



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

Distr.: General  
29 June 2020

Original: English  
English, French and Spanish only

---

**Committee on the Elimination of Racial Discrimination**

**Combined twenty-third to twenty-sixth reports  
submitted by Germany under article 9 of the  
Convention, due in 2018<sup>\*, \*\*</sup>**

[Date received: 30 April 2020]

---

\* The present document is being issued without formal editing.  
\*\* The annexes to the present document may be accessed from the web page of the Committee.

GE.20-08531(E)



Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



## I. General section

1. For Germany's justice system and policymakers, protecting all people against racism and racist discrimination has exceptional importance. This is why Germany ratified ICERD in 1969, committing itself to combat racism and racist discrimination and report regularly to the relevant bodies. Racist and other discriminatory prejudices, attitudes and actions (conscious or subconscious) persist to varying degrees within society. Public authorities and organisations are no exception. The drive to combat racist attitudes and discrimination is therefore an extremely important and complex long-term challenge to be tackled by the state and society as a whole.
2. Germany submitted its last report in 2013. Commenting on that report in its concluding observations of 13 May 2015, the Committee recommended that Germany present reports 23 to 26 together. The review period extends from December 2012 to June 2018. The report also contains some information from outside this period. Under established practice, the report will be posted on BMJV's website<sup>1</sup> in German and English, as will the concluding observations (concluding observation 24 on Germany's last report).
3. In compliance with concluding observation 28, the present report addresses all points in the concluding observations (overview in Annex 1).
4. In drafting the current report, consultations were held on 6 October 2017 with representatives of civil society organisations working in human rights – particularly in combating racism and racist discrimination. This approach (concluding observation 23) proved valuable with previous reports and is now Federal-Government standard practice.
5. Germany's Common Core Document containing general information was updated and submitted to the UN in November 2016 (concluding observation 25). It is available on BMJV's website.<sup>2</sup>

## II. Report on compliance with and implementation of Articles 1 to 7 ICERD

6. Rejecting all conceivable forms of racism and extremism is a fundamental principle of all legislative, judicial and administrative activity. Articles 1 to 7 are consistently complied with and implemented pursuant to this principle:

### A. Article 1

7. German law affords protection against all forms of discrimination that fall under racial discrimination under Article 1 of the Convention. This arises first and foremost from every person's right to have their human dignity respected and protected. Human dignity is enshrined as a supreme legal interest in Article 1 (1) GG. Article 3 GG is also key. Under Article 3 (1) GG, all persons are equal before the law. This right to demand equal treatment from the state comes into sharp focus in paragraph 3 with specific bans on drawing distinctions. Article 3 (3) sentence 1 GG 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 BVerfG case-law, the attributes in Article 3 (3) GG may not be 'used as occasion for unequal treatment before the law. This applies even where a provision is not aimed at unequal treatment prohibited under Article 3 (3) but where it primarily pursues other objectives' (BVerfGE 85, 191 <206>). The rights to equality under Article 3 GG are equally binding on executive, judiciary and legislature, and protect not only natural persons, but also domestic legal persons and associations of individuals – insofar as the nature of these individual guarantees permits their applicability thereto (Article 19 (3) GG). Comparable provisions can be found in the *Länder*

---

<sup>1</sup> [www.bmjbund.de](http://www.bmjbund.de).

<sup>2</sup> [https://www.bmjbund.de/SharedDocs/Downloads/DE/Ministerium/AbteilungenReferate/Kernbericht\\_2016\\_EN.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjbund.de/SharedDocs/Downloads/DE/Ministerium/AbteilungenReferate/Kernbericht_2016_EN.pdf?__blob=publicationFile&v=2).

constitutions.<sup>3</sup> Ultimately, these provisions express a fundamental principle that prohibits direct and indirect discrimination in all public life and extends to the legal relationship between private individuals.

8. Protection against racist discrimination is also contained in non-constitutional law in the AGG of 18 August 2006. For more details on the AGG, see margin numbers 169 et seqq.

9. Germany thus possesses a legal framework with a broad-based approach to combating racial discrimination in all forms. These provisions do not need to explicitly define racial discrimination since a definition is given in Article 1 (1) ICERD and is thus directly applicable law in Germany. All public authorities are therefore obliged to take account of the definition in Article 1 and implement it as directly applicable federal law.

10. In the NAP adopted in summer 2017, the Federal Government seeks to raise awareness about the ICERD definition of racism – not just in administration, courts and security but also among the general public. It also committed to ensuring that this definition is used as a standard in the everyday work of public authorities.<sup>4</sup> Within their remits, ministries are to provide relevant information to improve ICERD’s practical implementation when German law is applied. This should be backed up by suitable events and formats (concluding observations No. 7c and 24).

11. An initial awareness-raising measure is an information leaflet produced by BMJV and attached to this report (Annex 2). This was designed to give legal practitioners an accessible overview of key information regarding ICERD’s content and significance. It makes explicitly clear to practitioners that the definition of racial discrimination in Article 1 ICERD is directly applicable German law, encompasses diverse forms of discrimination – direct/indirect, conscious/subconscious – and is not restricted to cases involving Nazi ideology or falling under ‘incitement of masses’ (section 130 StGB). The leaflet is available on BMJV’s website, and was distributed at federal and *Länder* levels to raise awareness among staff in judicial and administrative practice.

12. As stated in Germany’s last report, the term ‘race’ (and the related term ‘racial discrimination’) is controversial in Germany because it could be misinterpreted to mean that different ‘races’ of humans exist. The Federal Government wishes to reiterate that it rejects any ideas/theories that claim the existence of different ‘races’ of human beings.<sup>5</sup> To prevent misunderstandings in this report, the Federal Government has tried wherever possible to avoid the term ‘racial discrimination’ used in ICERD and other international and constitutional-law instruments. Instead it refers to ‘racist discrimination’. For clarity, however, it may be necessary to use the terms ‘race’ and ‘racial discrimination’ when directly citing ICERD or other international/domestic-law instruments.

## **B. Article 2**

13. Germany condemns all forms of racist discrimination and ensures that endangered population groups are protected therefrom by the state and civil society.

### **1. Article 2 para. 1 (a) and (b)**

14. The entire state apparatus is bound by Articles 1 (1) and 3 (3) GG. All public agencies are thus prohibited from engaging in any discrimination of persons on account of ‘race’.

<sup>3</sup> Article 2 (1) of Baden-Württemberg’s Constitution read with Article 3 (3) sentence 1 GG; Article 10 of Berlin’s Constitution; Article 12 (2) of Brandenburg’s Constitution; Article 2 (2) of Bremen’s Constitution; Article 1 of Hesse’s Constitution; Article 5 (3) of Mecklenburg-Western Pomerania’s Constitution read with Article 3 (3) sentence 1 GG; Article 3 (3) of Lower Saxony’s Constitution; Article 4 of NRW’s Constitution read with Article 3 (3) sentence 1 GG; Article 17 of Rhineland-Palatinate’s Constitution; Article 12 (3) and (4) of Saarland’s Constitution; Article 18 (3) of Saxony’s Constitution; Article 7 (3) of Saxony-Anhalt’s Constitution; Article 2a of Schleswig-Holstein’s Constitution; Article 2 (3) of Thuringia’s Constitution; Article 119 of Bavaria’s Constitution explicitly bans racial and ethnic hatred.

<sup>4</sup> cf. NAP, p. 41. For more information on the NAP, see margin nos. 29 et seqq.

<sup>5</sup> As it does in the NAP, p. 14.

## 2. Article 2 para. 1 (c)

15. ICERD's implementation is monitored at various levels in Germany. Federal bills are legally scrutinised in accordance with section 46 GGO. According to the Manual for Drafting Legislation, this includes ensuring 'compatibility with international law, especially the UN General Declaration of Human Rights and the European Convention on Human Rights and Fundamental Freedoms', which includes ICERD. The *Länder* have corresponding regulations<sup>6</sup>.

16. In legislative and political processes, efforts to identify and reduce systemic discrimination are also made by the Federal Government Commissioner for Migration, Refugees and Integration. Germany is also involved in monitoring at European level, e.g. through ECRI. EU-FRA draws up annual reports also addressing racism and ethnic discrimination in Member States. Within FRA's research network FRANET, Germany's focal point for reporting is the DIMR in collaboration with EFMS.

17. Legal protection afforded by the courts is key in monitoring state activity. Under Article 19 (4) sentence 1 GG, anyone whose rights are violated by public authority has recourse to the independent courts. These then apply domestic law – including ICERD which has the status of federal legislation. Parties in German court proceedings are therefore always able to assert their rights arising from international conventions such as ICERD. The courts consider the requirements set down in ICERD whenever there is concrete reason to do so – e.g. when a claimant invokes them, or when national law needs further interpretation or is silent on a decisive issue and ICERD must be consulted to interpret the law.

18. Pursuant to Article 93 (1) no. 4a GG read with section 90 (1) BVerfGG, anybody alleging that one of their basic rights – including their right to equality – has been infringed by public authority may lodge a constitutional complaint with BVerfG. Furthermore, BVerfG conducts both abstract and specific judicial review of statutes, scrutinising legal provisions for compatibility with Article 3 GG. This includes screening for content amounting to racist discrimination. Such proceedings also exist before the *Länder* Constitutional Courts.

19. Once domestic legal remedies are exhausted, individuals can involve the ECtHR and claim a violation of Article 14 ECHR if they feel discriminated in their 'enjoyment of the rights and freedoms set forth in this Convention'. Impermissible grounds for discrimination include race, skin-colour, language, religion, national or social origin or association with a national minority.

## 3. Article 2 para. 1 (d)

20. Criminal-law aspects of combating racism is covered by Article 4 (margin numbers 91 et seqq.). Action against organisations with racist goals (prohibition of associations/parties) is also covered under Article 4 (margin numbers 123 et seqq.). For civil-law measures to end racist discrimination by private individuals, see margin numbers 169 et seqq.

---

<sup>6</sup> For instance, section 6 RoP of the Bavarian State Government; section 21 (4) RoP of Brandenburg; section 10 RoP of the Hamburg Senate; sections 58 and 67 RoP of Hesse (version until 27 June 2016) and sections 37 and 44 RoP of Hessen (version since 28 June 2016); section 4 (4) RoP II of Mecklenburg-Western Pomerania; sections 40 and 41 RoP of Lower Saxony; section 36 RoP of North Rhine-Westphalia; section 8 (2) RoP of the Bremen Senate; section 29 RoP of Rhineland-Palatinate; section 12a (1) RoP of the Government of Saarland; No. 4 (b) of the Administrative Provision of the Saxon State Government on the Issuance of Legal Provisions and Administrative Provisions; section 10a RoP of the Government of Schleswig-Holstein; section 24 RoP of Thuringia; cf. also Number 4.4 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, stipulating that planned legislation must also be examined in terms of its impact on social change, e.g. on integration of people from immigrant backgrounds. In Berlin, the Senate Administration for Justice, Consumer Protection and Anti-Discrimination conducts the relevant examination as standard practice during the joint approval procedure under section 10 (3) and (4) and section 39 RoP II.

#### 4. Article 2 para. 1 (e)

21. Fighting racism is a major foreign-policy concern (a). In 2017, the Federal Government adopted a newly-revised NAP against racism (b). Additionally, civil society organisations which oppose racism are supported (c).

##### *Combating racism in foreign relations*

22. Combating racism is part of Germany's foreign policy on human rights. This is served not only by various human-rights projects but also by a large number of other instruments including human-rights dialogues and démarches, high-profile statements and quiet diplomacy, cultural initiatives and outreach.

23. The Federal Government financially supports OHCHR's work to combat racism, including with annual voluntary contributions. Germany also financially supports projects gathering information on the fight against racism – e.g. OHCHR's Anti-Discrimination Database launched in September 2013.

24. The Federal Government maintains constant dialogue with ECRI (CoE). An ECRI delegation visited Germany during its 5th evaluation round in March 2013 and published its report on 25 February 2014. Subsequently on 14 March 2016, the Federal Government submitted its statement on implementation of the two recommendations necessitating follow-up. ECRI published a statement in response on 28 February 2017, thereby bringing the 5th evaluation round to a close. Dialogue continues with the 6th evaluation round and will be covered in Germany's next report.

25. In January 2014, Germany furthermore presented its 4th report on the CoE Framework Convention for the Protection of National Minorities (published on BMI's website)<sup>7</sup>. In response, CoE's Committee of Ministers published recommendations in February 2016, commented upon by the Federal Government in 2017, bringing the 4th evaluation cycle under the Convention to a conclusion. The 5th report will be covered in Germany's next ICERD report.

26. The OSCE has significantly stepped up activities to combat racist discrimination in recent years. Germany held OSCE Chairmanship in 2016 and marked the occasion by having DIMR conduct an independent review of the implementation of OSCE human-rights and democracy commitments in Germany. One major focus of this 'self-assessment' was the fight against discrimination and hate crime. Germany thus followed Switzerland and Serbia, which first conducted such 'self-assessments' during their OSCE Chairmanships in 2014 and 2015. This type of voluntary reporting mechanism is to be established as good practice for the country holding OSCE Chairmanship. DIMR's report was commented by the Federal Government and civil society. The report and commentaries can be downloaded from DIMR's website in German and English.

27. Germany also works to counter racism in its bilateral relations. The FFO regularly assigns funds to projects tackling racism. In 2017, e.g., funding went to a Ukrainian NGO project documenting hostile news items attacking minorities in the Ukrainian media. It supplies insights to authorities and educates journalists about tolerant and non-discriminatory reporting. Furthermore, FFO-supported Holocaust-remembrance projects combat anti-Semitism, racism and anti-Gypsyism. One currently-funded project involves building a digital archive of Europe-wide eye-witness accounts by Sinti and Roma of Nazi persecution. With discussion events in various European cities, the project raises awareness about contemporary discrimination of Sinti and Roma. BMZ also funds projects fighting discrimination and racism abroad. Between March 2017 and December 2018, e.g., the Open Regional Fund for South-East Europe was used to develop an optional course on anti-discrimination law for university law faculties and enhance regional interaction among equality authorities. In 2015/2016, this Fund helped strengthen state anti-discrimination agencies in protecting against discrimination and supported the incorporation of anti-discrimination into legal training. Via the 'Civil Peace Service', BMZ also supported projects to promote dialogue and reduce prejudice and discrimination in Kenya, Cambodia, the Palestinian territories and Guatemala during the reporting period.

<sup>7</sup> [www.bmi.bund.de](http://www.bmi.bund.de).

28. The Federal Government still considers it inappropriate to sign and ratify the 1990 UN Migrant Workers Convention (concluding observation 22). The primary reasons for Germany's position were expressed in 1990 in a declaration submitted upon the Convention's adoption by UNGA, and these still apply. For example, in the Federal Government's view, the term 'migrant worker' as used in the Convention is not sufficiently precise. It includes persons who are in Germany informally and employed without authorisation. Their position is protected far beyond the non-contentious need to grant them full human rights. Furthermore, the Federal Government strives to intensify the fight against illegal employment, and existing residence law is to be used to combat illegal migration. Moreover, migrant workers' rights were strengthened with national transposition of the EU Employer Sanctions Directive 2009/52/EC. Thus, no plans exist to ratify the Convention. However, the Federal Government believes that migration should take place within a safe, orderly and regular framework. This is why it actively supports the Global Compact for Migration process, designed to improve legal migration options.

#### **Priority issue: 2017 NAP**

29. On 14 June 2017, the Federal Cabinet adopted the new NAP against racism, which also contains a descriptive account of the extensive activities undertaken by the *Länder* (see Annex 3 and BMI's website<sup>8</sup>). When authoring the NAP, the Federal Government placed great importance on consultations with civil-society initiatives and NGOs, considering their position papers as far as possible in drafting. Further consultations with civil society regarding the NAP's ongoing implementation are planned for spring 2020.

30. The NAP was entirely redrafted following the 2009 Durban Review Conference and reflects the Conference's objectives, making reference to the relevant UN context (concluding observation 20). Continued pursuit of NAP plans lies with the 'Promoting Democracy and Preventing Extremism' interdepartmental working group led by BMI and BMFSFJ.

31. The NAP was completely restructured during the redrafting process, allowing key issues and positions to be considered in light of changing social realities and enabling discourses and developments at national and international levels to be taken into account. Entire NAP sections are dedicated to selected group-focused hostilities and discrimination. The selected areas have particular socio-political significance: anti-Semitism, anti-Gypsyism, Islamophobia, racism against black people, and now also homophobia and transphobia (concluding observation 16). Intersectionality is addressed as a cross-cutting phenomenon with particular emphasis on women and LGBTI. The starting point for this NAP was a 2017 IKG report on disparaging attitudes and discriminatory prejudices in German society produced for BMI. A summary of the report is attached to the NAP as Annex III.

32. The NAP's main focus is on the Federal Government's positions and the measures it has taken or will take in the following areas: human-rights policy; protection against discrimination and prosecution of criminal offences; (civic) education; social and political commitment to democracy and equality; diversity at work, training and strengthening intercultural and social skills; racism and hatred online; research.

33. Further details of the NAP's messages and objectives can be found in relevant sections throughout this report.

#### **Promoting civil-society initiatives against racism**

34. Involving civil society is a vital part of fighting racist discrimination. The overview of programmes and measures given below is merely a glimpse of the support provided by civil society (exhaustive lists are impossible within the bounds of this report). For details of the programmes mentioned, see the NAP.

35. Via the federal programme 'Living democracy!' (launched in 2015; budget: €40.5 million in 2015; increased to €50.5 million in 2016; €104.5 million in 2017; €120.5 million in 2018) run by BMFSFJ, the Federal Government supports civil-society initiatives and democratic behaviour at municipal, regional and national level. The federal programme

---

<sup>8</sup> [https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2018/nap-en.pdf?\\_\\_blob=publicationFile&v=4](https://www.bmi.bund.de/SharedDocs/downloads/EN/publikationen/2018/nap-en.pdf?__blob=publicationFile&v=4).

supports more than 600 programmes tackling violence, hatred, radicalisation, right-wing extremism, racism, anti-Semitism, Islamic extremism and other forms of anti-democratic behaviour and hostility e.g. homophobia and transphobia.

36. Via the federal programme ‘Social cohesion through participation’, BMI supports associations and clubs throughout Germany to ensure the work of their volunteers and staff matches the values of our free democratic system. Within the associated projects, members promote democratic participation and prevent extremism, racism and racist prejudices in rural and structurally weak regions, using existing civic-engagement structures. Since 2016, the programme has had a budget of €12 million p.a. (€6 million p.a. before 2016).

37. Since 1990, BMBF has funded the programme ‘Acting democratically’ – a nationwide competition to strengthen democratic attitudes and democratic culture in everyday schooling and youth work.

38. Launched at federal level in 1998, the ‘Forum Against Racism’ is an internal discussion platform enabling NGOs and the Federal Government to share ideas about racism and ideologies of inequality. Important consultations were held here with key civil-society initiatives in drafting the NAP.

39. The ‘XENOS – Integration and Diversity’ programme (2nd funding phase from 2012 to 2014) supported measures against exclusion and discrimination in the transition between school, training and the workplace. XENOS was part of the Federal Government’s NIAP and was funded by BMAS and the ESF (€30 million and €70 million respectively). Special focus was on juveniles and young adults with and without immigrant backgrounds who face disadvantages in accessing education, training and jobs. XENOS provided access to special qualifications and strengthened structures to reduce discriminatory and racist attitudes, in particular supporting migrants entering the labour market and sustainably integrating into society. In the 2nd funding phase, XENOS was academically evaluated by the DJI from early 2012 to late 2014.

40. Via the new programme ‘Youth remembers’, the Federal Government strengthens educational work at Holocaust memorial sites and documentation centres by helping these develop and permanently establish innovative educational approaches. The goal is for young people to develop a critical awareness of history and engage with issues of contemporary relevance, developing an appreciation e.g. for the value of democracy and rule of law. This aims to combat discrimination, racism, right-wing extremism, anti-Semitism and anti-Gypsyism.

41. Additionally, numerous projects are organised by *Länder* and local authorities to strengthen civil society and fight racism and discrimination<sup>9</sup>. Comprehensive documentation of *Länder* activities (compiled by the *Länder* themselves) is attached to the NAP as Annex 3.

## 5. Article 2 para. 2

### Priority issue: Collection of population data

42. Concluding observation 6 on the most recent ICERD report – which again calls upon Germany to expand production of population-composition statistics, enabling racist discrimination to be identified and countered – is taken very seriously by the Federal Government. As stated in the last report, Germany has not collected any comprehensive demographic and socio-economic statistics on an ethnic basis since the end of WW2. This is partly due to Germany’s historical experience, in particular the persecution of minorities under National Socialism. Given this historical context, Germany will continue to refrain from gathering comprehensive ethnic data for its official statistics. To ensure that a sufficiently broad statistical basis is nevertheless available to analyse population composition and participation in German society, Germany takes a two-track approach. First, the criteria used in official population statistics to record immigrant background have been refined (margin no. 43 below); second, the Federal Government and *Länder* are currently encouraging different approaches exploring options for gathering additional data on a voluntary basis (margin nos. 44 et seq.).

<sup>9</sup> Cf. *Länder* examples of promoting civil-society initiatives against racism, Annex 4.

43. The main data sources for official German population statistics are the census (last carried out in 2011) and annual micro-census. In both surveys, respondents are obliged to provide information. When the MZG was reformed in 2016,<sup>10</sup> the criterion of ‘Nationality and Immigrant Background’ (section 6 (1) no. 4 MZG) was changed to allow much greater differentiation. As a result, individuals from immigrant backgrounds can now be differentiated according to their own and their parents’ country of birth. In future, the main reason for immigration must also be stated (e.g. academic studies, vocational training, family reunification, flight, asylum, employment). Using immigration reasons and qualifications/employment data (also in the micro-census), conclusions can be drawn about integration processes and participation in German society. The micro-census now also records the languages primarily spoken in each household, thereby enabling a more nuanced analysis of integration levels. Additionally, to obtain better data about the overall population with an immigrant background, persons born with German nationality are asked to provide information about parents no longer living in their household.

44. The Federal Government is aware that members of society can still suffer racist discrimination even if they do not fulfil the statistical criterion of having an ‘immigrant background’ – i.e. if they are not first or second-generation immigrants.<sup>11</sup> Research can play an important role in helping identify these groups, who also potentially experience racist discrimination – e.g. by gathering empirical data on a voluntary basis. This is why the Federal Government announced in the NAP that it will examine whether discussions with civil society can help identify an additional need for research on individual social groups.<sup>12</sup> One example of dialogue with the research community and civil society was the ‘Measuring the Immigration Society’ conference hosted jointly in December 2015 by the Federal Government Commissioner for Migration, Integration and Refugees, BIM and Berlin’s Humboldt University.<sup>13</sup>

45. Another new approach to gathering data is taken by the ‘Experiences of Discrimination in Germany’ study compiled by ADS and BIM. The results were presented in 2017 to the general public and – through submission to the Bundestag – to policymakers. The study is based on two surveys from autumn 2015. The first survey included a representative section of the population while the second survey involved people who had been directly affected by discrimination themselves or had witnessed it happening to others. In both surveys, the focus was on discrimination experienced by respondents over the last 24 months in Germany. The two surveys were designed to complement one another – any methodological shortcomings in one approach (e.g. limited representativeness and obvious subjectivity inherent in only surveying affected people) would be compensated by the strengths of the other.<sup>14</sup>

46. A 2017 study by Berlin-based NGO Citizens for Europe entitled ‘Diversity in public institutions – experiences and competencies at management level’<sup>15</sup> provides a concrete example of how public administrations in Germany can utilise new research approaches towards data collection. The study received support from the City of Berlin’s Integration Commissioner and LADS. It set out to examine how racist discrimination and the identity of potentially affected groups can be captured more accurately in the data. A voluntary online questionnaire was developed and tested (pilot). To enable a statistical picture of racist discrimination, participants were asked how they described their own ‘ethnic origin’ and how others described it, how frequently they experienced discrimination and what they believed the reasons were. The study reveals how managerial staff in Berlin’s public

<sup>10</sup> MZG, Federal Law Gazette 2016 I No. 59, p. 2826 et seqq.

<sup>11</sup> Although the term ‘immigrant background’ is controversial within German socio-political discourse and requires critical reflection, it continues to be widely used in official documents. The concept will therefore be mentioned frequently in this report. But where measures for ‘people from immigrant backgrounds’ are described in this report, the concept should be understood more broadly than its definition in the population-statistics context.

<sup>12</sup> NAP, p. 46.

<sup>13</sup> <https://www.bim.hu-berlin.de/de/veranstaltungen/2015/12/02/11-00/tagung-vermessung-der-einwanderungsgesellschaft/>.

<sup>14</sup> For more details, see: [https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/BT\\_Bericht/Gemeinsamer\\_Bericht\\_dritter\\_2017.html](https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/BT_Bericht/Gemeinsamer_Bericht_dritter_2017.html), section 1.5, p. 204 et seqq.

<sup>15</sup> For more details, see the study at: <http://vielfaltentscheidet.de/publikationen>.

institutions are shaping diversity and equality within their remits, and offers concrete recommendations for improvements in this area.<sup>16</sup>

47. Also mention-worthy is the multi-topic survey published every two years by ZFTI on behalf of the NRW Integration Ministry. The representative bilingual telephone survey of 1,000 persons of Turkish origin aged 18 and over in NRW – extended to 1,000 in other *Länder* in 2017 – comprises a standard survey of political perceptions and cognitive, economic, societal and identificational participation, combined with an annual focus on specific or current issues. Comparisons can be drawn over time to identify trends/developments. Empirical links are revealed between different issues. This exposes valuable correlations for identifying key conditions for successful inclusion processes and pragmatic integration policies. Both surveys centre around discrimination and perceptions thereof among people of Turkish origin. The results inform the *Land* government's political decision-making.

### Protection of individual population groups

#### *Sinti and Roma in Germany*

48. Sinti and Roma in Germany – like the Danish, Friesian and Sorbian communities – have been recognised by Germany's legislature as a national minority pursuant to the FCNM (margin no. 25 above). Furthermore, measures to improve the situation of Roma in Europe initiated under Hungarian Council Presidency ('EU Roma Strategy')<sup>17</sup> are implemented in Germany with integrated policy packages (concluding observation 17). The Federal Government presented the European Commission with an extensive report on this subject in 2011 and has since provided annual progress reports on implementation. These describe measures by the Federation, *Länder* and municipalities to eliminate discrimination in all areas listed in concluding observation 17 on the last report, and beyond.

49. Since 2015, the federal programme 'Living democracy!' has funded various local, regional and national measures taking a preventive, educational approach to anti-Gypsyism.<sup>18</sup> Alongside local measures via 'Partnerships for Democracy', emphasis is on supporting the Documentation and Cultural Centre of German Sinti and Roma to develop structurally and operate nationwide. The Centre is part of a nationwide effort to expand historical and political awareness of anti-Gypsyism. It runs empowerment projects to strengthen the position of Sinti and Roma in society. Furthermore, nine pilot-projects run by organisations across the country are currently funded to develop and test innovative methodological and educational approaches towards preventing anti-Gypsyism. Funding is also provided to Democracy Centres in each *Land*, offering counselling to victims of right-wing, racist, anti-Gypsy and anti-Semitic violence. Such establishment of civil-society victim-counselling facilities follows recommendations by the NSU Committee of Inquiry.<sup>19</sup>

50. The Memorial to the Sinti and Roma Victims of National Socialism was erected with federal funding and was opened in Berlin on 24 October 2012. The Federal Government strives to raise awareness about the genocide perpetrated against Sinti and Roma. To commemorate the fifth anniversary of the monument's inauguration, a nationwide conference 'Every day is Roma day – Dialogue between politics, authorities and educational history in Germany' was held on 22 November 2017 using funds from the 'Living democracy!' federal programme. For details of other measures, see the latest progress report.<sup>20</sup>

<sup>16</sup> For more details, see the study at: <http://vielfaltentscheidet.de/publikationen>.

<sup>17</sup> Commission Communication of 5 April 2011; Council conclusions of the Employment, Social Policy, Health and Consumer Affairs Council meeting of 19 May 2011 and approval by the European Council on 23/24 June 2011.

<sup>18</sup> <https://www.demokratie-leben.de/>.

<sup>19</sup> On *Länder* victim-counselling projects, see Annex 15.

<sup>20</sup> E.g. the 2017 progress report for the year 2016 is available at: <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/heimat-integration/minderheiten/umsetzung-2016-strategie-integration-roma.html>.

51. Some *Länder* have additionally signed framework agreements with their respective *Land* Association of the Central Council of German Sinti and Roma,<sup>21</sup> while other *Länder* are working towards such agreements (margin no. 33 of the last report).

52. Finally, the independent Expert Commission on Anti-Gypsyism convened at BMI on 27 March 2019 under Federal-Government plans for the current parliamentary term. Its mandate/activities will be addressed in Germany's next periodic report.

#### *Jewish community in Germany*

53. Germany's Jewish community defines itself as a community of faith, even if not all Jews belong to religious organisations. Today, Germany's Jewish community comprises some 98,500 individuals. Most local communities (105) are represented politically by the ZdJ which receives a contractually agreed sum of support from the Federation each year for its national mandate and other activities. The UpJ represents an additional 27 Jewish communities ascribing to a liberal-progressive form of Judaism. Apart from contractually-agreed ZdJ funding, the Federation also promotes Jewish life in Germany via institutional and project funding. Freedom of religion applies to all Jewish organisations, as it does to Germany's other religious communities (Article 4 GG, Article 9 ECHR and Article 18 ICCPR). Religious communities, *Land* associations and Central Councils in each *Land* are furthermore recognised as public-law corporations. This affords special constitutional status conferring privileges e.g. exemption from certain taxes/levies. Relations between *Land* community associations and the *Länder* themselves are governed by contracts which include regular funding for the associations.

54. Surveys indicate a latently anti-Semitic mindset in around 20% of Germans across all sectors of society including the 'centre'. However, anti-Semitism not only impacts the relatively small number of Jewish people living in Germany and Jewish tourists. It threatens society as a whole: it opens the door to other types of group-focused hostility, targets not only Jews but those perceived as being Jewish or 'Jewish-friendly', and entails an anti-modern and anti-democratic world-view. Correspondingly, there is an observable tendency towards brutalisation and decreased sensitivity – especially in language.

55. Furthermore, anti-Semitic crimes are an ongoing occurrence, rising almost 20% between 2017 and 2018 (2018: 1,799; 2017: 1,507; 2016: 1,468). Albeit outside the reporting period, the Halle attacks of 9 October 2019 must be mentioned. The Federal Government utterly condemns these crimes and shares the concerns of Jewish organisations following these events. Isolated anti-Semitic incidents in the first half of 2018 – e.g. the Syrian who attacked a man wearing a kippa in Berlin – drew widespread media attention and fuelled concerns that Muslim and anti-Israeli forms of anti-Semitism had significantly increased following the influx of refugees. However, BKA statistics on politically-motivated crime do not confirm such trend. Of 1,799 anti-Semitic offences committed in Germany in 2018, almost 90% (1,603 offences) were motivated by right-wing ideology.

56. Because of its history, Germany bears special responsibility towards its Jewish population. The fight against anti-Semitism in all forms is a Federal Government priority. In January 2015, an Independent Expert Committee on Anti-Semitism convened for the second time with the support of all parliamentary groups then in the Bundestag. It presented a report (including recommendations for action) which was discussed in the Federal Cabinet on 29 March 2017 and submitted to parliament for further consideration.<sup>22</sup> The report highlights diverse manifestations of anti-Semitism in different social contexts, examines perceptions of anti-Semitism from the Jewish perspective, and outlines efforts by the state and civil society to combat and prevent anti-Semitism, while also emphasising limitations and shortcomings. The recommendations have produced political debate in Germany.

57. The Expert Committee also highlighted the importance of the 'Living democracy!' federal programme's educational and preventive approaches to combating anti-Semitism.<sup>23</sup> Different measures primarily addressing contemporary forms of anti-Semitism are funded,

<sup>21</sup> E.g. Baden-Württemberg, Brandenburg, Hesse and Thuringia.

<sup>22</sup> Report at: <https://www.bmi.bund.de/DE/themen/gesellschaft-integration/gesellschaftlicher-zusammenhalt/expertenkreis-antisemitismus/expertenkreis-antisemitismus-artikel.html>.

<sup>23</sup> Ibid., footnote 22, page 220.

fostering sustainable structures within civil society and supporting pilot projects. Three organisations fighting anti-Semitism locally and receiving programme funds to expand their activities at federal level deserve special mention: (1) the Anne Frank Centre (for historical and political education), (2) the Kreuzberg Initiative against Anti-Semitism (for a society open to immigration) and (3) the Central Welfare Office of Jews in Germany (for raising critical awareness about anti-Semitism and empowering the Jewish community). RIAS – which monitors anti-Semitic incidents and offers victim support – is funded by the federal programme and Berlin’s regional programme ‘Democracy. Diversity. Respect. Against right-wing extremism, racism and anti-Semitism’. The annual ‘Campaign weeks against anti-Semitism’, the similarly annual ‘Viewpoint Conference’, and various individual measures (including through local ‘Partnerships for Democracy’) also receive funding. Twenty pilot projects by different organisations developing and testing innovative methodological and educational approaches/work-forms in anti-Semitism prevention are currently being funded throughout Germany. Eleven more funded pilot projects prevent anti-Semitism in other areas, e.g. ‘Activism and diversity in the professional and corporate world’, ‘Promoting democracy in education’, ‘Living together in a country of immigration’ and ‘Strengthening online activism – combating hate online’.

58. One of the Expert Committee’s key demands was implemented during this parliamentary term: on 1 May 2018, Ambassador Felix Klein was appointed as Federal Government Commissioner for Jewish Life in Germany and the Fight against Anti-Semitism, thereby delivering on a commitment from the 2018 Coalition Agreement.

59. Working interdepartmentally, the Commissioner coordinates Federal-Government measures combating anti-Semitism. Additionally, the Commissioner serves as POC for Jewish groups and community organisations, and acts as intermediary between Federation, *Länder* and civil society in their efforts to fight anti-Semitism. The Commissioner also coordinates a Federation-*Länder* standing committee with representatives of the competent bodies and helps raise awareness about current and historical forms of anti-Semitism via outreach and civic/cultural education.

60. Commissioners have also been appointed in individual *Länder*. In Baden-Württemberg, Michael Blume took office as ‘Commissioner against anti-Semitism’ on 19 March 2018. By decision of the Berlin House of Representatives on 31 May 2018, Berlin committed to developing a regional concept for anti-Semitism prevention involving Jewish organisations and civil society. Furthermore, on 1 September 2018 an Anti-Semitism Commissioner was established at Berlin Prosecutor-General’s Office. Since first being appointed in May 2018, Bavaria’s Commissioner for Jewish Life and against anti-Semitism, for Remembrance and Historical Heritage has served as an intermediary between civil society and state government, unbureaucratically boosting and supporting governmental action against anti-Semitism.

61. On 20 September 2017, the Federal Government adopted IHRA’s anti-Semitism definition in expanded form.<sup>24</sup> Although this definition is not legally binding, its political endorsement by the Federal Government underlines the latter’s resolute commitment to fighting all forms of anti-Semitism. The expanded working definition must be given particular consideration in school and adult education, and in training for members of the justice system and administration.

#### *Muslims in Germany*

62. There were between 4.4 and 4.7 million Muslims living in Germany as of 31 December 2015, representing 5.4%–5.7% of the entire population of 82.2 million. Another approx. 1.2 million Muslims came to Germany between 2011 and 2015. The proportion of Muslims with Turkish immigrant background fell from 67.5% (2011) to 50.6% (2015). While Turkey remains the most significant country of origin, half the Muslim population comes from another country. The new Muslim immigrants are largely from regions not strongly represented so far in Germany: Middle East, South/Southeast Asia and Southeast Europe. By contrast, most Muslims with Turkish background have been living in Germany for some time.

<sup>24</sup> ‘Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.’

63. Muslim life in Germany is diverse in terms of religious denomination, religious adherence, religious practice and country of origin. There are no current statistics on the denominations of Muslims in Germany. According to BAMF's 'Muslim life in Germany' study from 2009, the largest denomination was Sunni by a considerable margin (approx. 75%), followed by Alevi (approx. 13%) and Shia (approx. 7%). No uniform Islam-wide organisational structure exists, nor is there a uniform umbrella association to speak on behalf of all groups. Most Islamic associations have the legal status of registered associations. In 2012, there were 2,350 Islamic communities in Germany. More recent figures are not available.

64. Muslims in Germany do not form a homogeneous ethnic group. The element uniting them is their affiliation with the Islamic faith. Muslims are at risk of or experience discrimination not only because of their largely immigrant backgrounds but also due to their religion. Aside from attacks on mosques, numerous studies indicate the existence of scepticism towards people of Muslim faith, right through to open rejection.<sup>25</sup>

65. The Federation and *Länder* regard dialogue with Muslims in Germany as key to their integration policy. With the DIK, established in 2006, BMI set up a sustainable and institutionalised dialogue between the state (Federation, *Länder* and municipalities) and representatives of Muslims in Germany. This aims to improve the integration of Muslims in Germany both institutionally (under religious-communities law) and in society. Furthermore, dialogue within DIK serves to improve relations between Muslims and the majority population. DIK's output includes various recommendations e.g. proposals for more nuanced and non-prejudicial media reporting on Muslims and Islam, for introducing Islamic religious instruction as a standard subject at schools, for establishing Islamic theology at universities, on building and operating mosques in Germany, on Islamic burials, and on reconciling issues of religious practice with everyday school-life. DIK has also focused on imam training, gender equality, Islamophobia prevention and anti-Semitism prevention among people of Muslim faith.

66. During the last parliamentary term, DIK compiled recommendations on spiritual guidance in state-run institutions and on Muslim welfare services. This shows Muslims are fully at home in Germany and their social participation is welcome and normal. That includes making use of social services such as childcare and care for the elderly. One DIK outcome was several Muslim organisations joining forces with the 'Islamic Competence Centre for Welfare' association in autumn 2016 to promote Islamic welfare services. In the current phase, DIK will address the integration of newly-arrived immigrants of Muslim faith.

67. Building on recommendations by DIK (2009) and the Wissenschaftsrat (2010), University Centres for Islamic Theology have been established in Erlangen-Nuremberg, Frankfurt-Gießen, Münster, Osnabrück and Tübingen. Some €36 million in BMBF funding is providing for these five centres over ten years and another €8 million is available to foster networks between them and promoting exchange with academia and the general public.

68. Furthermore, in 2010 the 'Prevention work with young people' workstream was established within DIK for the universal prevention of Islamophobia, anti-Semitism and Islamism (as a form of religion-based extremism among Muslims). This aimed to provide practical support to those engaged in universal prevention work, especially with young people. The results were incorporated into the conceptual design of the 'Living democracy!' federal programme. For example, Islamophobia and anti-Muslim hatred were included in the federal programme as a separate topic in 2015. The pilot-projects funded by the federal programme develop and test practical educational strategies to prevent Islamophobia and empower those affected.

#### *Black people in Germany*

69. Being a visible minority, black people are particularly vulnerable to racism. The black community is estimated to consist of between at least 200,000 and 300,000 individuals. Please refer to the information on statistics in margin numbers 42 et seqq. for more details.

<sup>25</sup> See IKG study in Annex III to the NAP.

70. The Federal Government has taken the International Decade for People of African Descent (2015–2024) as an opportunity to increase scrutiny of racism against black Germans and initiate counter-measures (concluding observation 21).

71. In Germany, the International Decade was launched with a June 2016 event at BMFSFJ, hosted by ADS and organised in collaboration with the Central Council of the African Community and ‘Engagement Global’. The Decade’s launch was initiated by civil-society organisations. The conference ‘Human rights in practice: Experiences of people of African descent in Germany’ was held in the presence of OHCHR with a keynote by Karamba Diaby, Member of the German Bundestag.

72. To implement the Decade’s goals, various measures and events will continue to receive support in future – particularly via BMFSFJ’s ‘Living democracy!’ federal programme. One good example is the EOTO association, which since 2017 has received support for its structural transformation to become a central organisation within the ‘Living democracy!’ programme. EOTO is a community-based education and empowerment project in Berlin which strives to provide black people (especially black children and youth) with better access to education. One example of support for a pilot-project to counter group-focused hostility is the funding provided to NARUD, a project to counter discrimination and racism, report on incidents and enhance intercultural openness in society. Using educational measures, the pilot empowers victims and other potentially affected persons and promotes civil courage and diversity awareness in neighbourhoods. Project findings are collected and processed in an affiliated competence centre. Findings will be published in a handbook, and relevant and updated information on anti-discrimination released for dissemination via smartphone. Another example is the project ‘African dialogue – networking and professionalisation of self-organised African immigrant groups in NRW’ run by the NRW Parent Network – Integration Together.

73. The new NAP, adopted by the Federal Cabinet in June 2017, references anti-black racism as a phenomenon of group-focused hostility for the first time.

74. The *Länder* have likewise taken the International Decade for People of African Descent as an opportunity to initiate various measures. The *Land* of Berlin, e.g., explicitly mentions implementation of the UN Decade in its Coalition Agreement and highly emphasises cooperation with self-organised groups. In February 2018, a consultation process with self-organised groups was launched on how to increase visibility and record the discrimination of people of African descent. This process is intersectional and examines various areas including education, justice, police, housing, employment and culture. The process is coordinated and monitored academically by the Diversifying Matters team at the association ‘Generation Adefra’. In Saxony, efforts for and by people of African descent are promoted via the ‘Integrative Measures’ programme, e.g. supporting the youth club ‘Spike’ (Altstrehlen 1) as well as the Afropa association and the Center for African Socioeconomic Enhancement and Educational Development.

75. WGEPAD visited Germany in February 2017. The Federal Government supported the visit by organising an extensive programme taking in different *Länder*. On 15 August 2017, WGEPAD submitted its visit report,<sup>26</sup> and the Federal Government responded with a statement on 21 August 2017.<sup>27</sup> The report’s recommendations have fed into the discussion on future measures to combat discrimination of people of African descent.

#### *Intersectional discrimination*

76. Intersectionality refers to the combined impact of different forms of discrimination. Multiple discrimination can affect individuals who belong (or are assumed to belong) to more than one group. This can occur when, e.g., sexist and racist discrimination overlap. Because intersecting forms of discrimination can influence and reinforce one another, they amount to more than just the sum of all forms put together. The Federal Government therefore considers it particularly necessary to regard the impact of racist and sexist discrimination – e.g. against women, people from immigrant backgrounds, and LGBTI –

<sup>26</sup> WGEPAD report: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/238/67/PDF/G1723867.pdf>.

<sup>27</sup> Federal Government response: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/242/77/PDF/G1724277.pdf>.

through the framework of intersectionality (concluding observation 16). The NAP thus deliberately takes an intersectional viewpoint and has introduced a new section on measures to combat homophobia and transphobia.<sup>28</sup>

77. One of the Federal Government's objectives as defined in the NAP is to raise public awareness about intersectionality (concluding observation 16).<sup>29</sup> Furthermore, multiple discrimination and intersectionality are to receive greater attention in research.<sup>30</sup> For example, BMI is currently analysing data collected by the ADS study 'Experiences of Discrimination in Germany' (margin no. 45 above) regarding experiences of discrimination on grounds of sexual identity, with emphasis on intersectional discrimination.

78. BMH also runs a special project addressing intersectionality. BMH's mission is to promote education, science and research to counter societal discrimination against persons who are lesbian, gay, bisexual, transgender, intersex or queer. Its project 'Refugees and Queers: Political Education at the Interface of LGBTTIQ and Flight/Migration/Asylum' has run since 2016. This BMH-run training and networks project targets multipliers involved in educational work at this interface. Numerous LGBTTIQ organisations, initiatives and institutions have begun developing support strategies to properly address the complex realities and multiple discrimination faced by LGBTTIQ refugees. And many queer refugees have either set up their own initiatives or become actively involved (on a voluntary or professional basis) in existing LGBTTIQ organisations. Building on that, the project aims to foster nationwide networks of individuals/projects/initiatives involved in educational work at the interface between LGBTTIQ and flight/migration/asylum, and to develop training formats tailored to specific needs. Since the project began, numerous workshops, network meetings, training courses and a conference have taken place.

79. Intersectionality also plays an important role at *Land* level, as evidenced by a broad range of projects and initiatives.<sup>31</sup>

## C. Article 3

### Housing market and infrastructure in integration policy

80. German integration policy aims to effectively counter social, ethnic and economic segregation. Approximately 18.6 million people with immigrant backgrounds live in Germany, many in urban areas. In certain major cities, some 30% of the current population has an immigrant background.

81. Residential environments and public spaces, public and private infrastructure and housing provide an important framework for social coexistence and successful integration.

82. Localities with a blend of population groups have a long tradition in Germany. Social stability in local neighbourhoods is best ensured with a blend, e.g. younger/older residents, households with higher/lower incomes. Social housing makes a significant contribution to this. Care is taken during initial planning and when funding is granted to ensure that social housing is distributed throughout an urban area to avoid segregation. Socially-stable residential structures also play a role in allocating these subsidised homes.

83. Problematic social structures within individual neighbourhoods can be avoided or remedied if care is taken when allocating housing that, at least to a certain degree, there is blend of population groups. A precondition for this, however, is a certain latitude in selecting tenants. Creating such latitude is the goal of the exception clause in section 19 (3) AGG. While the AGG ensures equal treatment in selecting tenants, this provision allows population groups to be treated differently when allocating housing if necessary to create socially-stable residential structures and balanced housing estates, as well as balanced economic, social and cultural environments. It does not allow discriminatory practices in procuring or leasing residential property; rather, it serves to strengthen social cohesion and – subject to strict conditions – aims at preventing ghetto-formation and ethnic marginalisation, thereby averting living environments that could have negative effects on

<sup>28</sup> See NAP, Chapters 3.1.5 and 3.1.6, p. 12 et seq.

<sup>29</sup> See NAP, Chapter 6, p. 37.

<sup>30</sup> See NAP, Chapter 6, p. 44.

<sup>31</sup> For *Länder* intersectionality examples, see Annex 5.

current or future residents. It cannot be used to justify an underrepresentation of certain groups. Indeed, section 19 (3) AGG serves the idea of the European city in the sense of integration and coexistence of cultures without mutual marginalisation (cf. Bundestag printed matter 16/1780, p. 22).

84. Independently of individual neighbourhood residential structures, discrimination against population groups with immigrant backgrounds has been proven in studies, specifically in urban areas with high influx. In this sense, discrimination is not limited to equal access to residential space; rather, it must be understood more broadly to include rental conditions, housing quality, neighbourly coexistence, and neighbourhood participation opportunities. The *Land* of Berlin has reacted to this issue by establishing ‘Rent fairly – live fairly’, an office offering advice and fostering networks to establish a culture of discrimination-free rental in Berlin.

85. Combining urban, economic, social and ecological policies, urban development assistance at federal and *Länder* level plays a particularly prominent role in fostering integration of people from immigrant backgrounds – especially the ‘Social City’ programme. This programme supports cities in creating liveable neighbourhoods, promoting integration and neighbourly coexistence. The *Länder* and municipalities are responsible for implementation, and hence for selecting neighbourhoods. This guarantees that decisions on where demand lies are taken locally. Investments in neighbourhood centres, improving the living environment, neighbourhood management and fostering networks, for example, are important for socially just neighbourhoods and improve integration of newcomers. As a core social-integration programme within the scope of urban development assistance, the ‘Social City’ programme is ongoing and underpins the ‘Inter-Departmental Strategy for a Social City’ adopted in 2016. With the latter, neighbourhoods with significant integration requirements are given more targeted support by bundling funds from other departments locally and coordinating them more effectively. To date, 891 ‘overall measures’ in 513 cities and municipalities have been included in the Federation-*Länder* programme.<sup>32</sup> Funding of €190 million was provided in 2018.

86. The Federation and *Länder* also support the integration of people with immigrant backgrounds via the 2017 ‘Social Integration in Neighbourhoods’ investment compact. This programme strengthens social integration and societal cohesion in cities and communities to enable all population groups to participate in public life. The investments transform community organisations into places of social integration and cohesion. An annual budget of €200 million was allocated for this purpose between 2017 and 2020.

87. The anti-discrimination office in Saxony conducted a study on racist discrimination in Saxony’s residential market, testing for concealed discrimination. In the test, at least two individuals comparable on all points relevant for a decision were put in the same situation. They differed only in terms of a single characteristic, which would potentially make them vulnerable to discrimination. Comparing social situations – in this case looking for an apartment – allows an analysis of how discrimination occurs and of its (qualitative) impact. Especially by including anonymised assessments of case files held by anti-discrimination counselling services, this type of study enables more precise capturing of the ‘how’ of discrimination and allows more targeted action by administrations. The study resulted in a finding<sup>33</sup> that discrimination was clearly present in 60% of cases; 22.5% of the cases could not be assessed, and no discrimination took place in 17.5% of cases. The anti-discrimination office also gleaned recommendations for action from the results.

#### **Accommodation of asylum seekers and persons required to leave the country**

88. Section 47 (1) AsylG generally obligates asylum seekers to live in the accommodation they are assigned to for a maximum term of six months.<sup>34</sup> A rule applicable only to asylum seekers from safe countries of origin is that they are generally obligated to live in the accommodation they are assigned to (section 47 (1a) AsylG) until BAMF decides on their asylum application and, if the latter is rejected as manifestly

<sup>32</sup> Current as of programme year 2017.

<sup>33</sup> <https://www.adb-sachsen.de/storage/app/uploads/public/5b4/86f/158/5b486f15887a5378116496.pdf>.

<sup>34</sup> Since 21 August 2019, asylum seekers are obliged to live in the accommodation they are assigned to for a maximum of 18 months; however, the maximum is six months for minor children and their parents or others with custody rights as well as their adult, unmarried siblings.

unfounded/inadmissible, to remain there until they leave the country or the deportation warning/order has been executed.

89. Section 47 (1b) AsylG was added with the Act to Improve Enforcement of the Obligation to Leave the Federal Territory, which took effect on 29 July 2017 (Federal Law Gazette Part I, p. 2780). This provision allows the *Länder* to oblige asylum seekers whose asylum application is rejected as manifestly unfounded/inadmissible to live in specific accommodation until they leave the country or until deportation, but for a maximum of 24 months. The explanatory memorandum accompanying the law explains that these rules, as *lex specialis* based on the provision applicable to those from safe countries of origin (subsection 1a), permit the *Länder* to provide for a longer mandatory accommodation period than the six months foreseen in subsection 1 for asylum seekers with no prospect of remaining in Germany. In particular, this is designed to prevent an impending termination of the residence title from becoming unnecessarily complicated because the foreigner is required to move to another residence. *Land* (constitutional) law determines the form in which the *Länder* make such rules. Some *Länder* have not made use of this possibility at all. In others, e.g. Saxony-Anhalt, placement in collective accommodation is possible in principle for persons whose deportation has been temporarily suspended; however, section 1 (5), first sentence of Saxony-Anhalt's Reception Act then calls for placement in shared accommodation facilities with the smallest possible number of residents. They may also be accommodated in residential housing. The fact that over 60% of those foreigners in Saxony-Anhalt who are not entitled to remain permanently are currently accommodated in residential housing shows that a flexible approach is taken to this regulation. In any case, however, the federal-law rules of sections 48–50 AsylG remain unaffected, i.e. the asylum seeker must be discharged from the accommodation if BAMF cannot decide, or cannot decide in a timely manner, whether an asylum application is inadmissible/manifestly unfounded.

## **D. Article 4**

90. Germany combats all forms of racist propaganda by consistently and resolutely applying criminal law (1). In addition, close and careful monitoring is in place to identify whether organisations and associations have or are developing racist tendencies. If so, action is taken against them (2). A core mission of Germany is to exclude all forms of racist discrimination from all public authorities (3).

### **1. Article 4 (a)**

91. There are comprehensive criminal provisions in effect (a) which are applied in court proceedings (b) and investigation proceedings (c) in order to combat racist offences. The Federation and *Länder* attach great importance to decisive action against crimes motivated by racism; this is one reason why statistical recording of hate crime is being further expanded (d); see also statement on concluding observation 9d.

#### **Legal bases**

92. Section StGB criminalises dissemination of propaganda materials of unconstitutional organisations. Section 86a StGB provides that use of symbols of certain parties or organisations prohibited by BVerfG and/or banned by final decision of the competent authorities, especially former Nazi organisations, is subject to criminal liability. The offence of incitement of masses (section 130 StGB), which also includes incitement to racial hatred, remains one of the most important criminal-code provisions for combating racist, right-wing extremist and xenophobic propaganda. Subsection 1 emphasises the typical cases where the provision is applied, namely incitement against 'national, racial, religious groups, or groups defined by their ethnic origin'.<sup>35</sup> Racist incitement against individuals also falls under the offence of incitement of masses.

---

<sup>35</sup> Section 130 (1) StGB was slightly adapted while implementing the Additional Protocol to the Convention of the Council of Europe on Cybercrime with regard to the criminalisation of actions of a racist and xenophobic nature committed through computer systems of 28 January 2003 (SEV no. 189), as well as of the Framework Decision of the Council of the European Union on combating certain

93. Since 1 August 2015, with the Act of 12 June 2015 to Implement the Recommendations of the Committee of Inquiry of the 17th legislative term of the German Bundestag on the ‘National Socialist Underground’ terrorist group, ‘racist, xenophobic or other aims and motives evidencing contempt for humanity’ have been explicitly included in the catalogue of sentencing principles of section 46 (2), second sentence StGB. The element ‘other aims and motives evidencing contempt for humanity’ also covers discrimination on other grounds. These aims and motives are generally to be considered as aggravating circumstances in sentencing. The RiStBV guidelines, which are binding for police and public prosecutors, were amended in No. 15 (5) to stipulate that if any indications of racist, xenophobic or other motives evidencing contempt for humanity exist, the investigation must be extended to include such circumstances. The Federal Government provided detailed information on these reforms in its position paper on concluding observations nos. 10 and 19, forwarded on 13 September 2016.<sup>36</sup>

### **Application of criminal provisions – plus Priority issue: Statistical recording of hate crime**

#### *Application of criminal provisions in court proceedings (judicial statistics)*

Convictions under sections 86, 86a and 130 StGB

94. The figures for convictions under sections 86, 86a and 130 StGB in Germany from 2012 through 2017 are presented with a short explanation in Annex 6. Data for 2018 are not yet available. However, since these criminal provisions extend in part to acts not motivated by racism, only some of the convictions listed fall within the scope of ICERD.

Practical experiences with section 46 (2) sentence 2 StGB

95. There are only a few published court decisions on the scope of application of section 46 (2), second sentence StGB (AG Duisburg, judgment of 10 June 2016, 81 Ds 78/16; LG Marburg, order of 23 November 2015, 3 Qs 17/15; OLG Naumburg, judgment of 7 December 2017, 1 Rv 50/17), whereby in two of the three cited decisions, an aggravated sentence due to racist/xenophobic motives was affirmed; in the third case, the Court found such motives could not be determined (LG Marburg).

#### *Application of criminal provisions in investigation proceedings (Police statistics)*

96. Hate crime is recorded as a separate statistical category via the KPMD-PMK, introduced in 2001. Recording hate crime as ‘politically-motivated crime’ does not limit the criminal offences recorded; rather, this heading captures all criminal offences perpetrated with racist motives. Within this heading, offences are assigned to different subcategories to provide a nuanced view of the motives recorded. These are as follows: *anti-Semitic, disability, xenophobic, social status, racism, religion, sexual orientation*. Additionally, since 1 January 2017, anti-Muslim, anti-Christian and anti-Gypsy offences have been recorded as separate subcategories. The offences concerned are reported by local police via the *Land* criminal police offices to the BKA, where the data are collated. In its follow-up report on concluding observations 10 and 19, forwarded on 13 September 2016, the Federal Government provided detailed information on the content and continued expansion of these statistics.<sup>37</sup>

97. Police statistics for 2012 to 2018<sup>38</sup> show that offences motivated by anti-Semitism peaked in 2018, reaching 1,799. In 2017, 1,504 offences were recorded. The overwhelming majority of anti-Semitic offences continue to fall into the category of politically-motivated right-wing crime. The number of criminal offences motivated by xenophobia continuously increased between 2012 and 2016, from 2,922 to 8,983. In 2017, the number of xenophobic

---

forms and expressions of racism and xenophobia by means of criminal law (FD 2008/913/JHA). The changes entered into force on 22 March 2011.

<sup>36</sup> Cf. doc. CERD/C/DEU/CO/19-22/Add.1, margin no. 85 et seqq.

<sup>37</sup> Cf. Doc. CERD/C/DEU/CO/19-22/Add.1, re concluding observation 10b) (ii), margin no. 30 et seqq.

<sup>38</sup> [https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2019/pmk-2018-hasskriminalitaet-2001-2018.pdf;jsessionid=19DC1935724DA9F068AEB931CBEE74FD.2\\_cid287?\\_\\_blob=publicationFile&v=5](https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2019/pmk-2018-hasskriminalitaet-2001-2018.pdf;jsessionid=19DC1935724DA9F068AEB931CBEE74FD.2_cid287?__blob=publicationFile&v=5).

criminal offences decreased again for the first time but, with 6,434 offences recorded, still remained well above the levels reported for 2014. There was an increase again in 2018, with 7,701 criminal offences. The number of criminal offences motivated by racism peaked in 2018, with 1,725 offences recorded that year.

*Further extension of hate crime recording in judicial statistics*

98. The justice administrations of Germany's *Länder* have been recording the number of investigation proceedings initiated by their public prosecutor's offices due to right-wing extremist/xenophobic offences since 1992. BfJ centralises this data and compiles a nationwide set of statistics. This statistical recording system was fundamentally reformed with effect as of 2013 to produce better, comparable data delivery for the whole of Germany. The results for the period starting 2013 are available on BfJ's website<sup>39</sup> and provided in Annex 7. These statistics capture criminal proceedings for offences perpetrated with xenophobic or right-wing-extremist motives. Criminal offences with anti-Semitic motives and those perpetrated via the internet are listed separately. Figures for 2018 are not yet available.

99. The number of investigation proceedings due to right-wing extremist/xenophobic offences rose between 2013 and 2017. A total of 22,698 investigation proceedings in 2017, compared to 20,293 in 2013, represents an increase of 11.9%. But compared with the maximum of 28,527 investigation proceedings in 2016, the 2017 number decreased again. There has been a significant increase in the number of offences under sections 130 and 131 StGB. There were 2,813 investigation proceedings in 2013, compared with 5,465 in 2017, meaning that the number almost doubled in that period. However, here as well the number of investigation proceedings have decreased compared to 2016. The number of offences involving bodily injury (sections 223 et seqq. StGB) have decreased from a high of 1,029 in 2016 to 619, and is therefore almost back to the 2013 figures.

100. The figures for investigation proceedings due to criminal offences with anti-Semitic motives have increased more intensely. In 2017, there were 1,858 investigation proceedings, compared with 691 in 2013; this represents an increase of 168.9%. The figures for initiated investigation proceedings due to offences involving 'incitement of masses' under sections 130, 131 StGB rose sharply (from 338 to 1,076); and for propaganda offences as well, there was a very steep increase in the total period from 2013 to 2017 (from 244 to 645). However, compared to the previous year (2016), there was a significant decrease here too (from 1,059 to 645). Investigation proceedings in the category of offences involving bodily injury with an anti-Semitic motivation almost doubled between 2013 and 2017 (from 13 to 25); however, compared with 2016 there has also been a decrease in these offences.

101. Investigation proceedings based on right-wing extremist/xenophobic offences committed by means of the internet almost tripled from 2013 to 2017 (from a total of 1,564 to 4,573). More than six times as many investigation proceedings were initiated in 2017 (2,670) than in 2013 (403) due to offences of incitement of masses committed by means of the internet pursuant to sections 130 and 131 StGB. Compared with the directly preceding year of 2016, however, even this represents a decrease in the numbers.

102. A new system for statistically recording criminal proceedings for hate crimes is currently being introduced in Germany. These statistics, gathered by the *Land* justice administrations (in some *Länder*, since 1 January 2018), include information on different types of offences, such as homicide, bodily harm (separate listing of bodily harm perpetrated in office), defamation and arson, which are then categorised according to motive (anti-Semitic, anti-Muslim, anti-Christian, xenophobic and anti-disability offences, offences perpetrated due to sexual orientation or identity). The statistics also record whether the offence was committed 'by means of the internet'.

103. The new statistics will classify criminal offences as hate crime if, upon assessing the circumstances of the offence and/or the perpetrator's attitude, there are indications that they are directed against a person on the basis of that person's actual or ascribed/assumed nationality, ethnic origins, skin-colour, religion, beliefs, physical or and/or psychological disability or impairment, sexual orientation and/or sexual identity, political position,

<sup>39</sup> [https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Straftaten/Strafrechtspflege\\_node.html](https://www.bundesjustizamt.de/DE/Themen/Buergerdienste/Justizstatistik/Straftaten/Strafrechtspflege_node.html).

political views and/or political involvement, external appearance, or status in society, and the offence is causally related to this or is committed in this context against an institution, object or premises.

104. Collection of these justice-system data on hate crime first began in selected *Länder* on 1 January 2018; since 1 January 2019, the same system of statistical recording has been applicable in all *Länder*. The data from the *Länder* are collated by BfJ for publication as a nationwide statistic. The first set of statistics will likely be published in spring 2020. The publication for the 2019 reporting period will be the first to contain complete nationwide statistics on hate crime. The Federal Government will forward these data to the Committee with its next periodic report (concluding observation 9d).

### **Priority issue: Resolute action against racially motivated criminal offences**

#### *Training*

105. Within its remit, the Federal Government is committed to improving training in all areas of administration, the judiciary and police, including exchanges/cooperation with the *Länder*. In particular, the aim is to promote greater awareness and understanding of racism/discrimination among actors in these areas. Training on these issues is also provided at *Länder* level.<sup>40</sup> The Federal Government refers to the examples of police/justice training in its follow-up report to concluding observation 10.<sup>41</sup> For concluding observation 9b), the following federal/*Länder* examples can be added:

106. The DRA, funded by the Federation and *Länder*, offers all German judges and public prosecutors regular interdisciplinary training courses on specific issues of racism, right-wing extremism and anti-Semitism. One DRA seminar organised by the Federation is on the ‘Rosenburg Project’, focusing on personnel/substantive continuities between the Nazi period and the initial years of the post-war Federal Justice Ministry. The seminar especially focuses on forward-looking conclusions from the Project’s findings – especially for the formation of a stronger professional ethos among jurists. The seminar sensitises judges to risk factors for rule of law and democracy in their day-to-day professional lives, and fosters legal ethics.

107. Further, BMJV, along with DIMR and the *Länder*, which are responsible for judicial training, pursued a two-year project titled ‘Racism and Human Rights – Strengthening Criminal Justice’, developing training modules for criminal-court judges and public prosecutors on combating racism. The training modules, developed in cooperation with three model *Länder*, help judges and prosecutors address crimes motivated by racism or hatred appropriately, respond in criminal proceedings to the experiences of those affected by racism, and provide victims with effective non-discriminatory access to justice. The project was concluded in 2018 with the publication of training materials and a ‘reader’. With this, the *Länder* are now equipped to provide training on this topic within their own justice systems. They can also draw on a pool of speakers recruited and trained during the project.

108. Finally, regular events addressing various aspects of racism and discrimination are carried out by BMI, BKA and BPol, as well as bpb and DHPOL.

#### *Combating racism and hate on the internet*

109. The Federal Government pursues a multi-departmental approach to effectively combat online racism and hatred. This includes a package of measures focussing on awareness-raising, dialogue and social engagement; it also pursues a regulatory approach where necessary. Please refer to the NAP, which devotes an entire chapter to online hate-speech (concluding observation 9c).<sup>42</sup> The following measures deserve special mention:

110. In early 2016, the Federal Government joined the CoE’s ‘No Hate-speech’ campaign. Through the ‘Living Democracy!’ federal programme, BMFSFJ commissioned the independent journalists’ association ‘Neue Deutsche Medienmacher’ to coordinate the

<sup>40</sup> See Annex 8 for *Länder* training examples.

<sup>41</sup> Cf. doc. CERD/C/DEU/CO/19-22/Add.1, concluding observation 10b) (iv), margin no. 42 et seqq.

<sup>42</sup> Cf. NAP, Chapter 5.6, p. 35 et seqq.

campaign in Germany. Even after the CoE campaign ended in late 2017, ‘Neue deutsche Medienmacher’ received funding from the federal programme for the national ‘No Hate-speech’ campaign through 2019. Also, BMFSFJ has enhanced prevention work on the web via its own heading within the federal programme. Currently, 35 measures are funded via the federal programme under the heading ‘Strengthening Activism on the Web – Against Hate on the Internet’, which was introduced in 2017 and pursues preventive and educational approaches to issues including online hate-speech.<sup>43</sup>

111. An important role is also played by ‘jugendschutz.net’ which functions as a ‘joint competence centre of the Federation and *Länder* for youth protection on the internet’ based on section 18 JMStV and a framework agreement with BMFSFJ. This civil-society organisation receives funding from the *Länder* based on the JMStV and from BMFSFJ and BMJV on behalf of the Federation. E.g., BMJV is funding a monitoring project, whereby jugendschutz.net systematically reviews the complaints mechanisms of social networks. Furthermore, within the ‘Living Democracy!’ federal programme, jugendschutz.net conducts ongoing analysis of the methods used by right-wing and Islamic extremists to lure young internet users; it also takes action against sites which could endanger or impair the welfare of young people. This is done both on the basis of complaints and the organisation’s own research. On international phenomena, jugendschutz.net works closely with foreign organisations, and is a founding member of the INHOPE (combating depictions of sexual exploitation of children and juveniles) and INACH (combating hate on the internet) networks.

112. The spread of hate-speech on the internet, especially on social networks such as Facebook, YouTube and Twitter, led the Federal Government in September 2015 to establish a Task Force that included these networks and civil society. Participation in the Task Force resulted in companies actively combating hate-speech on their platforms. Despite initial successes, the monitoring undertaken by jugendschutz.net (margin no. 110 above) demonstrates that user complaints of hate crime are still not processed quickly and effectively, especially by Facebook and Twitter.

113. Because the voluntary commitments entered into by the networks had limited effect, as illustrated by these shortcomings, Germany is also pursuing a regulatory approach to online hatred. This approach has resulted in the NetzDG, which took effect on 1 October 2018.<sup>44</sup> NetzDG aims to more effectively combat hate crime and other illegal content on social networks. Such illegal content includes, e.g., dissemination of propaganda material of unconstitutional organisations (section 86 StGB), use of symbols of unconstitutional organisations (section 86a StGB), insult (section 185 StGB), malicious gossip (section 186 StGB), defamation (section 187 StGB), public incitement to commit offences (section 111 StGB), incitement of masses (section 130 StGB), depictions of violence (section 131 StGB), and threat (section 241 StGB). NetzDG introduced statutory compliance rules for social networks to encourage social networks to process complaints more quickly and comprehensively, especially those about manifestly unlawful content. It stipulates statutory reporting by social networks on how they handle complaints, introduction of effective complaints management, and appointment of domestic representatives to effect and receive service. Violations can be punished with heavy fines against the company and management. Individual violations can be sanctioned as regulatory offences with fines of up to €5 million; companies themselves may be fined up to €50 million.

114. It should be emphasised that NetzDG does not mandate any new forms of interference with the right of freedom of expression protected under Article 5 (1) GG. Rather, the statutory compliance rules for social networks set out in NetzDG serve to ensure that networks take swift and rigorous action to meet their existing legal obligations, i.e. to delete or block unlawful content at the latest upon being made aware that this content is available on their platform. Thus, NetzDG explicitly refers to criminally punishable content only, sanctioning of which represents a justified restriction of freedom of expression.

---

<sup>43</sup> For more information, see <https://www.demokratie-leben.de/bundesprogramm/ueber-demokratie-leben/staerkung-des-engagements-im-netz-gegen-hass-im-netz.html>.

<sup>44</sup> Text: <https://www.gesetze-im-internet.de/netzdg/BJNR335210017.html>.

*Critical examination of the NSU cases*

115. The comprehensive investigation into the NSU murders continues both nationally and at *Länder* levels. The Federal Government refers to its follow-up report forwarded on 13 September 2016, which commented in detail on the Committee's recommendations in concluding observation 10.<sup>45</sup> Furthermore, the following developments can be reported:

116. After more than five years and 438 trial days, on 11 July 2018 the 6th Criminal Panel of OLG Munich found the principal defendant, Beate Zschäpe, guilty of nine counts of murder (so-called Ceska series), 32 counts of attempted murder committed in one and the same act (nail-filled bomb attack on Keupstrasse in Cologne), attempted murder (explosion on Probsteigasse in Cologne), murder and attempted murder (of two police officers in Heilbronn), multiple robberies, attempted murder by major arson (arson on Frühlingsstrasse in Zwickau) and membership in a terrorist organisation (NSU). The panel sentenced the defendant to life in prison. The court determined the particular gravity of the defendant's guilt. One co-defendant was sentenced to a total prison term of ten years for nine counts of accessory to murder (so-called Ceska series). Two co-defendants were sentenced to prison terms of three years and two years and six months, respectively, for supporting a terrorist organisation (NSU). One co-defendant who was a juvenile at the time of the offences was sentenced to a juvenile penalty of three years for nine counts of accessory to murder (so-called Ceska series).

117. The Third Committee of Inquiry of the 18th legislative term of the German Bundestag, as the second investigative committee to address the NSU cases ('NSU-II'), submitted its report of more than 1,000 pages<sup>46</sup> on 27 July 2017. NSU-II held a total of 54 meetings and heard 84 witnesses from February 2016 through March 2017. In its recommendations, NSU-II expressly recognises the efforts to implement the 47 recommendations of NSU-I, and vehemently advocates permanent funds for civil-society projects and initiatives against right-wing extremism, racism and anti-Semitism. The Federal Government has taken up the recommendations of the two NSU committees and has already implemented many of them. E.g.: numerous measures to improve cooperation among security authorities were taken. Many of the recommendations involve long-term tasks, e.g. focusing training on combating right-wing extremism and terrorism, victim protection, and intercultural competence. The recommendations of the two NSU committees define the goals of Federal-Government policy.

118. To implement the recommendations, a Federation-*Länder* working group directed by BKA was formed; this group met for the first time on 7 and 8 June 2018. It produced a concluding report titled 'NSU recommendations for action', which was presented at the autumn meeting of JuMiKo.

119. One insight of the Committee of Inquiry was that shortcomings existed in how information was passed on and measures were coordinated; some of these shortcomings are due to the relatively broad distribution of responsibilities under Germany's federal structure and the 'principle of separation' between policing and intelligence; considerable efforts have been made to counteract these issues. The establishment of GETZ, stricter reporting requirements and events such as regular regional conferences held by GBA, have created a network of competent contacts in the justice system, offering a stronger guarantee that emerging right-wing-terrorist structures are recognised sooner and combated in a coordinated manner.

120. The recommendations are being implemented comprehensively at *Länder* level as well. In connection with the recommendation to strengthen civil society and act preventively against right-wing extremism, the *Länder* intelligence agencies have agreed in recent years to improve preventive work, i.e. the part of their work that involves sharing information, and function as 'democracy service providers' oriented to the needs of civil society. Also, following a joint decision by the prosecutors-general of the *Länder* and GBA, in 2017 a state security centre was established at a prosecutor-general's office in each *Land* to improve the exchange of information and coordinate respective procedures at inter-

<sup>45</sup> Cf. doc. CERD/C/DEU/CO/19-22/Add.1, re concluding observation 10, margin no. 7 et seqq.

<sup>46</sup> Accessible at: <http://dip21.bundestag.de/dip21/btd/18/129/1812950.pdf>.

*Länder* level and with GBA. Furthermore, the *Länder* are taking a multitude of measures to continue their critical examination of the NSU cases.<sup>47</sup>

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

121. The Federal Government takes note of the letter from the Committee of 17 May 2017, in which it again calls upon Germany to implement its recommendations from communication No. 48/2010, TBB-Turkish Union in Berlin/Brandenburg v. Germany (Sarrazin case). The Federal Government refers to its follow-up report sent on 13 September 2016,<sup>48</sup> in which it addresses concluding observation 19 in detail. The Federal Government made clear in those comments that it accords great importance to effectively combating racist hate-speech. However, it also noted the high value of freedom of expression, and emphasised that criminal law, as the most powerful weapon in the armoury of state sanctions, should generally remain the last resort. The Federal Government additionally made clear that it considers the existing sanctions for criminally relevant expressions of opinion (sections 130, 185 et seqq. StGB) adequate and that these fulfil Germany's obligations under international law. As a result, not every racist statement – no matter how morally reprehensible – crosses the threshold of criminal liability.

122. The Federal Government recognises that racist statements by political leaders, state representatives, and public figures may have a particularly destructive effect due to their range of influence and impact (concluding observation 9a). In these cases too, however, use of criminal sanctions depends on an assessment to be undertaken by prosecuting authorities and independent courts by applying criminal provisions to the respective case. If prosecuting authorities consider racist statements to fulfil the elements of a criminal offence, an investigation proceeding must be initiated due to the principle of mandatory prosecution. No discretion exists in this respect.

123. Independently of the assessment of this individual case, fighting hate-speech remains the Federal Government's central goal. To achieve that goal, the government pursues a holistic approach which, in addition to criminal prosecution, focuses on societal engagement and discourse (margin no. 108 above). For example, the Sarrazin case resulted in broad public debate in Germany, throughout which a range of politicians and public figures – including Chancellor Merkel – very clearly rejected Mr. Sarrazin's theories.

## 2. Article 4 (b)

### Prohibiting associations

124. The Federal Government and *Länder* combat organisations which promote or call for racist discrimination. They therefore banned a total of eight right-wing extremist organisations in the reporting period.

125. On 27 January 2016, the Federal Interior Minister prohibited the 'Altermedia Deutschland' neo-Nazi internet platform under VereinsG. That site, used mostly by neo-Nazis, disseminated considerable amounts of racist, xenophobic, anti-Semitic and anti-Islamic content. Five 'Altermedia Deutschland' operators and administrators were charged with suspicion of forming a criminal organisation.

126. On 16 March 2016, the Federal Interior Minister prohibited 'Weisse Wölfe Terrorcrew' (WWT), a right-wing extremist group prone to violence whose goals and activities were contrary to criminal law and directed against the constitutional order.

127. At *Länder* level, targeted action is also taken against organisations pursuing racist philosophies: During the reporting period, right-wing extremist groups were prohibited in Brandenburg ('Widerstandsbewegung Südbrandenburg'), Bavaria ('Freies Netz Süd'), Saxony ('Nationale Sozialisten Döbeln,' 'Nationale Sozialisten Chemnitz'), Baden-Württemberg ('Autonome Nationalisten Göppingen') and Hesse ('Sturm 18 e.V.').

<sup>47</sup> For *Länder* examples on critical examination of the NSU cases, see Annex 9.

<sup>48</sup> Cf. doc. CERD/C/DEU/CO/19-22/Add.1, re concluding observation 19, margin no. 79 et seqq.

## NPD prohibition proceedings

BVerfG judgment of 17 January 2017

128. Under Article 21 (2) and (4) GG, BVerfG may declare unconstitutional and prohibit political parties which, by their aims or adherents' behaviour, seek to undermine or abolish the free democratic basic order, or endanger the existence of the Federal Republic. Since this tool was abused during the Nazi dictatorship, BVerfG has affirmed that the obstacles for party prohibition are very high.

129. By judgment dated 17 January 2017 (2 BvB 1/13),<sup>49</sup> BVerfG rejected as unfounded a Bundesrat motion to declare the right-wing extremist NPD unconstitutional. BVerfG concluded that the NPD indeed follows a political concept targeted toward abolishing the free democratic basic order, and that it is methodically working toward that goal. However, in that judgment BVerfG for the first time also required for a party prohibition that there are concrete and weighty reasons making it at least appear possible that the party might actually succeed in pursuing its anti-constitutional goals.<sup>50</sup> Based on the NPD's current situation (e.g., it is currently not represented in any *Land* parliament), BVerfG rejected this notion. It held that the NPD was neither in a position to garner a majority at election, nor did it have the option of joining a coalition. BVerfG also opined that given the NPD's low level of organisation, its impact within society was limited. At the same time, it made a clear finding that the NPD followed anti-constitutional, racist and discriminatory goals.

### *Constitutional amendment: Exclusion of anti-constitutional parties from party funding*

130. In its judgment in proceedings to ban the NPD, BVerfG did not view the high constitutional threshold for a party ban pursuant to Article 21 (2) GG as having been attained. It did, however, remind the legislature that sanctions are available against anti-constitutional parties which are less severe than an outright ban.<sup>51</sup> The legislature responded without delay, amending the constitution. Pursuant to Article 21 (3) GG, newly added in July 2017, parties are excluded from state funding if, by their aims or adherents' behaviour, they seek to undermine or abolish the free democratic basic order or endanger the existence of the Federal Republic.<sup>52</sup> This especially includes parties which, like the NPD, pursue anti-constitutional goals but have not been outlawed simply because BVerfG does not see them as being in a position to achieve those goals. BVerfG decides on motions to exclude a party from state funding (section 13 no. 2a BVerfGG). A relevant motion may be made by the Bundestag, Bundesrat or Federal Government (section 43 (1) BVerfGG). If the motion has merit, the party is excluded from party funding under section 46a (1) BVerfGG, initially for a period of 6 years. In that case, any favourable fiscal treatment of and payments made to that party cease (Article 21 (3), second sentence GG).

### *Motions by three constitutional organs to exclude the NPD from party funding*

131. Despite its bad showing at federal elections in 2017, garnering only 0.4% of the votes, the NPD continues to receive payments through state party funding under PartG. This depends on votes not only in Bundestag elections, but also in *Land* and European elections. The NPD also profits from tax advantages provided to political parties.

132. To terminate that situation, all constitutional organs authorised to file a motion before BVerfG under section 43 (1) BVerfGG did so on 19 July 2019 to exclude the NPD from party funding. The further process will be covered in Germany's next report.

<sup>49</sup> Judgment: [http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/01/bs20170117\\_2bvb000113.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/01/bs20170117_2bvb000113.html).

<sup>50</sup> With that holding, BVerfG also followed ECHR case-law (cf. margin no 607 et seqq. of the judgment of 17 January 2017 (ibid)).

<sup>51</sup> Cf. on this point the recommendation from the 4th ECRI report on Germany, margin no. 68 (published on 26 Mai 2009 and accessible at <https://rm.coe.int/fourth-report-on-germany/16808b5680>) and ECRI general policy recommendation no. 7, points 16 and 36 of 13 December 2002 (accessible at <https://rm.coe.int/ecri-general-policy-recommendation-no-7-revised-on-national-legislatio/16808b5aae>).

<sup>52</sup> Act to Amend the Basic Law (Article 21 (3)) of 13 July 2017 (Federal Law Gazette I, p. 2346). The resulting changes in ordinary law were made with the Act of 18 July 2017 for the exclusion of anti-constitutional parties from party funding (FLG I, p. 2790).

### Expert opinion on handling racist campaign posters, considering Article 4

133. The Federal Government (BMJV) commissioned an expert opinion in 2015, which sought to identify the extent to which ICERD may be utilised to proceed against racist election advertising. In recent years, the right-wing extremist party NPD had placed election advertisements with overtly anti-Gypsy/racist connotations. Such election posters ‘peaked’ in advance of *Land* and European parliament elections in 2014. It was striking in this context that no criminal investigations were initiated, and that only in exceptional cases were regulatory measures taken (e.g. when posters were placed at ‘sensitive’ sites like concentration-camp memorials). Those authorities that had ordered removal of NPD posters in ‘normal’ public spaces were frequently ordered by courts to allow them to be rehung: In reviewing the authorities’ invocation of preventive powers in the so-called ‘general clause’ of police law to remove the posters, administrative courts did not see the elements of the crime of incitement of masses (section 130 StGB) as fulfilled. BMJV deemed that situation unsatisfactory, and commissioned an analysis of the legal situation within the context of ICERD.

134. The opinion paper was submitted by Prof. Dr. Stefanie Schmahl in October 2015.<sup>53</sup> It examines whether international-law prohibitions against racist propaganda, such as Article 4 ICERD, may be utilised when citing public-security concerns as grounds for invoking the police-law ‘general clause’ to justify interventions by authorities. The answer was yes. Prof. Dr. Schmahl even concludes that discretion was reduced to zero: Public-order authorities had no other choice but to remove the posters, she argues, because there was no less severe yet equally suitable means of countering the threat to public security and order. The paper therefore concludes that authorities were obliged to take down the NPD’s election posters.

135. In the Federal Government’s view, the expert opinion constitutes a helpful contribution to the important debate on feasible solutions for preventing election propaganda with xenophobic tendencies. BMJV and BMI have therefore taken measures to disseminate the paper among legal practitioners. It was made available to *Länder* Interior Ministries, and was discussed at the 87th JuMiKo on 1 and 2 June 2016. In its resolution, JuMiKo welcomed the expert opinion and denounced the fact that cynical and irresponsible aggression against minorities is repeatedly stirred up and exploited for campaign purposes. It agreed that all legal means available must be used to prevent campaign agitation at the expense of minorities; JuMiKo also deemed it necessary to have a broad-based debate within society and the justice system about sensitivity vis-à-vis minorities during election campaigns.

### 3. Article 4 (c)

136. The ban on racial discrimination arising from Article 4 (c) ICERD, which applies to all authorities, is directly applicable law in Germany. As stated above, the ban on discrimination from Article 3 (3) sentence 1 GG, and respect for human dignity under Article 1 (1) GG, are binding on all German authorities.

137. An effective means of countering potential discrimination in authorities in practice is to increase the percentage of staff with immigrant backgrounds in public service. Promoting intercultural diversity in the federal administration, above all by increasing the percentage of staff with immigrant backgrounds, is a central goal of the Federal Government; particularly since commencing the NIAP, this has been a constant priority. The federal ministries have established an inter-departmental working group to permanently address the issue of promoting cultural diversity in the federal administration. The federal ministries and other federal authorities conducted voluntary staff surveys in 2014, 2015 and 2017; this was the first time that the number of federal employees with immigrant backgrounds had been counted. Meanwhile, 38 authorities with over 56,000 employees have participated. A report with the results of the 2014 and 2015 surveys was presented on 26 May 2016 by BMI and the Federal Government Commissioner for Migration, Refugees and Integration. The average percentage of federal-administration employees with immigrant backgrounds was 14.8%. These reports are the basis for the authorities to develop and implement

<sup>53</sup> Accessible at: (<https://www.jura.uni-wuerzburg.de/lehrstuehle/schmahl/aktuelles/meldungen/single/news/gutachten-wahlkampfplakate/>).

concrete measures to further increase the percentage of staff with immigrant backgrounds and decrease potential barriers to participation.

138. The Federal Government website [www.wir-sind-bund.de](http://www.wir-sind-bund.de) – translated into several languages – specifically addresses young people and jobstarters with immigrant backgrounds to encourage them to enter public service. For some time now, BaköV has offered training for staff responsible for personnel-hiring and members of selection committees, which specifically address cultural fairness in personnel selection. BaköV also offers a handbook on intercultural diversity for personnel selection in the public service.<sup>54</sup>

139. At *Länder* level too, the goal is to fill more positions in administration with staff from immigrant backgrounds. Many *Länder* have stipulated in their coalition agreements that they will promote intercultural openness in administration and/or have initiated corresponding programmes or campaigns. The *Länder* are also contributing to that goal by participating in the ‘Diversity Charter’.<sup>55</sup> The Hesse *Land* government and the *Land* of Berlin, for example, strive to achieve the same diversity in the composition of their personnel as in the *Land* population itself. Berlin’s government therefore works to ensure consistently discrimination-free access to education and occupations – e.g., insisting on anonymised job applications at city authorities and companies in which the *Land* has a shareholding. *Länder* justice and police authorities are also making significant efforts to ensure staff diversity. The Federal Government refers to its statements in its follow-up report regarding concluding observation 10.<sup>56</sup> Surveys in individual *Länder* demonstrate that their efforts have in part resulted in *Land* administrations now filling over 20% of positions with people from immigrant backgrounds. In Hesse, civil-service law provides for authorities to give adequate consideration to intercultural competence: Section 2 (2) to (4) HLVO sets out the terms ‘aptitude’, ‘qualifications’ and ‘professional achievements’, which form the basis of career advancement decisions. Within the scope of Hesse’s civil-service law reform in 2014, intercultural competence was included under ‘qualifications’ in HLVO. This express rule in the law pertaining to career development shows the significance of intercultural competence for the public service and creates the possibility for such skills to be considered in personnel selection and individual performance reviews for public servants.

## E. Article 5

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

### Introduction: German constitutional law

141. Under the Basic Law, anyone – regardless of their nationality – can invoke the following fundamental rights: the right to free development of personality (Article 2 (1) GG), the right to life and physical integrity and freedom of the person (Article 2 (2)), equality before the law (Article 3), freedom of faith and conscience, freedom of expression and freedom of the press, freedom of art and science, privacy of correspondence, posts and telecommunications and inviolability of the home (Articles 4, 5, 10 and 13), special protection of marriage and family (Article 6 (1)) and the right to property (Article 14). Some fundamental rights are reserved to German nationals, e.g. 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). However, these rights are essentially guaranteed to foreign nationals through Article 2 (1) since the right to freedom of development of personality entails a right to general freedom of action.

<sup>54</sup> cf. NAP, p. 32.

<sup>55</sup> <https://www.charta-der-vielfalt.de/>.

<sup>56</sup> Cf. follow-up report on concluding observation 10b) (v), margin nos. 68–78.

**Right to equal treatment before the courts and all other bodies of the justice system –  
Priority issue: Preventing racial profiling**

142. As stated above, Article 3 (1) GG stipulates that all persons are equal before the law and Article 3 (3) GG stipulates that discrimination on grounds *inter alia* of race, language, homeland and origin is not permissible.

143. These comprehensive equality rights are to some extent specified in ordinary law, e.g. in the AGG, in social law in individual provisions of the SGB,<sup>57</sup> and in relation to appointment criteria for federal civil servants in section 9 BBG. The courts monitor application of these provisions in everyday administrative practice (concluding observation 8b).<sup>58</sup> In Germany, there is no systematic discrimination of population groups. Germany's state institutions are structures founded on the rule of law and are subject to the norms of the democratic constitutional state.

144. Police measures based exclusively or overwhelmingly on outward appearance or ethnic origin (racial profiling under the definition applied by CERD and EU-FRA) do not feature among the methods used in police practice in Germany. Racial profiling violates applicable German law, in particular the equal-treatment principle enshrined in Article 3 (3) sentence 1 GG. Neither the BPolG nor the relevant regulations and ordinances applicable within BPol permit unequal treatment of persons based on factors such as race, origin or religion. The same is true of the corresponding regulations applicable to *Land* police authorities (concluding observation 11).

145. To ensure that each and every police officer exercises his/her powers in a non-discriminatory manner, police training at federal and *Länder* levels focuses on how to prevent racism and discrimination. This equips (trainee) police officers with the necessary awareness for their interactions with people of diverse backgrounds and serves to prevent the occurrence of (conscious or subconscious) prejudice and discriminatory attitudes. Since 2014, racial profiling has featured directly or indirectly on the curriculum at all relevant stages of training. Existing approaches (e.g. internal seminars at BMI and BKA on ICERD's definition of racism and on racial profiling) continue to be pursued and further developed. Since 2016, BPol have been successively updating and improving training, related materials and applicable ordinances and regulations pertaining to discrimination, racism and racial profiling (concluding observation 11c and e).

146. Training at BPol regularly focuses on and continually revisits the topic of section 22 (1a) BPolG. Section 22 (1a) BPolG allows officers to question, check the identity documents of, and inspect objects in the possession of any person in railway stations, trains or airports, where situational intelligence or border-police experience suggest a case of unlawful immigration. The Federal Government believes this provision is compatible with the Basic Law and with international and European law, since situational intelligence and border-police experience are permissible criteria which – when accompanied by sufficient training and awareness on the part of the police officers concerned – allow for non-discriminatory selectivity. As described above, BPol therefore places special emphasis on training and awareness-raising.

147. Where, in isolated cases, complaints of discriminatory police conduct arise, there are effective procedures in place to clarify the incident (concluding observation 11f). Whoever feels they have suffered discrimination by being stopped by police can involve Germany's administrative courts, which then examine the case. BPol's official complaints mechanism provides various possibilities to lodge complaints internally and externally, ensuring that police misconduct is reviewed in an independent procedure conducted by supervisory authorities.

148. Affected persons can submit their complaints to any police station verbally, in writing or by telephone. BPol can also be contacted online. To ensure that an independent, impartial and comprehensive enquiry takes place, each complaint is processed and thoroughly investigated.

<sup>57</sup> See, e.g., section 33c sentence 1 SGB I and section 19a SGB IV.

<sup>58</sup> Regarding usage of public swimming pools, see for example OLG Rhineland-Pfalz's decision of 12 June 2019, 10 B 10515; regarding the appointment criteria for federal civil servants, see e.g. BVerwG's decision of 21 December 2016 – 2 VR 1/16; regarding social law, see for example VG Frankfurt's decision of 17 February 2014 – 3 L 247/14.F.

149. The previous decisions of the German courts<sup>59</sup> have emphasised that where police controls are conducted under section 22 (1a) BPolG, there must be reliable indications that an individual belongs to a certain group of outwardly recognisable offenders and that a higher burden of proof is incumbent upon the authorities in this respect. This means that a ‘reasonable suspicion’ standard applies. The Federal Government does not see any need for further legislative measures. BPol followed these court decisions by updating its internal instructions and training materials in 2016.

150. Furthermore, in 2016 BPol introduced an independent internal complaints mechanism.

Several *Länder* have also introduced different complaints bodies for their *Land* police.<sup>60</sup>

**Right to personal safety and protection by the state against violence/bodily harm –  
Priority issue: Safety of refugees**

151. The increase in violence and threats against refugees and helpers is a matter of great concern to the Federal Government. Various measures have been taken to combat this violence (concluding observation 18b). Consistent criminal prosecution of racist violence is a key part of this. To encourage such prosecution, Federation and *Länder* are focussing particular efforts on training prosecutors and judges to raise their awareness of racist motives and promote intercultural competence.<sup>61</sup> Furthermore, section 46 (2) sentence 2 StGB – amended in 2015 – now explicitly emphasises that courts must consider racist motives as aggravating circumstances. Under the revised RiStBV, police and public prosecutors are required to consider such motives during investigation proceedings.<sup>62</sup>

152. Enhanced statistics are another aspect of improving criminal-justice measures to combating racist violence.<sup>63</sup> Given the increase in offences against refugees and helpers, police statistics on politically-motivated crime have been differentiated even further. Since 2016, politically-motivated crime has been separated into the categories: ‘against asylum seekers/refugees’, ‘against aid organisations/volunteers’, ‘between asylum seekers/refugees’, ‘against public officials and elected representatives’ and ‘against the media’.<sup>64</sup>

153. Alongside criminal prosecution, measures to promote democracy and prevent radicalisation also play an important role. In Germany, many national, regional and local initiatives/projects exist to prevent and counteract radicalisation.<sup>65</sup> There are various reasons for radicalisation. Since there is no uniform pattern, countermeasures must be taken individually and locally. The ‘Radicalisation Advisory Service’ at BAMF supports anybody who is concerned about Islamist radicalisation in their environment. If necessary, persons seeking advice can be assisted further by civil-society organisations and government agencies of the *Länder*. Assistance is provided to relatives and social contacts, or via exit programmes. The Advisory Service and local organisations together form a nationwide counselling network, where anyone seeking advice can receive help in person and, above all, locally. This is consistent with the Federal Government’s approach of promoting individual, multidisciplinary measures at local level involving civil society actors.

154. To improve the safety of refugees in accommodation centres in the *Land* of Berlin, the mobile counselling team at VDK advises accommodation-centre staff and volunteers. Recognising LGBTI refugees as a particularly vulnerable group in accordance with the EU Reception Directive, Berlin has introduced specific measures to protect and safeguard LGBTI refugees. As part of the ‘Berlin Model for Supporting LGBTI Refugees’, a

<sup>59</sup> e.g. OWG Koblenz’s judgment of 21 April 2016 and OWG NRW’s judgment of 7 August 2018.

<sup>60</sup> See examples of internal complaints mechanisms from the *Länder*, Annex 10.

<sup>61</sup> See margin nos. 104 et seqq. above, and the Federal Government’s follow-up report on concluding observation 10, doc. CERD/C/DEU/CO/19-22/Add.1, there: remarks on concluding observation 10 b) (iv), margin nos. 42 et seqq.

<sup>62</sup> Margin no. 93 above.

<sup>63</sup> See margin nos. 94 et seqq.

<sup>64</sup> Case numbers are published annually on BMI’s website:

<http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2017/04/pks-und-pmk-2016.html>.

<sup>65</sup> See the various examples of radicalisation prevention initiatives from the *Länder*, Annex 11 and Annex 3 (NAP).

dedicated accommodation centre for LGBTI refugees was set up, a handbook for accommodation centres and refugees highlighting key aspects of violence prevention was published ('What to do in cases of violence against refugee women and LGBTI in accommodation centres'), anti-violence and anti-discrimination work was enhanced, and constant training for refugee accommodation-centre managers and staff is provided. Mandatory violence-prevention concepts for reception facilities were also implemented in other *Länder*.<sup>66</sup>

### Participation

155. To implement human rights protection under Article 5 ICERD in practice, it is important that each individual can participate fully in social and political life without facing racist discrimination. Examples are examined below: public and political life (a), education (b), work and economic life (c), healthcare and social security systems (d).

#### *Participation in public and political life*

156. Germany strives to continually improve participation for people from immigrant backgrounds in public and political life.

#### Acquiring citizenship

157. The means of achieving full political participation is to acquire German citizenship. Foreign nationals living in Germany can acquire German citizenship through naturalisation. After living in Germany lawfully for eight years, a person has the legal right to naturalisation if certain preconditions for integration are met. These include: ability to secure one's livelihood, no previous criminal convictions, German-language skills, and knowledge of the German legal system and way of life. This is normally assessed in a naturalisation test, which is the same in all *Länder*. This test has proven its suitability, as candidates must study the German legal and social order and way of life intensively before taking it. For those who have successfully completed an integration course, the required period of residence is reduced to seven years. If the applicant demonstrates particular efforts to integrate,<sup>67</sup> naturalisation can be granted after six years of lawful, ordinary residence in Germany. As a rule, persons must still renounce any foreign citizenship. However, there are exceptions – e.g. for EU citizens or where renunciation is impossible or only possible under particularly difficult conditions. Nevertheless, some people are still reluctant to apply for naturalisation. Different reasons for this are observed – not only the desire to retain a previous nationality, but also other social, family and professional factors. In the last 20 years, more than 2.3 million people have been naturalised in Germany (over 100,000 annually since 2010).

158. Since 2000, children born to foreign parents in Germany have acquired German citizenship under the place-of-birth principle (*ius soli* under section 4 (3) StAG) if one parent has been lawfully resident in Germany for eight years and has an indefinite residence right. Since the law was amended in 2014, persons who have acquired German citizenship under *ius soli* and have grown up in Germany can permanently retain both the German and foreign citizenship they have acquired by descent from their parents. A person is considered to have grown up in Germany if he/she has normally resided in Germany for eight years, has attended school here for six years, or has a school-leaving certificate or vocational training completed in Germany. Only *ius soli* Germans who did not grow up in Germany and have a foreign nationality other than that of another EU Member State /Switzerland must choose, after the age of 21, whether they wish to retain German nationality or that of their parents.

159. The *Länder* are highly interested in increasing naturalisation figures. To this end, naturalisation campaigns are planned/carried out by the *Länder* and local authorities.<sup>68</sup>

<sup>66</sup> e.g. Bavaria: <https://www.stmi.bayern.de/assets/stmi/mui/asylsozialpolitik/gewaltschutzkonzept.pdf>; Hamburg: <https://www.hamburg.de/fluechtlinge/7040758/gewaltschutz-einrichtungen/>; North Rhine-Westphalia: <https://www.mkffi.nrw/landesgewaltschutzkonzept-lgsk-nrw>.

<sup>67</sup> E.g. language skills far above the level of the German Certificate, or voluntary work (e.g. fire brigade or a sports club).

<sup>68</sup> On *Länder* naturalisation campaigns, see Annex 12.

### Legislative measures

160. More and more *Länder* are creating a legal basis for improved participation of people from an immigrant background. In addition to Berlin's PartIntG – mentioned in the last report – NRW, Baden-Württemberg and Bavaria have also legislated accordingly.<sup>69</sup>

### Funding projects

161. Since 2010, BMI has supported projects in rural and structurally-weak regions with €12 million annually through the federal programme 'Social cohesion through participation'. These projects promote a self-confident, lively and democratic culture in which extremist and anti-constitutional structures have no place, focusing on regional clubs, associations and multipliers. Clubs and associations (especially organised sport, voluntary fire brigades, and relief organisations e.g. THW) are pillars of social cohesion. The projects are preventive (especially vis-à-vis extremism) and lay foundations for egalitarian and non-violent community life.

162. The Federal Government Commissioner for Migration, Refugees and Integration funded the pilot project 'Vote D: Participation of People with Immigrant Backgrounds in the 2017 Federal Elections', part of special 2016/2017 activities under 'Be involved, Be part of it: Participation in the Immigration Society'. It tested methods for increasing participation of people from immigrant backgrounds in elections, and was designed as a tool for political education.

163. To improve participation by immigrants in public and political life, some *Länder* have also initiated projects to help organisations of immigrant communities professionalise and form better networks as lobbies and organisers of integrational activities. Furthermore, support is being provided to help institutions/facilities become more intercultural to reduce access barriers for immigrants.<sup>70</sup> The Federal Government has also funded selected umbrella organisations representing immigrant communities at federal level since 2013 to support their structural development. To date, 17 organisations of immigrant communities have received or are receiving multi-annual structural support. The aim is to firmly establish organisations of immigrant communities as reliable points of contact for policymakers and public administration, and to foster stronger networks both between these organisations and with other actors involved in integration work.

### Participation in education

164. For immigrant communities, access to education is central to integration and participation. The following developments can be observed in participation, education levels and success among people from immigrant backgrounds: Among all children in daycare, the proportion of children from immigrant backgrounds has recently fallen slightly, after a steady increase until 2015. The proportion of first-year students and people in continuing education from immigrant backgrounds has increased. The proportion of people from immigrant backgrounds aged 15 and over without a general-education or vocational qualification was in decline until 2014, but rose again slightly in 2016. The proportion of young immigrants with higher-education qualifications has increased. According to international comparisons of school performance (e.g. PISA), pupils from immigrant backgrounds continue to perform significantly worse in mathematics and reading than those without immigrant backgrounds. This shows there are still considerable differences in educational performance amongst children, adolescents and young adults with and without immigrant backgrounds, depending on age group and skill area. However, 'immigrant background' *per se* is not decisive in (educational) disadvantages: the greater factor is social background. Action is still needed particularly in early childhood and in ongoing learning-support in language and reading. Efforts are also needed to improve educational opportunities, participation and performance – especially given the challenges posed by increases in immigration because of larger numbers of refugees, particularly since 2015. Education reports (recently: 'Education in Germany 2018') also show the education system faces major challenges because the school population is increasingly diverse (e.g. integrating children with first languages other than German).

<sup>69</sup> On *Länder* Participation and Integration Acts in detail, see Annex 13.

<sup>70</sup> On funded projects for organisations of immigrant communities in the *Länder*, see Annex 14.

165. Funding for language education is therefore key. One example is the Federal-*Länder* BiSS initiative for language and reading skills and language diagnostics, aimed at improving children's and young people's skills in 'German as the language of education'. To support children and adolescents from immigrant backgrounds, the *Länder* have implemented a variety of measures in recent years. For example, parental involvement was enhanced, all-day schooling was extended, and comprehensive language-teaching concepts and measures were developed for language teaching in schools. To prevent long-term disadvantages due to lack of language skills at school-entry age, 4 to 6 year-olds are assessed for language skills in almost all *Länder*. Those children in need of assistance receive additional language training in all *Länder*. Extra-curricular programmes (e.g. language training camps, afternoon or weekend language instruction, additional classes for children and adolescents from immigrant backgrounds at Secondary School Levels I and II) complement the school curriculum. Additionally, many *Länder* also offer children and adolescents options to improve proficiency in their native language, as part of state-sponsored native-language teaching programmes. Working with diversity and promoting intercultural skills also play an important role in training for teachers and early childhood education specialists. This is reflected in schemes such as the 'Quality Offensive in Teacher Education' and the 'Further-Training Initiative for Early Childhood Education Specialists'. In 2015, KMK and HRK adopted recommendations on 'Educating Teachers for Diverse Schools', paving the way for teacher training with greater emphasis on diversity and inclusiveness. Furthermore, greater focus on 'language learning across all subjects' and 'language sensitivity in subject-based teaching' especially benefits pupils from multilingual backgrounds. People from immigrant backgrounds also benefit in particular from programmes in the area of vocational training. One example is the initiative 'Qualification and Participation – Educational steps all the way to vocational training qualifications', supporting young adults transitioning from school to workplace, and ideally onwards to vocational training or university. The federal and *Länder* governments have interlinked their programmes. The Federal-*Länder* joint initiative 'School Makes You Strong' will commence in the 2021/22 school year and will be funded equally by the Federal Government and *Länder*, providing €125 million over 10 years. This nationwide initiative help schools in difficult social environments cope better with challenges such as pupils from households at risk of poverty or parents with little formal education or knowledge of German.

166. Following the sharp rise in immigration of persons seeking protection and asylum in 2015, the *Länder* recruited additional teachers for children and young adults newly admitted to schools and made funds available for new posts. To improve the quality of language-integration schemes, several *Länder* introduced the KMK German Language Diploma, which also improved cooperation between the *Länder* on language integration. Additionally, BMBF launched a raft of measures to promote language and reading skills, support local authorities and local-authority networks, and facilitate entry and integration into training, studies and work. These include the programmes 'Beginner's German', 'Beginning to Read for Refugee Children', 'Municipal Coordination of Educational Opportunities for Newly Immigrated Persons', 'Career Orientation for Refugees', 'Preventing Dropout in Training', 'Coordination Office for Training and Migration', support for voluntary student initiatives, and promoting language and propaedeutic courses at preparatory colleges and universities. Furthermore, research projects are funded to improve insights into migration and integration. Efforts are also made to improve access to university education for people with refugee backgrounds. In 2015, KMK agreed a joint approach for students who, after fleeing their country, cannot prove they have a higher-education entrance qualification or cannot provide complete documentation. KMK has also discussed ways to reduce the costs of enrolment. At the same time, various measures have been taken in the *Länder* and at universities – e.g. funding for scholarships; and programmes/initiatives for advice and guidance, preparing for university, language acquisition and facilitating access to higher education.

#### *Participation in work and economic life*

##### Labour-market integration

167. Progress is being made in integrating the approximately 19 million people from immigrant backgrounds living in Germany into the labour market. Their labour-market

participation rose to 70.1% in 2017, while that of foreign nationals was 65.3% (persons without immigrant backgrounds: 82.1%). For foreign nationals, the unemployment rate among the entire civilian labour force was 12.4% in July 2018, thus falling 2.2 percentage points against the average for 2011 (immigrant background is not recorded in Federal Employment Agency unemployment statistics). The fall in the unemployment rate amongst this group was therefore as pronounced as the figure for German nationals in the same period (decline of 2.2 percentage points to 4.2%). Declining unemployment among foreign nationals would have been even more pronounced without the new challenges posed by refugee arrivals in 2015/2016. Despite significant support and funding, labour-market integration of this group will take time, not least because German-language skills must first be acquired. However, the current trend also shows a marked improvement in labour-market integration.

168. The nationwide ‘Integration through Qualification – IQ’ funding programme was supplemented by a fourth priority area ‘Regional Skilled-Worker Networks – Immigration’ at the start of the second funding round on 1 January 2019. To promote diversity in companies, the ‘Diversity Charter’ was introduced – an initiative promoting recognition, appreciation and inclusion of diversity in corporate culture in Germany. So far 3,400 companies and institutions have signed up as employers. In addition to other Federal-Government projects, numerous labour-market integration projects exist in the *Länder*, some of which fall under the ESF.<sup>71</sup>

#### Protection against discrimination

##### AGG

169. The AGG, which came into force on 18 August 2006, prohibits discrimination in employment and occupation on grounds of race, ethnic origin, gender, age, disability, sexual identity, religion or belief (section 7). If the AGG is violated, employees may be entitled to damages and compensation. If they suffer disadvantage, they may lodge a complaint (section 13). Additionally, ADS provides those affected with advice and assistance. Furthermore, they can take their case to court.

170. On behalf of ADS, the AGG was evaluated by an independent panel in 2016 and the results were published in October 2016<sup>72</sup> (concluding observation 8a). The Federal Government’s assessment of the evaluation has not yet been completed.

171. There are also efforts by the *Länder* to expand legal protection against discrimination – at least for matters falling within their legislative competence. In Berlin, a *Land* anti-discrimination bill (LADG) is currently in the legislative process.

##### Anti-discrimination agencies at federal and *Land* level

172. ADS was established in 2006 as the national body for protection against discrimination (section 25 AGG). Its tasks include providing informing about rights and legal protection to persons who believe they have been disadvantaged on grounds listed in section 1 AGG. Furthermore, ADS can refer to other bodies for advice and seek amicable settlements between parties (section 27 (2) nos. 1 to 3 AGG).

173. Further to ADS, there are a number of state anti-discrimination agencies at municipal and *Land* level. These have been established in an increasing number of *Länder* and are being expanded. Some offer free initial legal advice. There are also large numbers of non-governmental anti-discrimination bodies throughout Germany. ADS supported the setting-up of such non-governmental bodies through the programme ‘Advice Centres against Discrimination’ between 2015 and 2017, to close gaps in support (concluding observation 8c). From numerous applications, ADS selected eleven projects that will continue to improve support services for victims of discrimination/act as points of contact for anti-discrimination work in their regions. They are based in ten different *Länder*. To help people find a suitable local centre among a long list of support services, ADS launched a search tool and information database on its website [www.antidiskrimierungsstelle.de](http://www.antidiskrimierungsstelle.de) in

<sup>71</sup> On labour-market integration projects in the *Länder*, see Annex 15.

<sup>72</sup> Available on the ADS website: [http://www.antidiskrimierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/AGG\\_Evaluation.pdf?\\_\\_blob=publicationFile&v=15](http://www.antidiskrimierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/AGG_Evaluation.pdf?__blob=publicationFile&v=15).

2011.<sup>73</sup> This furthermore enables institutions and associations to find other organisations in their field and build networks.

#### Self-determination for churches and section 9 (1) AGG

174. Under section 9 (1) AGG, different treatment of employees or applicants based on religion or belief is permissible if the different treatment is a decision by a religious community or affiliated institution under its right to self-determination, or if a person's membership of a particular religion is a justified occupational requirement due to the type of activity to be performed. The prohibition of different treatment based on religion or belief does not affect the right of religious communities to require loyal and honest conduct from their employees in accordance with their respective self-image.

175. According to BVerfG case-law, religious communities can in principle decide for themselves whether they require applicants for a particular job to belong to a particular religion. However, this ecclesiastical right of self-determination, applicable under ordinary law, does not apply without restriction and is subject to a judicial review of plausibility and arbitrariness.

176. In 'Egenberger' (C-414/16, judgement of 17 April 2018), the ECJ considered the question of whether an applicant for a vacant position within the church had to belong to a particular religion. The ECJ found that the right to autonomy of the churches and the right of employees to non-discrimination must be weighed against each other, and that this assessment must be subject to judicial review. In any case, the requirements imposed by a church organisation must be objectively necessary and proportionate. National law, the Court held, must be interpreted in conformity with EU law as far as possible. Building on this, the ECJ's judgment of 11 September 2018 in 'Chefarzt' (C 68/17 IR/JQ) held that the decision of a church (or other organisation whose ethos is based on religion or belief) managing a hospital as a private limited company to impose on managers a requirement to act in good faith and with loyalty that differs according to the person's faith (or lack thereof), must be subject to effective judicial review. In conducting that review, the ECJ held, national courts must ensure that – considering the nature of the professional activities concerned or the context of their performance – a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. In the preliminary ruling, the ECJ considered the requirement in question unjustified.

177. In 'Egenberger', the BSG ruled on 25 October 2018 (8 AZR 501/14) that the rejection of the non-denominational applicant for religious reasons had disadvantaged the claimant on grounds of religion. In this case, the religion/belief was not held to be a justified occupational requirement because there was no probable and substantial risk that the church's ethos would be impaired by the project-related activity concerned. The BSG therefore ordered the defendant to pay compensation to the claimant for violating the prohibition of discrimination under the AGG. The defendant has now filed a constitutional complaint against the BSG judgment, asserting *inter alia* that the ECJ overstepped its competence. BVerfG has yet to issue its ruling on the matter. (See also concluding observation 15).

#### *Participation in healthcare and social-security systems: situation of asylum seekers*

178. Statutory health insurance benefits in Germany are open to all insured persons equally, regardless of nationality/origin. It is regulated without regard to the attributes in Article 1 (1) ICERD. However, persons seeking protection and persons obliged to leave Germany are generally cared for outside the statutory health-insurance system. For these persons, healthcare under AsylbLG is essentially limited to treatment of acute illnesses and pain. Additionally, vaccinations and medically-required preventive examinations are provided for prevention and early detection of diseases. Expectant mothers and women who have recently given birth must be given medical assistance and care, midwife services, medicines, bandages and remedies. Furthermore, other benefits may be granted especially where indispensable in individual cases to safeguard health or meet the special needs of children. These other benefits are at the discretion of the competent authority. In individual

---

<sup>73</sup> ADS support-service search: [http://www.antidiskriminierungsstelle.de/DE/Beratung/Beratung\\_Moeglichkeiten/Beratungsstellensuche/Beratungsstellensuche\\_node.html](http://www.antidiskriminierungsstelle.de/DE/Beratung/Beratung_Moeglichkeiten/Beratungsstellensuche/Beratungsstellensuche_node.html).

cases, their discretion may be reduced to zero (e.g. for reasons of European or constitutional law), i.e. a benefit must be provided. After 15 months in Germany without significant interruption, persons seeking protection and persons obliged to leave the country receive regular healthcare benefits under social-assistance law (so-called ‘analogous benefits’). They are treated the same as persons with statutory health insurance. Once BAMF has recognised a person’s entitlement to asylum, the person has access to the statutory health-insurance system.

179. Little representative information is presently available on the health status and medical care of persons seeking protection. However, valid data are essential for needs-oriented health-policy planning and decision-making. By funding the project ‘Sentinel surveillance of health status and primary medical care of asylum seekers in initial reception centres and collective accommodation in Germany’, BMG is making an important contribution to improving the data available on the health situation of persons seeking protection.

180. Additionally, BMG is actively encouraging structural optimisation in health reporting, health promotion and encouraging intercultural openness in healthcare. For example, outreach to migrants (particularly with refugee backgrounds) is being improved through a multilingual web portal, translations of information materials, and nationwide outreach events in cooperation with migrant-community associations. A ‘Health Guide for Asylum Seekers’ was produced and published in seven languages.<sup>74</sup>

181. The Federal Government Commissioner for Migration, Refugees and Integration financed the ‘Representative Study of Female Refugees in Different German *Länder*’.<sup>75</sup> The study addresses health issues and physical and psychological well-being amongst refugee women in Germany, while also providing an analysis of the medical and psychological/psychiatric care of refugees in Germany.

## F. Article 6

182. Regarding prosecution of racist offences, please refer to the information on Article 4a (margin nos. 91 et seqq.). On raising awareness of racist motives among investigating authorities, refer in particular to the information in margin nos. 104 et seqq. For state discrimination, recourse to the courts is guaranteed under Article 19 (4) GG (margin no. 17 above). Individual complaints of racist discrimination can be filed not only with the independent courts. There are also limitless opportunities to inform human-rights institutions and seek their advice. ADS plays a special role as advisory body (margin nos. 172 et seqq).

183. As stated in the last report, central focus is on victims’ rights. Please refer to the last report for a general overview of Germany’s victim-protection structures. The following reforms were introduced in the reporting period:

184. ORRG-3 of 21 December 2015 undertook further important steps to improve victim protection. First, it implemented the EU Victims-of-Crime Directive (2012/29/EU). Germany already had significant protection for victims, meaning amendments only had to be made in certain areas, such as procedural and information rights. E.g.: ORRG-3 explicitly regulates victims’ rights to interpreters during police and prosecutorial examination in section 163 (3) and section 161a (5) StPO respectively. Second, ORRG-3 incorporated psychosocial assistance in criminal-court proceedings. Particularly vulnerable victims now have access to professional assistance before, during and after trial. Children and young people have a legal right to psychosocial assistance free-of-charge where they endure serious sexual or violent offences. For other victims of serious violent/sexual offences and close relatives of somebody killed by an unlawful act, the court decides on the provision of psychosocial assistance case-by-case. The provisions on psychosocial assistance in court proceedings entered into force on 1 January 2017. Information can be found on BMJV’s website: [www.bmjv.de/opferschutz](http://www.bmjv.de/opferschutz).

<sup>74</sup> <https://www.bundesgesundheitsministerium.de/ministerium/meldungen/2016/160115-ratgeber-gesundheit-fuer-asylsuchende-in-de.html>.

<sup>75</sup> <https://female-refugee-study.charite.de/>.

185. As stated in the last report, victims of extremist attacks can receive hardship payments. This also applies to terrorism victims. Hardship payments are budgetary funds specifically earmarked annually by the Bundestag to support victims of such offences on humanitarian grounds; they are administered by BfJ pursuant to the ‘Guideline for Hardship Payments for Victims of Extremist Attacks’/‘Guideline for Hardship Payments for Victims of Terrorist Offences’. These payments are an act of victim solidarity by the state and its citizens, and send a clear message condemning attacks. Hardship payments are regularly made as immediate lump sums. Lump sums for loss of maintenance or professional disadvantage were increased in 2018. Hardship payments for surviving relatives were tripled: Spouses/civil-partners/children/parents of those killed in an attack now receive €30,000 instead of the previously provided €10,000. Siblings receive €15,000 each instead of €5,000. These increases are retroactive.

186. Additionally, benefits under OEG are set to increase significantly in the upcoming reform of social-compensation law. The Federal Government plans comprehensive reforms in this area. The law will now include victims of purely psychological violence. Also, all victims will have recourse to quick and easy-access services such as trauma centres. Services/benefits will be equally accessible irrespective of the victim’s nationality.

187. Furthermore, especially thanks to support from the ‘Living democracy!’ federal programme, counselling/support services are available in all 16 *Länder* to help victims of right-wing extremist, racist, anti-Semitic, homophobic, transphobic and Islamophobic incidents cope with the pecuniary and non-pecuniary impact of such offences and regain a sense of agency.<sup>76</sup>

## G. Article 7

### General measures

188. Combating ideologies of inequality and related forms of discrimination features prominently among measures to strengthen democracy and the rule of law; please refer to related information in the NAP, especially chapters 3 and 4.

189. The bpb, referred to in this context in the last report, implemented some 130 projects in 2017 to prevent and fight hateful, racist and extremist conduct and mindsets. These will continue permanently.

190. Additionally, many of the previously-described initiatives and organisations work to prevent racist mindsets through targeted information and education. This is true, for example, of the ‘Alliance for Democracy and Tolerance’, and the federal programmes ‘Living democracy!’ and ‘Social cohesion through participation’ (cf. margin nos. 35 et seqq.).

191. Involving as many people as possible in art and culture is key to social cohesion and an integration driving-force in a country of immigration. BKM funds the cultural-education work of various initiatives, networks and institutions, especially to reach those who have rarely visited museums, libraries or theatres.

192. In 2018, following recent developments, KMK revised its 2009 declaration on democracy education, emphasising not only that democracy is inherent in all subjects, but that schools can provide a democratic experience with potential for collective decision-making/ownership.<sup>77</sup> Many *Länder* have followed the 2009 recommendation to organise an annual project day on 9 November<sup>78</sup> for the critical study of 20th-century German history. For organisational reasons, some of these projects are spread out over the entire year.

---

<sup>76</sup> On victim-counselling projects in the *Länder*, see Annex 16.

<sup>77</sup> [https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen\\_beschluesse/2009/2009\\_03\\_06-Staerkung\\_Demokratieerziehung.pdf](https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2009/2009_03_06-Staerkung_Demokratieerziehung.pdf).

<sup>78</sup> In remembrance of 9 November 1938 (‘Reichspogromnacht’).

## Measures in teaching and education

### *Curricula and programmes to improve mutual understanding, tolerance and friendship between groups*

193. All Germany's *Länder* consider teaching respect for human dignity their inherent task and a fundamental goal of school education. The topic is firmly rooted in the curricula of all relevant subjects – especially religious education, ethics, philosophy, history, civics and social studies, but also economics, politics, geography, German and foreign languages – at all levels and in all types of school. It is also the focus of countless extra-curricular projects/initiatives. Human-rights education in schools teaches schoolchildren to know and defend their rights and stand up for the rights of others, and fosters respect/tolerance for other cultures and an intrinsic sense of social responsibility. Schools thus encourage all pupils to develop freely as individuals, and try to ensure equal opportunities and compensate disadvantage to the fullest possible extent.<sup>79</sup> In 2018, KMK thoroughly revised its recommendations on human-rights education in schools.<sup>80</sup> KMK maintains close working relations with ZdJ (joint recommendation in 2016, compendium of materials<sup>81</sup> for teaching Judaism in schools in 2018) and the Central Council of German Sinti and Roma (planned recommendations for teaching cultures, life circumstances and history of Roma and Sinti).

194. The bpb-funded project 'A School without Racism – A School with Courage' (see last report) now includes well over 1,000 schools.

195. With the annual 'Fair at school' competition, founded in 2017, ADS and publishing-house Cornelsen honours exemplary school projects aimed at fighting discrimination and promoting equal opportunities in schools.

### *Avoiding stereotypes in schoolbooks*

196. The KMK's Guidelines for Approval of Schoolbooks provide, *inter alia*, that schoolbooks may only be approved if they do not breach general constitutional principles and legal provisions. This includes avoiding stereotypes in schoolbooks (e.g. of a superior Europe, an Africa with nothing but poverty/civil war, or a single vision of Islam as totalitarian).

197. The 'Schoolbook Study on Migration and Integration', published in 2015 on behalf of the Federal Government Commissioner for Migration, Refugees and Integration examined how and whether schoolbooks reflect integration, migration and resulting social diversity. Importantly, it revealed that migration is often portrayed in schoolbooks as problematic, with opportunities of diversity often addressed as a side-issue. Various measures were taken since the study was published. For example, in May 2015 NRW's Ministry for Schools and Further Education organised a conference on 'Diversity and Migration in Teaching Materials'.<sup>82</sup> In October 2015, KMK adopted the joint declaration 'Portrayals of Cultural Diversity, Integration and Migration in Educational Media' with organisations of immigrant communities and educational publishers.<sup>83</sup> In January 2016, the Commissioner and KMK organised a conference at BKAmt for further discussion of the Schoolbook Study. The study helped raise awareness for a more intercultural approach to teaching materials and provided impetus for actors in the education sector, including *Länder* education ministries, teachers and educational publishers. The Federal Government will continue to pursue this process.

<sup>79</sup> See *Länder* examples of promoting human-rights education in schools, Annex 17.

<sup>80</sup> [https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen\\_beschluesse/1980/1980\\_12\\_04-Menschenrechtserziehung.pdf](https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/1980/1980_12_04-Menschenrechtserziehung.pdf).

<sup>81</sup> <https://www.kmk-zentralratderjuden.de/>.

<sup>82</sup> [http://www.medienberatung.schulministerium.nrw.de/Medienberatung/Dokumentationen/2015/04\\_FT-Diversity-in-Lernmitteln.html](http://www.medienberatung.schulministerium.nrw.de/Medienberatung/Dokumentationen/2015/04_FT-Diversity-in-Lernmitteln.html).

<sup>83</sup> [www.kmk.org/fileadmin/Dateien/veroeffentlichungen\\_beschluesse/2015/2015\\_10\\_08-Darstellung-kultureller-Vielfalt.pdf](http://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2015/2015_10_08-Darstellung-kultureller-Vielfalt.pdf).

## Media

198. The media significantly influence public opinion – not only with editorials and commentary, but with their choice of issues, images, words and context. This influence on democratic decision-making, debate and opinion entails a responsibility towards society as a whole. But it is also greatly important, especially with new digital media, to bolster media literacy and advance the protection of young people through law and education.

199. A significant role in combating discriminatory statements in the media falls to the German Press Council, an institution of voluntary self-governance for the press. Anybody can complain to the Council about a newspaper or magazine, including about digital content. If the complaint is well-founded, the Council takes action against the outlet. The applicable standards are set out in the 16 sections and accompanying guidelines of the ‘Press Code of Conduct’. Section 12 deals with discrimination by the press. Guideline 12.1 on crime reporting, updated in 2017, is at the centre of the ongoing media-ethics discussion in Germany. Under this guideline, when reporting on crimes, any reference to a suspect’s/perpetrator’s membership of ethnic, religious or other minority groups shall not result in a discriminatory generalisation of individual misconduct. As a rule, membership of a minority group shall not be mentioned, unless this is legitimately in the public interest. Editors are to remember that such references could stoke prejudices against minorities. The Complaints Committees examined 2,038 complaints in 2018 (2017: 1,788). The interpretation of the new guideline 12.1 was a central issue in 2017. However, from 2017 to 2018, complaints on this matter decreased by approximately 25%. To secure the Press Council’s financial independence and work, the Complaints Committee is funded under parliamentary act by BKM (€223,000 annually).

200. The *Länder*, responsible for broadcast and audio-visual media in Germany, have advanced protection of young people with amendments to JMSStV, effective as of 1 October 2016. The chief aim was to keep abreast with ‘media convergence’, by applying the age-groups defined in JuSchG to broadcast and telemedia and through mutual recognition of age ratings both on- and offline. Furthermore, the reform secured permanent funding for the *joint Länder organisation to protect minors* (‘jugendschutz.net’) – founded by *Länder* youth departments in 1997, funded by private-broadcaster oversight authorities and the *Länder*, and supported financially by the Federal Government especially in connection with fighting racism and hatred on the internet.

201. Furthermore, the Federal Government is working with the *Länder* to advance protection of young people through law and education. General information and advisory services offering media education to parents and child/ juvenile-welfare practitioners will be boosted and become more joined-up, and effective advisory services developed for young people. The ‘Growing up well with media’ initiative, particularly ‘TAKE A LOOK! At what your child’s doing with media’, the ‘Number against Worries’ hotline, information from ‘youth.support’ and youth counselling by ‘juuuport’ are good starting points. Concurrently, laws to protect young people against harmful media are to be adapted to advances in digital media and children’s/young people’s usage habits.

202. By late 2018, BPjM – mentioned in the last report – had added over 2,100 media glorifying war and/or Nazism/inciting racial hatred to the harmful-media index. Here, the digital age has yielded new threats. Young people not only encounter content constituting discrimination/inciting racial hatred/glorifying Nazism etc.: ‘interaction risks’ have also arisen, e.g. radicalisation and recruitment by extremists. As part of a FUTURE-WORKSHOP, BPjM<sup>84</sup> is launching a child/youth-policy strategy to formulate a response to (novel) threats in the digital environment and ensure that children/young people grow up well with media. A ‘risk atlas’ will be compiled to map out/analyse risks, permitting a sustainable and holistic strategic response (including for reforms to JuSchG).

203. Additionally, multiple initiatives exist in the *Länder*. One successful project to protect young people against harmful media is AKJS-Brandenburg’s ‘Parent Media Advisory Service’,<sup>85</sup> which helps parents be proactive and aware in educating their children to utilise the opportunities that media offer while minimising risks.

<sup>84</sup> Based on a May 2018 resolution by the Youth and Family Ministers Conference of the *Länder*.

<sup>85</sup> <https://www.jugendschutz-brandenburg.de/project/altern-medien-beratung2>.