly underlined in the wording of subs. 1 No. 1. It was furthermore clarified that incitement against individuals because of their race also falls under the offence of incitement to hatred. The Federal Republic of Germany transposed Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law (Framework Decision on racism) and the Additional Protocol to the Council of Europe’s Convention on Cybercrime of 23 November 2001, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (Additional

Cybercrime Protocol), which the Federal Republic of Germany ratified on 10 June 2011, into national law through this amendment. This means that the Federal Republic of Germany has complied with the Committee's corresponding recommendation in concluding observation No. 16 on the last periodic report.

The full wording of the criminal provisions is contained in Annex 5.

58. A racist motivation serves as an aggravating circumstance with all other crimes. There is no special provision which stipulates that the motive of ethnic, racial or religious hatred is explicitly taken into account as an aggravating circumstance for the purpose of sentencing in proceedings under the criminal law, as recommended by the Committee in No. 26 of the concluding observations. The Federal Government however holds the view that this concern has as a matter of principle been adequately taken into consideration by means of the general provision contained in section 46 subs. 2 of the Criminal Code, in accordance with which the court, when sentencing, is to consider the motives and aims of the offender and the attitude reflected in the offence by the court. It is recognised in German legal practice on the basis of these requirements that section 46 subs. 2 of the Criminal Code as a rule serves as an aggravating circumstance in sentencing, particularly when it comes to racist motives.

59. The SPD parliamentary group in the German Federal Parliament, as well as in the Federal Council, have presented draft Bills (Bundestag printed papers 17/8131 and 17/9345)¹³ providing to explicitly include racist, xenophobic or other contempt-filled motives and aims of the offender as additional circumstances in section 46 subs. 2 of the Criminal Code. After a hearing of experts was held on 13 June 2012¹⁴, at which the vast majority of experts were critical of these drafts, the Legal Committee of the Federal Parliament recommended to reject both draft Bills (Bundestag printed paper 17/11061)¹⁵. In line with this recommendation, the Federal Parliament rejected both draft Bills on 18 October 2012 in the second reading (Federal Council printed paper 26/12 and minutes of the plenary proceedings (Plenarprotokoll) 17/198)¹⁶.

(b) *Application of the criminal provisions in court proceedings*

60. The numbers of convictions in accordance with sections 86, 86a and 130 of the Criminal Code in 2004 to 2010 are subsequently presented and illustrated in the table in Annex 6. These figures for 2004 to 2006 relate to the former territory of West Germany, including all of Berlin. From 2007, by contrast, these are overall statistics for the whole Federal Republic of Germany. Since these criminal provisions also cover acts other than racially-motivated ones in some cases, however, only some of the convictions stipulated here fall within the scope of the ICERD.

Convictions in accordance with sections 86 and 86a of the Criminal Code

61. All in all, the element of the offence of section 86 of the Criminal Code shows an increase in the number of convicts in the former federal territory, including all of Berlin, from a total of 402 to 554 in 2004-2006. The number of convictions in the whole Federal Republic reached a peak at 1,139 in 2008. The totals of convictions fell in 2009 and 2010

¹³ Available on the Internet: <http://dipbt.bundestag.de/dip21/btd/17/081/1708131.pdf> as well as <http://dip21.bundestag.de/dip21/btd/17/093/1709345.pdf>.

¹⁴ Written statements of the experts retrievable on the Internet: http://www.bundestag.de/bundestag/ausschuesse17/a06/anhoerungen/archiv/23_Hasskriminalit__t/04_Stellungnahmen/index.html.

¹⁵ Available on the Internet: <http://dipbt.bundestag.de/dip21/btd/17/110/1711061.pdf>.

¹⁶ Available on the Internet: <http://dipbt.bundestag.de/dip21/brd/2012/0026-12B%28zu%29.pdf> as well as <http://dip21.bundestag.de/dip21/btp/17/17198.pdf>.

(Table 1). Developments in cases under section 86a of the Criminal Code are comparable (2004-2006 an increase from 590 to 681, peaking in all of Germany in 2008 at 816 convicts, cf. Table 2). In the main, criminal fines were imposed on the adults and adolescents who were convicted in accordance with general criminal law. Where sanctions are handed down in accordance with youth criminal law on adolescents and juveniles, these were largely disciplinary measures (youth detention, issuance of conditions, reprimands, cf. Tables 3 and 4).

Convictions in accordance with section 130 of the Criminal Code

62. With the number of persons convicted because of incitement to hatred (section 130 subs. 1 of the Criminal Code), the peak in the total number of convicts occurs in 2007, at 318 convicts. The number of convicts has been falling since 2007, and it troughed at 184 convicts in 2010 (Table 5). Whilst the share of prison sentences among the total of all sanctions imposed in accordance with general criminal law averages approx. 20 %, the share of prison sentences in 2004-2010 with convictions in accordance with section 130 subs. 1 of the Criminal Code is between 37 % and 46 % (2004: 41 %; 2005: 46 %; 2006: 40 %; 2007: 45 %; 2008: 40 %, 2009: 41 %; 2010: 37 %, cf. Table 6). Disciplinary measures were largely ordered as sanctions against those who were convicted in accordance with criminal law relating to young people (2004: 82%; 2005: 82 %; 2006: 84 %; 2007: 81 %; 2008: 82 %, 2009: 86 %; 2010: 68 %).

63. Section 130 subs. 2 of the Criminal Code criminalises the dissemination of written materials which incite hatred and performances conveyed by radio, media services or telecommunication services. The number of convictions fell from 47 to 34 from 2004 to 2006, and since 2007 it has been at a similar level of between 60 and 68 for the entire federal territory (Tables 7 and 8).

64. Section 130 subs. 3 of the Criminal Code criminalises approval of, denial or minimisation of an act committed under the rule of National Socialism of the kind indicated in section 6 subs. 1 of the Code of International Criminal Law. This includes Holocaust denial. The number of convicts ranges between 24 in 2004 (related to the former federal territory including all of Berlin) and 60 in 2011 (in the entire federal territory), cf. Table 9.

65. The Act Amending the Assemblies Act and the Criminal Code (Gesetz zur Änderung des Versammlungsgesetzes und des Strafgesetzbuchs) of 24 March 2005 (Federal Law Gazette (BGBl.) Part I 969) included section 130 subs. 4 in the Criminal Code, which includes the glorification of the National Socialist rule of arbitrary force. Convictions in accordance with section 130 subs. 4 of the Criminal Code have been kept in the criminal prosecution statistics since 2006. The total number of convicts has been at virtually the same level of between three and eight since 2006 (cf. Tables 11 and 12).

(c) *Application of the provisions in investigation proceedings*

66. Data on the criminal investigation proceedings relating to criminal offences with a racist background are collected by the Land administrations of justice and by the Federal Criminal Police Office:

Data of the Federal Criminal Police Office

67. Data on criminal offences with a racist, xenophobic or anti-Semitic motive are also collected by the Federal Criminal Police Office by the "Police Reporting System in Cases of Politically-Motivated Crime", which was introduced as per 1 January 2001, as politically-motivated criminal offences in the topical field of "hate crime".

68. The Reporting System defines hate crime as when the circumstances of the offence or the attitude of the offender lead to the presumption that it targets a person because of

their political attitude, nationality, ethnicity, race, skin colour, religion, philosophy, origin, sexual orientation, disability or external appearance or their social status. It is also conceivable that the offence is committed not directly against an individual, but in the above context against an institution or a thing.

69. Hate crime is the umbrella term to which the following sub-topics are currently attributed: anti-Semitic, disability, xenophobic, social status, racism, religion, sexual orientation. This separate but differentiated collation of hate crime has proven its worth, and makes it possible to record a single offence in a multi-dimensional manner as both “xenophobic” and “racist”.

70. Table 13 deals with the period from 2004 to 2011. The number of anti-Semitic criminal offences with a politically right-wing motivation has reduced considerably after peaking at 1,682 criminal offences in 2005, and was at 1,188 in 2011. The number of criminal offences with a xenophobic background, by contrast, increased from 2,083 in 2010 to 2,423 in the following year. The number of criminal offences with a racist background is between 349 in 2005 and 530 in 2006; it was 479 in 2011. Whilst the case numbers of criminal offences with an anti-Semitic background reached their lowest level in 2011 since the “Politically-Motivated Crime” definition system was introduced in 2001, the Federal Government is concerned at the increasing number of criminal offences with a xenophobic and racist background in 2011 in comparison to the previous year. However, there were much higher numbers in the previous years, and the development has so far been more of a “wave movement”. The increase in 2011 hence does not lead one to conclude a trend that is rising in the long term.

Communication No. 48/2010 (discontinuation of the investigation proceedings against Sarrazin)

71. This is also the right place to mention the only communication in accordance with Article 14 of ICERD currently pending against the Federal Republic of Germany, since it relates to criminal investigation proceedings on suspicion of a racist criminal offence. The Applicant “Turkish Federation of Berlin Brandenburg” is complaining of a violation of Article 2 §1 d), 4 a) as well as of Article 6 of ICERD. It holds that the Federal Republic of Germany did not guarantee adequate protection against incitement to hatred and offensive statements towards Turks and Arabs. This accusation is based on an interview in which former Berlin Senator of Finance Thilo Sarrazin made derogatory comments about Turks and Arabs in the context of integration problems in Berlin. The applicant had thereupon filed criminal charges against Sarrazin; the proceedings were however discontinued and the complaints against the discontinuation order were unsuccessful.

72. The Federal Government explicitly stresses once more that it rejects Sarrazin’s statements and that it is aware of how hurtful they are. The Federal Government has expressed this by various different means, including through public statements on the part of Federal Chancellor Dr. Angela Merkel. The Federal Government is nonetheless of the opinion that no obligation can be derived from the ICERD in this specific case to prosecute Sarrazin’s statements with criminal law means, particularly since this would not be compatible with freedom of opinion. Please refer for further details to the statements of the Federal Government of 22 December 2010, 1 June 2011 and 9 February 2012, which the Committee has at its disposal.

73. Regardless of how one assesses Sarrazin’s statements under criminal law, the public reaction to them is highly significant. This was triggered not only by this interview, but also by the book entitled “Germany is doing away with itself” (*Deutschland schafft sich ab*), which Sarrazin published in the summer of 2010. The Federal Government has observed with concern that some of Sarrazin’s hypotheses caused a positive echo, and in some cases were even developed on to form or to justify racist statements. It was therefore all the more

important that Sarrazin's statements met with considerable opposition in the political arena and from society as a whole, as a consequence of which Sarrazin also had to resign from his seat on the Board of the German Bundesbank. All in all, an open, serious debate on integration was initiated in society as a whole in which the existing problems were approached honestly. This debate should be encouraged.

(d) *Resolute action against racially-motivated criminal offences – the NSU*

74. The Federal Republic of Germany takes very seriously concluding observation No. 18 on the last periodic report, and is taking resolute action against racist criminal offences. This includes a permanent review of the investigation methods and investigative cooperation between the various agencies in order to recognise and implement the need for optimisation.

NSU – critical debate on the investigation work

75. The detection of the right-wing terror group “National Socialist Underground (NSU)” in November 2011 led to a critical debate on the investigation work that had been carried out to date. Members of this group were obviously able to live in the Federal Republic of Germany undetected for many years, during which time they were able to commit serious criminal offences in various parts of the country. These include the murders of a total of nine traders, eight of whom were of Turkish origin, and one of whom had a Greek migration background from 9 September 2000 to 6 April 2006 (the so-called “Ceska murders”), the bombing of an Iranian shop on 19 January 2001 in Cologne, the so-called “nail bombing” in Cologne on 9 June 2004, as well as the Heilbronn police murder of 25 April 2007, in which a female police officer was killed and her colleague was seriously wounded. The association is furthermore accused of at least 15 bank robberies in which several people were wounded. The discovery of these criminal offences has revealed that a new terrorist dimension of right-wing violence has become visible in Germany.

76. Against this background, the Federal Public Prosecutor General at the Federal Court of Justice took on investigations on 11 November 2011 on suspicion of the formation of a terrorist organisation and murder (sections 129a and 211 of the Criminal Code), as well as further criminal offences, and commissioned the Federal Criminal Police Office with carrying out the police investigations. The detection of these offences and of the underlying structures, as well as the identification of the supporters, has been pursued with great vigour since then. On 8 November 2012, the Federal Public Prosecutor General charged the last living member of the NSU (the two male members committed suicide before they could be caught) with ten murders, membership of a terrorist organisation and other criminal offences before the State Security Senate of Munich Higher Regional Court. Additionally, four alleged supporters were charged. Since the right-wing extremist background to the criminal offences did not become evident until after the NSU had been uncovered and the investigations previously pursued all possible indications, family members of the victims felt placed under pressure or unjustifiably accused – an extremely painful experience, in particular in the specific situation, which could have been prevented had the NSU been discovered previously. The feelings of the victims and of their family members were also hurt by the in some cases sensational media reporting on the series of murders, for instance repeatedly speaking of “kebab murders”. An important sign was therefore the state ceremony for the victims of the NSU, which took place on 23 February 2012, at which Federal Chancellor Dr. Merkel personally apologised to the families of the victims for the shortcomings in the work of the German security authorities which had been revealed by the discovery of the series of murders.

77. Particular significance attaches in this context to the fact that the Federal Government nominated Professor Barbara John as ombudsperson by resolution of

23 December 2011, who is supporting the victims of the NSU and their families. Professor John is particularly well qualified for this function because through her many years of work as the Berlin Senate Commissioner for Foreigners' Issues, as well as her experience as the current German member of the "European Commission against Racism and Intolerance (ECRI)", an institution of the Council of Europe, she is particularly well trained to recognise discrimination. cf. para. 146 on the support of the victims through compensation payments.

78. The German Federal Parliament established an investigation committee on 26 January 2012 in order to make a contribution towards thorough, rapid detection and necessary conclusions. The committee is to form an overall picture of the NSU terror group, its members and offences, its entourage and their supporters, as well as on why they were able to commit heinous crimes for so long without being detected. On the basis of the information obtained, the investigation committee is in particular to also examine:

- what conclusions need to be drawn for the structure and the organisation of the security and investigation authorities of the Federation, for cooperation at federal and Land level and for obtaining and exchanging information of the Federation and the Länder.
- whether and how the suffering of the victims of right-wing extremist criminal offences and their families can be avoided more effectively with investigation measures.
- whether and how the fight against right-wing extremist violence in all areas (repression, prevention, awareness-raising among the responsible agencies) can and must be improved.

79. In addition to the Federation, the Länder Thuringia, Saxony and Bavaria have also established investigation committees in order to clarify the possible misconduct on the part of the security and justice authorities at Land level.

Measures that have been carried out

80. As early as one week after the NSU had been discovered, the Federal Minister of the Interior put forward a list of measures to remedy the evident shortcomings in cooperation between the security authorities as quickly as possible. The list of measures aims to better coordinate the work of the police and the authorities responsible for the protection of the constitution in future, and has already been largely implemented.

81. These measures focus on improving the coordination and the exchange of information between the police and the authorities responsible for the protection of the constitution of the Federation and of the Länder. For instance, a Joint Defence Centre against Right-wing Extremism (GAR) was established in December 2011 in which the police and the authorities responsible for the protection of the constitution of the Federation and of the Länder join together and jointly analyse the situation, refine anti-extremism concepts and coordinate their respective measures. The police and the authorities responsible for the protection of the constitution of the Federation and of the Länder, as well as the Federal Public Prosecutor General, work together under the joint management of the Federal Criminal Police Office and Federal Office for the Protection of the Constitution. In joint meetings and working parties, information is exchanged, specific manifestations and risk potentials of right-wing extremism and right-wing terrorism are analysed in greater detail, and conceptual work – such as the development of new concepts for solving and combating – is implemented. The "Case analysis" working party, for instance, coordinates the examination of whether previous cases might have a previously undetected right-wing extremist or terrorist background. The GAR has been part of a Joint Defence Centre against Extremism and Terrorism (GETZ) since November 2012.

82. All the Länder are participating by seconding representatives of the Offices of the Länder for the Protection of the Constitution and of the Land Criminal Police Offices to the GAR. The GAR has already made a major contribution towards improving cooperation between the active authorities and towards closer coordination in the necessary activities to counter these phenomena.

83. A further element of the activity plan is constituted by the establishment of a joint file on right-wing extremism for the police authorities and for the authorities responsible for the protection of the constitution, as well as for the Military Counterintelligence Service (MAD), which is intended to make it possible to form a more precise overall picture. By establishing a joint standardised central file for the police authorities and for the authorities responsible for the protection of the constitution of the Federation and the Länder, as well as for the Military Counterintelligence Service, individual items of information on countering violent right-wing extremism are combined, linked and made easier to access for the competent authorities. To this end, the authorities involved are obliged to store data on the relevant persons and objects in the file. Retrieval of data from the file makes the procedure much simpler, and hence optimises the exchange of information. The statute necessary for this came into force on 31 August 2012. The file became operational on 19 September 2012.

84. The Internet provides extremists and terrorists with a major medium for propaganda, logistics, mobilisation and recruitment, covert and open communication, as well as for group-forming interaction. The police as well as the authorities responsible for the protection of the constitution would also like to combat this development through the GAR. To this end, the “Coordinated Internet evaluation of right-wing extremism” (KIAR) was established parallel to the GAR, at the beginning of December 2011, chaired by the Federal Office for the Protection of the Constitution, which brings together representatives of the Federal Criminal Police Office and of the Federal Office for the Protection of the Constitution, as well as where appropriate further security authorities and the judiciary. It is being gradually further expanded. The KIAR is an important measure to comply with concluding observation No. 16 on the last periodic report and racist propaganda on the Internet.

85. The main task of the KIAR is topic-specific ad hoc monitoring of the Internet. This includes a systematic and on-going search for extremist and terrorist web content, as well as its evaluation. In an ideal case, this is to help to identify radicalisation taking place which might not yet have been reflected in the real world. In addition to obtaining information more effectively, it is a further goal to be able to identify connection lines between right-wing extremist propaganda, right-wing extremist violent acts and right-wing terrorist structures.

86. The Conference of Ministers of the Interior (IMK) in December 2011 resolved to establish a coordination group on right-wing politically-motivated crime (KG PMK-rechts) to further optimise the fight against right-wing politically-motivated crime (PMK-rechts). The group serves as a central tool to strengthen cooperation between the police and the authorities responsible for the protection of the constitution, and is to develop person-related combating measures in addition to structural ones.

87. The Ministers and Senators of the Interior of the Länder furthermore established a Government Commission by resolution of 6 February 2012 made up equally of the Federation and the Länder. The Federal Cabinet took note of this by resolution of 8 February 2012 and designated two members for the Federation. The goal of the Commission is to consider the “big picture”, to analyse and evaluate the forms of cooperation between the security authorities of the Länder with the federal authorities, in particular in the fight against violent right-wing extremism, and to submit proposals for

further improvements in their cooperation. The final report can be expected in the spring of 2013.

2. Article 4 (b): Measures against organisations with racist goals

88. The Federal Government and the Länder combat organisations which promote or call for racial discrimination. For this reason, they prohibited a total of 20 right-wing extremist organisations from March 2005 to September 2012.

(a) *Prohibiting associations*

89. The Federal Minister of the Interior prohibited the “Collegium Humanum” (CH), which operated on a nationwide basis, on 7 May 2008, including its subordinate organisation the “Farmer’s Helper” (Bauernhilfe e.V.) registered association, as well as the “Association for the Rehabilitation of those Persecuted for the Instigation of the Holocaust” (Verein zur Rehabilitierung der wegen Betreibens des Holocaust Verfolgten – VRBHV), followed on 31 March 2009 by the neo-Nazi youth organisation “German Youth be True to Your Homeland – Association for the Protection of the Environment, Fellow Humanity and Homeland” (Heimattreue Deutsche Jugend – Bund zum Schutz für Umwelt, Mitwelt und Heimat e.V. – HDJ). As a youth association that was organised on a nationwide basis, the HDJ was disseminating racist and National Socialist thinking. The HDJ imparted its world view, which is orientated towards National Socialism, to the children and juveniles within seemingly non-political leisure events.

90. On 21 September 2011, the Federal Minister of the Interior banned the “Organisation Assisting National Political Detainees and their Families” (Hilfsorganisation für nationale politische Gefangene und deren Angehörige e.V – HNG). This was in opposition to the HNG’s objective of systematically preventing the resocialisation of detained right-wing extremists, and instead of amplifying their hatred of and aggression against the freedom-based fundamental democratic system.

91. Also the appearance of Islamist groups frequently takes on racist, and in particular anti-Semitic characteristics. Negative social, cultural, religious and political characteristics are collectively assigned to the Jews which are alleged to justify disapproving of them, fighting against them or indeed annihilating them as a people. The Federal Minister of the Interior has therefore issued the following measures: The “Al-Aqsa e.V.” association was banned as early as on 31 July 2002 because of its financial support for HAMAS, which rejects the existence of the State of Israel in its statutes and also fights against it with terrorist activities. The prohibition of the successor organisation, the “Yatim Children’s Assistance” (Yatim-Kinderhilfe e.V.) registered association, followed on 30 August 2005. Yeni Akit GmbH, as the publisher of “Anadoluda Vakit”, was prohibited as an organisation for the above reasons on 22 February 2006. Its reporting had denied and played down the Holocaust in an agitative manner. A ban on operating in Germany was imposed on Al Manar TV on 29 October 2008 because the station opposes the concept of international understanding and endangers the peaceful co-existence of Germans and foreigners, as well as of various groups of foreigners in Germany. The IHH (International Humanitarian Aid Organisation), finally, was banned on 23 June 2010 because of its activities against the state of Israel that were counter to international understanding.

92. Also at Land level, targeted action is taken against organisations which pursue a racist philosophy: For instance, in North Rhine-Westphalia, the so called “Aachener Land” and “Hamm” Camaraderies (Kameradschaften), as well as the Dortmund national resistance organisation (Nationaler Widerstand Dortmund), which were regarded as right-wing extremist groups, were prohibited in 2012. This was followed by bans on right-wing extremist groups in the Federal Länder Brandenburg (“South Brandenburg Resistance

Movement" (Widerstandsbewegung Südbrandenburg)), Berlin, Saxony, Lower Saxony and Mecklenburg-Western Pomerania.

(b) *The NPD prohibition proceedings*

93. The possibility to pursue party prohibition proceedings via the Federal Constitutional Court is provided for by Article 21 para. 2 sentence 2 of the Basic Law as well as section 13 No. 2 and sections 43 et seqq. of the Federal Constitutional Court Act (BVerfGG). However, parties can only be banned if, by reason of their aims or the behaviour of their adherents they seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany. The obstacles for the prohibition of a party are very high in light of the abusive use of this tool during the National Socialist dictatorship. The Federal Constitutional Court imposes strict preconditions on the prohibition of a party. What is more, the legal framework emerging from the European Convention on Human Rights must be complied with as it is interpreted by the European Court of Human Rights. The initiation of renewed prohibition proceedings against the NPD (German National Democratic Party) is currently being discussed. When weighing up whether a banning application is to be made, it is also taken into account that the right-wing forces might emerge strengthened from failed prohibition proceedings, which might make the prohibition proceedings counterproductive.

3. Article 4 (c): Enforcement of ban on racial discrimination in all authorities

94. The ban on racial discrimination from Article 4 (c) of the ICERD, applicable for all authorities, is directly applicable law in the Federal Republic of Germany. As stated above, the ban on discrimination from Article 3 para. 3 sentence 1 of the Basic Law, as well as respect for human dignity under Article 1 para. 1 of the Basic Law, are furthermore binding on all German authorities. An efficient means of also effectively combating racial discrimination in authorities in practice is furthermore to increase the percentage of staff with a migration background in the public service. One element of the Integration Action Plan is hence the dialogue forum "Migrants in the public service". The dialogue forum has worked out concrete measures to enable all applicants to have equal access at all levels of the administration. These include:

- a central website on training and jobs vacant (www.wir-sind-bund.de), on which topical training places provided by the Federation, the Länder and the municipalities can be found closer cooperation with the Federal Employment Agency.
- school internships in all authorities.

95. The efforts of the Länder particularly focus on gaining young staff and training individuals who have a migration background (cf. on this also para. 106). This is helped in Berlin for instance by the "Berlin braucht dich!" (Berlin needs you!) campaign. This campaign targets juveniles, parents and teachers. It provides information on the training that is available, is forming a network of supporting institutions and motivates the juveniles to apply. The campaign hence shows new perspectives and makes a contribution towards a varied, cosmopolitan and therefore high-performance economy and administration. In the same way, the police in Baden-Württemberg are making efforts to recruit more young officers from among migrants. To this end, the website (www.polizei-bw.de) and the advertising brochures have been revised. Furthermore, a separate pilot project (www.Streife-im-Quadrat.de) was launched in Mannheim.

96. Lower Saxony carried out a representative survey in 2011/2012 among the members of the Land administration with academic guidance in order to ascertain the percentage of staff who had a migration background. It emerged here that 8.1 % of all civil servants of the Land have a migration background and that the percentage has continuously increased

among new recruits in recent years. When it comes to new recruits in 2010/2011, the share had reached 11.5 %, and it is to be increased further.

E. Article 5: Comprehensive human rights protection

97. The comprehensive fundamental human rights protection provided by the Basic Law will be presented below (1), and then examples will be given of the practical guarantees and assurance of individual rights (2-4).

1. Introduction: Constitutional law in the Federal Republic of Germany

98. In accordance with the Basic Law for the Federal Republic of Germany, anyone may invoke the following fundamental rights regardless of their nationality: The free development of personality (Article 2 para. 1 of the Basic Law), the right to life and physical integrity and the freedom of the person (Article 2 para. 2 of the Basic Law), equality before the law in accordance with Article 3 of the Basic Law, freedom of faith and of conscience, freedom of expression and freedom of the press, the freedom of art and science, privacy of correspondence, posts and telecommunications and the inviolability of the home (Articles 4, 5, 10 and 13 of the Basic Law), the special protection of marriage and the family (Article 6 para. 1 of the Basic Law) and the right to property (Article 14 of the Basic Law). Some fundamental rights are reserved to German nationals, such as freedom of assembly and freedom of association, the right of freedom of movement throughout the federal territory and occupational freedom (Articles 8, 9, 11 and 12 of the Basic Law). However, these rights are essentially guaranteed to foreigners through Article 2 para. 1 of the Basic Law since the right to freedom of development of personality entails a right to general freedom of action.

2. Right to equal treatment before the courts and all other bodies of the administration of justice

99. As stated above, in accordance with Article 3 para. 1 of the Basic Law, all people are equal before the law and, in accordance with Article 3 para. 3 of the Basic Law, discrimination amongst other things because of race, language, homeland and origin is not permissible. These comprehensive rights of equality are therefore respected both in ordinary law as well as in everyday administrative practice.

100. With regard to “racial profiling” or “ethnic profiling”, unequal treatment is carried out by the police. The terms relate to a practice in which individuals are systematically classified, their documents checked or placed under suspicion in accordance with their race, ethnic origin, religion or national origin without there being specific elements of suspicion or indications of specific conduct. The police forces of the Länder and of the Federation do not use “ethnic profiling” or similar tools. Different treatment of individuals depending on race, origin or religion is hence not provided for in the Federal Police Act (Bundespolizeigesetz), or in the provisions and decrees applicable to the Federal Police simply because such methods are incompatible with the understanding of police work in a democratic state based on the rule of law.

101. In connection with preventing or banning unauthorised entry, and in order to combat human smuggling, the police use random questions and controls on an ad hoc basis. Here, situation-dependent questioning is not necessarily related to suspicion of a punishable act. A large number of criteria are used as variables to select the individuals to be subjected to a document check, such as police experience and topical situation information, the conduct of individuals, their clothing, the luggage which they have with them, the location and time and external appearance. The origin and nationality of individuals may also play a role in this specific connection, but are not decisive by themselves. The decision on the

implementation of police measures is taken in each case on the basis of an overall evaluation of these various criteria in a concrete situation.

102. There was discussion in this context in the Federal Republic of Germany of a judgment of Koblenz Administrative Court rejecting an action against police action. The plaintiff had submitted that he had been subjected to a document check solely because of his skin colour; Koblenz Administrative Court countered this by illustrating the various criteria which had led to the verification of the plaintiff in the concrete situation. In the proceedings on the appeal on points of fact and law, the Higher Administrative Court stressed that no one may be controlled because of their skin colour. No ruling was handed down on the facts; the legal dispute was declared terminated.

3. Right to security of person and to protection by the State against violence or bodily harm – raising awareness of racism

103. It is not only required to consistently prosecute criminal offences, but it is equally necessary to take comprehensive measures in order to make police officers aware of racist motives so that they can recognise and consider them at an early stage in the criminal investigation proceedings. If a police officer recognises and documents the possibility of a racist motive in good time, this subsequently forms the basis for the court being able to ascertain such a motivation and applying it as an aggravating circumstance.

104. For this reason, police basic and further training creates an awareness of racism and counters it. The topical areas “human rights, fundamental rights and the prohibition of discrimination” are cross-sectional topics in basic and further training for the Federal Police, and are dealt with comprehensively in the individual relevant contexts. Police officers are given the necessary persuasion, attitudes and positions in order to do justice to the role and responsibility of the police in a free democratic state based on the rule of law. The teaching of the basic theoretical knowledge is supplemented by practice-orientated training courses, such as in the shape of role-playing and situation training. Imparting intercultural skills is also a part of basic and further training. The officers of the Federal Police are thus also made more aware of and better able to recognise hidden discrimination and prejudices at individual level.

105. Comparable measures are carried out at Land level. The Police Academy in Brandenburg has incorporated targeted measures to prevent all manifestations of racist discrimination in the training plans. In Baden-Württemberg, for instance, police officers are trained to recognise xenophobic or racist motives behind criminal offences. Furthermore, several further training courses of the Police Academy are specifically dealing with the groups of topics related to “intercultural skills”; similar measures exist in Thuringia, Saxony and Lower Saxony. Rhineland-Palatinate has trained roughly 100 contacts and coordinators in the police headquarters who maintain an intensive dialogue with Muslim institutions. The Hesse police also have an area-wide network of “migration commissioners” forming a link between the police and people with a migration background, as well as their institutions. Furthermore, a working party meets on the topic of “Security for all – a partnership of migrants’ self-help organisations and the police in Hesse”. The “clearing agency” has been operating successfully within the Berlin police force for several years. With its intercultural tasks, the clearing agency supports people with a migration background in order to make a contribution towards active, equal-rights participation in public matters.

106. It is advantageous when raising awareness for racism for more police officers with a migration background to be recruited in the Länder. In Rhineland-Palatinate, a brochure that has been translated into six languages advertises for the police service; in Hesse a police recruitment adviser specifically makes publicity in for instance schools where there is a corresponding percentage of migrants. In the Frankfurt Airport District Federal Police

Headquarters, the pilot project entitled “Recruiting young police officers with a migration background”, initiated by the Federal Ministry of the Interior, has now been running for more than two years and has now led to a major increase in the number of applicants with a migration background. A comparable project is currently being prepared by Munich District Federal Police Headquarters.

107. The above measures also serve to avoid incidents such as the one which was the subject of the communication of 22 August 2008 by the Central Council of German Sinti and Roma against the Federal Republic of Germany (No. 38/2006) in future. The Federal Government was highly concerned to hear of the statements by a senior police officer concerning the Sinti and Roma made in a letter to the editor of the magazine of the Federation of German Detectives “der kriminalist”, and also takes very seriously concluding observation No. 28 on the last periodic report. It takes the view that the preventive measures presented are the best method against such incidents since they aim to prevent them from the outset.

4. Participation

108. In order to implement human rights protection in accordance with Article 5 of the Convention in practice, it is important for each individual to fully participate in social and political life without facing racist discrimination. Public and political life (a), education (b), work and economic life (c), as well as the healthcare system and the social security system (d), are dealt with below by way of example.

(a) Participation in public and political life

109. The Federal Republic of Germany is continuously attempting to improve participation by people with a migration background in public and political life.

Acquisition of citizenship

110. The means of achieving full political participation is to acquire German citizenship. Foreigners living in the Federal Republic of Germany can acquire German citizenship through naturalisation. After having lived in Germany lawfully for eight years, a legal right exists to naturalisation if certain preconditions for integration are met. Children born to foreign parents in the Federal Republic of Germany have acquired German citizenship since 2000 in accordance with the place-of-birth principle (*ius soli*) by force of law if one parent has been lawfully resident in Germany for eight years and has an indefinite residence right. A prerequisite for naturalisation is as a matter of principle also giving up the foreign citizenship where this is possible and reasonable. Individuals who have acquired German citizenship in accordance with the place-of-birth principle can choose after attaining the age of majority whether they wish to retain German citizenship or the foreign citizenship. As the Committee stated in concluding observation No. 20 on the last periodic report, the possibility to naturalise is being taken up with a certain reserve. The naturalisation figures have however been rising continuously once again since 2009. Reserve with regard to naturalisation can however not be exclusively traced back to the acquisition of citizenship being made to depend as a rule on giving up the other citizenship in question. There is no mono-causal relationship between the principle of avoiding multiple citizenship and reserved naturalisation on the part of the non-German population. Rather, a complex bundle of motives can be observed in the question of naturalisation which to a considerable extent are also influenced by aspects of the social, family and occupational sphere of those concerned.

111. A national naturalisation test (section 10 subs. 1 sentence 1 No. 7, section 10 subs. 5 of the Nationality Act (*Staatsangehörigkeitsgesetz*) in conjunction with the Ordinance on the Naturalisation Test (*EinbTestV*) is applied in order to prove within the naturalisation

process a knowledge of information from the legal and social system in the Federal Republic of Germany. This does not contain any questions with discriminating content. The Baden-Württemberg procedure criticised in concluding observation No. 19 on the last periodic report was a guideline that was internal to the authority which the Ministry of the Interior of the Land had handed to its authorities as a hand-out. The guideline was rescinded with immediate effect by letter of the Ministry for Integration of 29 July 2011.

112. The Länder are also highly interested in increasing the naturalisation figures. This was stressed once more by the Ministers and Senators of the Länder responsible for Integration at their 5th Conference on 19 March 2010. Hamburg therefore launched a naturalisation campaign in November 2010 entailing a personal letter from the First Mayor to all 137,000 foreign Hamburg residents aged at least 16 who meet the time-of-residence prerequisites for naturalisation. Rhineland-Palatinate has implemented a naturalisation campaign since the summer of 2009 within a Land integration concept. Central elements are posters and hand-outs, as well as Land-wide information events for multipliers, plus a separate website (www.einbuengerung.rlp.de). Naturalisation campaigns are now also being planned and implemented in other Länder and municipalities.

113. The Federal Government is aware that the formal act of naturalisation alone is inadequate for participation in public and political life. A naturalised person must also be perceived as being part of the German population and feel that they belong. Formal naturalisation is however a major step towards full political participation.

Statutory measures

114. The Berlin Participation and Integration Act (Berliner Partizipations – und Integrationsgesetz – Annex 7), which was adopted by the Berlin House of Representatives in December 2010, placed improved participation of people with a migration background on a statutory foundation. The Act prescribes amongst other things for all political spheres of action the principle of intercultural opening of administrations and social services.

115. In Rhineland-Palatinate, the possibilities for political participation of migrants have improved as a result of the Act Establishing Municipal Advisory Councils for Migration and Integration” (Gesetz über die Einrichtung von kommunalen Beiräten für Migration und Integration – Annex 8) adopted on 12 November 2008.

Special regulations in election law

116. In Schleswig-Holstein, political participation for the Danish majority (approx. 50,000 persons) has been made easier through special regulations in election law: The South Schleswig Voters’ Association (SSW), the political organisation of the Danish majority and of the Friesians, is exempt from the five-percent barring clause in accordance with which parties which have obtained fewer than 5 % of the votes in the elections are not considered when distributing the seats in the Land Parliament. The SSW was therefore enabled to enter the Land Parliament after the elections to the Schleswig-Holstein Land Parliament on 6 May 2012 although it had only obtained 4.6 percent of the second votes (61,025 second votes). The SSW therefore has three mandates in the 18th legislative period. It did not obtain any direct mandates. The party had 32,565 votes in the first ballot.

Promotional projects

117. The federal programme entitled “Solidarity through participation” to promote projects for democratic participation and against extremism in Eastern Germany acted to help strengthen and expand a self-confident, lively and democratic community culture in which there is no room for extremist and anti-constitutional movements. The programme runs for a term of 2010 to 2013, during which period measures with a total volume of

18 million Euros are to be carried out. The programme is to focus on skill-building among staff and volunteers in associations, clubs and municipal administrations, cooperation between state and non-state players, as well as the promotion of civil alliances and initiatives in regions of Eastern Germany where the structure is weak. A total of 104 projects are to be promoted.

118. In order to improve participation by immigrants in public and political life, some Länder have also initiated projects which aim to professionalise and link migrants' organisations as lobbies, as well as institutions of social integrative activities. Furthermore, the intercultural opening of facilities and institutions is supported in order to reduce access barriers for migrants. For instance, the Baden-Württemberg Social Affairs Ministry in particular is promoting participation by people with a migration background in youth work. Projects of intercultural opening of independent child and youth work and child and youth work that is organised in associations has been supported since 2006 as part of an integration offensive.

(b) *Participation in education*

119. Immigrants' access to education is essential in order to improve their chances in society and to enable them to make better use of their potential. In the National Integration Action Plan, the Federation and the Länder have emphasised the considerable significance attaching to education for integration. Successes have become visible in recent years.

120. It is particularly important to introduce children whose language of origin is not German to German in a way that is suited to children, whilst accepting their mother tongue. The continuous promotion of language from the outset in child day-care and in schools, as well as expanding early promotion, are hence the focus of the educational, family and integration policy work of the Länder. The Länder concentrate considerable efforts on integrating parents early by imparting to them the necessary knowledge of the education system and strengthening their educational skills.

121. School pupils whose parents have a low level of education, as well as those whose parents did not themselves attend school in Germany, have less favourable prospects for success at school. The Länder are undertaking considerable efforts to break this causal link. Some of the measures target the parents. In addition to family education in the early learning field (e.g. family centres), measures of parental education (e.g. "Mum's learning German") are added. Non-governmental organisations and migrants' self-help organisations are also active in this area, and are supported both ideationally, and in some cases also financially, by the Federation and the Länder.

122. A topical study carried out by the Federal Anti-Discrimination Agency (ADS) revealed that individuals with a migration background feel or felt disadvantaged disproportionately frequently at schools and vocational schools.¹⁷ Here, the ADS points out that the greater extent of discrimination experienced may also be caused by greater sensibility. Regardless of this, such a perception can only be reduced by avoiding objective discrimination, something which the Federation and the Länder have been working on for a long time. In particular in the transition from primary to secondary school, it is attended to ensure that children with a migration background are not placed at a disadvantage. For this reason, for instance in teacher training educational diagnostics (learning achievement

¹⁷ Cf. the study entitled "Benachteiligungserfahrungen von Personen mit und ohne Migrationshintergrund im Ost-West-Vergleich", published by the ADS, retrievable on the Internet: http://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2012/Studie-Diskriminierungserfahrungen-SVR-20120801.html;jsessionid=3530BAFC084FB8A062078DF016D3495B.2_cid094.

collation, achievement record, etc.), individual promotion and advice, as well as distinguishing and dealing with heterogeneity, are becoming increasingly important. This is reflected not lastly in the project jointly funded by all Länder and entitled “UDiKom – Basic and further teacher training with regard to improving ability to diagnose as a precondition for dealing with heterogeneity and individual promotion”. Skill-building methods for language diagnostic activities (e.g. dealing with tools of language development monitoring) and to promote language skills (including reading and writing skills) have also been established in the model programme entitled “FÖRMIG” (Support for immigrant minority children and youth) of the Federation-Länder Commission for Educational Planning and Research Promotion. The Conference of Ministers of Education and Culture agreed to make targeted promotion of underachieving pupils one of the foci of joint activities with its “Promotional strategy for low-achieving school pupils” (resolution of the Conference of 4 March 2010). The primary goal here is to considerably reduce the percentage of pupils who do not reach a minimum level of skill development at the end of their schooling, and hence do not receive any school-leaving qualifications.

123. Children and juveniles who have an inadequate knowledge of German – for instance because of their migration background – are to receive greater individual support in class. A lack of knowledge of German alone may not be permitted to be a reason for initiating proceedings to establish special teaching needs¹⁸. This is also referred to by concluding observation No. 23 on the last periodic report. In Rhineland-Palatinate, for instance, the hand-outs to establish the special teaching needs contain the following instructions which are to guide the actions of the schools:

“A lack of knowledge of German alone may not be permitted to be a reason for initiating proceedings to establish special teaching needs.”

It also says there:

“The proposal for a decision to establish special teaching needs in the promotional focus of language must be especially justified, and it must be made clear that difficulties with German did not lead to the proposal.”

Comparable provisions also exist in other Länder.

In relation to concluding observation No. 22 on the last periodic report (obstacles to the school enrolment of the children of asylum-seekers), reference is made to the Federal Government’s comments on the concluding observations.

124. A major aspect is the inclusion of the individual population groups in the school system. Recommendation No. 24 on the last periodic report to ensure the use of minority languages in the school system and to involve the Sorbian minority in decision-making and ensure the continuation of a viable Sorbian school network has been taken up in the Free State of Saxony. Together with the Sorbian organisations and lobbies, an inter-school concept has been drawn up and academically evaluated which ensures the framework for optimum support of the minority language in the Saxon school system. The concept is to be implemented at the beginning of the 2013/2014 school year.

125. Brandenburg has also played a very active role in recent years to involve the Sorbian majority in school developments. To this end, a working group has existed for several years with Sorbian participation. Teaching in Sorbian (Wendish) is offered at 20 primary schools, for which 150.92 teacher hours per week are available. There are 211.96 teacher hours per

¹⁸ Special teaching needs are presumed to exist where the school development and transition to work of children and juveniles need special educational support in order to reach the educational goals which correspond to what they are each individually capable of.

week for bilingual lessons. Annexes 9 and 10 contain an overview of the (in some cases very small) number of pupils who attend the lessons offered. There is limited demand for the Sorbian (Wendish) language service at secondary schools.

126. Friesian is taught in Schleswig-Holstein at 15 public schools in the North Friesian language area and on the island of Helgoland, largely in primary schools and on a voluntary basis. Language lessons are also offered at two schools of the Danish minority. According to information from the Frisian Council, Friesian language teaching was offered in 17 kindergartens in 2010.

(c) *Participation in work and economic life*

Integration into the labour market

127. The approx. 16 million persons living in the Federal Republic of Germany who have a migration background are so far only inadequately integrated into the German labour market. For instance, the unemployment rate related to the entire economically active civilian population for foreigners (a migration background is currently not shown in the unemployment statistics of the Federal Employment Agency) averaged 14.6 % in 2011 (2010: 15.7 %). It is hence more than twice as high as that among Germans, which is 6.4 % (2010: 7.0 %). It is not surprising against this background that persons with a migration background frequently feel disadvantaged on the labour market to a higher than average extent.¹⁹ On behalf of the Federal Ministry of Labour and Social Affairs, and in cooperation with the Federal Employment Agency, the “Integration through Skill-building – IQ” network has hence been developing and trialling since 2005 approaches for improved labour market integration, specifically of adults with a migration background, on the basis of the further development and migration-sensitive design of the labour market policy tools.

128. The “IQ” promotional programme has been expanded and developed since mid-2011 in collaboration with the Federal Ministry of Education and Research to become a nationwide structure of regional networks with three focal tasks:

- creating support structures such as advice agencies in connection with the implementation of the Act to Improve the Assessment and Recognition of Professional Qualifications obtained Abroad (Gesetz zur Verbesserung der Feststellung und Anerkennung im Ausland erworbener Berufsqualifikationen), which came into force on 1 April 2012.
- intercultural training for staff, in particular in the Employment Agencies and Jobcentres.
- interlinking the various labour market-related promotional services.

In order to promote diversity in companies, there is the “Diversity Charter”, an initiative which seeks to promote the recognition, appreciation and inclusion of diversity in corporate culture in the Federal Republic of Germany. The Charter has so far been signed by more than 1,250 companies, as well as by several Federal Länder in their capacity as employers.

¹⁹ Cf. the study entitled “Benachteiligungserfahrungen von Personen mit und ohne Migrationshintergrund im Ost-West-Vergleich”, published by the ADS, retrievable on the Internet: http://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2012/Studie-Diskriminierungserfahrungen-SVR-20120801.html;jsessionid=3530BAFC084FB8A062078DF016D3495B.2_cid094.

Protection against discrimination

129. The General Equal Treatment Act, which came into force on 18 August 2006, the broad scope of which also includes labour law (cf. 16th-18th periodic reports, IV.8.b), prohibits discrimination in employment and at work (section 7) for reasons of ethnic origin or race, of gender, of age, of a disability, of sexual orientation, as well as religion or belief.

130. The independent Federal Anti-Discrimination Agency (ADS) was set up at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth when the General Equal Treatment Act came into force. In accordance with section 26 subs. 1 sentence 2 of the General Equal Treatment Act, the management of the ADS is independent in the exercise of its office, and is only subject to the law. Anyone can turn to the ADS who consider themselves to have been disadvantaged for reasons of race or because of their ethnic origin, gender, religion or belief, a disability, age or sexual identity. The ADS works together closely with other commissioners of the Federal Government, such as with the Commissioner for Matters relating to Disabled Persons and with the Commissioner for Migration, Refugees and Integration. The tasks of the Federal Government Commissioner for Migration, Refugees and Integration include combating the discrimination of foreigners (section 93 No. 3 of the Residence Act (AufenthG)), and it supports those who feel that they have been discriminated against, also beyond the scope of the General Equal Treatment Act. To this end, it requests for instance statements from federal authorities (section 94 subs. 3 of the Residence Act).

131. The tasks of the ADS include:

- free advice and information to persons turning to them and placement in advice.
- efforts to reach an amicable agreement in the event of a dispute.
- public relations work on the General Equal Treatment Act and on the tasks of the ADS.
- prevention of discrimination.
- implementation of academic studies.
- submission of regular reports to the German Federal Parliament, connected with recommendations.

All federal authorities and other public agencies within the Federation are obliged to support the ADS and to provide it with the necessary information. There have been 1,914 cases of advice being given related to the criterion of ethnic origin since the Agency came into being (as per October 2012).

132. Since the first quarter of 2011, the ADS has offered via its website www.antidiskriminierungsstelle.de a search service for advice agencies, as well as an information database. People who are affected by discrimination can use the search service for advice agencies in order to enquire as to where there is an advice centre near them. It is sufficient to enter a postcode or city, and to select an area. The contact data are shown on a map and on a barrier-free list. Furthermore, institutions and associations can find other organisations operating in their field and network with them. The information database offers to individuals and institutions dealing with or interested in the topic of (anti-) discrimination judgments, press releases, research reports and literature on the topic.

Pilot project: Anonymised application procedures

133. Anonymised application procedures are a way of countering conscious or unconscious discrimination against specific groups of individuals. On the basis of good experience in other countries, the ADS launched a nationwide model project in November

2010 in which various companies and authorities tested anonymised application procedures for twelve months. The results were presented in April 2012. Although the parallel study that was carried out is not representative, the results of the pilot project show important initial trends. All groups of applicants had the same chance in the anonymised procedures to be invited to an interview. In comparison to traditional procedures, it was found for applicants with a migration background that whilst they were at a disadvantage in this respect previously, these disappeared as soon as anonymised application procedures had been introduced, so that their chances improved. The ADS will be offering training courses during this year for interested private and public employers.

(d) *Participation in the healthcare system and in the social security systems*

134. Access to statutory health insurance benefits in the Federal Republic of Germany is open to all insured parties in the same manner regardless of their nationality or origin. It is regulated without regard to the criteria listed in Article 1 para. 1 of the Convention. For asylum-seekers and persons who are enforceably obliged to leave the country, the scope of healthcare is restricted to the treatment of acute diseases and pain as a matter of principle. Other benefits to ensure health can be provided in individual cases. Healthcare is provided outside statutory health insurance.

135. Long-term care insurance provides for benefits for domestic, partially in-patient and fully in-patient long-term care. The benefits of long-term care insurance are not dependent on age, income or assets, on gender, on origin or on the religion of the insured party. The design of the programme of benefits offered by long-term care insurance makes it possible to take account of the different ethnic or cultural needs of the various ethnic groups. Section 1 of the Long-term Care Insurance Act (Pflege-ver-sicherungs-gesetz) explicitly stresses that the benefits offered are also to increasingly address the needs of people from other cultural spheres, and in this regard to provide the care which is needed in a manner that is sensitive to cultures by the out-patient and in-patient long-term care facilities is to be ensured.

136. In other respects, reference is made to the 16th-18th periodic reports in relation to access to the social security systems.

F. Article 6: Protection against acts of racial discrimination

137. With regard to the prosecution of criminal offences with a racist background, reference is made to the observations on Article 4 (para. 56 et seqq. and 66 et seqq.). To create an awareness among the investigating authorities for racist motives cf. in particular the observations on Article 5 (para. 103 et seqq.). In case of acts of discrimination committed by the State, recourse to the courts is guaranteed in accordance with Article 19 para. 4 of the Basic Law (cf. para. 14). Individual complaints of racial discrimination can be submitted not only towards the independent judiciary. There is also an unrestricted possibility to inform human rights institutions and to seek their advice. The Federal Anti-Discrimination Agency (ADS) plays a special role here as an advisory body, cf. para. 130 et seqq.

138. The observations below on Article 6 focus on the rights of the victim, in particular when it comes to the question of what opportunities are open to them to receive compensation and to what degree they are supported when asserting their claims.

1. Information on the so-called adhesion procedure

139. Victims of racially-motivated criminal offences are informed of their rights and of the possibilities which exist to assert them, as are all victims of a criminal offence

regardless of their nationality. In accordance with section 406h subs. 1 No. 2 of the Code of Criminal Procedure (*Strafprozessordnung – StPO*), aggrieved persons are to be informed of the fact that they may assert a property claim arising out of the criminal offence in criminal proceedings. This “adhesion procedure” is governed by sections 403 to 406c of the Code of Criminal Procedure and enables victims of criminal offences to assert the said claim directly in criminal proceedings on request.

140. The Second Act Reforming Victims’ Rights (2. *Opferrechtsreformgesetz*) of 29 July 2009, which came into force on 1 October 2009, expanded the obligation to provide information to the victims such that an indication must also be given that victims of criminal offences in accordance with the Victims Compensation Act (*Opferentschädigungsgesetz – OEG*) may assert a maintenance claim (section 406h subs. 1 No. 3 of the Code of Criminal Procedure). Section 406h subs. 1 of the Code of Criminal Procedure made it clear that the information on the rights and powers must be provided as early as possible, as a rule in writing and in a language that the victim can understand. As a result, the content of the standard nationwide info sheet for the information of victims of criminal offences, which is already provided on the first contact with state agencies, has been revised and translated into a large number of languages.

141. Additionally, victims of the crimes listed in section 395 subs. 1 of the Code of Criminal Procedure (e.g. sexual coercion and rape, bodily harm, murder and deprivation of freedom) can join a public prosecution as a private accessory prosecutor within the proceedings of the criminal court. The procedural rights of private accessory prosecutors are governed by section 397 of the Code of Criminal Procedure. They include being entitled to be present at the main hearing and to ask questions and the right to apply for evidence to be taken. In accordance with section 187 subs. 2 of the Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*), an interpreter or translator is to be provided for private accessory prosecutors who have no command of German.

2. Compensation

(a) Victims Compensation Act (*Opferentschädigungsgesetz – OEG*)

142. In accordance with the Victims Compensation Act, victims of violent acts receive considerable non-income-linked compensation payments (medical treatment, rehabilitation and participation benefits, basic non-income-linked pensions) as a matter of principle because of the damage to health that they have suffered, regardless of their nationality. These are paid notwithstanding the motivation from which the violent act was committed – be it a racist or other motivation.

143. This also applies to income-linked benefits. However, the citizenship of the victim of the violence may make a difference here. Foreign nationals who are lawfully resident in the Federal Republic of Germany receive the same benefits as Germans in accordance with section 1 subs. 4 of the Victims Compensation Act if they are nationals of EU Member States or of states with which appropriate agreements exist or which provide for similar benefits to Germans (reciprocity). With all other foreign citizenships, the scope of the benefits is in accordance with the duration of their stay in Germany. For further details please see the information on pp. 51 et seqq. in the 16th-18th periodic reports. Hence, the amount of the compensation paid in accordance with the Victims Compensation Act may depend on citizenship, as found by the Committee in concluding observation No. 25 on the last periodic report, but this depends on the duration of residence.

144. It has been complained in the past that the court proceedings on claims in accordance with the Victims Compensation Act take too long. The Act on Legal Protection in the Event of Excessive Length of Court Proceedings and of Criminal Investigation Proceedings (*Gesetz zum Rechtsschutz bei überlangen Gerichtsverfahren und straf-*

rechtliche Ermittlungsverfahren), which came into force on 3 December 2011, has created an effective remedy against unjustifiably long proceedings.

(b) *Hardship benefits*

145. The possibility has existed in the Federal Republic of Germany since 2001 to also pay hardship benefits from the federal budget to victims of right-wing extremist attacks. This budget item was extended in 2010 to cover victims of all types of extremism, in particular left-wing or right-wing extremism, anti-Semitism and Islamism. The hardship payments can be granted on request. Responsibility for processing hardship payments lies with the Federal Office of Justice, which provides comprehensive information on this and an application form on its website. Hardship payments for victims of extremist attacks can be granted for physical injury and violations of the general personality right. Material damage cannot be compensated for. Hardship payments are granted in accordance with the principles of equity, depending on the nature and severity of the violations in the shape of a one-off payment. Such voluntary emergency aid, to which no legal right exists, is to be understood as an act of solidarity on the part of the State and its citizens towards those who are affected. At the same time, a clear signal is to be set for the condemnation of such attacks. The hardship payments are as a matter of principle subsidiary to the other compensation claims which the victim has against third parties, in particular against the offender. Having said that, the State also provides hardship payments where such claims exist if the victim is unable to obtain compensation at short notice from third parties who are obliged to pay. In this case, the State asserts the recourse claims against the third parties which are assigned to it consistently and emphatically in order to prevent the offender obtaining any financial advantage as a result of the fact that the victim has received compensation from the State.

146. The Federal Office of Justice has now paid hardship benefits in excess of 900,000 Euros (as per 1 August 2012) to victims and family members of the victims of the criminal offences of which the members of the NSU have been accused (cf. on this para. 74 et seqq.). The victims of the NSU and their family members are advised by the ombudsperson Professor Barbara John, who has been nominated by the Federal Government (cf. para. 77).

147. Victims of criminal offences and their surviving dependants may, finally, also turn for psychosocial care and advice to the coordination office Aftercare, Support for Victims and their Relatives (NOAH), which is at the Federal Office of Civil Protection and Disaster Assistance.

(c) *Programmes, projects and organisations supporting the victims*

148. The “*Weisser Ring e.V.*” (White Ring) helps victims of criminal offences in many ways. It provides assistance when dealing with authorities and accompanies the victim at court appointments. Furthermore, it supports psychotraumatological advice on burdens resulting from a criminal offence. The Weisser Ring receives financial support as a result of it being deployed by courts and public prosecution offices when criminal proceedings are discontinued on condition of paying an amount of money to a charitable institution, frequently as the recipient of the amount in question. Moreover, there is a large number of mostly local or regional victim assistance facilities, some of which have come together in the “Task force on assistance for victims” (ado) and which offer support and help for victims of violent offences with professional staff. These facilities are partly funded by the Federation or the *Länder*.

149. Facilities are additionally supported from public funds which inform and advise victims of racist criminal offences of their rights, or which provide psychological support.

150. The advice networks against right-wing extremism operating in the *Länder* within the federal programme entitled “Promoting Tolerance – Enhancing Competence” support victims of right-wing extremist and racist violence in overcoming the consequences of an attack.

151. In Berlin, for instance, the project entitled “Reach Out victims counselling centre” deliberately targets victims of attacks with a right-wing extremist motivation. The staff target those concerned and offer them their assistance. The *Land* Brandenburg is funding parts of posts in the Victims’ Perspective registered association (*Opferperspektive e.V.*), as well as in a branch of the Regional Centre for Education, Integration and Democracy (RAA), which offer advice for victims of racist discrimination.

G. Article 7: Measures in the fields of teaching, education, culture and information

1. General measures

152. The fight against right-wing extremism in its various manifestations plays a prominent role within the measures to enhance democracy and the rule of law.

153. A major function in the fight against racism is played by the Federal Agency for Civic Education (bpj). This is a state facility tasked with enacting measures of civic education to promote an understanding of political situations, entrenching a democratic understanding and increasing the readiness to play a political role. A major field of its work is the fight against extremism and anti-Semitism. The service provided by the bpj, which is available nationwide, provides information on racism, anti-Semitism, stereotypes and prejudices, and also provides teaching resources for school and non-school lessons. Furthermore, it promotes a large number of projects to improve mutual understanding and tolerance.

154. As well as this, many of the initiatives and organisations that have already been introduced contribute by providing targeted information and education to preventing racist thinking. This applies for instance to the Alliance for Democracy and Tolerance or to XENOS (cf. on this para. 26 et seq.).

155. The Conference of Ministers of Culture and Education stressed the considerable significance attaching to education towards democracy as a task for work in schools on 5/6 March 2009 in the shape of a declaration and praised democratic commitment within school activities. The reason for this was the 90th anniversary of the constitution of the Weimar Republic and of the acceptance of the first democratic Constitution enacted on German soil, the 60th anniversary of the Basic Law and the 20th anniversary of the peaceful revolution in the German Democratic Republic in 2009, as well as the 20th anniversary of German unity in 2010. Moreover, the Conference of Ministers of Culture and Education recommended strengthening democracy education in secondary levels I and II by carrying out a project day consisting of a debate on German history in the 20th Century on 9 November of every year. There are many initiatives in this context in the *Länder*.

2. Measures in the fields of teaching and education

The following measures are being carried out in the fields of teaching and education:

(a) *Curricula and programmes to improve mutual understanding, tolerance and friendship between the groups in question*

156. All the *Länder* in the Federal Republic of Germany regard teaching people to respect human dignity to be a substantial task and a major goal of schools. The topic is a fixed part

of the curricula in the relevant subjects of all types and levels of schools – in particular religion, ethics, philosophy, history, civics, social studies, through to economics/politics, geography and German – and is furthermore the subject of large numbers of extra-curricular projects and initiatives. Human rights education in schools aims to shape tolerance and respect for other cultures, as well as a fundamental responsibility towards society. On this basis, schools promote the free development of the personality of each individual and attempt as they are able to counter unequal opportunities and discrimination.

157. The Federal Agency for Civic Education is promoting the project entitled “School without racism”, which offers children and juveniles the opportunity to exert an active influence on the atmosphere at their school by consciously turning against all manifestations of discrimination, mobbing and violence. This network now covers more than 1,000 schools.

158. The Federal Ministry of Justice launched a competition among school pupils in December 2011 which intends to promote ideas against right-wing extremism and to award a prize. Moreover, the Federal Ministry of Justice has been promoting the school project entitled “Malfunction indicators on tour” of the “Show your face! Germany is open to the world” association since June 2008. The project aims to establish indirect contact with juveniles in regions in which right-wing extremists are disturbing tolerant, social co-existence. Famous persons and youth idols from the fields of sport, culture and journalism visit schools all over Germany in order to create an awareness of the topic among school pupils in public discussions and role-playing and to attract their attention to possible forms of reaction against right-wing extremist activities.

159. The Federal Ministry of Justice is furthermore supporting the charitable Amadeu Antonio Foundation, established in 1998, which aims to strengthen democratic civil society against right-wing extremist influences through local initiatives and projects in the fields of youth and school, protection of victims and assistance for victims, alternative youth culture and municipal networks. A major focus of the foundation’s work is constituted by information work on right-wing extremist tendencies on the Internet, which is increasingly being used by right-wing extremist groups to disseminate propaganda, as well as to influence forum discussions. This also makes a contribution towards the implementation of concluding observation No. 16 on the last periodic report (cf. above para. 84).

(b) *Avoiding stereotypes in schoolbooks*

160. The Guidelines for the Approval of Schoolbooks (*Richtlinien für die Genehmigung von Schulbüchern*) of the Conference of Ministers of Culture and Education (resolution of 29 June 1972) provide amongst other things that a schoolbook may only be approved if it does not breach general constitutional principles or legal provisions. This provision also includes the avoidance of stereotypes in schoolbooks (such as the “superiority of Europe”, an “Africa” full of poverty and civil war or “Islam” as a totalitarian power).

(c) *Information on the history and culture of the groups protected by the Convention*

161. The information on the history and culture of the groups protected by the Convention forms an element of school teaching. It is worth mentioning in this regard a project from Rhineland-Palatinate, in which the “Paths through Life” (*Lebenswege*) Online Migration Museum was constructed in 2009. One of the first of its kind in Germany, the Museum is to make the history and culture of migration visible and tangible. The Migration Museum shows that people with a migration background have become a fixed, indispensable element of our society. Visitors can learn about the history of migration, migrants’ biographies, the starting situation in their countries of origin and their lives in their new home. Topical films and other exhibits illustrate the topics of migration from various points of view. The Museum offers schools in particular a large number of

possibilities to creatively approach the important topic of migration in a creative, action-orientated, and cognitive manner. A similar concept is pursued by the “German Emigration Center” in Bremerhaven, which as a Migration Museum presents both historic and current emigration and immigration.

3. The media

162. The media exert a major influence on public opinion. It is highly significant to prevent the media stirring up or promoting racism. It is an advantage here if the media involve all population groups and plausibly impart the advantages of a culturally-diverse society. To this end, the National Integration Action Plan encourages public-law and private television and radio stations, as well as representatives of the printed media, to commit themselves. For further details, please refer to the Action Plan (cf. on this para. 25).

163. Particular significance in the fight against discriminatory comments in the media is taken on by the German Press Council. This is the voluntary self-regulation facility of the press. Each individual can complain to the Press Council about newspapers and periodicals. Complaints have also been possible since 1 January 2009 on journalistic and editorial articles from the Internet if they are not part of broadcasting. The standard for the review is the Press Code with its 16 items and corresponding guidelines. No. 12 and the corresponding guideline 12.1 relate to discrimination by the press. If the complaint is well-founded, the Committee takes action against the medium. The Press Council has four possible sanctions: public reprimand (which must be printed), non-public reprimand (not printed, for instance for reasons of victim protection), disapproval and an “indication”.

164. The complaint committees examined a total of 880 complaints in 2011. No. 12 of the Press Code was the standard for the review in 76 cases. The Press Council examined particularly frequently whether it was justifiable in terms of press ethics to state ethnicity and nationality when reporting on criminal offences. Furthermore, it maintains a regular exchange with organisations which combat discrimination. These include the Central Council of Sinti and Roma. In collaboration with the Press Council, the Central Council for instance held a media conference at the Friedrich Ebert Foundation in Berlin on 5 January 2009. Also in the following years, both players met for talks and rounds of discussion (cf. on concluding observation No. 27).

165. The fight against racism on the Internet is one of the tasks of the joint agency of the *Länder* for youth protection on the Internet, namely the “jugendschutz.net” youth protection organisation. This agency supports the Commission for the Protection of Minors in the Media (KJM) and the highest *Land* youth authorities in their tasks, and also provides advice and training in the tele-media. The statutory core tasks include in particular research, advice on youth-orientated phenomena on the Internet, assessments on topical developments in the online field (e.g. also right-wing extremist agitation particularly targeting juveniles) and information on the current developments and problems of youth protection. Moreover, “jugendschutz.net” is a co-founder of the “International Network Against Cyber Hate” (INACH), which contributes towards an on-going exchange of experience on activity against racism and discrimination on the Internet and takes international action against hate sites on the Internet – a further contribution towards the implementation of concluding observation No. 16 on the periodic report.

166. An important function is also carried out by the Federal Department for Media Harmful to Young Persons. This agency lists media which are dangerous to youth and promotes value-orientated media education, as well as striving to create an awareness among the public for the interests of youth media protection. Media constitute a danger to youth if they are liable to endanger the development of children or juveniles or their development to become responsible personalities and capable members of the community. These include above all media that are immoral, have a brutalising effect, incite to violence,

crime or racial hatred, as well as those in which violent acts such as scenes of murder and slaughter are presented as a means in themselves and in detail, or self-justice is proposed as a means to enforce alleged justice. The Federal Department for Media Harmful to Young Persons has listed more than 1,600 media which glorify National Socialism and/or war or incite to racial hatred. These are media, films, PC games, printed media and websites. Listed media may not be made available to children and juveniles, and may not be acquired in public. Furthermore, administrative authorities in accordance with the Youth Protection Act (Jugendschutzgesetz) may order that under-age persons may not attend concerts where listed contents are presented.

III. Conclusion

167. The report shows where the danger of racism and racist discrimination exists in the Federal Republic of Germany today, and provides an impression of the measures taken in combating racism. These cannot be exhaustively and comprehensively presented because of the restrictive scope of the report. The Federal Government is concerned to provide the Committee by means of this report with a realistic picture of the situation in the Federal Republic of Germany. This entails the expectation that the report enriches the discussion as to how it is possible to counter racism even more effectively. A major impulse will be provided in this context by the Committee's conclusions, to which the Federal Government is looking forward with considerable interest. The Federal Government is also highly interested in expressing its appreciation to all who play an active role in the everyday fight against racism and motivating them to continue and further develop their important work.
