



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

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9  
OF THE CONVENTION**

**Eighteenth periodic reports of States parties due in 2006**

**Addendum**

**Germany\* \*\* \*\*\***

[16 January 2007]

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\* This document contains the sixteenth, seventeenth and eighteenth periodic reports of Germany, due on 15 June 2004 submitted in one document. For the fifteenth periodic report and the summary records of the meetings at which the Committee considered the report, see document CERD/C/338/Add.14, CERD/C/SR.1449, 1450 and 1460.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\*\* Annexes to the report may be consulted in the secretariat's files.

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**Annexes**

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- II. Core document of the Federal Republic of Germany forming part of the Reports submitted by States Parties to the United Nations human rights conventions (English version)
- III. Federal Parliamentary Printed Matter - BT-Drs. - no. 14/9519 dated 14 May 2002: Report on the Federal Government's Current and Planned Measures and Activities to Combat Right-Wing Extremism, Xenophobia, Anti-Semitism and Violence
- IV. Excerpt from the Seventh Report of the Government of the Federal Republic of Germany on its Human Rights Policy in the Context of Foreign Relations and Other Areas of National Policy
- V. Penal provisions for the suppression of racist offences (in German)
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## I. GENERAL SECTION

1. The protection of all people against racial discrimination<sup>1</sup> is an objective of outstanding importance to German law and German politics. The International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966 (ICERD, hereinafter “the Convention”) defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing, of human rights and fundamental freedoms in the political, economic, cultural or any other field of public life.
2. The Federal Republic of Germany ratified the Convention in 1969. Since then, the German government has regularly submitted reports to the Committee on the Elimination of Racial Discrimination (CERD, hereinafter “the Committee”). In these state reports it has provided the Committee with information on the legislative, judicial, administrative and other measures taken by official agencies in the Federal Republic of Germany to prevent and eliminate racial discrimination.
3. The Federal Republic submitted its last State report in 2000 (CERD/C/338/Add.14). In its concluding observations of 21 March 2001 on that report (CERD/C/304/Add.115), the Committee permitted Germany to present the 16th and 17th reports together with the 18th report. Since the 15th report merely comprised an updated short report, the current report constitutes a comprehensive periodic State report covering the period between the submission of the 15th report up to and including 31 December 2005. It will be posted on the Federal Ministry of Justice’s website ([www.bmj.bund.de](http://www.bmj.bund.de)). The core document of the Federal Republic of Germany forming part of reports of State parties on the human rights instruments of the United Nations (HRI/CORE/1/Add.75/Rev.1) is likewise available on the aforementioned website and is included in the annexes to this report (German version, Annex I; English version, Annex II). The core document contains general information on Germany and its people.
4. The present report was compiled by the German federal government and gives an account of its position. Non-governmental organisations (NGOs) working on human rights and racism issues, the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) and representatives of the Jewish and Muslim communities were requested to contribute their statements and invited to discuss them at a meeting at the Federal Ministry of Justice. The German government would like to thank all those involved in these discussions for their ideas and suggestions.
5. The declared belief in the free, democratic basic order and a rejection of all conceivable forms of extremism and racism are among the fundamental principles on which the German government bases its political activity. Diverse programmes against right-wing extremism,

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<sup>1</sup> The German government applies the term ‘racial discrimination’ as defined in the Convention. In no way does that mean that it supports theories or doctrines which claim that there are different human races. The German government thus makes reference to the declaration made on behalf of the European Union at the World Conference against Racism on 7 September 2001.

xenophobia and intolerance have already been devised and are being implemented, and the German government will continue to follow these up. On account of the manifold factors which contribute to the emergence of right-wing extremist patterns of behaviour, the German federal government is pursuing a multi-dimensional strategy which combines preventive and repressive elements. The main emphases are on the four pillars of a pro-active human rights policy: strengthening civil society; encouraging people to have the courage to stand up for their convictions (civil courage); promoting the integration of foreigners; and measures directed at perpetrators and their environment.

6. Integrating immigrants is one very particular focus of the German government's human rights policy. On the invitation of the Federal Chancellor, representatives of the federal administration, the *Länder*, local government, private industry, society and migrants met for an Integration Summit held in the Federal Chancellery on 14 July 2006. The Summit marked the beginning of a process that will lead to the drawing up of a National Integration Plan by the summer of 2007. This National Integration Plan is to contain clear goals, concrete measures and self-imposed commitments on which to base a sustainable integration policy. In addition, the German government's objective in setting up the German Standing Conference on Islam was to improve religious and social integration of the Muslim population in Germany and to prevent violent Islamism. Federal Minister of the Interior Dr Wolfgang Schäuble opened the German Standing Conference on Islam on 27 September 2006. The Standing Conference is intended as a process of negotiation between the German state and Muslims living in Germany and will last several years.

## **II. REPORT ON THE IMPLEMENTATION OF ARTICLES 2 TO 7 OF THE CONVENTION**

### **ARTICLE 2**

#### **A. Obligation of official agencies not to engage in racial discrimination (art. 2 para. 1 (a) and (b))**

7. In Germany, the prohibition on discriminating against a person on account of his/her race derives from each person's right to respect for and protection of human dignity. Human dignity is established in the Basic Law of the Federal Republic of Germany as the supreme right: "Human dignity shall be inviolable. To respect it and protect it shall be the duty of all state authority." (Article 1 para. 1 Basic Law).

8. According to Article 3 para. 1 of the Basic Law, all persons are equal before the law. The right to be treated equally before the law by the state is given more concrete form in specific prohibitions against discrimination in Article 3 para. 3, sentence 1 of the Basic Law: "No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions." The principle of equality applies to the executive, judiciary and the legislative bodies in equal measure and not only protects natural persons, but also legal persons and associations of individuals.

9. Should any person's rights be violated by a public authority, Article 19 para. 4 of the Basic Law guarantees that they may have recourse to the law. According to Article 93 para. 1 No. 4.a in conjunction with Section 90 (1) of the Federal Constitutional Court Act, any person

who alleges that their basic rights - i.e. including their right to equal treatment - have been infringed by a public authority may submit a constitutional complaint to the Federal Constitutional Court. According to the case law of the Federal Constitutional Court, the attributes listed in Article 3 para. 3 of the Basic Law may not be “used as the occasion for unequal treatment before the law. That also applies when a provision is not geared to that unequal treatment which is prohibited under Article 3 para. 3, but when it is primarily pursuing other objectives” (BVerfGE 85, 191 <206>).

**B. Mechanisms for reviewing procedures applied by official agencies and legislation which have the effect of creating or perpetuating racial discrimination (art. 2 para. 1 (c))**

10. The German government would first like to point out that the government agencies at federal administration and *Land* level who are entrusted with tasks pertaining to the Convention are also responsible for monitoring the implementation of that Convention. For example, according to Section 46 of the Joint Standing Orders of the Federal Ministries, all draft legislation of the federal government is subject to a legal examination as regards its conformity with the Convention. Furthermore, at EU level there is the European Monitoring Centre on Racism and Xenophobia (EUMC). In addition, the European Commission against Racial Discrimination (ECRI) examines the actual and legal conditions in each of the Council of Europe Member States, i.e. also in Germany. Finally, official action may also be examined by the courts and must thereby be measured against the requirements set out in Article 3 para. 3 of the Basic Law, which explicitly prohibits racial discrimination. This examination must cover the provisions set out in the Convention.

**C. Prohibition against discrimination among private individuals (art. 2 para. 1 (d))**

11. Article 4 of the Convention covers criminal law aspects, which are dealt with in paragraphs 79 to 166 below. Please refer to paragraphs 160 to 164 below as regards civil law aspects.

**D. Promoting integration especially by encouraging integrationist organisations and movements (art. 2 para. 1 (e))**

12. The government provides wide-ranging support to organisations and movements for their work on combating racial discrimination, which it sees as contributing to integration. In a report dated 14 May 2002, the German government informed the Bundestag about its ongoing and planned measures and activities aimed at combating right-wing extremism, xenophobia, anti-Semitism and violence (Federal Parliamentary Printed Matter - BT-Drs. - 14/9519; Annex III). The German government's most recent (Seventh) Report on its Human Rights Policy in the Context of Foreign Relations and Other Areas of National Policy also contains comprehensive information on the topic of combating racism in the period under review (April 2002 to December 2004; Federal Parliamentary Printed Matter 15/5800; see Annex IV for an excerpt). The German government's foreign policy in the area of combating racial

discrimination and promoting organisations and activities in that area, as well as the anti-racism work done by two government-funded institutions will be outlined in more detail in the following. Section VI below on Article 7 contains more information on other measures for promoting integration.

### **1. Combating racism and racial discrimination in the context of foreign relations**

13. Combating racism and racial discrimination is a major concern of foreign policy which Germany vigorously supports not only within the framework of the United Nations, but above all as part of the European Union (EU), the Council of Europe and the OSCE, whose Conference on Anti-Semitism took place in Berlin in April 2004. The German government in particular supports the European Monitoring Centre on Racism and Xenophobia (EUMC) and the European Commission against Racism and Intolerance (ECRI).

14. The Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa from 31 August to 8 September 2001, as was agreed at the 52nd General Assembly of the United Nations (1997). The German delegation played an active role during the conference.

15. Regional conferences were held in preparation for the World Conference. The first such preparatory conference was the European Conference against Racism, which the Council of Europe organised for the region of Europe from 11 to 13 October 2000 in Strasbourg (<http://ecri.coe.int>). Along with the Member States of the Council of Europe, the conference was attended by representatives of international organisations engaged in combating racism, of institutions of the Council of Europe, the EU, the OSCE and the United Nations, as well as of national institutions (the Federal Government Commissioner for Matters Relating to Foreigners represented Germany) and 82 national and international NGOs. The conference was preceded by an event organised by NGOs, the results of which were incorporated into the European conference.

16. The German government and the other Member States of the Council of Europe were in agreement that regional preparations should above all deal with the situation in that particular region. That is why four working groups at the European Conference looked into the following issues within a local, national and European context: Legal protection against racism and racial discrimination; practical measures against racism and racial discrimination; education and awareness raising in combating racism; the role of information, communication and the media in combating racism and racial discrimination.

17. At the conference the German government introduced the Alliance for Democracy and Tolerance - Against Extremism and Violence ([www.buendnis-toleranz.de](http://www.buendnis-toleranz.de); see b) below), which the Federal Ministry of the Interior and the Federal Ministry of Justice brought into being. This national initiative fitted in with European and international activities in preparation for the World Conference against Racism.

18. German NGOs also provided important impulses for the work of the German delegation during the preparatory phase. For the first time a representative of an NGO (Human Rights Forum, [www.forum-menschenrechte.de](http://www.forum-menschenrechte.de)) was an official member of the German delegation.

19. The German government directed especial attention during negotiations to the topics of anti-Semitism, the importance of education and training as regards preventive work, combating hate propaganda (especially on the Internet), banning extremist organisations and inter-religious tolerance. Another particular focus was the issue of discrimination against refugees and migrants, as well as multiple discrimination against women. Germany played a key role within the EU and was a driving force behind working out the compromises reached. Given Germany's past, the German government had tried to enlist support during these European preparations to take seriously the wish expressed by many African states that historical injustice also be discussed. Declarations on how to deal with historical injustice contained in the Final Document of the European preparatory conference were to a large extent based on Germany's suggestions. The then Foreign Minister Joschka Fischer said in his speech at the beginning of the World Conference on 1 September 2001.

20. "At this conference we must begin with the past. In many parts of the world the pain felt on account of the consequences of slavery and exploitation during the colonialist era still goes very deep, and those consequences continue to have an effect today. Past injustice cannot be undone. However, admitting we are to blame, taking responsibility and facing up to our obligations can at least give the victims and their descendants back the dignity of which they were once deprived. Today I would like to do that on behalf of the Federal Republic of Germany."

21. The German government provides funding and staff to the Anti-Discrimination Unit which was set up in the Office of the UN High Commissioner for Human Rights based on the Durban documents. Among other things, the Anti-Discrimination Unit is tasked with collating information on legal and practical means of taking action against racism, racial discrimination, xenophobia and related intolerance and with making that information available to the public.

22. During the regional follow-up conference in Brussels (10-12 December 2003) the German government outlined the current level of implementation of the Durban documents in Germany and thereby in particular referred to work on a National Action Plan<sup>2</sup> and the OSCE Anti-Semitism Conference. Since 2003 the OSCE has increasingly been devoting itself to the issue of intolerance, in particular racism, xenophobia, discrimination and anti-Semitism. On the invitation of the German government, a high-ranking OSCE conference on anti-Semitism took place in Berlin on 28/29 April 2004 in the Federal Foreign Office under the Bulgarian OSCE Presidency. The President of the Federal Republic of Germany gave the opening speech. The political aim of the conference in Berlin was to send a widely visible signal that, in view of

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<sup>2</sup> In line with the obligations it is under pursuant to the Durban Final Document of the UN World Racism Conference, the German government in 2003 forwarded its "Report on Ongoing and Planned Measures and Activities of the German Government against Right-Wing Extremism, Xenophobia, Anti-Semitism and Violence" (Federal Parliamentary Printed Matter - BT-Drs. - No. 14/9519) to the UN. The report had been presented to the Bundestag and already constitutes a "Core National Action Plan (NAP)". The German federal government is currently working on a further draft version, which will be completed before the end of 2006. It will subsequently be discussed with civil society in co-operation with the German Institute for Human Rights.

growing anti-Semitism, the 55 participating OSCE states are taking seriously the concerns of the Jewish people and of Israel. 900 well-known personalities, politicians, academics and experts from over 60 states and 150 NGOs discussed at length the problem of anti-Semitism and measures to combat it. At the end of the conference the participants agreed on a “Berlin Declaration” containing concrete measures to combat anti-Semitism. As well as condemning anti-Semitism, the Berlin Declaration also contains concrete operative steps that are to be taken within the framework of the OSCE:

- The OSCE’s unequivocal condemnation of anti-Semitism has laid a politically binding foundation within the OSCE area on the basis of which anti-Semitism can now be rejected. According to the Berlin Declaration, anti-Semitism constitutes a threat to basic human values, democracy and thus also to security in the OSCE area. In addition, the Declaration committed the participating states to the precept that international disputes, including those in Israel and the Middle East, can never justify anti-Semitism;
- The concrete steps for combating anti-Semitism can be divided into two areas: The first covers comprehensive self-imposed commitments made by the OSCE states, ranging from tolerance training and integration policy to statistics on and criminal prosecution of anti-Semitic attacks. The second comprises operative tasks entrusted to the OSCE’s human rights institution, the Office for Democratic Institutions and Human Rights (ODIHR). These include systematically recording anti-Semitic attacks in the OSCE area and collating tried and tested measures (so-called best practice examples) on combating anti-Semitism. The latter include legislative measures and the promotion of education and training programmes that deal with the Holocaust and anti-Semitism.

23. The operative implementation of these agreements and those adopted at the sister conference on racism in Brussels in September 2004, which were followed up in another OSCE conference on anti-Semitism and other forms of intolerance in Cordoba, Spain in 2005, is the responsibility of the newly created Tolerance and Non-Discrimination Unit at the ODIHR. The German government is supporting the Tolerance Unit by providing and financing two experts on combating anti-Semitism and racism and by voluntary contributions to concrete projects, including developing teaching materials on the Holocaust and anti-Semitism, as well as training police officers to deal with hate crimes.

24. In order to ensure that the fight against intolerance is more visible at the political level, the OSCE president in late 2004 introduced the office of three Personal Representatives (on Combating Anti-Semitism, on Combating Intolerance and Discrimination against Muslims, and on Combating Racism, Xenophobia and Discrimination). Mr Weisskirchen, a member of the German Bundestag, was appointed the first OSCE Personal Representative on Combating Anti-Semitism. The German government in 2006 invited the Personal Representative on Combating Intolerance and Discrimination against Muslims, Ambassador Orhun of Turkey, and the Personal Representative on Combating Racism, Xenophobia and Discrimination, Ms Crickley of Ireland, to visit Germany.

## **2. The Alliance for Democracy and Tolerance - Against Extremism and Violence**

25. The Alliance for Democracy and Tolerance - Against Extremism and Violence was officially brought into being on 23 May 2000 (the day on which Germany marks the adoption of

the Basic Law) by the then Federal Ministers Otto Schily and Prof. Dr Herta Däubler-Gmelin. The Alliance aims to promote peaceful co-existence based on mutual respect between all those living in Germany. Its leitmotiv is that human rights can only be protected and violence and xenophobia can only be eliminated in the long term when strong civil society structures have become established. The Alliance thus brings together and mobilises those elements of society that are committed to working towards these goals and which have a wealth of ideas on how to achieve them. More than 1,300 initiatives from all areas of society have already joined the Alliance. The work of the Alliance is to a large extent shaped by its advisory committee, which comprises 23 people, including representatives of the government and of all those parties who are represented in the Bundestag, representatives from academia, private industry, trade unions, the Jewish community and social organisations. A group of supporters that includes numerous prominent politicians, artists and sportsmen and sportswomen support the Alliance by raising public awareness for initiatives and organisations or by speaking about these issues on specific occasions.

26. One particular way in which the Alliance is attempting to achieve its goal of strengthening civil society is by holding its annual “Active for Democracy and Tolerance” competition, in which projects are brought together from all areas of life, successful models are honoured for setting an example and prizes are awarded. Along with rejecting right-wing extremist activities and integrating minorities, the focus is here on measures against discrimination and those for protecting minorities.

27. Furthermore, each year select projects dealing with the topic of right-wing extremism receive funding from the Alliance.

28. Individuals or groups that have put especially good ideas into practice are awarded prizes by the relevant federal ministries as so-called “Ambassadors of Tolerance” at the annual function held on 23 May.

29. On 23 May 2005, the following five prize-winners each received an endowment of €5,000: The Kreuzberg Music Action registered society from Berlin was set up in 1987. It aims to get children and adolescents off the street with the help of rock music, hip-hop, break dance and street dance. This creative work succeeds in boosting the young adults’ self-esteem and thus combats violence and extremist attitudes. The Social Service for Refugees of the Gera Social Work Alliance, registered society, endeavours to overcome fears and reservations against migrants and refugees. It organises events and has published a book about immigrants and refugees. Ms Bertha Leverton, an “Ambassador for Children” and a survivor of the Holocaust from London, primarily visits schools to talk about her experiences. The Hildesheim Sinti registered society runs a Sinti radio programme and is striving to ensure that people can live together without prejudices and with mutual understanding. The citizens’ action group “Wunsiedel is multicoloured - not brown” in Wunsiedel and initiatives in Verden against right-wing extremism have come up with particularly inspired ways of combating right-wing extremist marches and violence.

30. On 23 May each year hundreds of young people meet to discuss how fundamental and human rights can be realised in day-to-day life. The forum is effectively publicised. These

events, which are held on the day on which Germany celebrates the adoption of the Basic Law, are an expression of the Alliance's day-to-day work, namely strengthening democratic constitutional consensus. Further information is available at: [www.buendnis-toleranz.de](http://www.buendnis-toleranz.de).

### **3. The German Institute for Human Rights**

31. The German Institute for Human Rights was founded as a registered society on 8 March 2001 based on a decision by the Bundestag of 7 December 2000. It is a national human rights institution accredited with the United Nations and is based on the so-called Paris Principles. The Institute undertakes various tasks which are all dedicated to the protection and promotion of human rights in and from Germany. One main emphasis of its work is human rights education that is directed at a number of target groups, ranging from schools to the police and to development specialists. A second main emphasis is the promotion of the international and European system of human rights protection. The Institute organises meetings of experts and conferences, publishes application-oriented studies and manuals, and advises the German government and parliament. Political consultancy is thus also the third main area of the Institute's work. Apart from the German government and Bundestag, it works with the federal *Länder* and other key institutions. The Institute offers a broad forum for human rights discussions involving politics, civil society and academia that serve as a platform for national and international debates.

32. One regular topic of the German Institute for Human Rights' education and public relations work and its political consultancy work is the necessary protection against discrimination. The Institute advocates a wide-ranging anti-discrimination policy and wants to contribute to the human rights debate to ensure that such a policy becomes firmly established in Germany. To that end it provides information on Germany's obligations under international law and exemplary developments in other countries and works towards Germany's ratification and implementation of international obligations and documents. It sees the key issues here as the implementation of the EU's Directives on Combating Discrimination and the Final Document of the Durban World Conference against Racism, as well as the ratification of the 12th Protocol to the European Human Rights Convention. The Institute is involved in important national forums against racism and endeavours to open up new levels of discussion between the government, politics, civil society and the academic world.

33. In June 2003 the Institute put forward a study written by David Nii Addy entitled "Racism and Discrimination - International Commitments and National Challenges for Human Rights Work in Germany". The study provides a systematic overview of human rights obligations and recommendations on how to combat racial discrimination at international and European level. Based on comments by international organs on the situation in Germany as well as best practice examples from other states, the author develops the cornerstones for a comprehensive German anti-discrimination policy. The results of the study serve the Institute as guidelines for its political consultancy, research and further training. In particular that also applies to its role in political processes to implement the EU's anti-discrimination directives and compile a National Action Plan against Racism following the Third World Conference against Racism in Durban.

34. The Institute incorporated the results from its study into the process of drawing up a National Action Plan against Racism. In addition, it provided strategic consultancy and information on how to shape national action plans. After the government's draft National Action

Plan against Racism was not put forward at the end of 2003 (as originally planned) and an action plan proposal made by an NGO under the umbrella of the Forum against Racism was also unsuccessful, the Institute provided a new platform for discussion between NGOs and the government by organising two specialist meetings. The goal of these meetings was to agree on a consultation process with civil society on drawing up the plan and monitoring its implementation. The meetings have not yet involved consultation on the content of the Action Plan, since the government's draft was not available at the time of reporting.

35. The Institute also advised those from the federal ministries and the Bundestag involved in implementing the EU's anti-discrimination directives in Germany. One aspect it stressed was the importance of effective, independent anti-discrimination agencies that are also accessible to those affected for the practical implementation and theoretical support of anti-discrimination legislation. That was why the Institute in November 2003 invited representatives of the government, parliament, civil society and social partners to a "Specialist Discussion on the Implementation of the European Union's Anti-Discrimination Directives: Shaping Anti-Discrimination Agencies in Germany". Examples from other countries as well as the recommendations from human rights institutions, for instance the ECRI, served as reference points. The Institute criticised the fact that, in its view, Germany was dragging its feet in implementing the EU Directives.

36. The Institute contributed to the objectification of the so-called headscarf debate - that is the question of whether a teacher in a state school should be permitted to wear a headscarf. This took the form of public lectures, political consultancy meetings, as well as a policy paper that was published in June 2004.

37. The Institute used the opportunity afforded by the ECRI's Third Report on Germany to organise an event to promote the implementation of the ECRI's recommendations. It invited representatives from the government, parliament, civil society and the academic world to discuss the report and its recommendations with two representatives from the ECRI.

38. The issue of linking the prohibition against discrimination with the protection of minority rights was dealt with at the conference entitled "Consolidating Antiracism and Minority Rights: Critical Approaches", which the Institute organised in Berlin in June 2003 in conjunction with the Human Rights Institute at the Abo Akademi University and the University of Lapland. Finnish and German academics from various disciplines contributed to the discussions on concepts of equality and equal opportunities, rights to be different and to be given special treatment, on integration and participation. A volume of conference proceedings was published in 2004.

#### **E. Protection of certain ethnic groups (art. 2 para. 2)**

39. The German government is pursuing the policy of protecting all those ethnic groups who are living in Germany. Members of all ethnic groups enjoy the protection of human rights as established under international and national law. Although only German nationals are entitled to certain of the rights contained in the German constitution (the Basic Law, e.g. the right to freedom of association pursuant to Article 9 para. 1 Basic Law), the fundamental right to general freedom of action applies to all foreigners residing in Germany, and it only offers a very slightly lower level of protection (see also paras. 117-120 ). Members of certain ethnic groups are again and again threatened with racism. The measures described in this report (see above all

paragraphs 117 to 164 below) are an attempt on the German government's part to reduce that threat. The police and criminal prosecution authorities are responsible for protecting threatened groups against criminal acts (see paras. 79-116 below).

40. Furthermore, the German government is attempting, through its integration policy, to put members of ethnic minorities in an increasingly better position to be able to themselves stand up for their rights and to improve equal opportunities for themselves (see paras. 125-140 below). The dialogue with Muslims living in Germany has an especially important role to play in that (see paras. 42-49 below). In view of the threat of anti-Semitism, this report will also outline measures to protect members of the Jewish community in Germany (see paras. 49-56 below).

41. In addition, special constitutional and sub-constitutional provisions at *Länder* level apply to groups recognised in Germany as national minorities within the meaning of the Council of Europe's Framework Convention for the Protection of National Minorities (Danes, Sorbs, Friesians, German Sinti and Roma).

### **1. Excursus: Protection and promotion of Muslims in Germany/Intercultural and inter-religious dialogue**

42. There are currently around 3.2 million Muslims living in Germany (exact figures are not available). Most of these - more than 2 million - come from Turkey. The majority of those, in turn, are Sunnis; around 200,000 are Shiites and around 500,000 are Allevite migrants from Turkey. Other Muslims living in Germany originally come from Iran, Morocco, Lebanon, Tunisia, Pakistan, Indonesia, Iraq, Afghanistan, and other countries. Around 500,000 Muslims have German nationality.

43. Muslims in Germany do not have one unified religious organisation or an umbrella organisation to speak on behalf of all the groups. Muslim religious associations usually have the legal status of a registered society. In addition, very few Muslims in Germany are members of any religious organisation. Only around 2,500 Muslim societies have been registered with German courts; they only have around 320,000 members. Along with religious interests, some of these Muslim religious societies also look after political and national interests.

44. Muslims living in Germany do not constitute a homogeneous ethnic group. What unites them is their common faith. At the same time, however, many people (both German and foreign nationals) of this denomination are threatened by racism not on account of their faith, but their ethnic origin. The federal administration and the *Länder* thus view the dialogue with Muslims living in Germany as one of the main emphases of its integration policy. This dialogue serves to improve relations between the Muslim minority and the majority of society. The German government supports measures such as inter-religious dialogue, political education, involving Imams in language and integration programmes, and the targeted integration of Muslim women and youngsters (see paras. 133-137 below on extending Islamic religious education).

45. Since 2002 around € 425,000 in funding has been made available to promote projects in the area of Christian-Islamic dialogue (Federal Budget Plan - *Bundeshaushaltsplan* - Chapter 0602 Title 685 04). This funding has mainly been provided to church, Muslim and inter-religious organisations. Since 2003 the Federal Ministry of the Interior has, for example, been supporting projects run by the Co-ordinating Committee of the Associations of

Christian-Islamic Dialogue in Germany, registered society (KCID), an umbrella organisation of Christian-Islamic dialogue initiatives, with funding totalling around € 40,000 per year. The types of projects supported include training courses for voluntary helpers, a database on Christian-Islamic dialogue, as well as national conferences. The Meeting and Training Centre for Muslim Women, registered society (BFmF), a Muslim women's organisation, has been receiving funding to organise seminars for multipliers in schools and educational work since 2002. In addition, a project to train Muslim women in dialogue work in mosques has received funding since 2006. The two projects together receive around € 40,000 from the federal administration. Dialogue seminars for Turkish Imams organised by the Federal Agency for Civic Education (BpB) receive around € 50,000 in funding per year under the aforementioned title. This project brings Imams and potential partners from the inter-religious field and socio-political field together, with the aim of strengthening their communication skills and their ability to co-operate. Furthermore, the Muslim Academy - a civil society platform of the Muslim community for inner- and inter-religious dialogue, further developing the involvement of Muslims at various social and political levels, and democratic discourse within the Muslim community and the majority society - receives € 60,000 in funding annually.

46. The Federal Agency for Civic Education (BpB) is likewise involved in inter-cultural and inter-religious dialogue in the following three areas.

47. In the area of education and skills training it provides comprehensive information material, some of which is suitable for study on one's own, and some of which is conceived for use in schools and extracurricular political education.

48. It provides information for younger scholars of Islamic studies to support independent, reform-oriented Muslims, generally those with a 'migration background' who are fully integrated linguistically and professionally. Since May 2006 the Islamic Forum ("Zukunftsforum Islam") has been providing this group with an annual forum for discussion and networking. The project is run in conjunction with the German Muslim Academy.

49. In view of the weak influence of Islamic reform elements in Germany, the Federal Agency for Civic Education is endeavouring to revive the debate within Germany by drawing on the help of reform-oriented intellectuals from abroad. The problematic nature of Islamist ideology is especially rooted in its 'internationality'. A series of international conferences and specialist meetings in 2002 and 2003 served the aforementioned purpose. The conference Progressive Thinking in Contemporary Islam, held in September 2005, for the first time provided intellectual reform-oriented thinkers from France, the UK, the Netherlands and the United States with a forum for debate.

## **2. Protection of the Jewish community in Germany**

50. The Jewish community in Germany does not see itself as a separate ethnic minority (e.g. for the purposes of the protection of minorities), but defines itself as a religious community in Germany. However, not all Jews are members of a religious organisation. In 2005 the Jewish community had around 106,000 members, which means that it has more than trebled since 1990 on account of migration from the Commonwealth of Independent States (CIS). The number of

Jewish communities has risen from 67 to 102. The federal administration, *Länder* and municipalities support migrants with funding and measures to help them integrate, for example language courses.

51. The Jewish community in Germany is organised in communities and *Land* associations. The Central Council of Jews in Germany is the political representative of most of these communities. In addition, the Union of Progressive Jews in Germany, registered society, now represents the interests of the just under 20 Jewish congregations that are not members of the Central Council of Jews in Germany. Freedom of religion (Article 4 of the Basic Law, Article 9 Convention for the Protection of Human Rights and Fundamental Freedoms, Article 18 International Covenant on Civil and Political Rights) applies to all Jewish organisations, as it does to all other religious communities. In addition, the communities, *Land* associations and the Central Council of Jews in Germany are recognised in all *Länder* as public corporations (*Körperschaften des öffentlichen Rechts*). This special status does not mean that churches and religious communities are equal to state agencies and thus also to other public-law corporations. They are seen as having special status under constitutional law which guarantee them special privileges, for example the option of levying church tax with the help of state agencies, of which some Jewish communities make use.

52. Relations between the Jewish communities' *Land* associations and the *Länder* are governed by means of treaties, which, among other things, contain regulations governing the regular financial support the *Land* associations receive. These treaties take into account the special status of Jewish communities in Germany.

53. An agreement signed by the German government and the Central Council of Jews in Germany on 27 January 2003 contains provisions governing mutual relations in the sense of continuous co-operation based on partnership. Based on this agreement the Central Council of Jews in Germany receives annual funding for its national tasks. In an agreement signed in 1957 the federal administration and the *Länder* placed themselves under the obligation to jointly finance the costs for maintaining deserted Jewish cemeteries.

54. Over the past few years there have been isolated attacks against buildings belonging to the Jewish community in Germany (see para. 111 below). The attacks caused consternation and indignation among the German population, since the overwhelming majority of the German population does not support such anti-Semitic and neo-Nazi attacks. The German government takes very seriously the anxieties expressed by international Jewish organisations on account of these incidents. The dialogue on xenophobia and anti-Semitism in Germany between the German government and the World Jewish Congress and other organisations began in 1993 and is still ongoing.

55. The German government is conscious of Germany's historical responsibility towards Jews. More and more academic research is being done at nearly all universities and numerous specialist institutes into the history of Jews in Germany and the history of the Holocaust. National and regional memorials and documentation centres remind visitors of what Jewish life

used to be like in Germany and of Nazi crimes. The Memorial to the Murdered Jews in Europe in Berlin, which was officially opened on 10 May 2005, is of especial importance in that respect (for more information go to: [www.holocaust-mahnmal.de](http://www.holocaust-mahnmal.de)).

56. By proclamation of the Federal President of 3 January 1996, 27 January, the day of the liberation of the Auschwitz concentration camp, was declared the “Day of Remembrance of the Victims of National Socialism”.

### **3. Protection of national minorities and other minorities traditionally indigenous to Germany**

57. Germany ratified the Council of Europe Framework Convention for the Protection of National Minorities in 1997. The Framework Convention contains principles that are binding under international law on the protection of national minorities. It places contracting states under the obligation to implement measures to protect and promote these minorities. The Framework Convention applies to the following ethnic minorities in Germany: German Sinti and Roma, Danes, Sorbs and Friesians. Following a process of co-ordination with the affected minorities and in accordance with Article 25 of the Framework Convention, the Federal Republic of Germany submitted its First Report in 1999 and its Second Report in 2004.

58. Germany ratified the European Charter for Regional or Minority Languages in September 1998. The Charter aims to protect and promote regional and minority languages that are traditionally spoken in one of the contracting states as a part of European cultural heritage that is under threat. Minority languages that are protected as regional languages in Germany in accordance with the Charter are Danish, High and Low Sorbian, North Friesian and Saterland Friesian, the Romani spoken by Sinti and Roma, and Low German. After a process of co-ordination with the national associations of spokespeople of these languages and in accordance with Article 15 para. 1 of the Charter, the Federal Republic of Germany submitted its First Report in 2000 and its Second Report in 2003. The Third Report will be submitted in March 2007.

59. In order to contribute towards conflict resolution and thus to solving the problem of minorities in Europe, Germany and Denmark in 1996 founded the European Centre for Minority Issues (ECMI). The ECMI deals with issues relating to the national minorities and other traditional (autochthonous) ethnic groups in Europe and addresses the problems of minorities and majorities in the involved states, from the European perspective, by carrying out research, providing information and doing consultancy work.

60. There are an estimated 50,000 to 70,000 **German Sinti and Roma**. Varying numbers of German Sinti and Roma live in most *Länder* in the Federal Republic of Germany, principally in North Rhine-Westphalia, Rhineland-Palatinate, Hessen and Baden-Württemberg.

61. Government funding at federal administration and *Länder* level assists the Sinti's and Roma's associations and institutions so that they are in a position to represent their ethnic minority's interests, to organise cultural programmes, to implement measures to uphold their

traditional identity and to carry out integration tasks. The office of the Central Council of German Sinti and Roma, the ethnic minority's umbrella organisation, is funded by the federal administration. The federal administration and the *Land* Baden-Württemberg finance the Documentation and Cultural Centre of the German Sinti and Roma. Both facilities employ a total of around 20 full-time members of staff. Some *Länder* support regional measures and cultural programmes organised by *Land* associations of the German Sinti and Roma. The government of Rhineland-Palatinate, for example, on 25 July 2005 signed a Framework Agreement with the Association of German Sinti and Roma (Rhineland-Palatinate Land Association, registered society). This Framework Agreement provides for measures that are suitable for fostering conditions that enable Sinti and Roma living in Rhineland-Palatinate to actively participate in all areas of cultural, social, economic and political life - also within the meaning of the Council of Europe Framework Convention for the Protection of National Minorities.

62. The above-mentioned government funding for the Documentation and Cultural Centre supports the ethnic minority in researching its own history and making that research available to the public. This support is also given in view of the special responsibility which Germany has on account of the racial persecution of Sinti and Roma during the Nazi regime.

63. Another registered society which represents the interests of the "German gypsies" (the term they themselves use) is the Sinti Alliance of Germany, which was founded in 1999/2000. This is an umbrella organisation of nine independent Sinti organisations so far, as well as one Lovora group. The organisation is self-financing. It is above all interested in preserving traditional Sinti ways of life with their historical rules and prohibitions. In contrast to the Roma, the Sinti would not take part in government-funded lessons in their second mother-tongue Romani (the other being German), since this language may only be passed on from one family member to another.

64. A **Danish minority**, totalling around 50,000 people, lives south of the German-Danish border in the northern part of Schleswig-Holstein (Schleswig region). The Bonn-Copenhagen Declaration of 1955 states that one is free to profess the Danish culture, language and traditions and that it may not be contested or verified *ex officio*. The Danish minority's right to protection and promotion is established in the constitution of the *Land* Schleswig-Holstein.

65. The Southern Schleswig Voters' Alliance (*Südschleswigsche Wählerverband*, SSW), a political organisation of the Danish minority and of Friesians, is not bound by the 5 per cent "hurdle" (which is required to get a seat in a German parliament). It won two mandated seats in the Schleswig-Holstein *Land* parliament in the elections of 20 February 2005. The SSW won 30,000 votes during local government elections on 2 March 2003. It therefore has 145 representatives of the Danish minority in district assemblies and on municipal and district councils.

66. The Danish minorities' main cultural organisation is the Southern-Schleswig Society (SSV), which has around 13,000 members. In addition, the Danish minority has its own

church communities, a system of libraries, social facilities, wide-ranging youth work, and a Danish-language newspaper. The system of private kindergartens and schools (currently around 57 day nurseries and 50 schools of all kinds) are of particular importance. The language of tuition is Danish, although German is also taught at mother-tongue level.

67. The **Sorbs** are a Slavic people whose history goes back more than a thousand years. They have two written languages (High and Low Sorbian) and their own culture. Today the Sorbs live in the Oberlausitz region in the north-east of the Free State of Saxony and the Niederlausitz region in the south-east of the *Land* Brandenburg.

68. Everyone is free to profess their Sorbian national traditions and culture. The preservation and further development of the Sorbian culture and Sorbian traditions is guaranteed. There are an estimated 60,000 Sorbs. Following the lead taken by the Free State of Saxony (in its constitution of 27 May 1992, see also 11th/12th CERD Report), the *Land* Brandenburg entered the protection of Sorbs in its *Land* constitution of 20 August 1992. In addition, a law which entered into force in Brandenburg on 7 July 1994 governs the rights of the Sorbs. Based on this law the *Land* parliament was, among other things, to set up a Council for Sorbian Concerns, whose members are elected by the Landtag. The Council is to advise the *Land* parliament on matters relating to the Sorbs.

69. In accordance with the Brandenburg *Land* Election Law of 2 March 1994, political parties, political groupings or lists of Sorbs running for election to the *Land* parliament are exempt from the 5 per cent “hurdle”.

70. According to the provisional Administrative Procedures Act for the Free State of Saxony of 21 January 1993, members of the Sorbian people have the right to use the Sorbian language when addressing *Land* administration agencies. The Saxon Law on children’s nurseries of 10 September 1993 forms the legal basis for Sorbian and bilingual children’s nurseries in the German-Sorb region.

71. Sorbian electoral groups in the Free State of Saxony won 36 seats in the 2004 local government elections. There are around 40 representatives at district and municipal level in Brandenburg who belong to the Sorbian minority.

72. **Friesians** live in the north of Schleswig-Holstein and in the north-west of Lower Saxony. According to estimates, around 50,000 to 60,000 people claim to be North Friesian. Around 10,000 people still speak North Friesian; a further 20,000 people understand the language. In Saterland, an area near the border with the Netherlands, around 2,000 people still speak Saterland Friesian, which belongs to the East Friesian family of languages.

73. The Friesian ethnic minority’s right to protection and promotion is established in the *Land* constitution of Schleswig-Holstein.

74. The Schleswig-Holstein *Land* parliament has a Committee for Issues Relating to the Friesian Population in Schleswig-Holstein. The committee is chaired by the president of the *Land* parliament. North Friesians are also represented on local governments.

75. Friesian is taught at state schools in North Friesland - and at some private schools run by the Danish minority. These are generally voluntary lessons taught in Years 3 and 4. Attempts have been made for several years now to introduce Friesian in some kindergartens.

76. Please also refer to paragraphs 79 to 116 and 165 to 191 regarding articles 4 and 6 of the Convention.

### **ARTICLE 3**

77. There is no apartheid or racial segregation in the Federal Republic of Germany; it would also be prohibited in accordance with the Basic Law (see Articles 1 and 3 Basic Law). Quite the contrary, Germany sets very great store by the integration of foreigners living in Germany and by creating possibilities for their participation and has therefore stepped up efforts in this regard. For example, one of the main emphases of the Immigration Act which came into force on 1 January 2005 is the integration of foreigners legally resident on federal territory in economic, cultural and social life in Germany (see paras. 125-140 below).

78. Germany condemns systems of apartheid and in particular applies its development policy to advocate democratisation worldwide.

### **ARTICLE 4**

79. Modern means of communication, for instance the Internet, are gaining increasing importance for supporters and sympathisers of the right-wing extremist scene in particular. The security authorities in the Federal Republic of Germany carry out investigations in order to ascertain content on the Internet that is punishable by law and to prosecute such material. For further details, please refer to paragraphs 260 to 269 regarding no. 12 of the Committee's concluding observations.

#### **A. Criminal law provisions and their effectiveness (art. 4 (a))**

##### **1. Legal bases**

80. The Criminal Code (Strafgesetzbuch, StGB) contains the following criminal provisions which are relevant to combating racially-motivated crimes.

81. Section 86 of the Criminal Code makes the dissemination of means of propaganda of unconstitutional organisations a punishable offence. According to Section 86a, it is a punishable offence to use symbols of certain parties and organisations which have been banned by the Federal Constitutional Court or authorities competent in that regard (and that ban is final),

in particular former National Socialist organisations. The crime of agitation of the people (Section 130), which also covers incitement to racial hatred, is one of the most important criminal provisions in the German Criminal Code as regards combating right-wing extremist and xenophobic propaganda. Organisations which are based on racist ideas or which justify or attempt to foster racial hatred and racial discrimination may also face criminal prosecution pursuant to Sections 129 and 129a of the Criminal Code. Section 129 of the Criminal Code makes the founding of an organisation or membership of an organisation whose objectives or activities are directed towards the commission of offences a punishable offence. Section 129a contains a yet stricter threat of punishment when the organisation is a terrorist one. Finally, the dissemination of writings which glorify violence or render it harmless is punishable under Section 131.

82. Annex V contains the text of these criminal provisions in full. An English translation is included in Annex VI.

83. Key changes were made to Section 130 of the Criminal Code (Agitation of the people) during the period under review. With effect from 30 June 2002 sub-section 3 was amended in line with the new German Code of Crimes against International Criminal Law (*Völkerstrafgesetzbuch*, VStGB). With effect from 1 April 2004, sub-section 2 no. 2 of the provision was expanded to cover the dissemination of content via the media and tele services which incites people to hatred. As a result, the provision now also covers non-radio, non-recorded, live broadcasts, especially, for example, real-time transmission (so-called webcams) or audio broadcasts on the Internet.

84. On 11 March 2005 the Bundestag adopted the most recent amendment to Section 130 of the Criminal Code in order to close a legal loophole. Whilst up until that point the provision only covered the approval, denial or playing down of acts of genocide under the National Socialist regime, it now also covers the approval, glorification and justification of Nazi tyranny and despotism as such if the public peace is thereby disturbed and the victims' dignity is violated. Thus, an act is punishable when it attacks the right of victims of Nazi tyranny and despotism to respect.

## **2. Criminal prosecutions**

### **(a) Re legal proceedings and conviction**

85. The table below contains statistics on criminal prosecutions (territory of the former FRG, including the whole of Berlin)<sup>3</sup> on the number of people sentenced in accordance with Sections 86, 86a and 130 of the Criminal Code between 2000 and 2004. This and the other tables

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<sup>3</sup> There are as yet no statistics for the whole of the Federal Republic of Germany, including all five new *Länder*.

below show that the majority of people convicted were male. Since the aforementioned criminal provisions also in sometimes cover acts other than racially motivated ones, only some of the people convicted and listed here fall under the scope of application of the ICERD.

**Table 1****Convictions pursuant to Section 86 Criminal Code**

| Year | Adults |      |        | Young Adults <sup>4</sup> |      |        | Juveniles <sup>5</sup> |      |        | Total convictions |
|------|--------|------|--------|---------------------------|------|--------|------------------------|------|--------|-------------------|
|      | Total  | Male | Female | Total                     | Male | Female | Total                  | Male | Female |                   |
| 2000 | 253    | 248  | 5      | 67                        | 64   | 3      | 63                     | 61   | 2      | 383               |
| 2001 | 263    | 254  | 9      | 87                        | 86   | 1      | 88                     | 81   | 7      | 438               |
| 2002 | 274    | 256  | 18     | 93                        | 88   | 5      | 80                     | 75   | 5      | 447               |
| 2003 | 287    | 268  | 19     | 69                        | 68   | 1      | 66                     | 56   | 10     | 422               |
| 2004 | 269    | 260  | 9      | 74                        | 72   | 2      | 59                     | 52   | 7      | 402               |

**Table 2****Convictions pursuant to Section 86a Criminal Code**

| Year | Adults |      |        | Young Adults |      |        | Juveniles |      |        | Total convictions |
|------|--------|------|--------|--------------|------|--------|-----------|------|--------|-------------------|
|      | Total  | Male | Female | Total        | Male | Female | Total     | Male | Female |                   |
| 2000 | 247    | 235  | 12     | 109          | 103  | 6      | 111       | 102  | 9      | 467               |
| 2001 | 343    | 330  | 13     | 192          | 186  | 6      | 172       | 165  | 7      | 707               |
| 2002 | 346    | 328  | 18     | 150          | 140  | 10     | 135       | 130  | 5      | 631               |
| 2003 | 337    | 326  | 11     | 134          | 132  | 2      | 120       | 112  | 8      | 591               |
| 2004 | 373    | 366  | 7      | 120          | 117  | 3      | 97        | 92   | 5      | 590               |

86. There has been an overall increase in the number of people convicted of these crimes.

87. The dissemination of means of propaganda of unconstitutional organisations within the meaning of Section 86 of the Criminal Code reached its peak in 2002. In 2003 and 2004 the total number of people convicted progressively dropped.

88. Between 2000 and 2001 there was a clear increase in the use of symbols of unconstitutional organisations within the meaning of Section 86a of the Criminal Code. In 2001 the number of people convicted of that offence reached its peak, and has been dropping ever since.

89. There has been an increase in the number of adults convicted of these criminal offences, whereby the number convicted pursuant to Section 86a of the Criminal Code peaked in 2004 and

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<sup>4</sup> Young adults are defined as persons age 18 to 20.

<sup>5</sup> Juveniles are defined as persons age 14 to 17.

the number convicted pursuant to Section 86 of the Criminal Code dropped in the same year. There is no significant difference between these figures and the numbers of adolescents and young people convicted of these criminal offences.

**Table 3**  
**Convictions pursuant to Section 130 (1) Criminal Code**

| Year | Adults |      |        | Young Adults |      |        | Juveniles |      |        | Total convictions |
|------|--------|------|--------|--------------|------|--------|-----------|------|--------|-------------------|
|      | Total  | Male | Female | Total        | Male | Female | Total     | Male | Female |                   |
| 2000 | 103    | 89   | 14     | 42           | 42   | 0      | 41        | 36   | 5      | 186               |
| 2001 | 177    | 170  | 7      | 83           | 79   | 4      | 69        | 63   | 6      | 329               |
| 2002 | 187    | 174  | 13     | 79           | 75   | 4      | 64        | 59   | 5      | 330               |
| 2003 | 191    | 175  | 16     | 56           | 54   | 2      | 50        | 44   | 6      | 297               |
| 2004 | 146    | 134  | 12     | 47           | 45   | 2      | 53        | 48   | 5      | 246               |

**Table 4**  
**Convictions pursuant to Section 130 (2) Criminal Code\***

| Year | Adults |      |        | Young Adults |      |        | Juveniles |      |        | Total convictions |
|------|--------|------|--------|--------------|------|--------|-----------|------|--------|-------------------|
|      | Total  | Male | Female | Total        | Male | Female | Total     | Male | Female |                   |
| 2000 | 19     | 19   | 0      | 5            | 5    | 0      | 8         | 7    | 1      | 32                |
| 2001 | 43     | 41   | 2      | 16           | 16   | 0      | 26        | 23   | 3      | 85                |
| 2002 | 36     | 32   | 4      | 22           | 21   | 1      | 36        | 34   | 2      | 94                |
| 2003 | 30     | 29   | 1      | 10           | 9    | 1      | 9         | 9    | 0      | 49                |
| 2004 | 29     | 29   | 0      | 5            | 5    | 0      | 13        | 13   | 0      | 47                |

\* Including cases pursuant to sub-section 4 in the version then applicable, now sub-section 5.

**Table 5**  
**Convictions pursuant to Section 130 (3) Criminal Code**

| Year | Adults |      |        | Young Adults |      |        | Juveniles |      |        | Total convictions |
|------|--------|------|--------|--------------|------|--------|-----------|------|--------|-------------------|
|      | Total  | Male | Female | Total        | Male | Female | Total     | Male | Female |                   |
| 2000 | 6      | 6    | 0      | 1            | 1    | 0      | 0         | 0    | 0      | 7                 |
| 2001 | 27     | 27   | 0      | 11           | 11   | 0      | 6         | 6    | 0      | 44                |
| 2002 | 10     | 9    | 1      | 2            | 1    | 1      | 5         | 3    | 2      | 17                |
| 2003 | 13     | 11   | 2      | 3            | 2    | 1      | 2         | 2    | 0      | 18                |
| 2004 | 16     | 15   | 1      | 5            | 3    | 2      | 3         | 3    | 0      | 24                |

90. The number of people convicted of agitation of the people (Section 130 Criminal Code) initially rose in 2001 in comparison to 2000. Figures for those convicted based on Section 130 (1) and (2) of the Criminal Code peaked in 2002. Thereafter, figures dropped in 2003 and 2004. However, the same cannot be said of those convicted based on Section 130 (3) of the Criminal Code. Although there was an increase in 2001, the same continuous decline in

convictions based on Section 130 (1) and (2) of the Criminal Code is not in evidence as regards convictions based on Section 130 (3). Rather, the total number of people convicted rose slightly after 2002. Largely similar developments were registered for each individual age group.

91. No figures can currently be quoted for the number of convictions based on Sections 129, 129a of the Criminal Code, as the criminal prosecution statistics do not differentiate between those with a left-wing or right-wing extremist background. Nevertheless, the following can be said as regards the impact in practical terms of Sections 129, 129a of the Criminal Code.

92. In September 2003 a right-wing extremist terrorist organisation was broken up in Munich. The organisation's objective was to eliminate the existing social order in Germany, in particular by means of bomb attacks. Its ultimate aim was to establish a dictatorial system of a National Socialist nature. At some stage the group also laid plans to prevent the laying of the foundation stone for a Jewish Cultural Centre in Munich on 9 November 2003 by carrying out a bomb attack. However, the group dropped these plans - which would have involved placing high-ranking government representatives and those from religious communities under considerable threat - on account of police investigations against individual members of the group in another matter. There were fears that the plans would be uncovered. The Supreme Court of Bavaria sentenced the ringleader and seven members and supporters of this right-wing extremist terrorist organisation to prison terms of between one year and four months and seven years. The judgements became final on 5 April 2005 and 4 May 2005. Another defendant was sentenced to one year and six months in prison for violations against the Weapons Act (*Waffengesetz*) and the Explosives Act (*Sprengstoffgesetz*).

93. In its judgement of 7 March 2005, Brandenburg Higher Regional Court sentenced one person for being the ringleader of a terrorist organisation and a further nine people for founding a terrorist organisation to juvenile sentences of between eight months and four years and six months. The case dealt with the founding of a terrorist organisation called "Freikorps" in July 2003. The objective of the organisation was to carry out arson attacks against shops, restaurants and snack stalls owned or managed by foreigners and to force the foreign owners to give up their operations and to leave the area. In total the members of the "Freikorps" comradeship had carried out or attempted to carry out nine arson attacks against foreign businesses between August 2003 and May 2004 in pursuance of their xenophobic goals.

94. The Federal Supreme Court ruled on what has become known as the "Landser case" by judgement of 10 March 2004 (ref.: 3 StR 233/04). Three members of the Landser music group were convicted in these proceedings. The judgement is final. The music group, which had since 1997 comprised the three defendants, was classed as a criminal organisation within the meaning of Section 129 (1) of the Criminal Code. The group was found to be engaged in the production and dissemination of CDs, thus constituting criminal offences such as agitation of the people, dissemination of means of propaganda of unconstitutional organisations and discrediting the state etc.

95. In this context, reference should also be made to a good practical example from Schleswig-Holstein:

An order issued to authorities, police stations and district and local regulatory authorities on dealing with right-wing extremist events (Schleswig-Holstein Gazette - *Amtsblatt Schleswig-Holstein* - 2000, p. 494) contains instructions, based on current case law, on which decisions and possible actions in relation to right-wing extremist events are to be based. The objective of the order dated 27 June 2000 is to guarantee standardised and legally irreproachable as well as consistent procedure vis-à-vis right-wing extremism. Among other things, the order provides information on right-wing extremist organisations and their goals, basic aspects of the right of assembly, reasons for issuing a ban and other measures regarding the law on assembly and regulatory law, how to proceed as regards right-wing extremist music events, and co-operation with involved authorities and co-ordinating the exchange of information and police tactics. Since August 2001 the “List of Relevant Heavily Symbolic Data In the Area of Right-Wing Extremism” has been an official addendum to the decree. The *Land* Criminal Police Office guarantees that information on music groups in the right-wing scene is up to date and available to all *Land* police stations and the regulatory authorities at all times.

**(b) Re investigations**

96. Figures provided by three eastern German *Länder* on investigations instigated are to be presented in the following by way of example.

97. As is the case in numerous other *Länder*, the number of right-wing extremist propaganda crimes rose dramatically in Thuringia in 2000/2001. Up until 2004 the figures dropped to roughly previous levels. However, in 2005 the figures rose again. The following figures refer to the number of investigations instigated on account of violations against Sections 86 and 86a of the Criminal Code: 1998: 760, 1999: 558, 2000: 1195, 2001: 1022, 2002: 748, 2003: 717, 2004: 619, 2005: 928.

98. Saxony reported the following figures as regards investigations initiated, respectively, in 2000, 2001, 2002, 2003 and 2004 on account of the suspicion of violation of Sections 86 and 86a of the Criminal Code: 1327, 1809, 1184, 869, 424. The number of investigations on account of a suspected violation of Sections 130 and 131 of the Criminal Code were, respectively: 207, 286, 250, 160 and 97. Thus, there has also been a decline in such violations in Saxony over the past few years.

99. In the period between 1 January 2000 and 30 June 2004, 4,787 investigative proceedings were initiated in the field of right-wing extremism in Saxony-Anhalt. These included 604 cases of, among other things, suspected agitation of the people (Section 130 Criminal Code) and glorification of violence and cruelty (Section 131 Criminal Code). In total, however, only a very small minority of these criminal offences targeted foreigners.

100. Please refer also to the comprehensive information regarding Article 6 for details on investigations in connection with right-wing politically-motivated acts (see para. 170 below).

101. Reference is here also made to the fact that, for various reasons, figures regarding investigations can never show the whole picture. Firstly, it must be assumed that not all crimes are reported to the authorities. Secondly, it is not always easy to classify a particular act as

a racially-motivated crime. That is why it is not surprising that various NGOs quote figures for racially motivated crimes that vary quite considerably higher in some cases. In order to gain a comprehensive overview, all the available statistics therefore need to be taken together.

## **B. Measures against organisations that promote racial discrimination (art. 4 (b))**

### **1. Banning societies/associations and parties**

102. Provisions governing the banning of societies/associations that are not a political party are contained in Article 9 para. 2 of the Basic Law and in the Law on private associations (*Vereinsgesetz*). Hence, any society or association will be banned when the authority competent to impose a ban determines, by order, that its aims or activities contravene the criminal law or that they are directed against the constitutional order or against the concept of international understanding. Sections 14 and 15 of the Law on private associations contain provisions applicable to associations of foreigners and foreign associations comprising non-EU nationals, namely the reasons to ban the association or its activities, in particular when it approves of, supports or promotes the use of violence as a means to push through political, religious or other concerns. The authorities competent to ban societies/associations are the ministries of the interior of the *Länder* (in the case of those only organised and active at *Land* level) and the Federal Ministry of the Interior (in the case of foreign societies/associations and societies/associations whose organisation and activities reach beyond the respective *Land*).

103. The imposition of a ban on political parties is based on Article 21 para. 2 of the Basic Law. Consequently, parties are classed as unconstitutional when they, by reason of their aims or behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany. The decision regarding whether these conditions have been fulfilled is reserved exclusively for the Federal Constitutional Court. Until such a decision has been made, even parties whose activities are of an unconstitutional nature are classed as constitutional on account of the so-called privilege of political parties. The Bundestag, the Bundesrat and the German federal government are authorised to submit an application for the instigation of proceedings to ban a party. A *Land* government is only authorised to submit such applications if the party's organisation is restricted to that particular *Land*.

#### **(a) Right-wing extremist organisations**

104. At the end of 2005 there were 183 right-wing extremist organisations and other groups. They had a total membership of around 39,000 (1993: 64,500, 1994: 56,600, 1998: 53,600).

105. Since the last state report was compiled, the *Länder* have banned a further nine right-wing extremist organisations. Thus, since 1992, 17 regional associations with right-wing extremist objectives whose activities were restricted to one *Land* have been banned or dissolved. Furthermore, on 14 September 2000 the Federal Minister of the Interior banned the national neo-Nazi skinhead association Blood and Honour Division Deutschland and its youth organisation White Youth.

**(b) Islamist groups**

106. The conduct of Islamist groups is also often characterised by racism, primarily anti-Semitism. Although Islamist anti-Semitism is anti-Zionist in nature and not founded on racism, Jews are collectively assigned negative social, cultural, religious and political characteristics akin to biological features which are intended to justify that they are to be rejected, fought or even exterminated as a people.

107. The organisation Caliphate State used its internal publication *Ümmet-i Mu-hammed* (The Community of Mohammed) to vehemently agitate against Jews and Zionism. The pan-Islamic Hizb ut-Tahrir organisation also disseminated anti-Jewish propaganda in flyers and other publications. The Al-Aqsa registered fund-raising society supported Hamas, an organisation whose statutes deny Israel the right to exist and which is also fighting the state of Israel with terrorist means. The European edition of the Turkish newspaper *Anadoluda Vakit* (Anatolian Times), which is published in Germany, disseminates anti-Semitic and anti-Western propaganda. Reports printed in the paper deny and play down the Holocaust in a manner that constitutes agitation of the people.

108. Given the nature of the above-mentioned organisations, the Federal Minister of the Interior ordered the following measures: the Islamist Caliphate State (plus 35 of its sub-organisations) was banned in 2001/2002 on account of its agitation against Israel, the Jews and the idea of international understanding; anti-Semitic and anti-Israeli propaganda occasioned the ban on Hizb ut-Tahrir activities on 15 January 2003; the Al-Aqsa registered society was banned on 31 July 2002 for providing financial support to Hamas, as was its successor organisation, Yatim Children's Aid, registered society, on 30 August 2005; Yeni Akit GmbH, the publisher of *Anadoluda Vakit*, was banned for the aforementioned reasons on 22 February 2006.

**(c) The Proceedings to ban the National Democratic Party of Germany (NPD)**

109. No. 5 of the Committee's concluding observations of 21 March 2001 explicitly refers to efforts on the part of the government as well as the Bundesrat and Bundestag to bring the tricky matter of the constitutionality of the NPD before the Federal Constitutional Court.

110. The proceedings to ban the NPD were instituted before the Federal Constitutional Court in 2001 by all three constitutional organs authorised to file an application. The court abandoned the case in 2003 for formal reasons. Irrespective of that decision, the NPD has been weakened by applications to ban the party filed by the German federal government, the Bundestag and the Bundesrat. After membership dropped quite dramatically (-23%), it is currently just below 2001 figures (-8%). After the party entered the Saxony *Land* parliament in 2004 (after winning 9.2% of votes) and defeats in other Land parliament elections, it is still the most prominent right-wing extremist party. It will continue to be monitored very carefully by the federal administration's and *Länder's* security authorities.

## 2. Forfeiture of basic rights

111. According to Article 18 of the Basic Law, the Federal Constitutional Court may, upon the request of the Bundestag, the federal government or a *Land* government, declare the forfeiture of certain basic rights if these are misused to fight the free democratic basic order. That applies in particular to the freedom of expression, the freedom of the press, the freedom of assembly and of association.

## 3. Other measures

112. Parties that have not been banned by an organ given competence in the matter under the Basic Law may not be restricted by means of administrative measures as regards their existence or their activities. That is why parties from the extreme right-wing and left-wing enjoy the unrestricted right to and may actually stand for election. They also have the right to equal treatment pursuant to Section 5 of the Political Parties Act (*Parteiengesetz*) if all parties are being provided with facilities and other public services by a public authority. Under certain conditions they have the right to government funding (Sections 18 and 20 Political Parties Act). Their supporters, members and functionaries are not prevented from advertising their party's objectives by generally acceptable means, from taking part in elections and from taking up their political mandate when they are successful in such elections.

113. However, parties must also adhere to the law when exercising their rights. If they do not, party meetings can, for example, be banned. This derives from Section 5 (1) of the Law regulating public meetings (*Versammlungsgesetz*) and, in the case of open-air meeting, from Section 15 (1). Accordingly, the competent authority can ban a meeting "if at the time of the ordering of the ban circumstances in evidence indicate that public security or order will be directly endangered if the assembly takes place".

114. The *Land* Schleswig-Holstein reported on an agreement reached between the authorities responsible for assemblies and the *Land* police authorities, according to which the authorities responsible for assemblies receive immediate intelligence from the police and the authorities responsible for the protection of the constitution ahead of right-wing extremist meetings if this could be of significance for a decision on whether to impose measures to restrict the meeting or to prohibit the meeting. Furthermore, information on decisions made by the authorities responsible for assemblies and possible court decisions is regularly exchanged in order to guarantee standardised decision-making processes in the *Land*.

115. The executive is authorised and, within the context of its duty to uphold and defend the free democratic basic order, even under the obligation to monitor activities by parties that are incompatible with the Basic Law. It must assess the threats associated with such activities and report to the parliament and public any insights gained. It must also assess to what extent the objectives and activities of a political party are more or less incompatible with the Basic Law. The government of the Federal Republic of Germany is paying a great deal of attention to developments within right-wing extremism and within left-wing extremism. It decides on

a case by case basis, taking all the relevant circumstances into consideration, on what measures need to be taken. In some cases it is not possible to prove that the conditions for ordering a ban have been fulfilled. In other cases bans can prove to be an unsuitable measure. A ban on an organisation can thus only be issued after considering all the pertinent factors. The German government here gives precedence to the intellectual/political discussion on extremism and is committed to informing the public.

**C. Prohibition against racial discrimination in all public authorities or institutions (art. 4 (c))**

116. According to Article 1 para. 3 of the Basic Law, fundamental rights bind the legislature, executive and judiciary as directly applicable law. Furthermore, according to Article 20 para. 3 of the Basic Law, the legislature is bound by the constitutional order, the executive and judiciary by law and justice. Thus, the ban on discrimination set out in Article 3 para. 3 first sentence of the Basic Law is binding for all German public authorities (see paras. 7-9 above).

**ARTICLE 5**

**A. Introduction**

**1. The Position under Constitutional Law in Germany**

117. Under the Basic Law for the Federal Republic of Germany every person, irrespective of nationality, has the right to free development of his personality, insofar as he does not violate the rights of others or offend against the constitutional order or moral law (Article 2 para. 1 Basic Law). Every person has the right to life and physical integrity. A person's freedom is inviolable (Article 2 para. 2 sentences 1 and 2 Basic Law). The State may not discriminate against or favour any person on the grounds of sex, parentage, race, language, national or social background, faith, or religious or political opinions (Article 3 para. 3 sentence 1 Basic Law). This provision, being part of the objective constitutional order, also affects legal relations between private persons. Freedom of faith, conscience and creed, freedom of opinion, freedom of the press, freedom of the arts and the sciences, privacy of correspondence, post and telecommunications and the inviolability of the home are considered human rights ("*Jedermannrechte*") (Articles 4, 5, 10 and 13 Basic Law). Marriage and the family enjoy the special protection of the State (Article 6 para. 1 Basic Law). Property and inheritance rights are guaranteed for all (Article 14 Basic Law). Certain basic rights are reserved to German nationals, such as freedom of assembly and freedom of association, freedom of movement throughout the federal territory and freedom of choice of profession or occupation (Articles 8, 9, 11 and 12 Basic Law). Foreign nationals are, however, essentially assured of these rights by Article 2 para. 1 sentence 1 of the German Basic Law for the right to free development of one's personality encompasses a general right to handle at one's will, subject to the limitations mentioned above.

118. An example of legislation at *Länder* level which supplements the federal prohibition on discrimination is to be found in the constitution of the *Land* of Rhineland Palatinate. The principle of equality contained in Article 17 was amended in the year 2000 by the addition of a new paragraph four requiring the *Land* to respect ethnic and linguistic minorities. In defining this as an objective of the *Land*, the legislator made a symbolic gesture indicating its opposition to

right-wing extremist activities by introducing an express commitment to tolerance. Furthermore, Article 19 of the state constitution expressly emphasises the right of all Germans to equality of opportunity irrespective of race, thus supplementing the rather general wording of Article 33 para. 2 Basic Law.

119. Moreover, the Basic Law guarantees protection against political persecution under Article 16a Basic Law, which provides that persons persecuted on political grounds shall enjoy a right of asylum. This right is subject to limitations if a person enters via a “safe third country” or originates from a “safe country of origin”. For further details, please see the remarks contained in the 15th Country Report by the Federal Republic of Germany including Annex 1 thereto.

120. In accordance with Article 3 of the Geneva Convention on the Legal Status of Refugees, a country may not treat refugees differently on the basis of race, religion or country of origin. This means that no random or discriminatory considerations may be taken into account when conferring rights on recognized refugees.

## **2. Support in prosecuting war crimes and other crimes against humanity**

121. The federal government believes that the effective prosecution of serious breaches of humanitarian international law constitutes an important contribution to the defence of human rights worldwide. The federal government therefore continues to work closely with the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in criminal cases within the framework for rendering active judicial assistance.

122. In two cases, in the years 2000 and 2002 respectively, the Federal Republic of Germany undertook the enforcement of long term prison sentences imposed upon war criminals by the International Criminal Tribunal for the former Yugoslavia. The assumption of the enforcement was agreed in each case by an exchange of notes between the federal government and the International Criminal Tribunal for the former Yugoslavia. Both persons committed to Germany by the International Criminal Tribunal for the former Yugoslavia are currently serving prison sentences in Germany.

123. Germany also played a significant part in the drafting of the Rome Statute of the International Criminal Court, through which international criminal law was successfully codified and even further refined. The Statute came into force on 1 July 2002. The International Criminal Court (ICC) has jurisdiction in cases of genocide and war crimes, as well as in cases of crimes against humanity. The ICC expressly includes the crimes of apartheid or persecution on racial or certain other grounds in its definition of crimes against humanity. Germany provides one of the 18 judges on the Tribunal and currently contributes close to 20 per cent of the budget. The federal government continues to be actively involved in advocating the universality of the Tribunal and in defending the integrity of the Rome Statute.

124. Germany’s substantive criminal law has been brought into line with the Rome Statute by the creation of a more or less independent set of rules contained in the German Code of Crimes against International Criminal Law. The German Code of Crimes against International Criminal Law of 26 June 2002 mirrors the development of international humanitarian law and international criminal law in that it criminalizes crimes against international law. Moreover,

the Code provides that the principle of worldwide application of law applies without a need to show a national connection. The German Code of Crimes against International Criminal Law includes one part listing the particular defining elements of genocide, crimes against humanity and war crimes. The definition of genocide (section 6 of the Code) covers, inter alia, the annihilation of a racial group. Racist motives are also listed in the definition of crimes against humanity (section 7 sub-section 1 no. 10 of the Code). In addition, supplementary rules of procedure covering the German Code of Crimes against International Criminal Law were added to the rules of procedure for criminal law.

## **B. Integration Policy**

### **1. General**

125. The Immigration Act which came into force in early 2005 was the federal government's response to the challenge of providing a legal framework for the integration of immigrants (foreigners, late repatriates, citizens of the European Union) living permanently and legally in Germany. It is intended to enable immigrants who are likely to remain here to manage everyday situations in Germany more easily and it provides a framework within which they can participate fully in social, political and economical life as they wish and to the extent of their individual talents on a level playing field to the extent possible. In effect, this policy helps the persons concerned to exercise their rights by themselves.

126. At the heart of the integration measures under the new Immigration Act (*Zuwanderungsgesetz*) are the integration courses for new immigrants and foreign men and women already living in Germany, in which knowledge is imparted, not only of the German language, but also of the German culture, history and legal system. The federal government funds such integration courses to the tune of more than 140 Million Euros annually. The integration courses are being evaluated continually and the federal government will present the German Bundestag with a report on the implementation and financing of such integration courses by 1 July 2007.

127. Based on past experience in practice, specialized integration courses have been introduced including courses aimed at youths, courses for parents and/or women, and integration courses with a literacy element. With their tailor-made content, in particular in the case of integration courses for young people, the intention is to maximise learning.

128. To foster social integration, special measures aimed specifically at foreign women and girls (Women's Projects) are also subsidized. The courses offered include seminars that take place over more than one day, discussion groups on selected topics, as well as workshops. Here, assistance on a low-threshold level is offered in combination with information concerning job prospects and advice to individuals on issues currently affecting their lives. The objective of such courses is to foster the integration of women, to boost their self-confidence and enhance their capabilities, and to prepare them for continuing integration courses. The courses are tailored to the needs of the very differing groups of foreign women. Since funds were first allocated to such courses in 1985, an amount of approximately 30 million Euros (2 million Euros per year) has been set aside in the federal budget specifically for women's courses. Between 1985 and the end of 2004, approximately 420,000 women and girls (2004: 30,000) participated in such courses.

129. Key aspects of the projects funded by the Federal Ministry of the Interior and the Federal Office for Migration und Refugees, which are intended to facilitate integration into the host society and to prevent possible discrimination against immigrants, are:

**(a) Advice on immigration issues to supplement the integration courses/unified initial immigration advice service**

130. With effect from 1 January 2005 the systems of advising adult late repatriates and social counselling for foreigners were consolidated to form a single initial immigration advice service for all adult immigrants above the age of 27 years (late repatriates and foreigners with a long term residential status). The new advice service, which is intended to initiate, accompany and guide the integration process, is open to all immigrants within the first three years of their arrival. The service emphasises need-based case management, including an initial interview, an individual assessment of skills, a personal development plan, and an optional integration agreement. The operation of the initial immigration advice service falls within the remit of the Federal Office for Migration and Refugees which enlists the support of voluntary welfare organisations. These welfare organisations maintain advice centres nationwide which are located within the vicinity of the integration courses. In the 2006 budget, funds in the amount of approximately 26.6 million Euros were earmarked for this project. Certain *Länder* have created an additional integration advice programme or have overhauled the existing social counselling services for immigrants.

**(b) Integration through sport**

131. Sport furthers social integration through common activities including team sports in particular. Sport helps to break down linguistic and cultural barriers and increases mutual acceptance between immigrants and the local population. Immigrants are accepted by sports associations as equal members. The focus is on sporting achievements, which are independent of nationality, language, social or cultural background. Moreover, sport creates opportunities for making friends and for integrating persons with an immigrant background into a stable social environment. It is for reasons such as these that the German Olympic Sporting Association (*Deutscher Olympischer Sportbund* or “DOSB”), previously known as the German Sporting Association (*Deutscher Sportbund* or “DSB”), has, for the past 16 years, been implementing the initiative “Integration Through Sport” funded by the federal government to the tune of more than 5 million Euros per annum. The central objective of this national programme aimed at sportsmen and sportswomen of all ages is to achieve integration into the host society via and within sports associations. Team sports such as football are included in the project already, but so far only in a few sporting associations or departments within sports associations.

**(c) Measures to improve the societal integration of immigrants in local neighbourhoods**

132. These additional projects complement the integration courses and the initial immigration advice service described above. Their concept involves focussing on preventive work such as the de-escalation of social conflicts, encouraging increased acceptance on the part of the indigenous population and improving the interaction between Germans and immigrants (working to overcome xenophobia), as well as supporting the creation of municipal and regional networks and coordination centres. They help to sensitize local authorities to integration issues, foster greater understanding between Christians and Muslims on a day-to-day basis and seek

to counteract any tendency on the part of immigrants to seal themselves off, as well as any xenophobic reactions on the part of the indigenous population to the arrival of foreigners. In its 2005 budget the federal government made available approximately 14 million Euros which was primarily intended to support community-spirited projects aimed at integrating immigrants into the local community and, to the extent possible, involving the rest of the local population.

## 2. Islam

133. The primary objectives as far as the religious and political integration of Islam is concerned, are the expansion of existing German-language Islamic religious instruction in schools and the creation of higher institutions of learning to train Muslim teachers of Religious Education, as well as *Imams* (religious leaders) chosen from among the Muslim population in Germany.

134. With the exception of those *Länder* in which state legislation to the contrary existed on 1 January 1949, Article 7 para. 3 sentence 1 Basic Law provides that religious instruction shall form part of the regular curriculum in all state schools, with the exception of non-denominational schools. There is a general consensus in German society that regular Islamic religious instruction, also, would be desirable in German schools. All German political parties that are represented in the German Bundestag, both major Christian denominations and other social groups have spoken out in favour of such a change.

135. In the German *Länder*, within whose area of competence the issue falls, there have been numerous attempts over the years to offer Islamic Religious Education. The difficulty lies in the fact that to date, the authorities in the *Länder* have not found any negotiating partners with sufficient authority and authenticity to take decisions regarding the theory and content of the Religious Education curriculum. As a result, only a few model projects have been put into effect to date in cooperation with local Muslim groups.

136. So far, no solution has been found to the problem of identifying a single point of contact. This is not in any way due to a lack of goodwill either on the part of the state institutions or on the part of those Muslims in Germany who have recognized this as a problem. The larger Muslim associations in Germany are currently seeking to develop representative structures which will allow negotiation on these and other matters with the state on behalf of Muslims.

137. In Berlin, approximately 4,500 Muslim pupils attend lessons offered by the Islamic Federation of Berlin. In other *Länder* (North-Rhine/Westphalia, Lower Saxony, Baden-Württemberg, Schleswig-Holstein, Rhineland-Palatinate and Bavaria) pilot “Islamic Religious Education” projects in schools are up and running or are in their initial stages. Such courses are very well received by Muslim parents and pupils. In North-Rhine/Westphalia, for instance, Islamic Religious Education in the German language has been offered as an independent school subject since 1999 at 130 schools with a total of more than 6,500 pupils.

In addition, various universities (Frankfurt am Main, Münster, Osnabrück) have begun to introduce appropriate teachers' training courses in Islamic Religious Education. In various *Länder* (Bavaria, Baden-Württemberg, North-Rhine/Westphalia, Hesse), the Alevis are also seeking to have Alevi Religious Education introduced. An expert opinion commissioned by the *Länder* concerned came to the conclusion that the Federation of Alevis in Germany eV (AAFB) which submitted the application, is a religious community within the meaning of Article 7 para. 3 of the Basic Law.

### **3. Reform of Nationality Law**

138. The Act to Amend the Nationality Law of 15 July 1999, whose provisions essentially came into force on 1 January 2000, marked the achievement of an important objective in the policy of integration. To the existing principle of descent (*ius sanguine* or "right of blood"), in accordance with which only children having at least one German parent acquired German nationality, was added the territorial principle (*ius sole* or "right of soil"). In accordance with that principle, children born in Germany of foreign parents acquire German citizenship at birth if one parent has been legally and ordinarily resident in Germany for eight years and is a citizen of the European Union with a right of freedom of movement, or a citizen having an equivalent status from another country within the European Economic Area, or a citizen of Switzerland, or has an EU right of residence or settlement permit. Children who have acquired German citizenship on the basis of the principle of *ius sole* have to opt for either the German or the foreign citizenship when they come of age. If they opt for German citizenship, they have to give up their foreign citizenship unless it is impossible or unreasonable for them to do so. They have to make this decision before they reach the age of 23.

139. Children under the age of 10 who were born before 1 January 2000 and who would, at birth, have met the requirements of the principle of *ius sole* first introduced by the Act to Amend the Nationality Law were given a special naturalization entitlement which expired on 31 December 2000. Under this interim rule, too, the children have to opt for either German or foreign citizenship upon attaining the age of majority.

140. Since 1 January 2000 adult foreigners acquire a naturalization entitlement after eight (as opposed to the previous fifteen) years. This right is conditional upon sufficient knowledge of the German language and a commitment to the free and democratic order enshrined in the Basic Law for the Federal Republic of Germany. It remains a policy objective to avoid multiple nationalities through naturalization, but a number of additional exceptions to this principle have been introduced. For instance, the requirement to renounce one's previous citizenship as a condition of naturalization is waived if the surrender would cause significant disadvantages, particularly of a financial or property-related nature. For victims of political persecution and recognized refugees the requirement to obtain release from their previous citizenship is generally dispensed with.

### **C. Consideration of the concerns of foreigners in court practice**

141. Germans or foreign nationals who feel their rights have been violated may have recourse to the courts of law. Where the violation of rights is perpetrated by a public authority, this right is guaranteed by Article 19 para. 4, sentence 1 Basic Law. Where the violation of rights was perpetrated by a private individual, this right (general right to have justice administered) has

been developed by the Federal Constitutional Court on the basis of Article 2 para. 1 Basic Law in conjunction with the principle of supremacy of the rule of law contained in Article 20 para. 3 Basic Law. Article 103 para. 1 of the Basic Law further establishes that every individual is entitled to a hearing in accordance with the law. Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms also guarantees anyone whose rights and freedoms as guaranteed by the Convention have been violated, an effective legal remedy.

142. At this point, reference should also be made to the broad curriculum of the German Judicial Academy, an educational institution for judges and public prosecutors under the joint auspices of both the federal administration and the *Länder*, which is very popular in judicial circles. The German Judicial Academy offers a number of continuing education courses on topics such as Right-wing extremism, racism and xenophobia, but also on the integration of foreigners.

#### **D. Participating in elections**

143. German citizens who have attained the age of eighteen are actively and passively entitled to vote. Whether or not they are members of an ethnic minority or belong to a particular ethnic group is of no regard. This is guaranteed by Article 38 of the German constitution (Basic Law).

144. Article 28 paragraph 1 sentence 3 Basic Law provides that any citizen belonging to a member state of the European Union is entitled to vote, and to stand for election, in county and municipal elections, in accordance with the laws of the European Union.

#### **E. Health and social welfare**

##### **1. Statutory health insurance**

145. All insured persons in the Federal Republic of Germany enjoy equal access to the benefits of statutory health insurance, irrespective of their nationality or origin. The legislation governing the statutory health insurance scheme contains no restrictions on benefit based on the nationality of the claimant. Nor do the characteristics listed in Article 1 para. 1 of the Convention have any relevance as regards obtaining access to insurance cover. In the case of asylum seekers and persons justifiably facing deportation the cover available is limited, as a general rule, to the treatment of acute illnesses and pain. Other health care benefits may be granted on a case by case basis. Medical care is provided outside the statutory health insurance scheme.

##### **2. Statutory long-term nursing care insurance**

146. The statutory long-term nursing care insurance covers benefits such as nursing care at home, as well as out-patient or in-patient care at a nursing home. The benefits of long-term nursing care insurance are not dependent on age, income or assets, sex, origin or religion of the insured. The structure of long-term nursing care insurance is such that it can be tailored to take into account the differing needs of various ethnic groups based on ethnic or cultural differences.

### **3. Statutory accident insurance**

147. The statutory accident insurance is a compulsory liability insurance taken out by employers in favour of their employees. All workers, salaried employees and trainees are included in the insurance cover on the basis of their employment relationship. The obligation to insure arises out of the factual existence of an employment relationship. The respective nationality of the employee, as well as their race, sex, age or religious convictions are irrelevant. This also applies to benefits provided in the event of a successful claim.

### **4. Statutory retirement pension insurance**

148. Benefits under the statutory retirement pension insurance scheme in the Federal Republic of Germany are also available to all insured persons equally, regardless of nationality, race, sex, age or religion. The only exception is a specific right to early retirement benefits available to women subject to certain conditions. The statutory pension scheme is structured as a compulsory insurance scheme; i.e. in principle all salaried employees are insured by operation of law. The contributions are based on achievement potential and are calculated by reference to earnings. Whether or not there is an obligation to insure also depends exclusively upon the actual existence of an employment relationship.

## **F. Education and vocational training**

149. In order to overcome the particularly strong interdependency in Germany between social background (an immigrant background may also be considered a form of “social background”) and educational achievement, a central starting point is to improve early education and foster the individual development of children and young people. This primarily involves improving the acquisition of language skills in early childhood, an effort which must then be pursued systematically through all levels of education, as well as encouraging increased cooperation between nurseries and primary schools. This fostering must be undertaken in the first years of life, allowing language deficiencies to be identified and combated by means of targeted coaching at an early stage. In order to achieve this, the federal government would like to see the quantity and quality of education, upbringing and child care improved.

150. The federal government and 10 of the *Länder* currently participate in the project “Support for Immigrant Minority Children and Youth” (“FörMig”). The aim of the programme is to improve the fostering of language skills by means of an individualized assessment of linguistic ability and the provision of continuous language support starting at nursery age and continuing right up to the point of transition toward professional qualification. As part of the planned Federal Reform (*Föderalismusreform*), the federal government is to make compensation payments to the *Länder* starting in 2007. The payments are also intended to finance the continuation of this programme. In seven of the German *Länder*, the federal government has lent its support to the remedial education scheme for immigrant children and youths operated by the Mercator Trust in cooperation (as regards content) with the FörMig programme.

151. The federal government also supports numerous measures undertaken by the *Länder* to further the success of immigrant children and young people through activities in the field of educational research, particularly in order to evaluate the effectiveness of completed projects and to facilitate the implementation of results. The federal government supports a project seeking to

develop a method by which linguistic ability can be regularly assessed. A frame of reference is currently being drawn up for developing test instruments to assess linguistic ability at different ages further.

152. The objective of the four billion Euro investment project “Future Education and Childcare”, through which the federal government has been assisting the *Länder* financially since 2003 with the building and extension of all-day schools to meet requirements, is also to develop the talents of all children and to prevent disadvantages or discrimination at an early stage. Here, too, the intention is to offer all children and youths better educational opportunities through more individual coaching in order to sever the link between social background, particularly an immigrant background, and educational achievement in Germany.

153. In order to identify disadvantages or discrimination better, thus allowing supportive measures to be put into place with greater effect, however, the official statistical records on immigrants need to be improved to the extent data protection regulations allow. The Programme on Intercultural Conflicts and Societal Integration (“AKI”) at the Berlin Science Centre organized an experts’ forum sponsored by the Federal Ministry of Education and Research on 17/18 June 2004 entitled “Immigrants and Educational Statistics”. A documentation entitled: “Immigrant Children and Youths: Methods of Improving Statistical Data” was published by the Federal Ministry for Education and Research.

### **G. Professional integration**

154. As part of the labour market reforms there has been a change of approach in an attempt to integrate persons with a migration background into the labour market. Assistance in entering the job market is now available to all persons with a migration background who [have good prospects of obtaining a permanent residential status] and who have, as individuals, had difficulty getting a job placement due to their migration background. The measures are based on labour market criteria and start with the deficits specifically associated with a migration background. This primarily involves remedying a lack of language skills (job-related technical language) and a lack of qualifications. In order to compensate for specific defects in the counselling system in respect of further assistance for persons with a migration background, a prototype counselling and information network has been set up in six regions in Germany. In general, the Labour Office is seeking to tap the qualification potential of persons with a migration background more effectively by applying all existing individual labour market instruments.

155. In addition, the federal government is focussing on developing the potential of young immigrants.

156. To improve the professional integration of socially disadvantaged youths and young adults with learning difficulties, the Federal Ministry for Education and Research introduced a project entitled: “*Enhancing skills - Professional qualification for target groups with a particular need for support*” (the “BQF programme”) in 2001. (The programme is due to run until 2006 and provides funding in the amount of approximately 60 million Euros, of which about 50 per cent are financed by the European Social Fund (ESF)). A particular focus of this programme is to improve the qualification options available to young immigrants. Within the BQF programme, ten local and regional Professional Qualification Networks were set up nationwide in 2003/2004

to improve the opportunities of young people with a migration background. Professional qualifications are of critical importance if such people are to be integrated into economic and social life on a long term basis. One of the principal objectives of the Professional Qualification Networks, therefore, is also to increase public awareness of the importance of ensuring that immigrants obtain a professional qualification. All relevant local players, such as local government agencies, chambers of commerce, businesses, trade unions, employment agencies, schools, educational establishments, as well as immigrant organisations should all be sensitized to this issue. As such, the programme also makes a significant contribution to reducing intolerance and combating xenophobia.

## **H. Racial discrimination in the private sector**

### **1. Access to the job market**

157. As a result of changes in the economy as well as demographic developments in the resident population in Germany, an increased need for highly qualified professionals in the German labour market is becoming apparent. In some sectors of the German economy there is already a lack of skilled workers. This has not, however, resulted in an automatic fall in unemployment rates on the German labour market. On the contrary, unemployment is likely to remain a general problem until at least 2010 and, moreover, will affect persons with few or no qualifications particularly severely (as to the professional integration of poorly qualified persons with a migration background see paragraphs 154-156 above).

158. The Immigration Act which came into force on 1 January 2005 took into account the globalization of the economy worldwide and the increasing need for skilled workers without neglecting the need to protect the national job market. The key aspects of the Immigration Act with regard to the employment of foreigners are:

- The recruitment ban for both skilled and unskilled jobs which has been in place since 1973 remains in place; priority is given to the local labour force;
- Flexible admission and steering instruments to facilitate admission of foreign skilled personnel;
- Guaranteed and permanent residential status with unlimited access to the job market for the highly qualified (with a salary of at least twice the statutory health insurance earnings ceiling (currently 85,500 Euros per annum in the western part of the Federal Territory));
- Graduates given opportunity to find jobs commensurate with their qualifications following completion of their studies in Germany;
- Marked facilitation of access to qualified jobs for applicants from the new EU Member States.

159. These instruments can be used to manage and control the admission of workers from abroad. The primary objective, however, as regards employment policy remains to give priority to full utilization of the employable population resident in Germany (Residence Act section 1 sub-section 1). This includes both German citizens belonging to ethnic minorities as well as foreigners who are likely to remain in Germany.

## **2. Comprehensive legislation to implement the EU Equal Treatment Directives**

160. The legislative process in relation to the comprehensive anti-discrimination legislation agreed by the German Bundestag on 17 June 2005 (Federal Parliamentary Printed Matter - *BT-Drs.* - 15/5715) could not be completed as elections were held during the final legislative period. A new legislative process was, therefore, initiated, which ended with the promulgation of the Act for the Implementation of European Directives implementing the principle of Equal Treatment on 17 August 2006. The Act, which came into force on 18 August 2006, serves to implement all four EU Equal Treatment Directives: 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC.

161. While the main focus of the Act is on employment law, it also affects general civil law, i.e. above all private law agreements.

162. In civil law, Article 19 para. 1 of the Act in the first instance prohibits all forms of discrimination on the grounds of race or ethnic origin, gender, religion, disability, age or sexual identity, in the conclusion, performance or termination of certain civil law contractual obligations. The prohibition applies, firstly, to contracts that are typically entered into on comparable terms in a large number of cases (mass business such as cash purchase of objects for day-to-day use). Secondly, it applies to contractual obligations arising in connection with private law insurance. A certain amount of objectively justifiable differentiation remains permissible, however. For example, insurance companies can calculate the risks on the basis of a statistically reliable method.

163. In the event of discrimination, the victim is entitled *inter alia* to damages and compensation for pain and suffering. An anti-discrimination office is to be created at the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, which will assist victims of discrimination within the scope of application described. Furthermore, Section 23 of the Act provides that, subject to certain conditions, anti-discrimination organizations may attend court proceedings as advocates where the attendance of legal counsel is not mandatory. In the case of discrimination on the grounds of race or ethnic origin, specifically, Section 19 sub-section 2 additionally prohibits any discrimination in the conclusion, performance and termination of civil law contractual obligations in respect of access to, and supply of, goods and services which are publicly available, including housing. This would, for example, facilitate entry into restaurants or similar establishments free of discrimination. The only permissible exceptions are cases where there is a close personal relationship or a relationship of trust. In landlord and tenant relations this may be the case particularly where the parties or their relatives use housing space on the same property. In renting out accommodation it is permissible, in the very interests of socially disadvantaged parties to treat applicants differently in order to ensure that socially stable population structures and a well-balanced demographic structure are created and maintained, as well as in the interests of harmonious economic, social and cultural relations.

164. However, the federal government would like to draw attention to the fact that, to a large extent, discrimination had already been legally excluded through detailed criminal law provisions, regulations in administrative law and general civil law provisions the interpretation of which is affected by the prohibition on discrimination contained in Article 3 para. 3 Basic Law, as well as through the legal protection generally available in Germany.

## **ARTICLE 6**

### **A. Racially motivated crimes**

165. The central criterion for registration within the improved system of registration (“Politically Motivated Criminality”) introduced with effect from 1 January 2001 is the politically motivated act. An act is deemed to be politically motivated particularly when the circumstances surrounding the act or the attitude of the perpetrator suggest that the act was targeted at a person on the grounds of his or her political convictions, nationality, ethnicity, race, skin colour, religion, ideology, origins, sexual orientation, disability, external appearance and/or social status. The facts and circumstances of the case are evaluated by reference to various criteria and findings are made, in particular, on the quality of the criminal act, the objective category into which it falls, its subjective background, any possible international dimension and, where applicable, the possibly extremist nature of the act. This detailed breakdown allows a concrete analysis of the data as required and provides a basis for the targeted implementation of appropriate repressive and/or preventative counter-measures.

166. Crimes with a xenophobic and/or anti-Semitic background are generally categorized as “politically motivated crimes - right-wing”.

167. Following modification of the criteria used to record data, it is no longer possible to compare the statistics recorded prior to 31 December 2000 with the facts and circumstances of cases recorded for the purposes of the new registration system “Politically Motivated Criminality”. Accordingly, only the period covering the years 2001 to 2005 is dealt with below.

**Table 6**

#### **Total number of crimes with a politically right-wing motivation and a racist background**

| 2001  | 2002  | 2003  | 2004  | 2005  |
|-------|-------|-------|-------|-------|
| 3 391 | 2 789 | 2 431 | 2 553 | 2 493 |

**Table 7**

#### **Total number of crimes with a politically right-wing motivation and an anti-Semitic background**

| 2001  | 2002  | 2003  | 2004  | 2005  |
|-------|-------|-------|-------|-------|
| 1 629 | 1 594 | 1 226 | 1 346 | 1 682 |

168. The above statistics show that, following a steady decline in the number of politically right-wing motivated crimes with a xenophobic or anti-Semitic background in the years 2001 to 2003, a renewed increase was registered in 2004. While there was a renewed decline in politically right-wing motivated crimes with a racist background in the year 2005 compared to the previous year, the number of such crimes with an anti-Semitic background increased in the same period.

169. More than 80 per cent of crimes with a politically right-wing motivation and an anti-Semitic background, and almost 70 per cent of such crimes which have a xenophobic background, concern agitation of the people (*Volksverhetzung*) or so-called propaganda offences. The term “propaganda offence” encompasses “dissemination of propaganda material for unconstitutional organisations” and the “use of symbols of unconstitutional organisations”.

### **B. Police and criminal law measures**

170. In the year 2003, the police initiated 19,120 investigations in respect of relevant crimes. 82 per cent of the cases investigated concerned dissemination of propaganda materials of unconstitutional organisations, the use of symbols of such organizations, and agitation of the people” (Sections 86, 86a, 130 Criminal Code). This represents approximately 10.7 per cent fewer investigations than were initiated in 2002. 17,832 cases were closed. In roughly two thirds of the cases closed investigations were discontinued as it was not possible to identify the perpetrator. One significant reason why investigations were discontinued in such a large number of cases may be that the dissemination of propaganda of unconstitutional organisations and the use of symbols of such organisations were perpetrated in a way that made it very difficult to trace the perpetrators, particularly because the symbols were drawn on, or attached to, buildings and institutions where there were no witnesses. In 2003, 2,334 persons were convicted of such crimes, of whom 543 persons received juvenile or prison sentences. 33 persons were given juvenile or prison sentences of more than 2 years. This is because prosecution is not restricted to particularly spectacular violent crimes. Even minor offences continue to be prosecuted with the full force of the law.

### **C. Right-wing extremist tendencies in the population**

171. In the past few years a number of surveys have been carried out concerning right-wing extremist and xenophobic tendencies. The attitudes of youths and young adults, in particular, have been thoroughly researched and documented. The results show that 16 to 29 year old Germans are less likely to have right wing extremist attitudes than older age-groups. The statistics also show that between 1992 and 2003 there has been a steady decrease in the average level of xenophobic attitudes amongst youths and young adults in East and West Germany. A comparison between East and West Germany shows that youths and young adults in the new federal *Länder* clearly identify with extreme right-wing and xenophobic doctrine much more often than do young people in the old federal *Länder*. Both the percentage of 16 to 24 year-olds that identify with right-wing extremist views, as well as the percentage of 16 to 29 year-olds who are found to be xenophobic, is twice as high in East Germany as it is in the case of the persons questioned in West Germany. Generally, there is also a fairly balanced distribution of extreme right-wing tendencies in men and women. When, however, the definition of right-wing extremism used in the study includes a readiness to use violence, such attitudes are found more frequently amongst men than amongst women.

#### **D. Allegations against the German police force**

172. In concluding observation no. 11 in relation to the 15th Country Report for the Federal Republic of Germany, the Commission expressed its concern about repeated reports of racist incidents at police stations and the maltreatment of foreigners including asylum seekers and German citizens of foreign origin by civil servants (police officers) in the service of the penal system.

173. Criticism of the police in reports concerning foreigners who were victims of police maltreatment in the Federal Republic of Germany have been, and continue to be, taken very seriously by the federal government. The Government agrees with the Committee that both a good schooling of all police officers and strict disciplinary measures against the perpetrators are appropriate.

174. The training schedules and curricula for all career branches contain a multitude of instructional units which give members of the police force theoretical and practical training in standing up for the free and democratic order, respecting and protecting human rights, and showing tolerance in dealing with citizens of German and non-German origin. For detailed information regarding these and other educational measures please see the remarks in response to concluding observation No. 11 (paras. 235-257 below).

175. In spite of all these measures, however, one cannot rule out the occurrence of misconduct in individual cases. There is absolutely no excuse for this, especially in the case of policemen and policewomen. The authorities therefore consistently invoke the full force of the law in dealing with police officers accused of such misconduct. An objective and independent assessment of incidents of that nature is guaranteed by the principle of the division of powers and, in particular, by the independence of the judiciary.

#### **E. Legislative measures**

176. During the period under review, legislative measures have been introduced in the field of criminal law, particularly in order to fill existing gaps in protection against Internet crime (see paras. 80-84 above, and paras. 258-266 below).

#### **F. Compensation payments by the State for racially discriminatory attacks**

177. There are two ways in which victims of racially discriminatory attacks can obtain redress from the State.

178. First of all, the interests of the aggrieved party are largely covered by the Act on compensation for victims of acts of violence (“OEG”). The objective of the OEG is to pay compensation to persons who have been victims of an act of violence within the sovereign territory of the Federal Republic of Germany for the physical and emotional pain suffered. It regulates an independent statutory compensation scheme above and beyond the general systems of social insurance and social welfare for persons whom the German State was not able to protect against an intentional act of violence. Benefits under the OEG are granted upon application. There is no time limit for submitting the application.

179. The aim of the OEG is to compensate for the health and economic consequences of acts of violence. Persons who have suffered damage to their health through an intentional, unlawful attack (aggrieved parties) or the surviving dependents of persons who have died as a result of damage to their health, are entitled to claim.

180. Initially only German citizens had a right of claim under the OEG. The Second OEG Amendment Act of 21 July 1993 also gave all foreigners lawfully residing in Germany who had been victims of an intentional act of violence, the right to claim damages in accordance with the OEG with retrospective effect from 1 July 1990 or, in the case of temporary visitors, at least the right to compensation in the form of a hardship payment. As a rule, the level of compensation paid is determined by reference to the extent of their integration. The term “lawful” does not necessarily mean that possession of a valid residence permit is a requirement.

181. It was the increase in violent attacks on foreigners in Germany that led to the decision to broaden the circle of persons with a right of claim through the Second OEG Amendment Act. The victims of such attacks were both foreigners who had been resident here for a long period of time and foreign refugees and asylum seekers, whereby the perpetrators sometimes also cited racism or xenophobia as the motive for the crime. The declared objective of the Second OEG Amendment Act was to show solidarity with, and give support to, such victims by creating a right of claim to compensation payments under the OEG.

182. The position of foreign victims of acts of violence is as set out below:

(a) Citizens from EU Member States, from countries in respect of which applicable EU legislation requires equal treatment with Germans (this currently includes Norway, Iceland and Liechtenstein), and countries where reciprocity is guaranteed (this is determined on a case by case basis; to date reciprocity has been guaranteed in respect of some states within the USA and certain Canadian provinces), have the same status as Germans regarding the conditions for, and the extent of, compensation granted;

(b) All other foreigners receive the same level of compensation as Germans if they have been lawfully resident in Germany for at least three years;

(c) Foreigners who have been lawfully resident within the territory of the Federal Republic of Germany for more than six months but less than three years receive the same level of compensation as Germans, with the exception of income-related compensation such as compensation for industrial disability, supplementary pensions to guarantee subsistence, spouse benefits and additional benefits from the welfare service for war victims (*Kriegsopferfürsorge*);

(d) Foreigners who have been lawfully and temporarily residing in the federal territory for no longer than six months and are either married or directly related to a German citizen or a foreigner who satisfies the requirements mentioned in (a), (b), or (c) above; or who are citizens of a signatory state to the European Convention on the Compensation of Victims of Violent Crimes (Council of Europe) which was ratified by Germany in 1997, receive the same benefits as the foreigners mentioned in (c) above.

183. Foreigners who are not entitled to claim on the basis of the criteria mentioned in (a) to (d) above, particularly foreigners who are not intending to stay in Germany for more than six months (visitors, tourists) may, if the application of such criteria would result in particular hardship in an individual case, be granted a one-off hardship payment subject to the consent of the highest authority in the respective Land in mutual agreement with the Federal Ministry of Labour and Social Affairs.

184. Secondly, during the debates on the 2001 federal budget, the *Bundestag*, against the background of a significant increase in right-wing extremist, xenophobic and anti-Semitic crimes during the year 2000, created the option of making hardship payments out of the budget to victims of right-wing extremist attacks. Introducing the option to make such hardship payments is part of the federal government's policy of proscribing and preventing right-wing extremist attacks. This additional option of rendering prompt assistance to victims of such attacks complements the preventative and repressive measures to counter such attacks, as well as the existing system of general compensation for victims. The payments are also conceived as an act of solidarity with the victims and are to have a beacon effect.

185. There is no right of claim in respect of the hardship payments which, being discretionary payments by the State, are decided upon on the basis of equitable considerations and made in the form of one-off monetary payments. Persons who have been physically injured in a right-wing extremist attack or whose general right of personality has been violated may apply. Payments can be made not only to victims of physical attacks, but also to persons who have suffered insulting or threatening behaviour. The hardship payments made to date have varied between EUR 100.00 per person in the case of simple insults and up to EUR 250,000 in cases where the victim suffered severe physical injury.

186. In 2001, 210 applications for hardship payments were received. Of the 210 applicants, 151 persons were paid a total of 1,430,302 Euros. During the first year following introduction of the hardship payments, the fact that applications for hardship payments could be made retrospectively for events which took place in earlier years had a noticeable impact on the number of applications and the total amount of payments made. Only hardship payments for injuries which occurred before 1 January 1999 were conditional upon the existence of special circumstances. After 2001 the number of applications and the total sum of hardship payments made annually decreased significantly. In the year 2004, for example, 130 applications were made for hardship payments. To date a total of 92 persons have been granted hardship payments in the amount of EUR 156,300 in 90 proceedings. The amounts paid varied between EUR 100.00 and EUR 13,000. At the time of the Federal Public Prosecutor's latest report (February 2006) four applications were still pending. In 2005 there were 139 applications for hardship payments. In 72 cases so far, the application has been granted and hardship payments in the amount of EUR 222,800 in total have been approved. The individual payments made ranged from EUR 200.00 to EUR 100,000. At the time of the Federal State Prosecutor's latest report 45 applications were still pending.

187. Hardship payments are only granted upon application. The Federal Public Prosecutor has produced a memorandum and an application form for this purpose, in which the applicant is required to provide the information necessary for determining whether a hardship payment should be made. In order to publicize the existence of hardship payments, the Federal Public Prosecutor has informed the Public Prosecutors in the *Länder* via the Prosecutors General and

the police services via the *Länder* Police Authorities (*Landeskriminalämter*), as well as informing the authorities responsible for dealing with the affairs of foreigners (*Ausländerbehörden*), social services and the “White Ring” (*“Weißer Ring”*), an organization which helps to protect victims. The information is repeated every year.

188. Hardship payments are, in principle, subsidiary to other rights in damages which a victim may have. However, the State will also advance money where such rights of claim exist if the victim cannot in the near future hope to obtain redress from the liable third party. The applicants assign any claims in damages they may have against third parties to the Federal Public Prosecutor, including, in particular, rights against the perpetrator(s) in the amount of the money advanced to the victim. In the interests of effectively combating right-wing extremism, assigned rights of regress against perpetrators are regularly and vigorously pursued in order that right-wing extremist criminals are also held accountable for their actions in civil law and do not obtain a financial advantage due to the fact that the victims have been compensated by the State.

## **G. Further measures**

### **1. Programmes to encourage right-wing extremists to leave the movement**

189. As part of a sustained effort to combat right-wing extremism, several federal *Länder* decided in 2001 to set up their own EXIT programmes for right-wing extremists. These EXIT programmes are conceived as an additional preventive measure offering state assistance to any who wish to leave the right-wing extremist scene again at any time. One way of accessing the programme is via a telephone hotline which was publicized by means of posters, flyers and press releases. In addition, the police and the Federal Office for the Protection of the Constitution (*Verfassungsschutz*) bring the possibility of exiting to the attention of individuals. Thus in the year 2003 alone, over 1000 people in North-Rhine/Westphalia who were classed as sympathizers, activists or leadership figures within the extreme right-wing movement were approached. The range of assistance available upon exiting the movement differs from case to case. It encompasses intensive counselling sessions, assistance in seeking a job, support in obtaining further qualifications, the availability of psychological support, assistance in joining detoxification programmes, support in reuniting the family, assistance in moving or in reducing indebtedness, and counselling while in prison. Up to December 2005, 40 people in Bavaria and up to September 2004, 26 people in North-Rhine/Westphalia, respectively, had permanently left the right-wing extremist scene with the support of the Exit Programme.

### **2. Supporting civil society structures**

190. To combat the influence of racism and xenophobia, the federal government also initiates and/or supports activities within civil society. On 23 May 2000, for example, the “Alliance for Democracy and Tolerance - Against Extremism and Violence” already described in paragraphs 25 to 30 above was founded to implement and actively embody the values and principles of social and democratic rule of law. It brings together all forces that oppose xenophobic, racist or anti-Semitic tendencies.

191. The dialogue begun in 1997 (European Year against Racism) between the government and non-governmental organisations continues on a national level within the German successor institution “Forum against Racism”. This body was constituted in March 1998 and now includes

80 organisations of which 60 are non-governmental organisations that are active nationwide in an effort to overcome xenophobia, racism, anti-Semitism and violence. It also serves as a “national round table” as defined in the principles of the “European Monitoring Centre on Racism and Xenophobia” (EUMC) in Vienna.

## ARTICLE 7

### A. Overview

#### 1. Increased civil courage/voluntary civic activity

192. The vast majority of citizens in Germany is committed to democracy and the rule of law and is against violence and extremism. Numerous social action groups from civil society stand up for these objectives with great enthusiasm. Such initiatives are important and they receive recognition and support (see, for example, paragraphs 25 to 30 above). The continuing presence of right-wing extremist ideas and attacks show, however, that the fight against racism and right-wing extremism must continue to be fought with a broad basis of support.

193. In combating racism, xenophobia and right-wing extremism, the German authorities now take a multi-dimensional approach. In addition to measures intended to counteract the activities of right-wing extremists, such an approach also focuses on general conditions prevailing in German society as a whole which underlie such violence. Emphasis is placed on financing local initiatives to strengthen a democratic civil society, for example. In the fields of employment and education, particularly, there is a whole range of initiatives primarily intended to improve the situation of minority groups and to combat racial discrimination.

194. The survey entitled “*Youths and young adults in Germany*”, commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and carried out by the ipos Institute in Mannheim (an institute for social research), registered an increase in moral courage. The readiness to show moral courage in the face of violence has clearly risen since 1993: In answer to the question “Would you come to the assistance of foreigners in the event of an attack involving physical violence?” 60 per cent of West Germans and 51 per cent of East Germans questioned answered: “Yes”. In 1993 the figures registered were only 49 per cent and 38 per cent respectively. The results are also underscored by a registered decline in resentment against foreign neighbours. 72 per cent of young West Germans declared that they had one or more persons without a German passport in their circle of friends - in East Germany it was 38 per cent. The gap between East and West Germany, while still significant, has shrunk from the 1993 level of 47 per cent to 34 per cent. At the same time the vast majority of youths and young adults do not support violence against foreigners. There is no great difference between the East (89 per cent) and the West (94 per cent) in this issue.

195. Voluntary work undertaken by the public is an essential pillar of a stable and active civil society, in which citizens assume responsibility on the basis of democracy and the rule of law. The encouragement and support of such voluntary civic activity constitutes a significant contribution to combating and preventing racism and xenophobia. The representative longitudinal survey “Volunteering in Germany from 1999 to 2004”, the second national survey of the voluntary sector commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) shows that 36 per cent of citizens above the age of

14 years do voluntary work and 32 per cent would be willing to take on voluntary work. Through informal learning processes, involvement in the voluntary sector gives one the opportunity to acquire not only technical knowledge, but above all wide-ranging personal and communicational skills, activity-related and implementation-oriented skills, as well as technical and inter-cultural skills. Through voluntary work one learns tolerance towards others, whether they are socially or physically disadvantaged or members of other cultures and religions. Prejudices and reservations due to ignorance can be overcome and racism countered. The voluntary services “Voluntary Social Year” and “Voluntary Ecological Year” constitute a unique and well structured form of civic engagement for young people. They offer the opportunity to gain an insight into career options, as well as to acquire social skills and experience of inter-cultural interaction through informal learning processes. Since 2004/05, particular attention is being paid to involving youths with a migration background in the voluntary services sector. For the period 2007-2013 a new project sponsored by the European Social Fund is being planned, entitled: “Disadvantaged Young People - Acquiring skills through a Voluntary Services Year or a Voluntary Ecological Year”. The voluntary services sector thus plays a major part in increasing tolerance and furthering integration.

## **2. Programme of Action for Democracy and Tolerance - Against Right-Wing Extremism, Xenophobia and Anti-Semitism**

196. In its efforts against right-wing extremism, xenophobia and anti-Semitism, the government has placed a special emphasis on its policy concerning young people. Thus, the programme “Young People for Tolerance and Democracy - against Right-Wing Extremism, Xenophobia and Anti-Semitism” was started in the year 2001. This comprehensive programme encourages democratic behaviour, voluntary civic activity, tolerance and a cosmopolitan attitude.

197. The programme of action consists of three parts:

- “Entimon - Hand in Hand against Violence and Right-wing Extremism”;
- “Civitas - Active against right-wing extremism in the new federal states”;
- “Xenos - Living and Working in Diversity”.

198. Since 2001 approximately 4000 projects, initiatives and measures have received funding, of which 2,300 were part of Entimon, 1,500 a part of Civitas and 250 a part of Xenos.

199. By the year 2006, app. 192 million Euros in programme funding will have been made available. Of this amount, approximately 65 million Euros go to Entimon, approximately 52 million Euros to Civitas and 75 million Euros to the Xenos part of the programme from the European Social Fund matched by government funds in the same amount.

200. Detailed information as to the programme, as well as a regional data base containing all funded projects can be found under [www.bmfsfj.aktiv-gegen-hass.de](http://www.bmfsfj.aktiv-gegen-hass.de). The website contains an updated summary of information on all three parts of the programme. Separate information about each part of the programme is accessible under [www.jugendstiftung-civitas.org](http://www.jugendstiftung-civitas.org), [www.entimon.de](http://www.entimon.de) and [www.xenos-de.de](http://www.xenos-de.de), respectively. The programme of activities will continue until the end of 2006.

201. A note on the individual parts of the programme:

**(a) Entimon - Hand in Hand against Violence and Right-Wing Extremism**

202. The central focus of the programme is to support measures aimed at strengthening democracy and tolerance and at preventing and combating right-wing extremism and violence. Political education plays an essential part in achieving this objective. A particular focus is placed on model projects with long-term structures which emphasise participation and have, or are in the course of developing, a network character.

203. The objectives of the programme are:

- To develop and strengthen the ability to combine openness towards strangers and towards the multitude of cultural, ethnic and religious convictions and lifestyles while standing up for the constitution and defending human rights (practising tolerance);
- To develop and strengthen the ability and readiness to counter violence, right-wing extremism, xenophobia and anti-Semitism and to protect minorities (combating violence);
- To integrate persons with an immigrant background into the society (integration);
- To encourage readiness to get involved and take responsibility for tasks facing society (taking responsibility);
- To develop and strengthen the ability to overcome differences of opinion and other conflicts democratically (experiencing democracy through democratic action);
- To encourage people to speak their personal convictions openly (moral courage);
- To impart a reliable basic political education (knowledge).

**(b) CIVITAS - Active against right-wing extremism in the new Länder**

204. The programme's target is to contribute towards the setting up, networking and further development of model civil society projects in the new federal *Länder*. The work is to be human rights oriented and bear in mind the perspective of victims of right-wing extremism. At the very centre of this idea is the need to recognize, protect and respect ethnic, cultural and social minorities. Both the professionalizing of advice structures as well as the development and recognition of local civil initiatives are important aspects of fostering a democratic culture. Civitas addresses multipliers in associations, private initiatives, schools, kindergartens, parliaments, administrative bodies, the police, the judiciary and businesses; it addresses citizens who are active in the society; parents and guardians; immigrant men and women, young people, pupils at secondary modern schools and vocational institutions, young people who are in danger of being sucked in by right-wing extremism and the victims of right-wing extremism.

205. Support is given to:

- Mobile advisory teams. The target is to build up a competent advisory network in the new federal Länder;
- Counselling victims and/or potential victims of right-wing extremist criminality or violence: The work of counselling centres is aimed at victims of right-wing extremist violence (whether or not they have pressed charges and regardless of the classification of the act in criminal terms), and at ethnic, cultural and social minorities that are indirectly affected by right-wing extremist violence as a group;
- Measures to strengthen and further develop social and democratic structures in the community, including:
  - Exchanging and communicating experiences;
  - Strengthening a democratic culture which focuses on the good of the whole;
  - Building a network of civic engagement in the community.

**(c) Xenos - Living and Working in Diversity**

206. The aim of the programme is to use practice-oriented measures to counteract racism, xenophobia and discrimination in society in a sustained effort. The programme is intended to strengthen civil society structures and foster peaceful co-existence. The strategy of Xenos is to focus on the interface between school and work. Labour market qualification measures are consciously linked with activities to combat racism and xenophobia.

207. Xenos aims its message primarily at youths and young adults who are at a disadvantage as concerns access to jobs as well as school and vocational education. For it is precisely at this point, at the interface between school, job and working life, that a strong interdependence between the spectre of unemployment, the perception of having to compete with immigrants for jobs, latent or openly held xenophobic attitudes and statements and a rising willingness to use violence and discrimination against foreigners rise to the surface. The subjective feeling of being faced with a dead-end future: a lack of vocational training places or long-term unemployment, often leads to a search for deceptive “substitute careers” in the right-wing extremists’ scene. Xenos, on the other hand, encourages adolescents and young adults of differing backgrounds to live and work together, and supports inter-cultural dialogue. For if German and foreign youths share common experiences this can greatly contribute to reducing intolerance.

208. Four types of project are funded through XENOS:

- Integrated local projects, mobile advice teams and pools of experts seek to encourage local and regional cooperation by the main players on the labour market in order to strengthen civil society structures and voluntary civic activity;
- The training of multipliers results in the transfer of strategies and methods for dealing with xenophobia and racism;

- Measures in schools, professional life and industry complement existing offers in schools and vocational training through practice-oriented measures against racism and xenophobia;
- Information and awareness enhancement to achieve greater sensitization to the issues in the sciences, politics, businesses and lessons.

209. The projects funded include measures such as seminars to strengthen inter-cultural competence of German and foreign young people in conjunction with vocational internships at home and throughout the EU with the aim of improving professional mobility. Other aspects on which the programme focuses assistance are the development of education and advanced training modules/curricula for multipliers in schools, professions and industry, as well as the fostering of a mutual familiarity with cultural and professional differences and commonalities as part of vocational training, orientation, preparation for professional life and consulting.

210. The federal government has allocated 75 million Euros for the period 2000 to 2006 from financing provided by the European Social Fund for the implementation of XENOS. 55 per cent of the ESF funding is earmarked for eastern Germany and 45 per cent for western Germany. The total funding for the XENOS programme including national co-financing, amounts to approximately 160 million Euros. The Xenos programme has been subject to scientific evaluation by an external evaluator since January 2004.

211. Xenos impacts on social structures on a long-term basis and it is therefore possible to reach important conclusions concerning the integration of immigrants in Germany. Scientific findings based on the current XENOS projects are:

- In the sphere of education the targeted work with migrant parents has proven to be an effective starting point. The parents frequently do not have enough knowledge of the German education system nor are they aware of how important their children's education is for their social and professional development. Through involving multipliers who have an immigrant background themselves and speak the parents' mother tongue, it was possible to sensitize them to educational standards and to smooth the path through the German educational system for children with an immigrant background;
- In industry, cooperation amongst employees, both natives and non-Germans, as well as between different immigrant groups, was improved in Xenos projects through training courses and a reorganisation of communication structures within the businesses. Such an approach appeals to businesses because it leads to a better working climate and thus contributes to increasing the company's productivity;
- In residential neighbourhoods, targeted low-threshold offers have been introduced, including measures which aim to improve access of migrants to health information and health care. The central focus here is on "health multipliers". These are people with an immigrant background who receive suitable training and are then locally deployed as multipliers, in order to inform and support immigrants as they navigate their way through the German health system.

212. In addition, cross-border exchange programmes with Eastern European youths offer many options in terms of social measures which run parallel to the accession of central and eastern European countries to the European Union.

## **B. Measures in the field of instruction and education**

### **1. Children's day-care centres**

213. The Conference of Youth Ministers (*Jugendministerkonferenz*) and the Standing Conference of Education Ministers of the *Länder* (*Kultusministerkonferenz*) agreed upon a Common Framework for the *Länder* for early education in children's day-care centres (*Kinder-tageseinrichtungen*) on 13/14 May 2004 and 3 June 2004. Emphasis is placed on one express aim of pedagogic work, being to prevent, and respond adequately to, social stigmatisation. Individual differences in terms of sex, origin, religion, life style, age and stage of development, strengths and weaknesses are recognized and taken into account in terms of organization and pedagogy. The Framework Agreement provides that elementary educational options should be open to all children and give them fair, equal and common chances of learning and developing. A pluralistic society is regarded as a chance to safeguard a united global future.

### **2. Schools and Vocational Training**

#### **(a) General**

214. One of the most important functions of schools is to provide an education in democracy and tolerance. The importance attached to this task is reflected in the curricula of the *Länder*, in which the acquisition of skills and a development of moral values are taking on a more central role alongside the transmission of knowledge. Accordingly, the topic: "The teaching of democracy and tolerance" is an integral part of the curriculum in History, Civics, Legal Studies, Economics, Ethics, Protestant Religious Education, Catholic Religious Education, as well as in the teaching of the German language and foreign languages. As early as 1996, the Standing Conference of Education Ministers passed a recommendation entitled: "Inter-cultural education and upbringing in schools" (Standing Conference of Education Ministers, Recommendation of 25 October 1996). Partnerships with foreign schools are encouraged in order to foster openness to other cultures in schools. There are more than 12,000 such partnerships in place nationwide (as at the end of 2005).

215. The Federal Ministry for Education and Research in conjunction with the *Länder*, implements model programmes and projects against racism and xenophobia in order to improve social aspects of life at school.

216. The model programme of the Federal Administration/*Länder* Committee "Learning about and Living Democracy", scheduled to run from 2002 to 2007, aims to foster democratic competency and a democratic school culture. "Learning about and Living Democracy" is understood to be an innovative programme which combines aspects of school development with the fostering of a democratic culture by reference to the social and societal context of the school

and its pupils. In order to achieve a broad transfer effect which also reaches schools, pupils, teachers and parents who do not directly participate in the project, a corresponding Internet structure has been created. In an effort to ensure permanence and propagation, multipliers are to be trained and institutions at *Länder* level involved.

217. The combined research and training project “Our school...civic quality of schools; intra-school evaluation/initial and in-service training” centres around the evaluation of the civic quality of schooling, the development of profiles for further training in schools and the kick-starting of a further education process via long-distance learning chosen from 26 flexibly selectable modules (e.g. successful teaching and learning in forms of instructions which allow the pupils to be active, reluctance or refusal to attend school, mediation in conflicts, empowering parent work in schools, school development and prevention, youth cultures and youth scenes). On the basis of a representative questionnaire addressed to pupils regarding juvenile delinquency and school quality, a data base will be set up for each individual school, which is intended to help the schools develop their own further training profile. The schools choose the modules that interest them from amongst all the modules offered on the course. The project is being carried out with advanced training institutions for teachers.

218. In vocational schools, care is taken to develop and foster equally the technical, personal and social skills. Lessons are intended inter alia, to improve the ability and willingness to act responsibly at work, in one’s private sphere of life and in public life. The joint Framework Curriculum agreed by all the *Länder* thus gives vocational schools the task of dealing with central issues of our times such as the peaceful co-existence of people, nations and cultures in one world while maintaining cultural identity and safeguarding human rights, in both its general and its vocational instruction.

### **(b) Competitions for schools and young people**

219. The numerous competitions for pupils and young people which receive national funding, such as the Federal President’s History Competition, the political education competition for schools, and the European competition “Europe in Schools”, also play an important role. In addition there are further competitions such as “Jugend debattiert”. At the *Länder* level too, the competitions organized on the subject of diversity of people, cultures and languages contribute to a conscious awareness, and respect of differences.

220. Finally, in many places, schoolchildren have taken the initiative themselves and organised their work against right-wing extremism, racism and xenophobia independently under the title “Schoolchildren against right-wing extremism”.

## **3. Universities**

221. Universities also see standing up against racism within the university itself but also in society as a whole, as an essential part of their self-perceived role. Accordingly, numerous lectures deal with the issue of confronting racism. The successful inter-university project to foster inter-cultural competence amongst students (HOPIKOS) in Hamburg, which was commended by the Federal Ministry for Foreign Affairs and has grown into a supra-regional role model, deserves a particular mention.

222. The situation in Thuringia also deserves a special mention. In Thuringia, the number of foreign students has more than trebled in the past ten years and at the beginning of 2006 numbered approximately 3100. This means that there are young people from over 100 countries studying in Thuringia. Most foreign students come to Thuringia from China, followed by Vietnam, Bulgaria and the Russian Federation. But young people from Libya, El Salvador and Togo, for example, have also chosen to study in the Free State Thuringia. The Franz Liszt School of Music in Weimar has a particularly high proportion of foreign students, numbering 29.2 per cent, followed by the Bauhaus University Weimar with 14.4 per cent and the Technical University of Ilmenau with 9.8 per cent. Many students are attracted to the universities in Thuringia because of its international orientation and excellent academic conditions, such as the increasing number of internationally recognized degrees offered.

223. The Academic Offices for Foreign Students and the Students' Unions have responded to the special challenge of caring for foreign students by finding creative solutions. For instance, assistance is provided in searching for accommodation, accompanying students to the authorities, giving advice as to what to study and supervision and support in the form of mentoring, without the need for a lot of bureaucracy.

224. As part of the competition "Studying together in Thuringia", the former Thuringian Ministry of Science, Research and the Arts has been awarding prizes for activities and projects which work towards the integration of foreign students and fellow citizens every two years. In 2004 the first prize went to the Ilmenau initiative: "Initiative Solidarische Welt Ilmenau ISWI e.V." at the Technical University of Ilmenau for its project "International Student Week in Ilmenau".

225. From as early as 1993, the student members of the association have been organizing an International Student Week in Ilmenau every two years. Through international student events inter-cultural understanding and peace are fostered. At the event in May 2003 approximately 350 participants from 48 countries got together around the theme "because the people matter" to discuss topics such as "the Future of Democracy", "Families and their importance for Democracy", "The Power and Responsibility of the Media" and "Globalization" in working groups. ISWI is the largest international student forum of its kind in Germany. The students are supported by the Technical University Ilmenau, the German Academic Exchange Service (DAAD), the former Thuringia Ministry for Science, Research and the Arts and many others. The next International Student Week in Ilmenau will take place from 1 June to 10 June 2007. The slogan is: "ISWI 2007 - time to think" "Live as if you will die tomorrow, but learn as if you will live forever".

#### **4. Adult Education Centres (Volkshochschulen) and adult education**

226. In the adult education sector many further education courses are offered on subjects such as inter-cultural and inter-religious dialogue, anti-racism, culture and life-style in the countries of origin of the immigrant population, anti-Semitism and persecution of the Jews under the NS regime, etc. Such events contribute to counteracting racial prejudice.

227. Moreover, the linguistic and social integration measures aimed at persons with a migration background may be regarded as preventive measures in terms of racial prejudice and racism. It is in this domain in particular that established adult education centres such as the *Volkshochschulen* and adult education institutions at *Länder* level play a central part by offering tailor made language and integration courses.

### **C. Cultural measures**

228. A number of the initiatives mentioned above have a cultural element. In addition to those measures, the following examples merit a separate mention: In Mecklenburg-Western Pomerania, for instance, artists have been holding workshops in schools, institutions for young people and ateliers since 2003 as part of the project “Artists for Schoolchildren”. In some *Länder*, multi-cultural festivities take place at which cultural and culinary traditions of various cultures are presented. The “Carnival of Cultures” which takes place annually in Berlin and Hamburg is a special treat for all with its diverse cultural programme and colourful processions, and is enjoying continuing growth in popularity both among participants and among visitors.

229. Between 2003 and 2005 the city of Kiel and other cities in Schleswig-Holstein organized annual intercultural weeks in cooperation with socio-cultural institutions, foreign associations and groups dealing with migration issues. The intercultural weeks were sponsored by the Land Schleswig-Holstein to the tune of 3,500 Euros each. The project helps involve the foreign population and provides an opportunity to learn about foreign cultures. In a series of individual events all aspects of xenophobia, discrimination, persecution and exclusion are touched on. In 2006 another inter-cultural week will be held from 24 to 30 September 2006.

### **D. Measures in the information sector**

#### **1. CIVIS Prize**

230. The contribution made by the Commissioner of the Federal Government for Migration, Refugees and Integration also deserves a mention. Together with the Freudenberg Trust and the first German TV broadcasting station represented by the West Deutscher Rundfunk, she has, since 1998, been awarding the annual CIVIS Radio and Television Prize “Living in Cultural Diversity - Respecting Differences”. The work associated with the CIVIS Prize including a special jury made up of young people which awards prizes for contributions produced by young people, as well as the award ceremony involve several hundred people, who are themselves media producers or consumers. The CIVIS Prize fulfils an important task in sensitizing the media as to how to deal appropriately with topics such as integration or foreignness in the media.

#### **2. Show Your Face!**

231. In August 2000 the Association Gesicht Zeigen! Aktion weltoffenes Deutschland e.V. (Show your face! Campaign for a Cosmopolitan Germany e.V.) was founded with the objective of becoming actively involved against right-wing violence and standing up for a cosmopolitan Germany. The patronage of the association was taken on by the then Federal President Johannes Rau. The objective of the Association is to strengthen civil engagement against racism and right-wing violence. To this end, projects, activities and publicity campaigns (such as billboards/posters, advertising spots in cinema and television) are developed and sponsored.

The Association has, for example, published a “Handbook for Acting with the Courage of one’s Convictions”, which gives examples of how one can become actively involved in combating racist violence.

### **3. Protecting the interests of youths in the media**

232. Alongside media content that is criminalized under the Criminal Code (StGB), the Act for the Protection of Young People (*Jugendschutzgesetz* or JuSchG) requires that media content - including Internet material - which could endanger the development of children and young people or their upbringing as responsible personalities with a sense of community, be entered into a list of media that are harmful to young people. This includes, above all, media that are immoral, appear brutal, or incite to violence, crime or racial hate. The Federal Inspection Agency for Media Harmful to Young People (*Bundesprüfstelle für jugendgefährdende Medien*) is charged with compiling and maintaining a list of such media.

233. The legal consequences of indexation of online material (so-called tele-media such as the Internet) are governed by the Länder Treaty concerning the Media and the Protection of Young People (*Jugendmedienschutz-Staatsvertrag* or JMStV). Under that agreement, Internet programmes that have been included in the list of media which endanger youth, may not be made available except in closed (adult) user groups. The JuSchG and the JMStV entered into effect together on 1 April 2003.

## **III. RESPONSE TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION (CERD/C/304/Add.115, paras. 10 to 16)**

### **A. Re paragraph 10 of the Committee’s recommendations**

234. After the sudden and dramatic increase in right-wing extremist, xenophobic, and anti-Semitic crimes during the year 2000, the federal government focussed intensely on this phenomenon. Thereafter, extensive, unified counter-measures were introduced throughout the federal territory (see paras. 121-124 above). It was also discovered that not every politically motivated crime appeared to have an extremist background. As a result, under the old system of recording statistics the circumstances of crimes were not being categorized in a consistent manner. Thus facts and circumstances of cases were sometimes categorized as extremist so that they could be included in the statistics, although the crimes were not extremist in nature. In order to ensure a uniform method of recording statistics throughout the country, which conforms to reality, the previous method of recording and analysis based on the concept of extremism was fundamentally reformed and eventually replaced by the new Criminal Investigation Registration Service - Politically Motivated Criminality (see paras. 156-169 above). This significantly eased and improved the statistical recording of crimes with a racist, xenophobic or right-wing extremist motivation.

## B. Re paragraph 11 of the Committee's recommendations

### 1. General

235. The first International Congress on Human Rights Instruction in Vienna in 1979 formulated the fostering of tolerance and solidarity, the imparting of knowledge on human rights and increasing awareness of possible ways of transforming this into reality, as aims for the teaching of human rights.

236. In the Federal and State police forces, these objectives are of fundamental importance in the area of education and further training. Human rights education is an integral part of initial training for all career groups within the law enforcement services and also of the in-service training at educational institutions and in the police stations of the various police authorities. The federal government and the federal *Länder* are aware that sensitizing police officers to such issues is a central and permanent task, a task that requires unceasing attention. Accordingly, this aspect of training has been the focus of particular attention for many years.

### 2. The teaching of human rights in the police training curriculum

237. The importance of the free, democratic and social constitutional order for the freedom of the individual as well as for the society as a whole is dealt with in the subject **Constitutional Law**. The young police officers are to internalize in particular, that they respect and protect the fundamental rights in the performance of their duties as a prerequisite for justice and freedom. They are to do their work in the service of a free and democratic state governed by the rule of law as a matter of personal conviction.

238. In the subject **Powers of Intervention** (*Eingriffsrecht*), the limits of police options and powers of intervention are emphasised and the concepts of “proportionality” and “minimum intervention” are highlighted in connection with all police measures. In examinations the trainees are asked to name the fundamental and human rights that are affected by the police measure even before considering whether they have the required authority to intervene. Relevant topics could be, for example, the guaranteed fundamental rights of freedom of opinion and freedom of assembly, asylum law or the right to self-determination regarding information, being part of the general right of freedom of personality.

239. The subject **Political Science** gives the prospective police officers an insight into the factual and institutional conditions of, and connections with, political thought and action, including drawing distinctions to other systems and ideologies. The central focus is placed on recognizing the interaction between political, economic, social and cultural factors both historically and in terms of their impact on the present. Important topics are democracy, xenophobia, racism, migration, religions and sects. The police officers are to be placed in a position where they are able to independently analyse and classify political conflicts and extremist propaganda, as well as political and religious ideas.

240. The young police officers are given an introduction to the ethical perspectives on the issue in the subject **Professional Ethics**. Here the focus is on how to deal with specific social and ethnic groups. The acceptance of other cultural groups and tolerance towards minorities and fringe groups is intended to impart to the police officers self-confidence tempered by morality

and ethics. They are to be given the skills and the sensitivity to argue and make judgements on an ethical basis. The centre of the value system is Man; issues such as: how to deal with the “Other” and “being different” are discussed.

241. In addition, numerous **behavioural training elements** make up an essential part of the training curriculum for the federal and state police forces. With as little delay as possible, the knowledge acquired during the theory lessons is thus dealt with in greater depth in a practical transfer phase. The training courses for personal and social skills are based on humanist concepts which have as their objective mutual respect and a cooperative communication. Police action is concretely evaluated in its affective, cognitive and social dimensions and measured inter alia against objective human rights standards. Against this background, a specialist teacher of psychology often assists in working out a philosophy of intervention which will form the basis of a respectful interaction with the people one comes across in police practice.

242. Seminars such as “Social Skills”, “Police and minorities for intercultural understanding” or “The police force in a multi-cultural society”, foster and encourage a sense of social justice in the trainees including a mandatory regard for human rights and the fundamental rights enshrined in the German Constitution.

### **3. The teaching of human rights in in-service police training**

243. The subject “Human Rights” is dealt with in various courses and modules from different perspectives. In addition to reviewing knowledge acquired during initial training, the focus is on a job-oriented consideration of current events.

244. The following lectures, listed by way of example, deal with the subject of human rights to varying degrees of depth and scope. In addition to police practitioners, lectures are also delivered by members of other professions who, partly as a result of their qualifications, have a special connection with human rights issues such as, for example, priests, psychologists, sociologists, political scientists:

- “Immigration law, asylum law and European law”;
- “A challenge to society - extremism amongst foreigners in Germany”;
- “Islam as a religion, Islam as a political factor”;
- “Germans of Jewish faith - historical roots and self-image”;
- “Cultural conflicts in Germany”;
- “Dealing with religious and ethnic minorities”;
- “Communicating with immigrants and migrants - how to behave towards people from other cultures”.

245. In addition there are also further training courses relating to the learning of foreign languages or the improvement of existing foreign language skills, in order to facilitate communication with people who do not speak German.

#### 4. Human rights education through police projects

246. The federal and state police forces also organize and participate in numerous projects and special events independently of the above-mentioned initial and in-service training courses to introduce the police officers to the thematic relationship between a culture of human rights and topics such as racism, anti-Semitism and xenophobia, not just theoretically, but also in practice, such as:

- “Tolerance is catching”, Action Days with the Riot Police Force (*Bereitschaftspolizei*) (Baden-Württemberg);
- “Transferring intercultural skills”, Project for the Transfer of intercultural Competence (“TiK” Berlin);
- “Integration or sub-culture” (Free and Hanseatic City of Bremen);
- “Seminar: A meeting of immigrants and police officers” (Hesse);
- “Competence in dealing with people of other cultures” (Free and Hanseatic City of Bremen);
- “Foreigners and the Police Force” (Federal Police Force);
- “Intercultural communication in police work” (North-Rhine Westphalia);
- “Orders are orders?” Exhibits on different themes which cast a critical eye on the role of the police force during the era of the nationalist socialist dictatorship in Germany (Rhineland Palatinate);
- “The Greens go foreign and Foreigners see green”, making contact with foreign families on Ascension Day (Saxony-Anhalt);
- “Saxony-wide Programme for Democracy, Tolerance and Open-mindedness” with the involvement of the police (Saxony);
- “How do the police deal with Human Rights - the transition from training to on the job experience” in cooperation with the “ai Group in Eutin” (Schleswig Holstein).

247. In order to foster a better understanding between the police and foreigners living here and to increase trust in the police force, Saxony-Anhalt has, since 1994, trained 130 law enforcement officers to be **police representatives responsible for questions relating to foreigners**. At the Technical University in the *Land* Saxony-Anhalt a separate course was created entitled: “The member of the police force responsible for questions relating to foreigners”. In similar programmes, **multipliers for police headquarters** were trained in Bavaria with the intention of acquiring more detailed background knowledge on the subject of “Xenophobia and Human Rights”, and in of Bremen, **deployment trainers** received training in the field of “Intercultural Competence”.

248. In many of the *Länder*, students at Police Colleges are offered practical experience or student exchange programmes abroad, with the aim of fostering greater understanding for foreign cultures through the intensive experience of a stay abroad.

249. The “Clearing Centre for Police and Foreigners” in Berlin, which is intended to ensure continual development towards citizen-friendly, cross-culture police work, deserves a mention here. In 2005, the Clearing Centre dealt with 50 conflict situations requiring resolution which were referred to the Centre by the Senate Commissioner for Integration and Migration, by the Coordination Centre against Discrimination, by the respective District Commissioners for Migration Issues, by immigrant initiatives or by the parties themselves.

250. Furthermore, the topic “Police and Human Rights” has been the subject of numerous lectures, seminars and projects at the German Law Enforcement Academy (*Deutsche Hochschule für Polizei*) in recent years.

251. To date, a particular target group has been leadership figures, both within and outside the police. Defining the target group accordingly and utilizing speakers from different professional backgrounds for specific topics (e.g. the Office for the Protection of the Constitution, universities, the Federal Crime Agency, etc.) has resulted not only in both a scientific and practice-based interdisciplinary look at the topic, but has also led to the discussion being carried forth into various different professions and groups within society.

252. In addition, several experts from the *Länder* police forces participated in the project: “Non-Governmental Organisations and the Police against Prejudices” sponsored by the European Union.

253. To sum up, it may be said that within the national and federal state police forces the orientation of both projects and initial and in-service police training in all branches of the service have been continually updated and intensified in recent years. These initiatives in the field of human rights related education within the police forces at both *Länder* and federal level shall continue to remain an integral part of initial and in-service training in future years.

## **5. Human rights education for persons employed in the prison services**

254. In the Federal Republic of Germany, the prison service - including the initial and in-service training of prison officers - is the responsibility of the *Länder*. The Training Regulations of the *Länder* include subjects such as Political Education or Social Studies in which the idea of “Man” as expressed in the Basic Law and the human and fundamental rights, in particular Article 1 Basic Law, are dealt with. During the training course, the importance of this idea of “Man” is considered against the background of work in a prison and one is led to reflect upon one’s own personal convictions especially as regards one’s dealings with criminals. European legislation, such as the Convention for the Protection of Human Rights and Fundamental Freedoms is also covered during the course. In listing individual fundamental rights, particular attention is paid to Article 3 Basic Law. Some training manuals list issues relating to multiculturalism and racism given the prison context or chances and problems when different cultures come together as examples of possible course content of the Committee’s recommendations.

255. The topic is also dealt with in subjects such as professional pedagogy, pedagogy or prison pedagogy. In these seminars, information about prisoners from other cultures or religions is imparted to the police officers and the practical implications of dealing with prisoners on site are discussed. The goal is to inform prison guards about basic cultural and religious patterns and concepts of “Man”, which the prisoners bring with them due to their socialization in other cultures. The trainee prison guards are taught strategies which they can employ to reconcile the state of the prisons at least to some extent with the cultural and/or religious requirements of the prisoners.

256. In other subjects issues of professional ethics are also dealt with and the prison officers are taught to respect the dignity of the prisoners.

257. During in-service training, the prison officers are given the opportunity to attend seminars on such topics. These primarily serve to shed light on the social, cultural and religious backgrounds of individual groups (e.g. Muslim prisoners, African prisoners or Ethnic Russian Germans) and thus give the officers a deeper understanding of their behaviour on a day-to-day-basis.

### **C. Re paragraph 12 of the Committee’s recommendations**

258. Germany views the prosecution of crimes committed via racist propaganda on the Internet as a very important task.

259. The definition of the crimes in Sections 86, 86a and 130 of the Criminal Code provides a comprehensive basis for prosecuting such crimes. Section 130 of the Criminal Code has been widened to ensure that hate speech presentations via media and tele-services are criminalized, which means that from now on live broadcasts using so-called web-cams or audio broadcasts via the Internet are covered (see paras. 80-84 above).

260. In order to identify Internet material that breaches criminal law and to analyse such material under criminal law aspects, security authorities in the Federal Republic of Germany carry out random searches on the Internet. In addition, the Internet providers are called upon to undertake voluntary self-control of the contents and to block criminal sites. As a result of increased preventive and repressive pressure, the number of homepages operated by Germans which have a right-wing extremist content has remained constant at approximately 1000 pages (2004: 950, 2003: 950). In 2005, approximately 10 per cent (2004: 15 per cent) of homepages operated by Germans contained criminal contents. These were mostly breaches of Sections 86, 86a and 130 of the Criminal Code. Right-wing extremists also use discussion forums, guest books and newsgroups, as well as anonymous emails to spread “hate crime”.

261. The initiators usually act very conspiratorially and make maximum use of all methods of disguising their identity available on the Internet. In order to quantify the potential threat posed by such contents on right-wing extremist pages, therefore, it is of the utmost importance to identify the right-wing extremists acting anonymously via the Internet.

262. More than 80 per cent of these crime-related Internet pages are made available on the Internet anonymously using providers located abroad, primarily in the USA. The right-wing scene exploits the laws applicable there, which generally permit the dissemination of such

content. Due to the continual and intensive cooperation between German and American security agencies, commercial American providers have now begun to ban right-wing extremist Internet material in individual cases. A prohibition banning “hate speech” which is part of most General Terms of Business provides the legal basis for the ban on right-wing extremist material.

263. In recent years, the German authorities have managed to identify anonymous originators of criminal right-wing extremist Internet contents in a number of cases. Between 2003 and 2005 alone the Federal Office for the Protection of the Constitution was able to pass on the names of the responsible operator of such homepages to the prosecution authorities in 62 cases (2005: 17). There were an additional 10 cases during the same period where perpetrators had disseminated their hate propaganda via guest books or chat rooms. The federal government also supports the work of “Jugendschutz.net” (Protection of Young People.net), a joint institution representing all the highest youth protection agencies of the *Länder*.

264. In individual cases there have also been examples of successful cooperation between the Federal Office for the Protection of the Constitution and foreign partner institutions. With the assistance of such institutions, particularly in countries bordering Germany, it has been possible to carry out investigations of foreign providers. “Hate criminality” is also a frequently observed phenomenon in Islamist activities on the internet. Time and again insulting attacks of this kind, anti-Semitic statements, slander and calls to boycott, even calls for war are found on homepages, in chat rooms, newsgroups, and other forums. It is much more difficult, if not impossible, to combat “hate criminality” in the domain of Islamist extremism/terrorism for two reasons: Firstly, the home pages are very “fleeting”, i.e. even significant homepages often have no constant address. Secondly, such communications are relayed via large mainframes in countries in which it is impossible for Germany to exercise any influence by way of cooperation with security agencies in such countries.

265. As the fact that the perpetrators do not act within Germany but instead put the relevant contents into the Internet from abroad often leads to difficulties when it comes to actually prosecuting the crimes, Germany is striving for improved international cooperation in this field in the context of the G8, the Council of Europe, and the EU. Germany accordingly has spoken out in favour of passing the EU framework resolution to combat racism and xenophobia, which unfortunately failed in May 2003 and since then has not been pursued. Germany has not ceased its efforts to get negotiations restarted.

266. In January 2003, Germany signed the Council of Europe’s First Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which regulates the fight against racist crimes via the Internet. Preparations for ratification are underway at present.

#### **D. Re paragraph 13 of the Committee’s recommendations**

267. In response to this concluding observation reference is again made to the remarks at B 2 of the 15th Report submitted by the Federal Republic of Germany. Through its policies, the federal government pursues the protection of all ethnic groups residing in Germany. The special support given to national minorities in Germany does not impair the guarantees for the remaining ethnic groups. The rights enshrined in the Convention are granted equally and without distinction to all ethnic groups living in Germany. Any special minority protection which the ethnic groups

the Danes, the Friesians, the Sorbs as well as the German Sinti and Roma enjoy in Germany is in accordance with Article 2 para. 2) of the Convention. In coming to a decision as to which ethnic groups are to be recognized as a national minority, the Federal Republic of Germany does not decide at its own discretion contrary to General Recommendation no. 24 of the Committee (General Recommendation XXIV <55>) but rather in accordance with common practice (at least in Europe) under international law.

268. The Council of Europe's Framework Convention for the Protection of National Minorities has now been ratified by 35 states and signed by a further 7 states. The German legal position is in line with the usual application of this Convention by Council of Europe member states to the ethnic groups in respect of whom the Convention is applied. Germany recognizes as national minorities groups within the population that satisfy the following five criteria: their relatives are German citizens; they differ from the majority of the population in that they have their own language, culture and history, i.e. an identity of their own, which they wish to maintain; they are traditionally at home in Germany; and they live in Germany in their traditional settlement areas.

#### **E. Re paragraph 14 of the Committee's recommendations**

##### **1. Number of persons of foreign origin in the police forces**

**Table 8**

**Number of applicants employed by the federal and state police forces who are foreign citizens or have dual citizenship\* or are German citizens of foreign origins**

| Applicants taken on                                                   | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|-----------------------------------------------------------------------|------|------|------|------|------|------|
| Candidates for the federal and <i>Länder</i> law enforcement services | 68   | 102  | 138  | 87   | 63   | 38   |

\* To the extent recorded by the federal government/the *Länder*.

269. The above statistics relate to both the federal and the state police forces. Only law enforcement officers are included. Applicants who are German citizens of foreign origin are separately recorded in some *Länder*. Citizens of another member state of the European Union are also similarly classified in some *Länder*.

270. The federal and state police currently employ 722 German citizens of foreign origin as law enforcement officers. This is subject to the same limitations as apply to the table showing employment figures. Absolute figures cannot, therefore, be obtained without a disproportionate amount of effort. Having regard to the limitations mentioned above, however, the actual figures are likely to be much higher.

271. The fall in the employment of prison officers of non-German or dual nationality in recent years is due on the one hand to the general decrease in new employment and on the other hand to the fact that, (as mentioned above) citizens of another Member State of the European Union are employed just as easily as Germans as defined by Article 116 Basic Law in some *Länder* and that, consequently, there are no separate statistics for such persons.

**2. New anti-discrimination legislation in the field of both civil law and labour law**

272. Updated information concerning new anti-discrimination legislation in the fields of both civil law and labour law is provided earlier in the present report in paragraphs 160 to 164, to which reference is made here.

**3. Number of persons who have been convicted following racist incidents**

273. Updated information on the number of persons who have been convicted following racist incidents has also been incorporated into the second part of the present report (see paras. 85-95 above).

**F. Re paragraph 15 of the Committee's recommendations**

274. The Federal Republic of Germany has submitted to the complaints procedure for individuals pursuant to Article 14 of the United Nations International Convention on the Elimination of All Forms of Racial Discriminations. A declaration to that effect was issued on 30 August 2001.

**G. Re paragraph 16 of the Committee's recommendations**

275. The Concluding Observations of the Committee on the Elimination of Racial Discrimination of 21 March 2001 on the 15th Report of the Federal Republic of Germany have been published on the website of the Federal Ministry of Justice ([www.bmj.de](http://www.bmj.de)) as has the Report itself. The 16th to 18th Report and the Concluding Observations thereto will also be published in the same way.

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