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## **I. General information about the Federal Republic of Germany**

### **A. Geographical, historical, demographic, social, cultural, economic and judicial characteristics**

#### **1. Geographical description**

1. The Federal Republic of Germany has an area of 357,104.07 km<sup>2</sup>, including the entire German-Luxembourg sovereign territory. It stretches from the North Sea and the Baltic Sea in the north to the Alps in the south.

2. The average temperatures of the coldest month of the year (January) range from +1.5° C to -0.5° C in the plain to below -6° C in the mountains, depending on the altitude. The average July temperatures are up to between +17° C and +18° C on the North German Plain, up to +20° C in the Upper Rhine Valley. The average annual temperature is +9° C.

#### **2. Historical background**

3. Fundamental and human rights were entrenched in Germany at federal level for the first time in the 1919 Weimar Reich Constitution, which contained a comprehensive list of basic rights. General, free suffrage was introduced in November 1918; women were able to vote and stand for office for the first time in January 1919. In terms of the organisation of the State, the German Reich was structured as a democratic republic and as a federal State. The authority of the State was vested in the people.

4. The Weimar Reich Constitution was not to last long. In particular, the until-then insignificant National Socialist German Workers' Party (NSDAP) of Adolf Hitler, which combined an anti-democratic attitude with radical anti-Semitism and agitated unscrupulously against the Republic and the middle-class and social-democratic parties representing it, gained strength at the beginning of the 1930s, and became the strongest party in Parliament. The difficult circumstances pertaining at that time made it possible for Adolf Hitler to take power within a very short period. Only a few weeks after his nomination as Reich Chancellor on 30 January 1933, a process was launched to gradually make the Weimar Reich Constitution invalid. By means of the so-called "Decree to protect the people and the State", first of all the basic rights which had just been included in the Constitution, such as freedom of opinion, freedom of the press, freedom of association and assembly and the inviolability of the home, were suspended. Also, the privacy of correspondence and telecommunications was suspended. Parallel to this, the criminal provisions were tightened, which was reflected particularly in the introduction of the death penalty for the offences of high treason and arson.

5. The adoption of the Enabling Act of 24 March 1933, finally totally abolished the separation of powers between the Reich Government and the Reichstag; the federal structures of the German Reich were dissolved only a short time later, and the tyrannical National Socialist regime was definitively established. The NS regime from 1933 to 1945 was a time of total disregard of basic and human rights. National Socialist rule was based on persecution and suppression. It pursued the mass extermination of Jewish and other citizens outlawed for political or ideological, particularly racist, reasons. Only the capitulation of the German Wehrmacht on 8 May 1945 enabled the return to a constitutional order based on respect for human rights.

6. On 23 May 1949, the Basic Law, which had been drafted by the Parliamentary Council, entered into force for the Western German Länder. The constitutional deliberations that had preceded the adoption of the Basic Law were guided not only by the

experiences of 1919 to 1933 in the area of application of the Weimar Reich Constitution, but also by the signals coming from the Universal Declaration of Human Rights of the United Nations, which was proclaimed on 10 December 1948. What is more, the composition of the Parliamentary Council had a major influence on the content of the Basic Law. The Council had four women among its members. These “mothers of the Basic Law” successfully campaigned for equal rights for women and men to be included in the list of basic rights.

7. By contrast, the development in the eastern part of Germany was characterised by convergence with the State system of the Soviet Union. The Constitution of the German Democratic Republic (GDR), founded in 1949, paid lip service to basic rights; however, it did not really guarantee individual freedom and defensive rights against the State’s powers. Political persecution, infringements of human rights and the “wall” between East and West Berlin, with its life-threatening border protection, formed the public image throughout the world of the State system of the GDR.

8. Hungary opened its borders in September 1989, permitting thousands of GDR citizens who wished to leave to pass through to Austria and from there to the West. In the GDR itself, more and more people took part in protest activities, firstly within, and then increasingly also outside the Churches. When in early October 1989 the GDR leaders celebrated the 40<sup>th</sup> anniversary of the founding of the GDR with great pomp and ceremony, mass demonstrations were held, primarily in Leipzig. This led to the resignation of Erich Honecker, long-term Chairman of the Council of State of the GDR. Continued pressure from the people finally led to the opening of the Berlin Wall on 9 November 1989. Following the first free elections to the GDR Peoples’ Chamber on 18 March 1990, negotiations were started between the Governments of the Federal Republic of Germany and the GDR with the aim of agreeing on the details of the unification of both partial States.

9. The German-German Treaty Establishing a Monetary, Economic and Social Union entered into force on 30 June 1990 as did, on 3 September 1990, the German-German Agreement on the preparation and implementation of the first all-German election to the Federal Parliament (Bundestag). The reunification process was ensured as regards foreign policy with the Agreement of 12 September 1990 on the final regulations with respect to Germany, the so-called “Two Plus Four Treaty” which was concluded between both German States, France, the Soviet Union, the United Kingdom and the United States of America. The Länder Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia, which had been abolished in 1950 with the conversion of the GDR into a united State, were reintroduced with effect from 3 October 1990 by a statute of the GDR of 22 July 1990. On 23 August 1990 the People’s Chamber in Berlin proclaimed the accession of the GDR to the area of application of the Basic Law of the Federal Republic of Germany. Upon entry into effect of the Unification Treaty between the GDR and the Federal Republic of Germany on 3 October 1990, the two German States were reunited.

### **3. Demographic characteristics**

#### *(a) General information*

10. The Federal Republic of Germany had 82,218,000 inhabitants on 31 December 2007. The population hence fell by 0.12 per cent in comparison with the previous year. There was also a slight drop with regard to population density, which fell to 230 inhabitants per km<sup>2</sup> in 2007. The comparative figures of the preceding years are contained in the table below:

<i>Year</i>	<i>Population size (in millions)</i>	<i>Population growth rate (in per cent)</i>	<i>Inhabitants (per km<sup>2</sup>)</i>
2006	82 315	- 0.15	231
2005	82 438	- 0.08	231
2004	82 501	- 0.04	231
2003	82 532	- 0.01	231

11. A total of 15.11 per cent of the population lived in the rural areas of Germany in 2007; 35.75 per cent lived in the semi-urban —that is semi-densely settled— areas and 49.14 per cent in the urban areas.

12. In the same year, the number of persons under 15 was 11,282,000 (male: 5,789,000 million, female: 5,493,000); that of people 65 years old and older was 16,519,000 (male: 6,945,000, female: 9,574,000). A total of 54,417,000 persons were in the age group 15–64 years old (male: 27,541,000, female: 26,877,000). For 2007, this led to a quotient of dependants (the ratio of the population under 15 and over 65 to the population aged 15–64) of 51.1.

13. There were 8.3 live births and 10.1 deaths per 1,000 inhabitants recorded in the Federal Republic of Germany in 2007. The number of births and deaths in the preceding years can be found in the table below:

<i>Year</i>	<i>Birth rate (live births per 1,000 inhabitants)</i>	<i>Mortality (deaths per 1,000 inhabitants)</i>
2006	8.2	10.0
2005	8.3	10.1
2004	8.5	9.9
2003	8.6	10.3

14. The birth rate (total fertility rate) in 2007 was 1.37 children per woman of child-bearing age. The current average life expectancy of newborn girls is 82.3; the average life expectancy of newborn boys is 76.9.<sup>1</sup>

(b) *Proportion of the population with foreign nationality*

15. Statistical data on the ethnic composition of the population living in Germany are not collected in view of the persecution of ethnic minorities during the tyrannical National Socialist regime. The table below however provides information on the composition of the foreign population living in the Federal Republic of Germany. The numbers relate to the year 2007:

<i>Continent/nationality</i>	<i>Number of individuals</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>
Europe	5 376 612	2 764 248	2 612 364
EU States	2 337 234	1 224 525	1 112 709
Greece	294 891	160 291	134 600

<sup>1</sup> The average life expectancy stated relates to the reporting period 2005 to 2007. The calculation takes place in each case for a three-year period.

<i>Continent/nationality</i>	<i>Number of individuals</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>
Italy	528 318	311 266	217 052
Poland	384 808	187 631	197 177
Turkey	1 713 551	904 680	808 871
Africa	269 937	157 506	112 431
America	215 666	98 922	116 744
Asia	812 816	401 329	411 487
Australia and Oceania	11 116	5 883	5 233

16. Hence, the proportion of the foreign population among the total population in the year 2007 was roughly 8.82 per cent (of whom male: 4.53 per cent, female: 4.29 per cent). In comparison to the previous years, the proportion of the foreign population was therefore subject to only marginal changes:

(c) *Religious affiliation*

17. The following figures on the religious affiliation of the population living in the Federal Republic of Germany relate to the year 2007:

<i>Religious community</i>	<i>No. of members (in persons)</i>	<i>No. of members (in per cent)</i>
Roman Catholic Church	25 461 100	30.97
Protestant Church	25 100 700	30.53
Islamic religious community	3 500 000	4.26
Jewish religious community	107 300	0.13

18. The number of members of the Roman Catholic Church, the Protestant Church and the Jewish religious community is based on the respective religious communities' own statistical data. The number of Islamic believers is based on estimates of the *Religionswissenschaftlicher Medien-und Informationsdienst e.V.* (Religious Studies Media and Information Service – REMID). It follows from the calculations of the *Forschungsgruppe Weltanschauungen in Deutschland* (Research Group on World Views in Germany – fowid) that non-denominationals now account for the largest share of the population, 32.5 per cent in 2005.

#### 4. Social and cultural characteristics

(a) *Most frequent causes of death*

19. The 10 most important causes of death in the Federal Republic of Germany are broken down in the table below:<sup>2</sup>

<sup>2</sup> The information not in brackets relates to all deaths; the information in brackets distinguishes between male (m) and female (f).

<i>Cause of death</i>	<i>2003 (deaths)</i>	<i>2004 (deaths)</i>	<i>2005 (deaths)</i>	<i>2006 (deaths)</i>	<i>2007 (deaths)</i>
Chronic ischaemic cardiopathy	92 673 (m: 38 471) (f: 54 202)	84 163 (m: 35 827) (f: 48 336)	80 998 (m: 35 017) (f: 45 981)	77 845 (m: 33 973) (f: 43 872)	76 915 (m: 34 483) (f: 42 432)
Acute myocardial infarct	64 229 (m: 34 679) (f: 29 550)	61 736 (m: 33 348) (f: 28 388)	61 056 (m: 32 973) (f: 28 083)	59 938 (m: 32 471) (f: 27 467)	57 788 (m: 31 195) (f: 26 593)
Heart failure	59 117 (m: 18 920) (f: 40 197)	48 184 (m: 15 053) (f: 33 131)	47 939 (m: 15 084) (f: 32 855)	47 079 (m: 14 721) (f: 32 358)	49 970 (m: 15 972) (f: 33 998)
Malignant tumour of the bronchials and the lung	39 286 (m: 28 652) (f: 10 634)	39 798 (m: 28 786) (f: 11 012)	40 641 (m: 28 959) (f: 11 682)	40 744 (m: 28 878) (f: 11 866)	41 495 (m: 29 121) (f: 12 374)
Stroke, not referred to as haemorrhaging or infarction	37 579 (m: 13 017) (f: 24 562)	32 241 (m: 11 154) (f: 21 087)	30 092 (m: 10 276) (f: 19 816)	28 566 (m: 9 961) (f: 18 605)	26 911 (m: 9 516) (f: 17 395)
Other chronic obstructive pulmonary disease	21 282 (m: 12 961) (f: 8 321)	19 390 (m: 11 780) (f: 7 610)	20 895 (m: 12 407) (f: 8 488)	20 709 (m: 12 259) (f: 8 450)	21 716 (m: 12 778) (f: 8 938)
Pneumonia, precise pathogen not designated	20 888 (m: 8 817) (f: 12 071)	18 395 (m: 7 988) (f: 10 407)	20 976 (m: 9 095) (f: 11 881)	19 713 (m: 8 771) (f: 10 942)	21 079 (m: 9 811) (f: 11 268)
Malignant tumour of the colon	19 925 (m: 9 307) (f: 10 618)	19 420 (m: 9 154) (f: 10 266)	18 970 (m: 8 982) (f: 9 988)	18 475 (m: 8 912) (f: 9 563)	18 072 (m: 8 744) (f: 9 328)
Hypertensive heart disease	15 844 (m: 4 406) (f: 11 438)	15 927 (m: 4 459) (f: 11 468)	16 760 (m: 4 483) (f: 12 277)	17 619 (m: 4 686) (f: 12 933)	18 553 (m: 5 015) (f: 13 538)
Malignant tumour of the mammary gland	17 437 (m: 264) (f: 17 173)	17 768 (m: 176) (f: 17 592)	17 700 (m: 245) (f: 17 455)	17 553 (m: 267) (f: 17 286)	17 029 (m: 249) (f: 16 780)

(b) *Infant and maternal mortality rate*

20. The number of infants dying in the first year of life per 1,000 live births reached a level of 3.9 infants in 2007. There were 4.1 deaths of mothers per 100,000 live births in the same period.

(c) *Use of birth control*

21. No regular data are kept in the Federal Republic of Germany on the use of birth control by women of child-bearing age or their partners. However, a topical telephone survey of the birth-control conduct of adults revealed that a total of 75 per cent of women and 73 per cent of men or their partners used birth control in 2007.<sup>3</sup>

<sup>3</sup> The information relates to 1,501 women and men interviewed on the telephone aged from 20 to 44 who had had sexual intercourse in the previous 12 months.



*(d) Number of medically necessary abortions*

22. The number of medically necessary abortions in 2007 was 4.5 cases per 1,000 live births. Whilst in 2006 and 2005 an average of 4.5 and 4.6 medically necessary abortions per 1,000 live births, respectively, were recorded, the abortion rate in 2004 and 2003 averaged 4.7 and 4.8 cases per 1,000 live births, respectively.

*(e) Number of reported cases of infectious diseases*

<i>Year</i>	<i>2007</i>			<i>2006</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
<i>Reported illness<sup>4</sup></i>						
Abdominal typhus	<b>59</b>	32	27	<b>75</b>	44	31
Adenovirus in the conjunctival smear	<b>375</b>	189	185	<b>574</b>	268	306
Anthrax	<b>0</b>			<b>0</b>		
Atrial fibrillation	<b>32</b>	11	21	<b>53</b>	26	27
Botulism	<b>9</b>	6	3	<b>6</b>	2	4
Brucellosis	<b>21</b>	13	8	<b>37</b>	14	23
Campylobacter enteritis	<b>66 128</b>	34 177	31 823	<b>52 059</b>	27 252	24 762
Cholera	<b>2</b>	1	1	<b>1</b>	1	0
Creutzfeldt-Jakob disease (CJD)	<b>99</b>	43	56	<b>98</b>	40	58
Cryptosporidiosis	<b>1 459</b>	754	701	<b>1,204</b>	605	596
Dengue fever	<b>264</b>	133	131	<b>175</b>	102	73
Diphtheria	<b>2</b>	0	2	<b>0</b>		
Ebola fever	<b>0</b>			<b>0</b>		
E. coli enteritis	<b>6 435</b>	3 275	3 099	<b>6 473</b>	3 400	3 051
Echinococcosis	<b>93</b>	45	48	<b>130</b>	64	65
Enterohaemorrhagic E. coli (EHEC) (not incl. Hemolytic-uremic syndrome -HUS)	<b>839</b>	411	427	<b>1 180</b>	560	615
Fleck typhus	<b>0</b>			<b>0</b>		
FSME (tick-born encephalitis)	<b>238</b>	151	87	<b>546</b>	340	206
Yellow fever	<b>0</b>			<b>0</b>		
Giardiasis	<b>3 654</b>	2 090	1 547	<b>3 670</b>	2 066	1 595
Haemophilus influenzae	<b>93</b>	47	46	<b>121</b>	68	53
Hantavirus	<b>1 688</b>	1 227	458	<b>72</b>	55	17

<sup>4</sup> The numbers of new HIV infections, new cases of AIDS and tuberculosis cases are dealt with separately. The same applies to the incidence rates of endemic malaria.

<i>Year</i>	<i>2007</i>			<i>2006</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
<i>Reported illness</i>						
Hepatitis B	<b>1 003</b>	690	309	<b>1 184</b>	808	373
Hepatitis C	<b>6 868</b>	4 128	2 696	<b>7 562</b>	4 585	2 956
Hepatitis D	<b>9</b>	5	4	<b>21</b>	15	6
Hepatitis E	<b>73</b>	49	24	<b>51</b>	33	18
Hepatitis non-A-E	<b>0</b>			<b>0</b>		
HUS, enteropathic	<b>44</b>	22	21	<b>63</b>	37	26
Influenza	<b>18 900</b>	9 694	9 115	<b>3 805</b>	2 026	1 778
Lassa fever	<b>0</b>			<b>1</b>	1	
Lice relapsing fever	<b>0</b>			<b>0</b>		
Legionellosis	<b>535</b>	374	161	<b>577</b>	393	184
Leprosy	<b>0</b>			<b>2</b>	2	
Leptospirosis	<b>166</b>	116	50	<b>46</b>	36	10
Listeriosis	<b>356</b>	207	149	<b>513</b>	286	227
Malaria	<b>541</b>	364	173	<b>569</b>	379	188
Marburg fever	<b>0</b>			<b>0</b>		
Measles	<b>566</b>	251	315	<b>2 308</b>	1 218	1 088
Meningococcus, invasive	<b>439</b>	234	205	<b>555</b>	308	247
Norovirus gastroenteritis	<b>201 227</b>	72 364	128 214	<b>75 865</b>	25 928	49 838
Ornithosis	<b>12</b>	9	3	<b>26</b>	16	10
Paratyphoid fever	<b>72</b>	38	34	<b>73</b>	41	32
Plague	<b>0</b>			<b>0</b>		
Poliomyelitis	<b>0</b>			<b>0</b>		
Query fever	<b>83</b>	53	30	<b>204</b>	119	85
Rabies	<b>1</b>	1		<b>0</b>		
Rotavirus	<b>59 368</b>	29 305	29 833	<b>67 030</b>	33 163	33 794
Rubella, connatal infection	<b>0</b>			<b>1</b>	1	
Salmonellosis	<b>55 408</b>	26 459	28 778	<b>52 607</b>	25 441	27 070
Shigellosis	<b>869</b>	392	475	<b>817</b>	368	448
Syphilis	<b>3 278</b>	3 010	266	<b>3 165</b>	2 835	328
Toxoplasmosis, connatal infection	<b>20</b>	7	13	<b>11</b>	7	4
Trichinellosis	<b>10</b>	5	5	<b>22</b>	12	10
Tularaemia	<b>20</b>	13	7	<b>1</b>		1
Yersiniosis	<b>4 988</b>	2 730	2 243	<b>5 162</b>	2 788	2 365
<b>Total</b>	<b>437 285</b>	<b>193 584</b>	<b>242 271</b>	<b>289 944</b>	<b>136 415</b>	<b>153 127</b>

Year	2005			2004			2003		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
Reported illness <sup>5 6</sup>									
Abdominal typhus	<b>80</b>	48	32	<b>82</b>	42	40	<b>66</b>	37	29
Adenovirus in the conjunctival smear	<b>138</b>	71	67	<b>658</b>	488	168	<b>397</b>	184	213
Atrial fibrillation	<b>0</b>			<b>0</b>			<b>0</b>		
Botulism	<b>24</b>	17	7	<b>6</b>	4	2	<b>8</b>	3	5
Brucellosis	<b>31</b>	13	18	<b>32</b>	25	7	<b>27</b>	15	12
Campylobacter enteritis	<b>62 147</b>	32 784	29 334	<b>55 808</b>	29 395	26 400	<b>47 937</b>	25 464	22 456
Cholera	<b>0</b>			<b>3</b>	2	1	<b>1</b>	1	0
Creutzfeldt-Jakob disease (CJD)	<b>91</b>	39	52	<b>81</b>	37	44	<b>78</b>	34	44
Cryptosporidiosis	<b>1 309</b>	655	654	<b>936</b>	456	480	<b>885</b>	445	440
Dengue fever	<b>144</b>	79	65	<b>121</b>	66	55	<b>131</b>	63	68
Diphtheria	<b>1</b>	0	1	<b>1</b>	1	0	<b>0</b>		
Ebola fever	<b>0</b>			<b>0</b>			<b>0</b>		
E. coli enteritis	<b>5 883</b>	3 000	2 879	<b>5 584</b>	2 836	2 743	<b>5 477</b>	2 897	2 579
Echinococcosis	<b>126</b>	56	69	<b>105</b>	43	59	<b>85</b>	41	43
Enterohaemorrhagic E. coli (EHEC) (not incl. Hemolytic-uremic syndrome -HUS)	<b>1 161</b>	551	608	<b>926</b>	453	473	<b>1 140</b>	585	555
Fleck typhus	<b>0</b>			<b>0</b>			<b>1</b>	1	0
FSME (tick-born encephalitis)	<b>432</b>	288	144	<b>275</b>	182	93	<b>277</b>	187	90
Yellow fever	<b>0</b>			<b>0</b>			<b>0</b>		
Giardiasis	<b>4 520</b>	2 416	2 100	<b>4 627</b>	2 498	2 126	<b>3 219</b>	1 804	1 411
Haemophilus influenzae	<b>71</b>	38	33	<b>67</b>	39	27	<b>77</b>	46	31
Hantavirus	<b>447</b>	323	124	<b>242</b>	167	75	<b>144</b>	110	34
Hepatitis A	<b>1 218</b>	602	614	<b>1 939</b>	1 044	895	<b>1 368</b>	776	592
Hepatitis B	<b>1 234</b>	827	404	<b>1 274</b>	866	407	<b>1 314</b>	908	405
Hepatitis C	<b>8 305</b>	5 007	3 287	<b>9 038</b>	5 430	3 600	<b>6 917</b>	4 128	2 779
Hepatitis D	<b>15</b>	10	5	<b>8</b>	7	1	<b>10</b>	8	2
Hepatitis E	<b>54</b>	30	24	<b>53</b>	34	19	<b>33</b>	27	6
Hepatitis non-A-E	<b>0</b>			<b>0</b>			<b>0</b>		
HUS, enteropathic	<b>79</b>	35	44	<b>55</b>	21	34	<b>82</b>	48	34
Influenza	<b>12 736</b>	6 593	6 134	<b>3 494</b>	1 846	1 647	<b>8 488</b>	4 421	4 067

<sup>5</sup> The numbers of new HIV infections, new cases of AIDS and tuberculosis cases are dealt with separately. The same applies to the incidence rates of endemic malaria.

<sup>6</sup> Since not all reports state gender, the total number may be higher than the total of numbers given as "female" and "male".

<i>Year</i>	<i>2005</i>			<i>2004</i>			<i>2003</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
Lassa	0			0			0		
Lice relapsing fever	0			1	1		0		
Leprosy	2	2		2	1	1	4	2	2
Leptospirosis	58	45	13	58	44	14	37	29	8
Listeriosis	512	265	247	296	151	145	256	139	117
Malaria	633	439	186	709	484	203	820	552	235
Marburg fever	0			0			0		
Measles	781	409	371	123	63	60	777	382	395
Meningococcus, invasive	629	326	303	601	317	284	774	442	332
Anthrax	0			0			0		
Norovirus gastroenteritis	62 773	22 674	40 041	64 794	23 099	41 656	41 755	14 155	27 578
Ornithosis	33	19	14	15	10	5	41	31	10
Paratyphoid fever	56	32	24	107	61	46	74	39	35
Plague	0			0			0		
Poliomyelitis	0			0			0		
Query fever	416	235	181	117	76	41	391	217	174
Rabies	4	2	2	1	1		0		
Rotavirus	54 294	27 707	26 538	37 811	19 164	18 627	46 137	23 603	22 510
Rubella, connatal infection	0			3	2	1	1	1	
Salmonellosis	52 281	25 529	26 709	56 991	27 675	29 287	63 095	30 692	32 370
Shigellosis	1 170	540	630	1 150	585	564	793	363	428
Syphilis	3 234	2 895	335	3 358	3 027	319	2 932	2 638	273
Toxoplasmosis, connatal infection	18	13	5	16	11	3	19	10	8
Trichinellosis	0			5	2	3	3	1	2
Tularaemia	15	14	1	3	2	1	3	2	1
Yersiniosis	5 629	3 056	2 572	6 184	3 355	2 829	6 577	3 462	3 112
<b>Total</b>	<b>283 343</b>	<b>138 060</b>	<b>145 054</b>	<b>258 237</b>	<b>124 427</b>	<b>133 648</b>	<b>243 047</b>	<b>119 265</b>	<b>123 609</b>

24. The incidence rates for new HIV infections can only be estimated. The following incidence rates of new HIV infections in the Federal Republic of Germany emerge:<sup>7</sup>

<sup>7</sup> The figures do not include infections diagnosed in Germany among migrants from so-called high-prevalence regions.

<i>Year</i>	<i>No. of cases</i>	<i>Incidence rate cases per 100,000 inhabitants</i>
2007	3 000	3.6
2006	2 900	3.5
2005	2 800	3.0
2004	2 600	3.2
2003	2 400	2.9

25. It is estimated that 80 per cent of the numbers from 2007 relate to persons of the male gender and 20 per cent to persons of the female gender.

26. The incidences of new AIDS infections are estimated as follows:

<i>Year</i>	<i>No. of cases</i>	<i>Incidence rate cases per 100,000 inhabitants</i>
2007	1 100	1.3
2006	1 100	1.3
2005	1 100	1.3
2004	1 100	1.3
2003	1 100	1.3

27. It is presumed that 82 per cent of the numbers from 2007 relate to persons of the male gender and 18 per cent to persons of the female gender.

28. The incidence rates of newly diagnosed tuberculosis cases have been distributed as follows in recent years:<sup>8</sup>

<i>Year</i>	<i>No. of cases</i>	<i>Incidence rate (cases per 100,000 inhabitants)</i>
2007	5 016	6.1
	(m: 9 945)	(m: 7.3)
	(f: 2 058)	(w: 4.9)
2006	5 377	6.5
	(m: 3 145)	(m: 7.8)
	(f: 2 226)	(f: 5.3)
2005	6 022	7.3
	(m: 3 642)	(m: 9.0)
	(f: 2 378)	(f: 5.7)
2004	6 533	7.9
	(m: 3 880)	(m: 9.6)
	(f: 2 651)	(f: 6.3)
2003	7 158	8.7
	(m: 4 402)	(m: 10.9)
	(f: 2 756)	(f: 6.6)

<sup>8</sup> The information not in brackets relates to all cases; the information in brackets distinguishes between men (m) and women (f).

29. One case of endemic malaria was recorded in the Federal Republic of Germany during 2005 and 2007, respectively. No cases of endemic malaria came to note in the other years between 2003 and 2007.

(f) *Education system*

30. The education system in the Federal Republic of Germany is subdivided into pre-school, primary and secondary areas. Whilst the primary area mainly includes primary schools, the secondary schools mainly include secondary general schools (*Hauptschulen*) and intermediate schools (*Realschulen*), types of school with several streams, as well as the lower grades of the grammar schools (lower secondary). Upper secondary, which follows on from lower secondary, is continued in the general schooling area, including the upper grades of the grammar schools (the so-called upper grammar school level), as well as the vocational schools. The latter constitute an element of vocational training in Germany. Vocational training takes place both in full-time schooling and on the dual track, hence facilitating a connection between vocational practice in a company and part-time schooling. The proximity to vocational practice and to the employment system here frequently ensures a seamless transition from training to employment. The fact that roughly two thirds of all school-leavers in Germany opt for the dual vocational training system demonstrates that this training method is highly attractive and popular.

31. Public funds in the educational sector are spent not only on public schools, as certain private schools also receive considerable State support.

32. There is a differentiated system of training promotion. Pupils at institutes of further education and vocational schools, as well as students at universities, receive assistance according to the Federal Education Promotion Act (*Bundesausbildungsförderungsgesetz*) if the funds required for their living expenses and education are not available from other sources. The promotion of education is a key element of the equalisation of family burdens, by means of which the State aims to equalise social differences by means of a differentiated social system. Its purpose is to create equal opportunities in education and to make full use of education reserves. The obligation to create equality of opportunity is a constitutional principle laid down in the social State principle of the Basic Law.

33. A total of 806,000 pupils and students in the Federal Republic of Germany received assistance under the Federal Education Promotion Act in 2007. Some €2.2 billion were spent on these benefits in the same year. Of this sum, €697 million went to pupils and roughly €1.49 billion to students. Pupils received an average of €301, and students €375 per month.

34. The Federal Republic of Germany has no figures on net school starting rates in the primary and secondary schools. The lack of data collection is a result of the existing obligation to attend school. In order to be able to nonetheless provide an overview of the attendance rates in the general schools, the current school attendance rates in this educational sector are shown below. They are broken down as follows:

## Pupils at general schools 2006/2007

Age from ... to (not incl.) ... years	Population on 31 Dec. 2006	School kindergarten, preliminary classes	Primary schools	Secondary general schools <sup>a</sup>	Types of school with several streams	Special schools	Intermediate schools	Grammar schools	Integrated comprehensives <sup>b</sup>	Evening schools and university entrance preparation colleges
<i>1,000% of the population of this age</i>										
4-5	724 (m: 371) (f: 353)	0.4 (m: 0.5) (f: 0.3)	-	-	-	-	-	-	-	-
5-6	741 (m: 380) (f: 361)	0.9 (m: 0.9) (f: 0.8)	0.5 (m: 0.4) (f: 0.6)	-	-	-	-	-	0.0 (m: 0.0) (f: 0.0)	-
6-7	774 (m: 395) (f: 378)	2.1 (m: 2.7) (f: 1.6)	57.4 (m: 54.3) (f: 60.6)	-	-	1.4 (m: 1.9) (f: 1.0)	-	-	0.6 (m: 0.5) (f: 0.6)	-
7-8	776 (m: 399) (f: 377)	0.4 (m: 0.6) (f: 0.3)	95.5 (m: 94.4) (f: 96.6)	-	-	3.2 (m: 4.1) (f: 2.1)	-	-	1.1 (m: 1.1) (f: 1.1)	-
8-9	793 (m: 406) (f: 386)	-	94.8 (m: 93.8) (f: 95.8)	-	-	3.6 (m: 4.6) (f: 2.5)	-	-	1.1 (m: 1.1) (f: 1.1)	-
9-10	818 (m: 420) (f: 398)	-	92.9 (m: 92.1) (f: 93.7)	0.1 (m: 0.1) (f: 0.1)	0.0 (m: 0.0) (f: 0.0)	3.9 (m: 4.9) (f: 2.9)	0.0 (m: 0.0) (f: 0.0)	0.3 (m: 0.3) (f: 0.3)	1.1 (m: 1.0) (f: 1.2)	-
10-11	803 (m: 412) (f: 391)	-	51.3 (m: 53.4) (f: 49.0)	8.8 (m: 8.6) (f: 9.1)	2.1 (m: 2.0) (f: 2.2)	4.4 (m: 5.5) (f: 3.3)	10.3 (m: 9.6) (f: 11.0)	18.9 (m: 17.0) (f: 20.8)	4.0 (m: 3.7) (f: 4.3)	-
11-12	779 (m: 399) (f: 380)	-	5.5 (m: 6.3) (f: 4.7)	20.5 (m: 21.5) (f: 19.5)	4.8 (m: 4.9) (f: 4.7)	4.8 (m: 5.9) (f: 3.7)	22.4 (m: 22.1) (f: 22.7)	35.5 (m: 33.4) (f: 37.6)	7.7 (m: 7.5) (f: 7.9)	-
12-13	789 (m: 405) (f: 384)	-	0.4 (m: 0.4) (f: 0.3)	21.7 (m: 23.6) (f: 19.8)	5.3 (m: 5.5) (f: 5.1)	5.2 (m: 6.3) (f: 4.0)	24.6 (m: 24.1) (f: 25.1)	35.5 (m: 33.0) (f: 38.0)	8.8 (m: 8.7) (f: 8.9)	-
13-14	822 (m: 422) (f: 400)	-	-	20.5 (m: 22.7) (f: 18.3)	5.9 (m: 6.2) (f: 5.6)	5.3 (m: 6.5) (f: 4.1)	25.6 (m: 24.8) (f: 26.5)	33.8 (m: 31.1) (f: 36.5)	9.0 (m: 9.0) (f: 9.2)	-
14-15	843 (m: 432)	-	-	21.5 (m: 23.7)	6.4 (m: 6.7)	5.6 (m: 6.9)	25.2 (m: 24.3)	31.1 (m: 28.3)	9.0 (m: 9.0)	-

## Pupils at general schools 2006/2007

Age from ... to (not incl.) ... years	Population on 31 Dec. 2006	School kindergarten, preliminary classes	Primary schools	Secondary general schools <sup>a</sup>	Types of school with several streams	Special schools	Intermediate schools	Grammar schools	Integrated comprehensives <sup>b</sup>	Evening schools and university entrance preparation colleges
<i>1,000% of the population of this age</i>										
	(f: 411)			(f: 19.2)	(f: 6.1)	(f: 4.2)	(f: 26.1)	(f: 34.1)	(f: 9.1)	
15-16	877	-	-	19.0	6.4	5.3	24.9	29.3	9.0	-
	(m: 450)			(m: 21.2)	(m: 6.6)	(m: 6.5)	(m: 24.0)	(m: 26.3)	(m: 9.0)	
	(f: 427)			(f: 16.7)	(f: 6.1)	(f: 4.0)	(f: 25.9)	(f: 32.5)	(f: 9.1)	
16-17	966	-	-	10.3	4.7	3.4	16.1	28.6	7.2	-
	(m: 496)			(m: 11.6)	(m: 5.1)	(m: 4.1)	(m: 16.1)	(m: 25.2)	(m: 7.1)	
	(f: 470)			(f: 9.0)	(f: 4.3)	(f: 2.6)	(f: 16.2)	(f: 32.1)	(f: 7.2)	
17-18	957	-	-	3.0	1.1	1.6	4.8	27.5	4.3	-
	(m: 490)			(m: 3.4)	(m: 1.3)	(m: 1.9)	(m: 5.2)	(m: 23.9)	(m: 4.0)	
	(f: 467)			(f: 2.6)	(f: 0.9)	(f: 1.3)	(f: 4.4)	(f: 31.3)	(f: 4.5)	
18-19	987	-	-	0.4	0.2	0.9	0.7	24.4	3.0	0.6
	(m: 506)			(m: 0.5)	(m: 0.2)	(m: 1.0)	(m: 0.8)	(m: 21.2)	(m: 2.7)	(m: 0.6)
	(f: 481)			(f: 0.4)	(f: 0.1)	(f: 0.7)	(f: 0.6)	(f: 27.8)	(f: 3.4)	(f: 0.5)
19-20	974	-	-	-	-	0.3	-	13.7	1.8	0.4
	(m: 499)					(m: 0.3)		(m: 12.6)	(m: 1.6)	(m: 0.4)
	(f: 475)					(f: 0.2)		(f: 14.8)	(f: 2.0)	(f: 0.4)
20-21	968	-	-	-	-	0.1	-	2.6	0.5	0.5
	(m: 493)					(m: 0.1)		(m: 2.7)	(m: 0.5)	(m: 0.5)
	(f: 475)					(f: 0.1)		(f: 2.4)	(f: 0.5)	(f: 0.5)
21-22	948	-	-	-	-	0.1	-	0.4	0.1	0.7
	(m: 482)					(m: 0.1)		(m: 0.4)	(m: 0.1)	(m: 0.7)
	(f: 466)					(f: 0.1)		(f: 0.3)	(f: 0.1)	(f: 0.7)
22-23	955	-	-	-	-	-	-	0.0	0.0	0.7
	(m: 485)							(m: 0.0)	(m: 0.0)	(m: 0.7)
	(f: 470)							(f: 0.0)	(f: 0.0)	(f: 0.7)
23-24	972	-	-	-	-	-	-	0.0	0.0	0.7
	(m: 492)							(m: 0.0)	(m: 0.0)	(m: 0.7)
	(f: 480)							(f: 0.0)	(f: 0.0)	(f: 0.7)
24-25	1 005	-	-	-	-	-	-	-	-	0.6
	(m: 509)									(m: 0.6)
	(f: 496)									(f: 0.6)



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*Pupils at general schools 2006/2007*


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<i>Age from ... to (not incl.) ... years</i>	<i>Population on 31 Dec. 2006</i>	<i>School kindergarten, preliminary classes</i>	<i>Primary schools</i>	<i>Secondary general schools<sup>a</sup></i>	<i>Types of school with several streams</i>	<i>Special schools</i>	<i>Intermediate schools</i>	<i>Grammar schools</i>	<i>Integrated comprehensives<sup>b</sup></i>	<i>Evening schools and university entrance preparation colleges</i>
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*1,000% of the population of this age*


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<sup>a</sup> Including orientation grade regardless of type of school.

<sup>b</sup> Including independent Waldorf schools.

35. A total of 23.7 per cent of graduates of general schools obtained a secondary general school qualification (228,616) in the leaving year 2007. The intermediate school qualification was obtained by 40.7 per cent of graduates (392,637). Entitlement to attend a *Fachhochschule* (higher education institution offering highly practice-related study courses of a scientific nature) was obtained by 1.5 per cent (14,068), and the general qualification to attend a university was obtained by 26.8 per cent of graduates (258,980). In the same period, 7.3 per cent of the pupils left secondary general school without a suitable qualification (70,547). The comparative figures for the previous years are found in the table below:

Year	<i>Leavers without secondary general school qualification (per cent)</i>	<i>Graduates with secondary general school qualification (per cent)</i>	<i>Graduates with intermediate school qualification (per cent)</i>	<i>Graduates entitled to attend a Fachhochschule (per cent)</i>	<i>Graduates entitled to attend a university (per cent)</i>
2006	7.8	24.5	41.1	1.5	25.2
2005	8.2	24.8	41.6	1.3	24.1
2004	8.3	25.0	42.6	1.2	23.0
2003	8.9	26.0	40.5	1.2	23.5

36. The ratio of teachers to pupils is broken down by educational field and type of school. For instance, there was an average of 19.0 pupils per primary school teacher in the general schools in 2007. In the secondary general schools, it was 1 teacher per 13.1 pupils, in the intermediate schools 18.7 pupils and in the lower grades of grammar school an average of 17.5 pupils. Furthermore, in the upper secondary section of the grammar schools there was an average of 13.5 pupils per teacher. The following pupil-teacher ratios have emerged in previous years:

Year	<i>Primary schools (pupils per teacher)</i>	<i>Secondary general schools (pupils per teacher)</i>	<i>Intermediate schools (pupils per teacher)</i>	<i>Grammar schools (lower secondary) (pupils per teacher)</i>	<i>Grammar schools (higher secondary) (pupils per teacher)</i>
2006	19.4	13.5	18.9	17.8	13.5
2005	19.9	14.2	19.2	18.0	13.4
2004	20.0	14.4	19.1	17.9	13.2
2003	20.1	14.7	19.1	17.8	12.7

37. The class size in the general school sector was an average of 21.9 pupils per class in the same year (2007) in primary schools, and 20.6 pupils per class in secondary general schools. The average class size is somewhat larger in intermediate schools and grammar schools (lower secondary), with 26.9 and 27.4 pupils, respectively, per class. The comparative data for the previous years are listed in the table below:

Year	<i>Primary schools (pupils per class)</i>	<i>Secondary general schools (pupils per class)</i>	<i>Intermediate schools (pupils per class)</i>	<i>Grammar schools (lower secondary) (pupils per class)</i>	<i>Grammar schools (upper secondary)<sup>9</sup> (pupils per class)</i>
2006	22.1	20.8	27.0	27.2	
2005	22.1	21.1	26.8	27.2	
2004	22.0	21.4	26.8	27.0	
2003	22.0	21.8	26.9	26.8	

<sup>9</sup> The information on class sizes in upper secondary do not apply since the pupils are no longer divided into classes.

(g) *Literacy rate*

38. A phenomenon occurring almost exclusively in the Federal Republic of Germany is what is known as secondary illiteracy. This indicates that the person concerned, despite having attended school, has major difficulties in reading and writing. There are no precise data on the illiteracy rate in the Federal Republic of Germany. Borrowing from the United Nations Literacy Decade, the Federal Government has however established a focal point for the promotion of adult education in the field of development tasks in research and science. The Federal Ministry of Education and Research is making a total of €30 million available for literacy and fundamental training work up to 2012.

(h) *Social security*

39. No statistical data are available in the Federal Republic of Germany with regard to the proportion of the population whose food intake is below the minimum necessary amount. The same applies to the share of underweight children under the age of five. It follows, however, from the provision contained in article 20, paragraph 1, of the Basic Law that the Federal Republic of Germany is a social State, meaning that the State is obliged to create the minimum preconditions for the dignified existence of its citizens.<sup>10</sup> Social disadvantages in this sense are hence cushioned by a comprehensive social security system which guarantees a socio-cultural level of subsistence in all circumstances, and hence as a matter of principle prevents poverty, as well as malnutrition resulting from poverty.

40. A closely meshed system of social transfers ensures that citizens who do not have sufficient means to maintain their normal livelihood, or who are unable to finance additional costs in special circumstances, are granted benefits to secure their socio-cultural subsistence level. Those who are seeking work, for instance, receive basic security benefits in accordance with Book II of the Social Code (*Sozialgesetzbuch II – SGB II*). Social assistance in accordance with Book XII of the Social Code (*SGB XII*) is received by all persons in need of assistance who are not capable of earning, as well as persons in need of assistance with special financial needs. Social assistance is the lowest social network for all people who do not receive sufficient income from other sources. It primarily covers livelihood, basic security benefits in old age and in cases of reduced earning capacity, assistance for health, integration assistance for persons with disabilities, assistance for long-term care and assistance to overcome special social difficulties. The number of recipients of minimum income transfers totals roughly 8.3 million persons. This corresponds to a good 10 per cent of the population of 82.2 million. Since the recipients of minimum income transfers receive an income amounting to the socio-cultural subsistence level, they are not to be designated as poor.

41. Indications of the proportion of the population living below the national poverty line can be indirectly deduced from the rate of those who are at risk of poverty, which was 12 per cent in 2004 and 13 per cent in 2005. The basis for the stated percentages is the official survey entitled *Leben in Europa* (Life in Europe). In the calculation, in line with the concept of relative income poverty, the total population is divided into those who are at risk of poverty and those who are not. Those at risk of poverty have at their disposal less than 60 per cent of the median net equivalence income (weighted in accordance with the new OECD scale) of the total population.

<sup>10</sup> Decisions of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts – BVerfGE* 82, 60, 80).

42. Measured in line with gross domestic product (GDP), the Federal Republic of Germany has provided the following social protection benefits in recent years, measured in accordance with the methods of the European system of integrated social protection statistics (ESSPROS):

<i>Social protection benefits (by function)</i>	<i>2002 (percentage of GDP)</i>	<i>2003 (percentage of GDP)</i>	<i>2004 (percentage of GDP)</i>	<i>2005 (percentage of GDP)</i>	<i>2006 (percentage of GDP)</i>
Illness	8.4	8.5	8.1	8.1	8.0
Disability	1.8	1.8	1.8	1.8	1.7
Age	10.2	10.4	10.4	10.3	10.1
Surviving dependents	2.4	2.4	2.3	2.2	2.1
Family and children	3.3	3.3	3.3	3.3	3.1
Unemployment	2.4	2.4	2.4	2.0	1.7
Housing	0.3	0.3	0.4	0.6	0.6
Other functions	0.1	0.2	0.2	0.2	0.2
<b>Total</b>	<b>29.0</b>	<b>29.3</b>	<b>28.7</b>	<b>28.5</b>	<b>27.6</b>

43. The social protection benefits provided in recent years are broken down as follows:

<i>Social protection benefits (by function)</i>	<i>2002 (in billions of euros)</i>	<i>2003 (in billions of euros)</i>	<i>2004 (in billions of euros)</i>	<i>2005 (in billions of euros)</i>	<i>2006 (in billions of euros)</i>
Illness	181.0	183.6	178.6	182.2	186.1
Disability	38.7	39.4	39.5	39.8	39.9
Age	217.9	224.4	229.1	232.0	234.1
Surviving dependants	51.2	51.2	50.5	50.0	49.7
Family and children	71.5	72.0	72.3	74.0	71.4
Unemployment	50.9	52.9	52.6	44.8	40.5
Housing	7.1	7.3	7.8	13.6	15.0
Other functions	2.8	3.7	4.2	3.9	4.0
<b>Total</b>	<b>621.2</b>	<b>634.7</b>	<b>634.4</b>	<b>640.3</b>	<b>640.6</b>

(i) *Composition and consumption behaviour of households*

44. Average household size in the Federal Republic of Germany was 2.07 members per household in 2007. The proportion of single-parent families was 21.4 per cent in the same year and the proportion of female-headed households was 34.0 per cent. Household composition was as follows in the previous years:

<i>Year</i>	<i>Average household size (in persons)</i>	<i>Proportion of families with a single parent (in per cent)</i>	<i>Proportion of households headed by a female (in per cent)</i>
2006	2.08	21.4	34.1
2005	2.11	20.5	33.7
2004	2.12	20.0	31.7
2003	2.13	19.4	31.4

45. Average household consumption in the last five years under review was divided as follows among the areas shown below:

<i>Year</i>	<i>Food (not including alcoholic beverages, tobacco) (in per cent)</i>	<i>Housing (in per cent)</i>	<i>Health (in per cent)</i>	<i>Education (in per cent)</i>
2006	13.8/(11.9)	32.7	4.0	0.7
2005	13.4/(11.6)	33.2	4.1	0.6
2004	13.7/(11.9)	32.4	4.4	0.6
2003	13.9/(12.0)	32.1	4.1	0.5
2002	13.8/(11.9)	33.4	3.6	0.5

46. The median net equivalence income was €15,617 in 2005; the Gini coefficient, which reflects the inequality of the income spread, was 27 per cent.

## 5. Economic characteristics

### (a) Employment

47. Among the total population aged 15 up to (but not including) 65 years (according to the EU Labour Force Survey), the employment rate in the Federal Republic of Germany was 69.4 per cent in 2007. The employment rate was 67.5 per cent in 2006, 66.0 per cent in 2005, 64.3 per cent in 2004 and 64.9 per cent in 2003.

48. The employment rate among women was 64.0 per cent in 2007. It is noteworthy that the employment rate of mothers in the Federal Republic of Germany depends greatly on the age of the youngest child. Whilst it was 29.8 per cent among mothers of children below the age of three years, as many as 57.9 per cent of mothers with children aged three up to, but not including, six years old and 64.8 per cent of mothers with children aged six up to, but not including, 10 years old were employed.

49. In 2007 2.1 per cent of all persons in gainful employment were employed in the agriculture and forestry, and fisheries sector. Roughly one quarter of all persons in gainful employment (25.5 per cent) worked in the production industries. By far the largest number, however, worked in the service sector which accounted for a total of 72.4 per cent of all persons in gainful employment. The following percentages of persons in gainful employment emerged in the years covered by the report:

<i>Year</i>	<i>Agriculture and forestry, fisheries (in per cent)</i>	<i>Production industries (in per cent)</i>	<i>Service sector (in per cent)</i>
2006	2.1	25.6	72.3
2005	2.2	25.9	71.9
2004	2.2	26.4	71.3
2003	2.3	27.0	70.7

50. There are no statistical surveys of the number of trade union members among persons in gainful employment. The basic right of freedom of association entrenched in the Constitution (in article 9, paragraph 3, of the Basic Law), however, grants to the individual the option of forming and participating in associations for the purpose of maintaining and supporting working and economic conditions. The basic rights constitute an obligation not only for all public legal entities, but also for private legal subjects. Trade union members hence enjoy comprehensive protection in the Federal Republic of Germany.

51. The unemployment rate among all persons in gainful employment (according to the EU Labour Force Survey) was 8.4 per cent in 2007, whilst it was 9.8 per cent in 2006, 10.7 per cent in 2005, 9.8 per cent in 2004 and 9.3 per cent in 2003.

(b) *Economic data*

52. Per capita income (national income per inhabitant) was €22,210 in 2007. The following per capita income was reached in the Federal Republic of Germany between 2003 and 2006:

<i>Year</i>	<i>Per capita income (in euros per inhabitant)</i>
2006	21 436
2005	20 575
2004	20 270
2003	19 385

53. The value of economic activities (GDP) created in Germany reached a volume of €2,422.9 billion in 2007. Hence, the annual growth rate of GDP recorded an increase of 4.4 per cent in a year-on-year comparison. The development of GDP in the previous years was as follows:

<i>Year</i>	<i>GDP (in billion of euros)</i>	<i>Growth rate of GDP (in per cent)</i>
2006	2 321.5	3.5
2005	2 243.2	1.5
2004	2 210.9	2.2
2003	2 163.8	1.0

54. Gross national income (GNI) — previously referred to as gross national product — reached a value of €2,464.19 billion in 2007. The following development in GNI took place between 2003 and 2006:

<i>Year</i>	<i>GNI (in billions of euros)</i>
2006	2 362.44
2005	2 270.82
2004	2 232.08
2003	2 148.67

55. On the expenditure side, public debt amounting to €1,553 billion was recorded in 2007. This includes all credit market debts and bank lending relating to the overall public budget, and was broken down in the previous years as follows:

<i>Year</i>	<i>Debt (in billions of euros)</i>
2006	1 545
2005	1 490
2004	1 430
2003	1 358

56. Of this, the foreign debt of the territorial administrative authorities amounted to the figures given below in 2007:

<i>Quarter</i>	<i>Foreign debt (in billions of euros)</i>
2007.4	765.4
2007.3	732.9
2007.2	726.6
2007.1	698.6

57. Consumer prices (consumer price index) in Germany show an average inflation rate of 2.3 per cent in comparison to 2006.

(c) *Public development cooperation*

58. The expenditure of the Federal Republic of Germany on public development cooperation increased from €6 billion in 2003 to €9.64 billion in 2008. Public development cooperation as a part of GNI can be found in the table below:

	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008<sup>11</sup></i>
Public development cooperation (in millions of euros)	6 064.3	8 112.1	8 313.4	8 978.4	9 643.9
Bilateral	3 076.8	5 991.7	5 604.1	5 807.3	6 209.3
Multilateral	2 987.5	2 120.4	2 709.4	3 171.0	3 434.6
Per cent of GNI	0.28	0.36	0.36	0.37	0.38

59. Bilateral gross benefits were broken down from 2005 to 2007 among the following promotional areas (sectors):

<sup>11</sup> The information for 2008 is provisional.

<i>Promotional area (sector)</i>	2005		2006		2007	
	<i>In millions of euros</i>	<i>In per cent</i>	<i>In millions of euros</i>	<i>In per cent</i>	<i>In millions of euros</i>	<i>In per cent</i>
<b>Total</b>	<b>7 208.9</b>	<b>100.0</b>	<b>6 890.3</b>	<b>100.0</b>	<b>6 827.0</b>	<b>100.0</b>
Social infrastructure and services	1 985.9	27.5	2 250.6	32.7	2 399.0	35.1
Education	985.1	13.7	1 068.2	15.5	1 027.1	15.0
Of which: fundamental education	56.7	0.8	68.5	1.0	62.1	0.9
Health care	117.5	1.6	131.3	1.9	156.3	2.3
Of which: basic health care	68.6	1.0	67.5	1.0	93.6	1.4
Population policy/programmes and reproductive health	53.6	0.7	66.3	1.0	99.5	1.5
Water supply and sewage/refuse disposal	304.0	4.2	272.5	4.0	302.7	4.4
State and civil society	345.1	4.8	522.9	7.6	613.1	9.0
Other social infrastructure and services	180.7	2.5	189.2	2.7	200.3	2.9
Economic infrastructure and services	550.7	7.6	838.0	12.2	961.5	14.1
Transport and storage	145.2	2.0	106.6	1.5	161.3	2.4
Communications	11.8	0.2	28.5	0.4	5.1	0.1
Energy generation and supply	140.1	1.9	205.2	3.0	298.3	4.4
Finance	171.4	2.4	380.9	5.5	387.4	5.7
Private economy and other services	82.2	1.1	116.8	1.7	109.4	1.6
Production areas	230.8	3.2	306.2	4.4	269.4	3.9
Agriculture and forestry, fisheries	176.7	2.5	182.2	2.6	162.4	2.4
Industry, mineral resources and mining, construction	39.3	0.5	107.4	1.6	88.9	1.3
Trade policy and trade regulations, tourism	14.8	0.2	16.6	0.2	18.1	0.3
Multisectoral/cross-sectional	691.0	9.6	467.1	6.8	494.1	7.2
Environmental protection, general	111.7	1.5	116.6	1.7	135.9	2.0
Women and development	7.6	0.1	-	-	-	-
Other multisectoral measures	571.7	7.9	350.4	5.1	358.1	5.2
Goods assistance and general programme assistance	63.7	0.9	89.5	1.3	93.5	1.4
General budget assistance	45.2	0.6	69.8	1.0	53.2	0.8



<i>Promotional area (sector)</i>	2005		2006		2007	
	<i>In millions of euros</i>	<i>In per cent</i>	<i>In millions of euros</i>	<i>In per cent</i>	<i>In millions of euros</i>	<i>In per cent</i>
Development-oriented food aid/aid in ensuring food	18.3	0.3	19.7	0.3	40.3	0.6
Other goods aid	0.2	0.0	0.0	0.0	-	-
Debt relief	3 175.6	44.1	2 417.0	35.1	2 187.2	32.0
Humanitarian assistance	268.8	3.7	284.7	4.1	203.6	3.0
Other	242.5	3.4	237.3	3.4	218.7	3.2
Administrative costs in the donor country	166.0	2.3	181.2	2.6	191.7	2.8
Support for non-governmental organisations	10.9	0.2	11.9	0.2	0.1	0.0
Refugee assistance in the donor country	-	-	14.7	0.2	10.3	0.2
Measures which cannot be attributed	65.6	0.9	29.4	0.4	16.6	0.2

## 6. Crime statistics and characteristics of the judiciary

### (a) Data on the judiciary and public security

60. For every 100,000 inhabitants in the Federal Republic of Germany in 2006 there was an average of 6.17 public prosecutors, 18.1 judges of ordinary jurisdiction, as well as 6.3 judges of the various specialist jurisdictions. A differentiated breakdown — including for the previous years — emerges from the statistics below:<sup>12</sup>

<i>Relative figures (per 100,000 inhabitants)</i>	2002	2003	2004	2005	2006
Public prosecutors	6.25	6.22	6.19	6.16	6.17
Judges of ordinary jurisdiction	18.75	18.56	18.35	18.25	18.10
Criminal judges	5.39	5.32	5.23	5.19	5.17
Other judges	13.36	13.24	13.12	13.06	12.93
Judges at specialist courts	6.56	6.44	6.32	6.31	6.30
Administrative courts	2.81		2.68		2.46
Finance courts	0.80		0.77		0.76
Labour courts	1.40		1.34		1.28
Social courts	1.55		1.53		1.79
Public prosecutors/judges total	31.55	31.22	30.86	30.71	30.56

61. The average number of non-completed cases per judge of ordinary jurisdiction at the various levels of the justice system relates to labour shares.<sup>13</sup> The following values were reached from 2002 to 2006:<sup>14</sup>

<i>Instance Type of court</i>	2002 <i>(per labour share of 1.0)</i>	2003 <i>(per labour share of 1.0)</i>	2004 <i>(per labour share of 1.0)</i>	2005 <i>(per labour share of 1.0)</i>	2006 <i>(per labour share of 1.0)</i>
<b>Criminal proceedings</b>					
<b>First instance</b>					
Local courts	143.4	145.1	147.7	140.7	136.5
Regional courts	6.1	6.2	7.2	7.5	7.2
Higher regional courts	0.4	0.4	0.2	0.4	0.4
<b>Appeals</b>					
Regional courts	40.3	41.4	55.3	58.0	56.9
Higher regional courts	11.1	12.6	12.4	18.1	17.1

<sup>12</sup> The figures for judges and public prosecutors at federal level for 2003 and 2005 come from the respective previous years. For specialist courts in total, the median value from the previous and following years is presumed since these data are only available every two years.

<sup>13</sup> This information does not relate to numbers of individuals, but to "labour shares". A labour share of 1.0 can for instance be composed of one full-time worker or of two part-time workers, each of whom are counted as a labour share of 0.5.

<sup>14</sup> Negative values result from the fact that more sets of proceedings (including those from previous years) were concluded than new ones became pending.

<i>Instance Type of court</i>	<i>2002 (per labour share of 1.0)</i>	<i>2003 (per labour share of 1.0)</i>	<i>2004 (per labour share of 1.0)</i>	<i>2005 (per labour share of 1.0)</i>	<i>2006 (per labour share of 1.0)</i>
Fine proceedings					
First instance					
Local courts	207.8	239.7	248.6	248.0	232.9
Appeals					
Higher regional courts	5.5	6.5	5.8	10.4	10.0
Civil cases					
First instance					
Local courts	274.0	280.3	270.9	250.6	246.9
Regional courts	123.5	127.6	136.0	133.5	126.0
Appeals					
Regional courts	73.0	73.1	77.9	82.8	81.4
Higher regional courts	37.9	34.1	33.8	34.7	34.6
Family cases					
First instance					
Local courts	336.9	331.6	311.4	293.1	297.5
Appeals					
Higher regional courts	44.7	45.4	43.6	43.0	32.7
Commercial cases					
First instance					
Regional courts	119.4	121.2	118.4	118.4	113.7

62. There is no information as to how many victims received compensation as a result of a court ruling. The statistical surveys also do not cover the proportion of respondents and detainees requesting legal aid.

63. A total of 411,845 labour shares were employed in the entire sector of public security and order on 30 June 2007. Among them, the area of police tasks, which includes the Federal Police, accounted for a total of 298,063 labour shares.

64. The proportion of expenditure from the public budgets for the task areas of public security and order, as well as for legal protection, are contained in the table below. The information here on public security and order shows expenditure on the police of the Federation and the Länder separately. The information listed for legal protection primarily covers the court system and the prisons.

<i>Expenditure from public budgets (by task area)</i>	<i>2002 (in millions of euros)</i>	<i>2003 (in millions of euros)</i>	<i>2004 (in millions of euros)</i>	<i>2005 (in millions of euros)</i>	<i>2006 (in millions of euros)</i>
<b>Total</b>	<b>992 688</b>	<b>1 003 307</b>	<b>993 125</b>	<b>1 002 244</b>	<b>1 004 943</b>
Public security and order	21 369	21 274	21 310	21 408	21 909
of which: Federal Police/police	13 939	13 902	13 874	14 004	14 173
Legal protection	10 733	10 867	11 082	11 311	11 329

(b) *Crime statistics*

65. The crime statistics given below are not broken down by the individual offences of the Criminal Code (*Strafgesetzbuch*), but the main types of crime are summarised according to the respective type of punishment.

66. The following table provides an overview of how many criminal offences came to notice in 2006 and were solved:

<i>Type of criminal offence/criminal provision</i>	<i>Criminal offences coming to notice (No.)</i>	<i>Solved criminal offences (No.)</i>	<i>Solution rate (per cent)</i>
Crimes against sexual self-determination (total) (sections 174–184B of the Criminal Code) of which:	52 231	41 032	78.6
Sexual abuse of children (sections 176, 176a and 176b of the Criminal Code)	12 765	10 459	81.9
Rape, sexual coercion (section 177, subsections 2–4, and section 178 of the Criminal Code)	8 118	6 726	82.9
Murder and manslaughter (sections 211–213 of the Criminal Code)	2 468	2 356	95.5
Dangerous and grievous bodily injury (sections 224, 226 and 231 of the Criminal Code)	150 874	125 538	83.2
Serious and simple theft (sections 242–244a, 247 and 248a of the Criminal Code)	2 601 902	771 734	29.7
Robbery and blackmail, assault on a motor vehicle driver resembling robbery (sections 249–252, 255 and 31a of the Criminal Code)	53 696	27 637	51.5
Crimes against the environment (sections 324–330a of the Criminal Code)	17 305	10 023	57.9
Offences related to the Narcotics Act	255 019	241 390	94.7
<b>Total</b>	<b>6 304 223</b>	<b>3 492 933</b>	<b>55.4</b>

67. The convictions handed down in the Federal Republic of Germany between 2002 and 2006 on the basis of the criminal offences listed are the subject-matter of the table below. It shows the number of criminal offences under both the Criminal Code and the Narcotics Act (BtMG). The information covers German and foreign offenders.

<i>Type of criminal offence/criminal provision</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Criminal offences against the State, public order and in office (sections 80–168 and 331–357 of the Criminal Code, not including section 142 of the Criminal Code)	20 618	20 251	21 620	22 305	22 261
Criminal offences against sexual self-determination (total) (sections 174–184b of the Criminal Code) of which:	6 770	7 333	7 900	7 882	7 485
Sexual abuse of children (sections 176, 176a and 176b of the Criminal Code)	2 294	2 401	2 437	2 331	2 149
Rape (section 177, subsection 2, No. 1, of the Criminal Code)	824	853	862	837	835
Other criminal offences against persons (total) (sections 169–173 and 185–241a of the Criminal Code)	88 198	90 680	98 642	103 299	105 140
Breach of maintenance obligations (sections 170 of the Criminal Code)	4 260	4 509	4 306	3 942	3 256

<i>Type of criminal offence/criminal provision</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>
Murder and manslaughter (sections 211–213 of the Criminal Code)	613	641	647	595	566
Bodily injury (section 223 of the Criminal Code)	32 287	34 055	37 629	40 371	41 077
Dangerous and grievous bodily injury (sections 224, subsection 1, 226 and 227 of the Criminal Code)	21 358	22 700	23 728	24 936	26 986
Theft and misappropriation (total) (sections 242–248c of the Criminal Code)	149 139	149 374	151 368	144 107	134 914
Theft (section 242 of the Criminal Code)	117 608	117 917	118 250	111 471	103 095
Serious theft (sections 243, 244 and 244a of the Criminal Code)	23 034	22 693	23 980	23 673	22 975
Robbery and blackmail, assault on a motor vehicle driver resembling robbery (sections 249–256 and 316a of the Criminal Code)	9 535	9 514	10 187	9 843	9 760
Other property crimes (total) (sections 257–305a of the Criminal Code)	138 320	152 493	176 003	194 028	187 832
Fraud (section 263 of the Criminal Code)	59 376	65 810	82 722	95 191	91 448
Falsification of documents (sections 267 and 271–273 of the Criminal Code)	18 400	18 557	19 462	19 499	17 915
Crimes causing a public danger, including environmental crimes (sections 306–330a or 316a of the Criminal Code)	8 622	7 903	7 547	6 750	6 123
Criminal Code (total of listed criminal offences)	421 202	437 548	473 267	488 214	473 515
Narcotics Act (total)	45 598	46 676	49 739	51 472	52 165

68. It should be noted that criminal offences related to the mutilation of female genitals do not constitute relevant phenomena in the Federal Republic of Germany, and are hence not separately covered in the crime statistics. The same applies to honour crimes and acid attacks.

(c) *Prison data*

69. A total of 64,700 criminal convicts and persons in preventive detention were in the State's care on 31 March 2007. The reasons for their criminal detention or preventive detention can be taken from the table below:

<i>Type of criminal offence</i>	<i>Number of criminal convicts and persons in preventive detention</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>
Criminal offences against the State, public order and in office (sections 80–168 and 331–357 of the Criminal Code, not including section 142 of the Criminal Code)	<b>1 217</b>	1 150	67
Criminal offences against sexual self-determination (total) (sections 174–184b of the Criminal Code)	<b>4 997</b>	4 955	42
Insult (sections 185–189 of the Criminal Code)	<b>239</b>	227	12
Criminal offences against life (sections 211–222 of the Criminal Code)	<b>4 543</b>	4 286	257

<i>Type of criminal offence</i>	<i>Number of criminal convicts and persons in preventive detention</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>
Criminal offences against physical integrity (sections 223–231 of the Criminal Code)	<b>7 525</b>	7 299	226
Criminal offences against personal freedom (sections 232–241a of the Criminal Code)	<b>727</b>	712	15
Other criminal offences against individuals (sections 169–173 and 201–206 of the Criminal Code)	<b>344</b>	336	8
Theft and misappropriation (sections 242–248c of the Criminal Code)	<b>13 523</b>	12 633	890
Robbery and blackmail, assault on a motor vehicle driver resembling robbery (sections 249–255 and 316a of the Criminal Code)	<b>8 063</b>	7 850	213
Aiding the perpetration of a crime and receivership (sections 257–261 of the Criminal Code)	<b>368</b>	362	6
Fraud and breach of trust (section 263–266b of the Criminal Code)	<b>6 926</b>	6 174	752
Falsification of documents (sections 267–281 of the Criminal Code)	<b>1 322</b>	1 188	134
Other criminal offences against property (sections 283–305a of the Criminal Code)	<b>342</b>	330	12
Crimes causing a public danger (sections 306–323c and 316a of the Criminal Code)	<b>706</b>	679	27
Crimes against the environment (sections 324–330a of the Criminal Code)	<b>18</b>	17	1
Criminal offences in traffic	<b>3 099</b>	3 022	77
Offences under the Narcotics Act	<b>9 665</b>	9 077	588
Other criminal offences	<b>10 668</b>	10 032	636

70. The duration of individual detention sentences, by age group of offender, was as follows on the same determined day:

<i>Likely duration of criminal detention</i>	<i>Age group</i>								
	<i>Juveniles (14 but not yet 18)</i>			<i>Adolescents (18 but not yet 21)</i>			<i>Adults (over 21)</i>		
	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
Less than 1 month	-	-	-	<b>20</b>	17	3	<b>988</b>	910	78
1–3 months	<b>1</b>	1	-	<b>41</b>	36	5	<b>5 645</b>	5 148	497
3–6 months	<b>30</b>	28	2	<b>142</b>	126	16	<b>8 542</b>	7 934	608
6–9 months	<b>66</b>	59	7	<b>250</b>	229	21	<b>5 812</b>	5 478	334
9–2 months	<b>115</b>	104	11	<b>437</b>	413	24	<b>5 068</b>	4 807	261
1–2 years	<b>341</b>	327	14	<b>1 420</b>	1,362	58	<b>10 702</b>	10 235	467
2–5 years	<b>215</b>	212	3	<b>1 183</b>	1,53	30	<b>15 090</b>	14 445	645
5–10 years	<b>12</b>	10	2	<b>72</b>	70	2	<b>5 173</b>	5 015	158
10–15 years	-	-	-	-	-	-	<b>935</b>	907	28
Life	-	-	-	<b>1</b>	1	-	<b>1 972</b>	1 870	102

71. The numbers of deaths in detention are shown in the table below, differentiated by cause of death:

<i>Year</i>	<i>Deaths</i>		
	<i>Total</i>	<i>Accident</i>	<i>Suicide</i>
2007	<b>173</b>	3	72
2006	<b>163</b>	2	76
2005	<b>159</b>	1	82
2004	<b>161</b>	1	81
2003	<b>150</b>	1	80

72. No executions take place in the Federal Republic of Germany. Article 102 of the Basic Law explicitly states that the death penalty is abolished.

73. No data are collected on the maximum or average duration of remand detention.

## **7. Other characteristics**

### *(a) Media access among the population*

74. Television, radio, printed media and the Internet are a sine qua non of society and are indispensable for democracy in Germany. Blanket coverage with media services is guaranteed. Persons who do not have their own Internet connection are able to obtain for themselves cheap, or even free, access to the desired information in Internet cafés or public libraries. Data regarding access by the population to the most important media, namely to the electronic media, as well as printed and audio media, are not covered in Germany's official statistics. However, the Federal Government regularly comprehensively reports to the German Federal Parliament on the situation and the development of the media in Germany. The most recent Media and Communication Report of the Federal Government was published in December 2008, and is available at [www.kulturstaatsminister.de](http://www.kulturstaatsminister.de). It also contains a large section about the media in Germany from data that are generally available.

### *(b) Non-governmental organisations*

75. No official statistical data are collected regarding the number of non-governmental organisations headquartered in the Federal Republic of Germany.

## **B. The constitutional, political and legal system**

76. The Basic Law of 23 May 1949 continues to be the Constitution of the Federal Republic of Germany following the achievement of German unity. Since reunification, completed in 1990, there have been a number of constitutional amendments, two of which should be emphasised here. Particular significance attaches first and foremost to the constitutional reform of 1994, which largely devoted itself to the questions arising in connection with German unity. The constitutional reform of 2006 served to modernise the federal order of the Basic Law. Both reforms led all in all to a strengthening of the legislative competences of the Länder.

77. The political framework for the action and organisation of the State is determined by the Basic Law via, on the one hand, the basic rights and, on the other hand, through the constitutional law governing State organisation. The main principles of the Basic Law governing the structure of the State include the republican principle, the principle of

democracy, the federal State principle, the rule of law principle and the social State principle, which has already been mentioned.

### **1. The State form of the republic**

78. The structural principle of the State, entrenched in article 20, paragraph 1, and article 79, paragraph 3, of the Basic Law, unequivocally rejects the State form of monarchy. A monarch as Head of State is not permissible; the Head of State is elected.

### **2. Head of State and the State leadership**

79. The Head of State and the highest representative of the Federal Republic of Germany is the Federal President. He/she is elected by the Federal Assembly, which is convened in each case only for this election, and is made up of members of the Federal Parliament and an equal number of members elected by the Land parliaments. The Federal Assembly does not have any other tasks. The period of office of the Federal President is five years, and re-election is only possible once.

80. The constitutional powers of the Federal President are largely representative and integrative in nature. The Federal President represents the Federal Republic of Germany at home and abroad, signs the federal laws and proclaims them, appoints and dismisses the Federal Chancellor, federal ministers, federal judges, federal civil servants and officers and non-commissioned officers of the Federal Armed Forces. Over and above this, he/she has several extraordinary competences to which he/she is entitled in certain crisis situations. For instance, the Federal President in particular has the power to dissolve the German Federal Parliament under certain preconditions and to declare a legislative state of emergency.

81. In terms of policy contents, however, the State leadership lies with the Federal Government, which is formed by the Federal Chancellor – currently by Federal Chancellor Angela Merkel – and the Federal Ministers. The Federal Chancellor determines policy direction and bears the responsibility for it. He/she is the only member of the Government who is elected by the Federal Parliament, and can, where appropriate, also be removed by a vote of no confidence. The Federal Ministers, by contrast, are nominated or dismissed by the Federal President at the proposal of the Federal Chancellor. A vote of no confidence against one or more Federal Ministers is not possible.

### **3. The federal State principle**

82. The Federal Republic of Germany is a federal State consisting of 16 Länder: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, the Saarland, Saxony, Saxony-Anhalt and Thuringia.

83. The Länder are members of the Federation, and as such play the role of States. This means that they have their own constitutions, parliaments and governments. Under certain preconditions, they are even entitled to conclude international agreements with foreign States. The constitutional spheres of the Federation and the Länder are hence equivalent. Article 28, paragraph 1, sentence 1, of the Basic Law states, however, that the constitutional system in the Länder must correspond to the fundamental principles of the republican, democratic and social State based on the rule of law within the meaning of the Basic Law. This so-called homogeneity principle ensures that the same constitutional principles apply in the Federation and the Länder.

84. In line with the character of a federal State, the Basic Law breaks down the State competences between the Federation and the Länder. For instance, the Basic Law contains comprehensive lists of competences with regard to those areas where the Federation is



allowed to pass legislation. If the Basic Law does not grant legislative competence to the Federation, the Länder have legislative competence. They may therefore in particular regulate by law on culture (schools, sections of higher education, radio and television), communal self-administration and the police, and since the constitutional reform of 2006 also prison law. The constitutional practice of recent decades shows that the perception of the legislative competences is concentrated on the Federation. In the administration of justice and the implementation of statutes, the emphasis is, however, clearly on the Länder. The federal model thus lives on the tension between a unitarian tendency on the one hand and a federal tendency on the other.

85. In the final analysis, the federal principle combines a decentralised State structure with a vertical division of powers, which supplements the classical division between legislative, executive and judicial powers. By dividing legislative, executive and judicial competences between the Federation and the Länder, independent areas of competence, and thus of responsibility, are created.

#### **4. Municipalities and associations of municipalities**

86. Municipalities and associations of municipalities (counties, associated municipalities, associations of towns and the surrounding area) are part of the Länder in accordance with the Basic Law. They form the lowest level of general public administration, and they are self-governing bodies. Municipal self-government is guaranteed as an institution in the Basic Law (cf. art. 28, para. 1). Self-government comprises a cluster of sovereign rights including territorial, personnel, financial, planning, organisational and legislative sovereignty. Municipalities and associations of municipalities are subject to State supervision, which in matters of self-government is, however, limited to supervision on points of law.

#### **5. Democracy and the electoral system**

87. A further major characteristic of the State structure is democracy. All State power in the Federal Republic of Germany is exercised by the people. In accordance with the Basic Law, the resulting constitutional structural option for a democratic State takes the shape of representative and parliamentary democracy. The people hence exercise State power primarily through elections by forming representative organs in the Federation, Länder and local authorities, and giving them legitimacy to exert the State's power in its name. Outside elections, participation by the people in State policy-making at federal level is only provided for in absolute terms in cases of a reorganisation of the Länder (art. 29 of the Basic Law) (referendum, petition for a referendum). Other forms and cases of direct democracy are theoretically conceivable, but do not exist in practice. They are, however, practised to differing degrees in the Länder and at local level.

##### *(a) Political parties*

88. In accordance with the Basic Law, the parties are constitutionally necessary tools for the forming of political opinion by the people, and they are raised to the status of a constitutional institution. They are the links between the citizens and the State, but are outside the organised State structure. The parties are independent factors of constitutional life and carry out their activities not only in elections at federal level to the German Federal Parliament or to the European Parliament, but also in elections of representatives to the Länder and of local authorities.

89. The free formation of parties is constitutionally guaranteed. Their formation does not require State approval or other State act of recognition. Also, the free activity of the parties is guaranteed by the Basic Law. The parties decide freely, within the framework of the general statutes, as regards the legal form, name, internal organisation, manifesto and

activities of party work. However, a party must adhere to certain regulations. In constitutional terms, the internal order of the party must correspond to fundamental democratic principles. In accordance with the Parties Act (*Parteiengesetz*), the political goals of the party are to be set out in a written manifesto and regulations adopted in statutes regarding its internal organisation.

90. The statutes and the manifesto, as well as the names of the members of the board, are to be submitted to the Federal Returning Officer who keeps these documents ready for inspection by anyone, in the interest of publicising the circumstances in the parties. The number of parties developed as follows in the reporting period:

<i>Year</i>	<i>No. of parties (documents deposited with the Federal Returning Officer)</i>
2007	109
2006	111
2005	103
2004	95
2003	90

91. As associations of citizens, parties are initially financed by subscriptions and donations. On the other hand, by carrying out the tasks entrusted to them by the Basic Law and the Parties Act, they make a contribution to the functioning of the State system, by which they incur considerable costs. The Parties Act hence also contains provisions on partial State funding for the parties, the amount of which depends on how deeply they are rooted in society, in other words on election results, as well as on revenue from donations and members' contributions.

92. Parties that in terms of their goals or by the conduct of their members aim to impair or eliminate the free democratic fundamental system of the Federal Republic of Germany or to endanger the existence of the Federal Republic are unconstitutional. The finding of unconstitutionality — which has been used twice in the history of the Federal Republic of Germany — and of the concomitant prohibition of a party is incumbent solely on the Federal Constitutional Court. The National Democratic Party (NPD) banning procedure, which was initiated in 2001 by the Federal Government, the Federal Parliament and the Federal Council (Bundesrat), was discontinued in 2003 for procedural reasons without a ruling on the merits.

(b) *Election and tasks of the German Federal Parliament*

93. At federal level, the Members of the German Bundestag, the Parliament of the Federal Republic of Germany, are elected in general, direct, free, equal and secret elections. These principles of electoral law, which are entrenched in the Constitution (art. 38 of the Basic Law), also apply to elections in the Länder and municipalities.

94. The Members are representatives of the whole people, are not bound by mandates and instructions and are subject only to their consciences. Accordingly, an elected Member does not lose his/her mandate if he/she leaves the party for which he/she was elected or changes to another party. The popular representation has comprehensive legislative rights and monitors the Government. Furthermore, the German Federal Parliament elects the Federal Chancellor, and participates in the election of the Federal President, as well as in the election of the judges of the Federal Constitutional Court. The decision-making principle in the German Federal Parliament is the majority principle.

95. All elections in Germany are implemented in the context of the timeframe provided by the Constitution and by statute. The legislative period at federal level as a rule is four years unless — as was the case in 2005 — it is terminated early by new elections. On the basis of the elections to the 16th German Federal Parliament in 2005, the seats in the German Federal Parliament were distributed as follows among the parties:

<i>Party</i>	<i>No. of seats</i>
Social Democratic Party of Germany (Sozialdemokratische Partei Deutschlands – SPD)	222
Christian Democratic Union of Germany (Christliche Demokratische Union Deutschlands – CDU)	180
Christian Social Union in Bavaria (Christliche Soziale Union in Bayern e.V. – CSU)	46
Alliance 90/Greens (Bündnis 90/DIE GRÜNEN – Grüne)	51
Free Democratic Party (Freie Demokratische Partei – F.D.P.)	61
The Left (DIE LINKE)	54

96. With regard to the distribution of seats listed above, it should be noted that only the lists of parties that received at least 5 per cent of all second votes\* cast in the election area or that received at least three constituency mandates directly are taken into account in distributing the seats. Parties that remain below these thresholds are not represented in Parliament in principle. This is intended to counteract party splitting, which could endanger the scope for action and the stability of Parliament and endanger the Government, as occurred during the Weimar Republic.

97. The proportion of women in the current 16th German Federal Parliament is 32.0 per cent, slightly slight fall in comparison to the proportion of women in the 15th German Federal Parliament, which was 32.5 per cent. It should be noted in this respect that almost all the parties represented in the German Federal Parliament have imposed internal quota or quorum regulations for the equal participation of women. In an EU-wide comparison, the proportion of women in the German Federal Parliament and in the Federal Cabinet is far above the average.

(c) *Suffrage*

98. The people, in whom State power is vested, is composed of German nationals in accordance with the Basic Law. The proportion of those with suffrage rights who have German nationality among the German population and the total population in elections at federal level has developed as follows in the period under report:

<i>Year</i>	<i>Proportion of the population with suffrage rights (in per cent)</i>	
	<i>Among the German population</i>	<i>Among the total population</i>

\* Note by the secretariat: In Germany's electoral system, voters cast two votes. The first goes to a candidate to represent their district in parliament (constituency mandate). The second vote goes to a party, and is used to ensure that each party's share of seats in Parliament reflects its proportion of votes nationwide.

2007	82.86	74.59
2006	82.62	74.83
2005	82.33	75.05
2004	82.08	75.33
2003	81.87	75.55

99. There are two important exceptions to the fundamental principle that only German nationals are eligible to vote, which are made on the basis of the requirements of the Treaty Establishing the European Community and of the secondary Community law that is based on this. In elections to the European Parliament and in elections at local level, nationals of the other Member States of the European Community who have a place of residence in the Federal Republic of Germany, or otherwise are habitually resident there, may also vote and be elected. On this basis, in the 2004 European elections, out of 1,964,883 foreign Union citizens (as of 31 December 2003) of voting age, 133,465 persons were entered in a voting registry. This corresponds to approximately 6.8 per cent of all eligible Union citizens in Germany.

(d) *Turnout*

100. Despite a slightly downward trend in the last two elections, the turnout in the Federal Parliament elections remains at a high level. In the elections to the 16th German Federal Parliament in 2005, 77.7 per cent of all those entitled to vote took part in the elections. This was 1.4 per cent less than in the elections to the 15th German Federal Parliament in 2002.

101. Turnout at the elections to the Parliaments of the Länder averaged 58.0 per cent in the same period. A turnout of 51.1 per cent was achieved for the elections to the local representative bodies. The details are contained in the table below:

<i>Land</i>	<i>Turnout for Land Parliament and local elections</i>	
	<i>Turnout Land Parliament election (year of the most recent election)</i>	<i>Turnout local elections (year of the most recent election)</i>
Baden-Württemberg	53.4 % (2006)	53.0 % (2004)
Bavaria	57.9 % (2008)	59.5 % (2008)
Berlin	58.0 % (2006)	55.8 % (2006)
Brandenburg	56.4 % (2004)	46.3 % (2003)
Bremen	57.5 % (2007)	56.1 % (2007)
Hamburg	63.5 % (2008)	50.3 % (2008)
Hesse	61.0 % (2009)	45.8 % (2006)
Mecklenburg-Western Pomerania	59.1 % (2006)	44.9 % (2004)
Lower Saxony	57.1 % (2008)	52.2 % (2006)
North Rhine-Westphalia	63.0 % (2005)	54.4 % (2004)
Rhineland-Palatinate	58.2 % (2006)	57.8 % (2004)
Saarland	55.5 % (2004)	56.4 % (2004)
Saxony	59.6 % (2004)	48.7 % (2004)
Saxony-Anhalt	44.4 % (2006)	36.4 % (2007)
Schleswig-Holstein	66.5 % (2005)	49.5 % (2008)
Thuringia	53.8 % (2004)	50.6 % (2004)

*(e) Proceedings regarding the scrutiny of an election*

102. The validity of an election is ruled on by means of the scrutiny of the election. In Federal Parliament elections, this scrutiny is incumbent on the German Federal Parliament itself, after a preliminary review has been performed by an election scrutiny committee. A complaint to the Federal Constitutional Court is admissible against a ruling by the Federal Parliament.

103. A total of 195 objections were received in the German Federal Parliament after the 2005 Federal Parliament elections. In accordance with the recommendations for a resolution of the election scrutiny committee, the German Federal Parliament either discontinued the proceedings or rejected the objections as inadmissible or manifestly ill-founded. A total of 19 complaints to the Federal Constitutional Court were filed against this by objecting parties.

**6. The Federal Council**

104. Another important constitutional body is the Federal Council, via which the Länder participate in the legislation of the Federation. The Federal Council consists of members of the Land governments, who are bound by instructions. It adopts resolutions by majority vote. The number of votes to which a Land is entitled in the Federal Council is the number of inhabitants of the Land in question. As to the contribution of the member Länder to the legislative procedure of the Federation, a distinction is to be made between so-called objection and approval statutes. The approval of the Federal Council is necessary for a statute to come into being. The Federal Council may submit an objection to the planned statute, but the Federal Parliament may reject it. Over and above this, it is the task of the Federal Council to contribute towards the administration of the Federation (in particular by approving legal ordinances) and to contribute in matters related to the European Union.

**7. The principle of the rule of law**

105. The rule of law State structure principle requires a division of powers and binds all State powers to law and order, and in particular to the basic rights. Executive power and jurisdiction are bound by legal provisions of all kinds, including unwritten law. The legal provisions take precedence over all other State acts. A special form of this priority of the law is constituted by the principle of the precedence of the Constitution, in accordance with which no State act may contradict the Constitution. The legislature itself is also bound by the Constitution.

106. Judicial independence, the guarantee of court legal protection against rights violations by public powers for all and the establishment of constitutional jurisdiction are particular manifestations of the principle of the rule of law, and are separately regulated in the Basic Law. Additionally, the constitutional principles of legal certainty and of the so-called provision of legality, in accordance with which the rights of the individual citizen may only be encroached upon by the State administration on the basis of statutes, as well as the principle of proportionality, are among the content guarantees of the principle of the rule of law.

**8. Jurisdiction and the Federal Constitutional Court**

107. In the rule of law system of the division of powers, the judicial power has received especially strong status through the Basic Law. It is entrusted to judges who are independent and only subject to the law. Judges can neither be removed nor transferred during their period of office. Judicial power is broken down into ordinary jurisdiction (civil and criminal jurisdiction), as well as into four specialist jurisdictions: labour jurisdiction, general administrative jurisdiction, social jurisdiction and finance jurisdiction. Ordinary

jurisdiction is largely structured in a three-tiered arrangement among the Federation and the Länder. There are as a rule two instances within specialist jurisdiction at Land level. The third, supreme instance of the federal courts is added at federal level.

108. In addition to the jurisdictions that have already been named, there is the Federal Patent Court, as well as the organs of disciplinary and professional jurisdiction. The latter hear mainly breaches of duty which someone has committed in his/her capacity as a civil servant, judge or soldier or in connection with his/her affiliation to a statutory-regulated profession (for instance as a lawyer, tax advisor, auditor, architect, physician, veterinarian or chemist).

109. A very special role is finally carried out by constitutional jurisdiction. It is exercised at federal level by the Federal Constitutional Court, and at Land level by the Land Constitutional Courts. Constitutional jurisdiction is outside the system of instances of the specialist jurisdictions, and only deals with violations of specific constitutional law.

110. The Federal Constitutional Court consists of two Senates of eight judges each. The period of office of the judges is 12 years, but it lasts at most until the age limit of 68 has been reached. Re-election is not possible. One half of the judges of each Senate are elected by the German Federal Parliament and one half by the Federal Council.

111. The Federal Constitutional Court only acts if it is called upon. It performs its tasks as the supreme guardian of the Constitution in different ways. It monitors the legislature as to whether in handing down statutes it has acted in accordance with the provisions of the Basic Law in formal and material terms. By means of a constitutional complaint, which anyone may lodge, asserting that his/her basic rights have been violated, it also monitors authorities and courts as to whether they have complied with the Constitution in their measures and decisions. Over and above this, the Court arbitrates in disputes between the supreme State bodies and rules in proceedings between the Federation and the Länder. Furthermore, it finds, for instance, on the validity of Federal Parliament elections, on the constitutionality of political parties and on the forfeiture of basic rights.

## **9. The social State principle**

112. A further major pillar of German constitutional law is the social State principle. It obliges the State to carry out social policy and welfare activity, and to bring about social justice. The principle primarily addresses Parliament, which has the obligation to ensure freedom from need, an existence worthy of human beings and suitable participation in the general prosperity. The guiding principle is to compensate for social differences and resolve conflicts, to structure society via State planning, to ensure the provision of services for the public and economic growth, as well as progress in prosperity. However, the principle of the social State is not intended to do away with all inequalities, nor does it contain any general obligation to maintain the status quo. Its primary aim is, rather, to deal with situations of social need and disadvantage, such as those caused by illness, age, disability, unemployment and other disadvantageous circumstances.

113. The inclusion of this principle in the Basic Law constitutes a decision to guarantee the social human rights by means of a mandate to Parliament regarding political structure. The social State principle does not compete with the other four structural principles, but rather the principles are structured in such a way as to supplement and limit each other.

## **10. The fiscal administration**

114. In order to guarantee the financial independence of the Federation and the Länder, and hence to guarantee that it carries out tasks on its own responsibility, the Basic Law ensures that they are provided with sufficient funds. The Constitution therefore governs what taxes the Federation, the Länder, or both together are entitled to (art. 105, para. 3, and

art. 106 of the Basic Law). The Federation and the Länder jointly receive income tax, corporate income tax and turnover (value added) tax, which make up about 70 per cent of all taxes levied. The Federation alone has the right to most excise duties (such as mineral oil tax, tobacco tax and coffee tax). The Länder alone receive, inter alia: revenue from gift/inheritance tax, land acquisition tax and beer tax. The local authorities keep for themselves revenue from trade tax, land tax and other local authority taxes such as revenue from dog licences. They are also entitled to a portion of the income and turnover tax gathered. The local authorities also receive a share of the Länder revenue from the combined taxes and the other Länder taxes in accordance with the relevant legislation. The Federation and the Länder are given a share of the trade tax.

115. Over and above this distribution of the sources of tax, and as a result of the solidarity existing between the Federation and the Länder, the Basic Law sets the stage for a redistribution of the income made in the entire federal territory to give rise to equivalent living conditions. This means, for instance, that those Länder which have little tax revenue of their own are enabled to carry out their tasks. To this end, the Basic Law facilitates two special regulatory systems: the horizontal financial equalisation between the Länder with stronger and weaker financial situations on the one hand, and supplemental federal allocations to less financially solid Länder (art. 107 of the Basic Law) on the other. Accordingly, the differences in financial strength remaining after the distribution of fiscal income between the Länder are suitably compensated for.

## **11. Law on the State Church**

116. Another element of constitutional law is the public law on churches, which largely has as its subject-matter guaranteeing freedom of religion, the separation of Church and State and the Church's self-determination right.

117. The constitutional basis for guaranteeing individual and collective freedom of faith can be found in article 4, paragraphs 1 and 2, of the Basic Law. Accordingly, individual freedom of religion encompasses the freedom to form a faith or belief and to act in accordance with its requirements, as well as the freedom to reject a religious or philosophical conviction. In contradistinction to this, collective freedom of religion entails the freedom rights of a religious community.

118. The separation of Church and State is manifested in the Basic Law, in particular in the prohibition of all legal forms of State church (cf. art. 140 of the Basic Law and art. 137, para. 1, of the Weimar Reich Constitution (*WRV*)). The fundamental principle of the separation of Church and State, however, has several lacunae, which are reflected, for instance, in the reference to God contained in the Preamble or in the provisions on religious instruction in public schools (art. 7, para. 3, of the Basic Law). In each case, however, the State is obliged to observe philosophical neutrality with regard to the religious communities. Parallel to this, the Churches' self-determination right, which is derived from article 140 of the Basic Law and article 137, paragraph 3, of the Weimar Reich Constitution, guarantees the Churches the power to govern their own matters independently and free of State influence. Their own matters include, for instance, questions of organisation, membership, levying of contributions and fees, or indeed the structure of the circumstances of their services.

## **12. Recognition of non-governmental organisations**

119. Non-governmental organisations do not require State approval in the Federal Republic of Germany, but they are subject to the provisions of the general law on associations. They are granted charitable status on the basis of section 52, subsection 1, sentence 1, of the Tax Code (*Abgabenordnung*). Accordingly, a corporation is considered to

be charitable if its activity aims to promote the public in a selfless manner in a material, intellectual or moral field.

### **13. Membership of the European Union**

120. Germany is a member of the European Union (EU), established by the Treaty on European Union. The EU presently consists of 27 Member States. In line with the three-pillar model, it forms the common roof for the three pillars of the alliance of States, including, firstly, the European Communities established by separate treaties, i.e. the EC (European Community) and the EAEC (European Atomic Energy Community), secondly, the common foreign and security policy and, thirdly, police and judicial cooperation in criminal matters. The EC has its own organs (the European Parliament, the Council and the Commission) with various legislative powers. The EC Treaty authorises the passing of legal acts, especially in the form of regulations and directives, in many fields. Regulations — like, in principle, the Treaties — are directly applicable in the Member States, while directives have to be transposed into national law. The Treaties establishing the European Communities, as well as the provisions passed on the basis of the Treaties, take precedence over the national law of the Member States. The Court of Justice of the European Communities (ECJ) ensures observance of Community law.

121. The law applicable in Germany is also largely influenced by European Community law. Parliament is obliged to properly transpose the directives into German law. It cannot pass any national law that would be in conflict with Community law. This is monitored by the Commission, which may initiate proceedings before the ECJ for violation of a treaty. The German courts have to apply directly-applicable Community law in their decisions, and they have to interpret German law in conformity with Community law. In cases of doubt they are entitled and partly even obliged to obtain a binding interpretation from the ECJ. The German executive has to enforce directly-applicable Community law as the European Community enforces Community law itself only as an exception, enforcement by the Member States being the rule.

### **14. Basic rights in the European Union**

122. The protection of basic rights is embodied in the following general clause in article 6, paragraph 2, of the EU Treaty: “The Union shall respect basic rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.” To the extent that the Federal Republic of Germany has transferred sovereign power to the European Community, the protection of basic rights is largely safeguarded by the rulings of the ECJ. On 7 December 2000, as well as on 12 December 2007, after approval by the European Council, the European Parliament, the Council and the Commission solemnly proclaimed the Charter of Basic Rights of the European Union which, in 54 articles, regulates basic rights in the European Union. When the Treaty of Lisbon amending the Treaty on European Union enters into force, the rights, freedoms and principles regulated in the 54 articles of the Charter will become legally binding in accordance with article 6 of the EU Treaty. It will then apply to the bodies and facilities of the Union. It will apply to the Member States exclusively on implementing the law of the Union.



## II. General framework for the protection and promotion of basic rights in the Federal Republic of Germany

### A. Acceptance and ratification of international and regional human rights agreements

#### 1. Fundamental international human right agreements

##### (a) *The state of ratification*

123. The Federal Republic of Germany has ratified the following fundamental international agreements and protocols involving human rights aspects:

(a) International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (including the amendment to article 8);

(b) International Covenant on Civil and Political Rights of 1966;

(c) Optional Protocol to the International Covenant on Civil and Political Rights of 1966, on communications from individuals;

(d) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty of 1989;

(e) International Covenant on Economic, Social and Cultural Rights of 1966;

(f) Convention on the Elimination of All Forms of Discrimination against Women of 1979 (including amendment of article 20, paragraph 1);

(g) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 1999, regarding complaints by individuals and investigation procedures;

(h) Convention of 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (including amendment of article 17, paragraph 7, and article 18, paragraph 5);

(i) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 2002, regarding regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty;

(j) Convention on the Rights of the Child of 1989 (including amendment of article 43, paragraph 2);

(k) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 2000;

(l) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000;

(m) Convention on the Rights of Persons with Disabilities of 2006;

(n) Optional Protocol to the Convention on the Rights of Persons with Disabilities of 2006.

124. The Federal Republic of Germany has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990. There is no indication that signing and ratification are to be considered. The reasons for this were expressed at the time of the adoption of the Convention by the United Nations

General Assembly in a statement, and they continue to apply: The fundamental basic rights are already contained in the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights. These rights also apply to all migrant workers without exception.

125. A further major basis for the decision of the Federal Government not to ratify the Convention is that the term “migrant worker” used in the Convention lacks differentiation, and also includes persons who are in unauthorised residence and are in unauthorised employment. The position of illegally resident migrant workers is hence protected in a manner which goes far beyond the undisputed need to grant them all basic rights. These regulations may therefore increase the incentive to take up employment in Germany without having the requisite residence title. It is also not intended to ratify the Convention given that the German Immigration Act (*Zuwanderungsgesetz*) has adopted the aim of combating illegal migration.

(b) *Reservations and declarations*

126. The Federal Republic of Germany has submitted reservations and declarations to the following international basic right agreements.<sup>15</sup>

<i>Convention</i>	<i>Reservations/ declaration</i>	<i>Content</i>	<i>Reasoning for the reservation/declaration</i>
International Covenant on Civil and Political Rights	Reservation (17 December 1973, upon ratification)	<p>1. Articles 19, 21 and 22 in conjunction with article 2 (1) of the Covenant shall be applied within the scope of article 16 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.</p> <p>2. Article 14 (3) (d) of the Covenant shall be applied in such manner that it is for the court to decide whether an accused person held in custody has to appear in person at the hearing before the court of review (<i>Revisionsgericht</i>).</p> <p>3. Article 14 (5) of the Covenant shall be applied in such manner that:</p> <p>(a) A further appeal does not have to be instituted in all cases solely on the grounds that the accused person having been acquitted by the lower court was convicted for the first time in the proceedings concerned by the appellate court;</p>	<p><b><u>Re No. 1 of the reservation:</u></b></p> <p>Article 16 of the ECHR reads as follows: “Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.”</p> <p>The reservation was submitted and is upheld in order to monitor the political activities of a growing number of political foreigners’ organisations to protect internal security in the Federal Republic of Germany.</p> <p><b><u>Re No. 2 of the reservations:</u></b></p> <p>This reservation was submitted with regard to section 350, subsection 2, sentence 2, of the German Code of Criminal Procedure (<i>Strafprozessordnung – StPO</i>), in accordance with which it is placed at the discretion of the court in the appeal on points of law procedure in criminal cases as to whether the accused person who is not at liberty is called up for the hearing on the appeal. If he/she is not</p>

<sup>15</sup> Declarations related to the applicability of the human rights agreements in the former West Berlin are obsolete, and hence are not included in the list below.

Convention	Reservations/ declaration	Content	Reasoning for the reservation/declaration
Optional Protocol to the International Covenant on Civil and Political Rights of 1966, on communications from individuals	Reservation (25 August 1993)	<p>The Federal Republic of Germany formulates a reservation concerning article 5, paragraph 2 (a), to the effect that the competence of the Committee shall not apply to communications</p> <p>(a) Which have already been considered under another procedure of international investigation or settlement; or</p> <p>(b) By means of which a violation of rights having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany is reprimanded;</p> <p>(c) By means of which a violation of article 26 of the [said Covenant] is reprimanded, if the reprimanded</p>	<p>called up, defence counsel must be appointed for him/her at his/her request (cf. section 350, subsection 2, sentence 1, of the Code of Criminal Procedure.</p> <p><b><u>Re No. 3 (b) of the reservation:</u></b></p> <p>No. 3 (b) of the reservation is relevant with regard to the appeal on points of fact and law against refusal of acceptance for adjudication. In accordance with section 313, subsection 1, of the Code of Criminal Procedure, in cases in which the accused has been sentenced to a criminal fine of not more than 15 daily rates, the reserved punishment in the case of a reprimand is not more than 15 daily rates, or a sentence is handed down for an administrative fine, an appeal on points of fact and law is only admissible if it is accepted. Such appeal is accepted in accordance with section 313, subsection 2, of the Code of Criminal Procedure if it is not manifestly ill-founded. Section 313 of the Code of Criminal Procedure hence restricts the admissibility of the appeal on points of fact and law for cases of small-scale crime in order to reduce the burden on the judiciary.</p> <p>As regards (a) of the reservation, it should be pointed out that, given that the Committee is not competent to receive complaints which have been examined by another procedure of international investigation or settlement, the Federal Republic of Germany has complied by depositing the reservation with a recommendation of the Council of Europe (Resolution of the Committee of Ministers (70) 17 of 15 May 1970). Hence, duplication of international review proceedings, and therefore overlaps with the legislation of the ECHR's bodies, were to be avoided, given that these may also lead to contradictory results. "Forum shopping" on the part of complainants was also to be avoided in the interest of the</p>

<i>Convention</i>	<i>Reservations/ declaration</i>	<i>Content</i>	<i>Reasoning for the reservation/declaration</i>
		violation refers to rights other than those guaranteed under the aforementioned Covenant.	functioning of international organs of human rights protection. This certainly applies if in international proceedings – such as here – an examination on the merits has already taken place.
International Convention on the Elimination of All Forms of Racial Discrimination	Declaration (30 August 2001)	The Federal Republic of Germany hereby declares that pursuant to article 14, paragraph 1, of the Convention, it recognizes the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by the Federal Republic of Germany of any of the rights set forth in this Convention. However, this shall only apply in so far as the Committee has determined that the same matter is not being or has not been examined under another procedure of international investigation or settlement.	With the second sentence of this declaration, the Federal Republic of Germany wishes to avoid the Committee dealing also with those legal cases which have already been ruled on by the European Court of Human Rights, possibly reaching a different outcome. The content of this part of the declaration corresponds to the provisions in three important basic right agreements of the United Nations, namely, the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The majority of EU States which submitted a declaration regarding article 14 of the Convention have included the same restriction in their declarations.
International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Declaration with regard to article 3 (1 January 1990, upon ratification)	This provision prohibits the transfer of a person directly to a State where this person is exposed to a concrete danger of being subjected to torture. In the opinion of the Federal Republic of Germany, article 3, as well as the other provisions of the Convention exclusively establish State obligations which are met by the Federal Republic of Germany in conformity with the provisions of its domestic law, which is in accordance with the Convention.	In the view of the Federal Government, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment only gives rise to State obligations. Whether this also applies to article 3 of the Convention was, however, doubted in the international discussion preceding ratification. In order to create clarity in this respect, the German Government submitted the above clarifying declaration when depositing the ratification document. Courts and authorities accordingly do not apply the Convention, but instead apply German law, which concurs therewith. Direct application of the Convention is prescribed in an exceptional case by special German

Convention	Reservations/ declaration	Content	Reasoning for the reservation/declaration
Convention on the Rights of the Child	Declaration (5 April 1992, upon ratification)	<p>I. The Government of the Federal Republic of Germany declares that it welcomes the Convention on the Rights of the Child as a milestone in the development of international law and that it will take the opportunity afforded by the ratification of the Convention to initiate reforms in its domestic legislation that are in keeping with the spirit of the Convention and that it considers appropriate, in line with article 3 (2) of the Convention, to ensure the well-being of the child. The planned measures include, in particular, a revision of the law on parental custody in respect of children whose parents have not married, are permanently living apart while still married, or are divorced. The principal aim will be to improve the conditions for the exercise of parental custody by both parents in such cases as well. The Federal Republic of Germany also declares that domestically the Convention does not apply directly. It</p>	<p>legal provisions. Section 6, No. 9, of the Criminal Code orders that German criminal law is to apply the Convention, regardless of the law of the place of commission, to acts committed abroad “which, on the basis of an international agreement binding on the Federal Republic of Germany, shall also be prosecuted if they are committed abroad”. When examining section 6, No. 9, of the Criminal Code, German judges, taking as a basis the provisions of the Convention, must hence examine whether German criminal law applies to the act of torture committed abroad.</p> <p>With the declaration, the Federal Government would also like to clarify article 3, paragraph 2, of the Convention against Torture: The judgment as to whether the person to be deported is at risk of torture, etc., in the State to which he/she is to be deported should always be examined in light of a danger in individual cases.</p>

**Re No. I of the declaration:**

It emerges from the wording of the Convention that primarily State obligations were to be created. Thus, the obligations governed by almost all the provisions of the Convention of the Rights of the Child are addressed to States. In particular, however, article 4 of the Convention makes it clear that the Convention still requires implementation by “appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention”. What is more, international law in principle releases States parties from a convention if they meet the international law obligations which have been taken on. The Convention on the Rights of the Child is hence binding on the contracting States without exception only with regard to certain goals, and places the means for meeting these goals at their

Convention	Reservations/ declaration	Content	Reasoning for the reservation/declaration
		<p>establishes State obligations under international law that the Federal Republic of Germany fulfils in accordance with its national law, which conforms to the Convention.</p>	<p>discretion. The contracting States can meet their obligations under international law particularly by granting the rights provided for in the Convention on the Rights of the Child in domestic law, in other words indirectly. The benefiting citizens can then not directly invoke the Convention, but the domestic law concurring with the Convention. The rights and basic freedoms of the child granted in the Convention apply. However, they cannot be directly derived from the Convention. This question is, however, of secondary significance for the legal position of the child.</p>
		<p>II. The Government of the Federal Republic of Germany is of the opinion that article 18 (1) of the Convention does not imply that by virtue of the entry into force of this provision parental custody, automatically, and without taking into account the best interests of the respective child, applies to both parents, even in the case of children whose parents have not married, are permanently living apart while still married, or are divorced. Such an interpretation would be incompatible with article 3 (1) of the Convention. The situation must be examined on a case-by-cases basis, particularly where the parents cannot agree on the joint exercise of custody. The Federal Republic of Germany therefore declares that the provisions of the Convention are also without prejudice to the provisions of national law concerning:</p>	<p><b><u>Re No. II of the declaration:</u></b> The declaration is intended to clarify at No. II that parental custody – and the concomitant right to bring up a minor child – is also a protective measure of the State legislature legitimated by article 24, paragraph 1, of the International Covenant on Civil and Political Rights, to which the child has a right. The right is not to be questioned by the Convention on the Rights of the Child. Rather, it is made clear by article 5 of the Convention that the Convention takes it as read that children and juveniles are subject to restrictions in asserting their rights, which emerge from the parental right to bring up a child or that of other persons having custody of them.</p>
		<p>(a) Legal representations of the minors in the exercise of their rights;</p> <p>(b) Rights of custody and access in respect of children born in wedlock;</p> <p>(c) Circumstances under family and inheritance law of children born out of wedlock.</p>	
		<p>This applies irrespective of the planned</p>	

Convention	Reservations/ declaration	Content	Reasoning for the reservation/declaration
		<p>revision of the law on parental custody, the details of which remain within the discretion of the national legislator.</p>	
		<p>III. In accordance with the reservations made by it with respect to the parallel guarantees of the International Covenant on Civil and Political Rights, the Federal Republic of Germany declares in respect of article 40 (2) (b) (ii) and (v) of the Convention that these provisions shall be applied in such a way that, in the case of minor infringement of the penal law, there shall not in each and every case exist:</p> <p>(a) A right to have “legal or other appropriate assistance” in the preparation and presentation of the defence; and/or</p> <p>(b) An obligation to have a sentence not calling for imprisonment reviewed by higher competent authority or judicial body.</p>	<p><b><u>Re. No. III (a) of the declaration:</u></b></p> <p>With the declaration re No. III (a), the Federal Government intended to ensure that article 40 (2) (b) (ii) of the Convention was applied such that in cases of criminal offences of less serious severity, a right does not exist in all cases to be appointed counsel to defend and prepare for the defence. In such cases it is sufficient for the parents or other person with custody to attend to the main hearing, as is provided for by domestic law.</p>
		<p>IV. In addition, the Federal Republic of Germany confirms the declaration it made in Geneva on 23 February 1989:</p> <p>“Nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the Federal Republic of Germany or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the Federal Republic of Germany to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens.”</p>	<p>The declaration at No. IV was submitted upon ratification of the Convention in order to avoid misinterpretations or over interpretations of the Convention. The Federal Government takes the view that the Federal Republic of Germany meets the obligations incumbent on it by virtue of the Convention on the Rights of the Child of 20 November 1989. This also applies with regard to article 22 of the Convention. The obligations of the contracting States do not include making it easier for children who wish to enter unaccompanied in order to request the legal status of a refugee to enter the country, or to make it possible to do so.</p>

<i>Convention</i>	<i>Reservations/ declaration</i>	<i>Content</i>	<i>Reasoning for the reservation/declaration</i>
		V. The Government of the Federal Republic of Germany regrets the fact that under article 38 (2) of the Convention even 15-years-olds may take part in hostilities as soldiers, because this age limit is incompatible with the consideration of a child's best interest (art. 3 (1) of the Convention). It declares that it will not make any use of the possibility afforded by the Convention of fixing this age limit at 15 years.	
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 2000	Declaration (13 December 2004, upon ratification)	<p>“The Federal Republic of Germany declares that it considers a minimum age of 17 years to be binding for the voluntary recruitment of soldiers into its armed forces under the terms of Article 3 paragraph 2 of the Optional Protocol. Persons under the age of 18 years shall be recruited into the armed forces solely for the purpose of commencing military training.</p> <p>The protection of voluntary recruits under the age of 18 years in connection with their decision to join the armed forces is ensured by the need to obtain the consent of their legal guardian and the indispensable requirement that they present an identification card or passport as a reliable proof of their age.”</p>	

(c) *Cancellations, limitations and restrictions*

127. There are no cancellations, limitations or restrictions with regard to the human rights conventions listed in paragraph 123.

**2. Other United Nations human rights conventions and associated conventions**

128. The Federal Republic of Germany is a contracting party to the following other United Nations human rights conventions:

- (a) Slavery Convention in the version of the Protocol amending the Slavery Convention signed at Geneva on 25 September 1926;
- (b) Convention on the Prevention and Punishment of the Crime of Genocide of 1948;
- (c) Convention relating to the Status of Refugees of 1951 and its Protocol of 1967;



- (d) Convention relating to the Status of Stateless Persons of 1954;
- (e) Convention on the Reduction of Statelessness of 1961;
- (f) Rome Statute of the International Criminal Court of 1998;
- (g) United Nations Convention against Transnational Organized Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants by Land, Sea and Air of 2000.

129. The Convention for the Protection of All Persons from Enforced Disappearance of 2006 was signed on 26 September 2007. The Federal Government adopted a draft Act on the Convention on 4 February 2009. The ratification process is likely to be concluded in 2009.

### 3. Other relevant international human right conventions

130. The Federal Republic of Germany is also a contracting party to the following conventions relevant to protection of human rights and humanitarian law:

- (a) Conventions of the International Labour Organisation:
  - (i) Convention (No. 29) concerning Forced or Compulsory Labour, 1930;
  - (ii) Convention (No. 81) concerning Labour Inspection in Industry and Commerce, 1947;
  - (iii) Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise, 1948;
  - (iv) Convention (No. 97) concerning Migration for Employment, 1949;
  - (v) Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949;
  - (vi) Convention (No. 100) concerning Equal Remuneration, 1951;
  - (vii) Convention (No. 102) concerning Minimum Standards of Social Security, 1952;
  - (viii) Convention (No. 105) concerning the Abolition of Forced Labour, 1957;
  - (ix) Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, 1958;
  - (x) Convention (No. 118) concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, 1962;
  - (xi) Convention (No. 122) concerning Employment Policy, 1964;
  - (xii) Convention (No. 129) concerning Labour Inspection in Agriculture, 1969;
  - (xiii) Convention (No. 132) concerning Annual Holidays with Pay (Revised), 1970;
  - (xiv) Convention (No. 138) concerning Minimum Age for Admission to Employment, 1973;
  - (xv) Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999;
- (b) Convention of the United Nations Educational, Scientific and Cultural Organization: Convention against Discrimination in Education of 1960;
- (c) Conventions of the Hague Conference on Private International Law:

- (i) Convention on the Law Applicable to Maintenance Obligations towards Children of 1956;
  - (ii) Convention concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children of 1958;
  - (iii) Convention concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants of 1961;
  - (iv) Convention on the Law Applicable to Maintenance Obligations of 1973;
  - (v) Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations of 1973;
  - (vi) Convention on the Civil Aspects of International Child Abduction of 1980;
  - (vii) Convention on International Access to Justice of 1980 (signed but not yet ratified);
  - (viii) Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption of 1993;
  - (ix) Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children of 1996 (signed but not yet ratified);
  - (x) Convention on the International Protection of Adults of 2000.
- (d) Geneva Conventions and other conventions in the field of the humanitarian international law:
- (i) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 1949;
  - (ii) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 1949;
  - (iii) Geneva Convention relative to the Treatment of Prisoners of War of 1949;
  - (iv) Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949;
  - (v) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts of 1977 (Protocol I);
  - (vi) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts of 1977 (Protocol II);
  - (vii) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction of 1997 (Ottawa Convention).

#### **4. Regional human right conventions**

131. At regional level, the Federal Republic of Germany is a contracting party to the conventions listed below:

- (a) European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

- (b) Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952;
- (c) Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions of 6 May 1963;
- (d) Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention of 6 May 1963;
- (e) Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto of 16 September 1963;
- (f) Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention of 20 January 1966;
- (g) Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty of 28 April 1983;
- (h) Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 19 March 1985;
- (i) Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby of 11 May 1994;
- (j) Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances of 3 May 2002;
- (k) Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention of 13 May 2004;
- (l) European Social Charter of 18 October 1961;
- (m) Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981;
- (n) Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows of 8 November 2001;
- (o) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987;
- (p) Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 4 November 1993;
- (q) Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 4 November 1993;
- (r) European Charter for Regional or Minority Languages of 5 November 1992;
- (s) Framework Convention for the Protection of National Minorities of 1 February 1995;
- (t) European Convention on the Exercise of Children's Rights of 25 January 1996;

(u) European Agreement relating to persons participating in proceedings of the European Court of Human Rights of 5 March 1996;

(v) Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe of 1949 of 5 March 1996.

## **B. Legal and institutional framework for the protection and promotion of human rights at national level**

132. The protection and promotion of human rights are frequently parallel in both legal and institutional terms. The framework to protect human rights and that for the promotion of human rights will therefore be shown below in a joint section.

### **1. Structure and anchoring of human rights in the German legal system**

#### *(a) The list of basic rights contained in the Basic Law*

133. Human rights enjoy special status in Germany's constitutional system. This is made clear by the fact that the Basic Law places them at the beginning of its provisions. The list of basic rights contained in the Basic Law primarily covers guaranteeing personal liberty rights protecting the individual against impairment of his/her freedom by the State. At the same time, they typify a highly specific perception of humanity, that is, that of an individual who can develop freely within society and whose individuality, independence, self-determination and responsibility for his/her own actions are to be respected by the State. The picture of a person which is painted by the Basic Law is not that of an isolated, sovereign individual, but rather one that recognises the tension between the individual and society, and takes into account his/her relation and tie to society without detracting from his/her individual value.

#### *(i) Personal liberty rights*

134. The basic rights are guaranteed partly in the form of general basic rights, and partly in the form of civil rights. Whilst each individual has a right to the former, the latter are only binding in respect of German nationals. The distinction between civil and human rights does not, however, deny foreigners protection in the regulatory area of civil rights. The conduct of foreigners falling in the area protected by civil rights is certainly protected by the general freedom to act (art. 2, para. 1, of the Basic Law).

135. In addition to primary human dignity, which is not subject to any State restriction (art. 1, para. 1, of the Basic Law), general human rights are, in particular, the right to free development of the personality (art. 2, para. 1, of the Basic Law), the right to life, physical integrity and individual freedom (art. 2, para. 2, of the Basic Law), the right to freedom of faith, of conscience, and freedom to profess a religion (art. 4 of the Basic Law), including the right to refuse to perform military service on grounds of conscience, as well as the right freely to express and disseminate opinions and freely to inform oneself, which includes the guarantee of freedom of the press (art. 5 of the Basic Law). Article 9, paragraph 3, of the Basic Law guarantees for all and for all professions freedom of association, and therefore the right to form and participate in associations to safeguard and improve working and economic conditions. Whilst article 10 of the Basic Law ensures for everyone the inviolability of privacy of letters, post and telecommunications, article 13 of the Basic Law ensures the inviolability of the home. Property enjoys protection under articles 14 and 15 of the Basic Law. Article 17 gives to everyone the right to address petitions. Furthermore, there are special guarantees advantageous to marriage and the family (art. 6 of the Basic Law), as well as to the school system (art. 7 of the Basic Law).

136. Freedom of assembly (art. 8 of the Basic Law) and of association are reserved for German nationals – unless already protected by article 9, paragraph 3, of the Basic Law (art. 9, para. 1, of the Basic Law), the right to freedom of movement (art. 11 of the Basic Law) and the basic right freely to choose an occupation and place of work (art. 12 of the Basic Law). There is also a restriction to German nationals with regard to equal access of men and women to the Armed Forces (art. 12a of the Basic Law). Finally, in accordance with article 16 of the Basic Law, Germans enjoy both protection of their citizenship and protection against extradition to another country.

137. In accordance with article 16a of the Basic Law, those who are politically persecuted have a right to asylum.

138. Some of the basic rights entrenched in the Constitution correspond to the internationally protected human rights; some of them, such as the right to refuse, on grounds of conscience, to perform military service, and the right of asylum, go beyond the standard contained in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

(ii) Rights similar to basic rights

139. In addition to the basic rights which have been described, the Constitution at the same time protects so-called rights similar to basic rights, which are largely also established as human rights in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the International Covenant on Civil and Political Rights. These are the right to resist any person seeking to abolish the constitutional order (art. 20, para. 4, of the Basic Law), the active and passive right to elect (art. 38 of the Basic Law) and elementary guarantees of court procedure. The latter are also referred to as basic judicial rights. In accordance with article 19, paragraph 4, of the Basic Law, anyone whose rights have been violated by a public authority has recourse to the courts. The following are also guaranteed: the right to a lawful judge (art. 101 of the Basic Law), the right to a hearing in accordance with the law, a ban on retroactive punishment and on multiple punishments (art. 103 of the Basic Law), as well as certain legal guarantees in the event of deprivation of liberty (art. 104 of the Basic Law).

(iii) Equality rights

140. The general constitutional principle of equal treatment is guaranteed in article 3, paragraph 1, of the Basic Law. Additionally, article 3, paragraph 2, contains the principle of equal rights for men and women, as well as the obligation of the State to promote the actual implementation of equal rights for women and men and to take steps to eliminate disadvantages that now exist. Furthermore, a prohibition of discrimination is entrenched in article 3, paragraph 3, of the Basic Law, stating that no one may be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions, and that no one may be disfavoured (or favoured) because of disability. Article 33, paragraphs 1 and 2, of the Basic Law also provide that every German has the same civil rights and duties and is equally eligible for any public office in accordance with his/her aptitude, qualifications and professional achievements.

(iv) Economic rights

141. The freedom of economic activity of the individual is protected by article 2, paragraphs 1 and 12, of the Basic Law. Furthermore, article 14 of the Basic Law protects the position of ownership and regulates the prerequisites for expropriation.

## (v) Cultural rights

142. The freedom of art and scholarship is guaranteed by article 5, paragraph 3, of the Basic Law. Article 5, paragraph 3, of the Basic Law contains first of all a right to freedom for all artists and all those who participate in the performance and dissemination of works of art from intervention by public power in the artistic sphere. As an objective value-decision in favour of the freedom of art, it sets the modern State, which regards itself as a cultural State, the task of maintaining and encouraging free cultural life. Article 7, paragraph 4, of the Basic Law guarantees the right to establish private schools.

## (vi) Social rights

143. The social State principle, already explained at section I.B.9 above, and the freedom and equality rights of the Basic Law are interdependent. Particular significance attaches here to the elementary basic right contained in article 1, paragraph 1, of the Basic Law (human dignity). Thus, it is possible to derive from article 1, paragraph 1, of the Basic Law in conjunction with the social State principle the constitutional basis for the guarantee of a minimum standard of living. One should further mention the mandate of the State to protect marriage and the family and the welfare obligation towards mothers (art. 6, paras. 1 and 4, of the Basic Law), as well as the mandate to the legislature to create for children born out of wedlock the same conditions for their physical and mental development and their status in society as for those born in wedlock (art. 6, para. 5, of the Basic Law). Also to be listed are the freedom of association and the equality rights from article 3, paragraph 2, sentence 2, and paragraph 3, sentence 2 (promotion of the equal rights of women and men, prohibition of disadvantages for persons with disabilities) that are entrenched in article 9, paragraph 3, of the Basic Law.

(b) *Further development of basic rights*

144. The basic rights contained in the Basic Law are given concrete form and are further developed by decisions rendered by the domestic courts, especially by the Federal Constitutional Court. An example of the further development of the basic rights by the case-law is the right to self-determination with regard to information, derived from the right to free development of the personality in conjunction with article 1, paragraph 1, of the Basic Law, and the resulting power of individuals to decide for themselves about when, and within what limits, to disclose information regarding their lives. Another example is the right to integrity and confidentiality of information technology systems, developed by the Federal Constitutional Court in 2008 which, in the view of the Court, is also derived from the general right of personality. Both rights play an increasingly important role in a modern information society.

(c) *Relationship between basic rights and human rights*

145. The declaration of belief in human rights as the basis of every human community, as embodied in the Basic Law, contains not only the commitment to human rights, but also the legal obligation for Germany to contribute to the worldwide implementation of human rights. Accordingly, the Federal Republic of Germany has ratified the fundamental international conventions for the protection of human rights. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the protocols thereto, formulate political participation rights and personal liberty rights in general terms. By virtue of article 25 of the Basic Law, these rights take precedence over the ordinary statutes and directly create rights and duties for the inhabitants of the federal territory, to the extent that they can be interpreted as general rules of international law. The international instruments for the

protection of human rights provide a guide for national legislation. They must also be taken into account in interpreting the Basic Law, that is, in determining the content and the scope of the principle of the rule of law and of the basic rights, as well as in interpreting the ordinary statutes. In addition to ratification and national implementation, the Federal Government is also supporting the establishment of international norms in the field of human rights. Thus, for instance, it supports clarification of legal issues in connection with individual economic, social and cultural rights, such as the right to adequate housing and education. In this way, international human rights and basic rights complement and support one another.

(d) *Maintaining basic rights*

146. The Basic Law may only be amended by a qualified majority of the Federal Parliament and the Federal Council. An amendment to the Basic Law is inadmissible if it affects the structure of the Federation in Länder, the fundamental participation of the Länder in the legislation or the basic principles laid down in articles 1 and 20 of the Basic Law. Since the profession of the inviolable and inalienable nature of human rights (art. 1, para. 2. of the Basic Law) is among these basic principles, they are protected against their elimination or a reduction of their core content by means of a constitutional amendment.

147. The basic rights may, however, be restricted by ordinary legislation to the extent explicitly permitted by the Constitution. The legislature is, however, prohibited in accordance with article 19, paragraph 2, from encroaching on the essence of a basic right in all cases.

## 2. Implementation of basic rights in the German legal system

(a) *The binding nature of basic rights on State power*

148. The basic rights contained in the Basic Law constitute directly applicable law. They are directly binding on the legislature, the executive and the judiciary in accordance with article 1, paragraph 3, of the Basic Law. Independent courts ensure protection of basic rights. In particular, any person whose basic rights have been violated by State power has the right of recourse to the courts in accordance with article 19, paragraph 4, of the Basic Law.

149. The basic rights not only have direct effect, however; they also influence the application of statutes. These must be interpreted in the light of the constitutionally protected basic rights. As this applies to all statutes, the authorities and courts are continuously and directly concerned with the protection of these rights in applying the statutes and are bound by them. Respect for basic rights is thus not only at the heart of the written Constitution, but also of State activity in practice.

150. The courts must examine *ex officio* whether the statutory provisions which they have to apply are in compliance with the basic rights protected by the Basic Law. Where a court considers that a statute on whose validity the court's decision depends is in breach of the Basic Law, in accordance with article 100, paragraph 1, of the Basic Law, it must stay the proceedings and obtain a decision from the Federal Constitutional Court. Article 1, paragraph 3, of the Basic Law is, however, also binding on the legislature, so that those who assist in legislating must examine in detail whether a bill which is in preparation is constitutional. Where there are differences of opinion or doubts as to the compatibility of statutory provisions with the Basic Law, the Federal Constitutional Court takes a decision once the statute has been passed if the Federal Government, the government of a Land or one third of the members of the Federal Parliament apply for it to do so. All in all, the Federal Constitutional Court hence has prominent status in the implementation of human rights, which above all is supplemented by the fact that the decisions of the Federal

Constitutional Court are binding on the constitutional bodies of the Federation and the Länder, as well as on all courts and authorities, and indeed have the force of law subsequent to more detailed statutory provision.

(b) *The constitutional complaint as a special instrument protecting basic rights*

151. A further important instrument serving the protection of basic rights is the constitutional complaint. This allows any person to address the Federal Constitutional Court claiming that one of his/her basic rights guaranteed by the Basic Law or one of the rights under articles 20, paragraph 4, 33, 38, 101, 103 and 104 has been infringed by a public authority. In principle, all sovereign acts of the legislature, the executive and the judiciary may be challenged by this legal remedy. As an extraordinary legal remedy, it is in principle only admissible if the applicant has previously exhausted all other legal remedies in respect of the alleged violation of rights. Exceptionally, a constitutional complaint is admissible immediately if there is no other legal remedy, for instance in the case of a statute which directly affects a citizen's rights.

152. A constitutional complaint is conditional on its being accepted for adjudication by the Federal Constitutional Court. It must be accepted for adjudication if it is of fundamental constitutional significance or if it is necessary in order to implement basic rights or rights which have status equivalent to basic rights.

(c) *The binding nature of basic rights under civil law*

153. The basic rights have been created primarily in order to protect the individual against the exercise of State power. Nevertheless, basic rights must be adhered to in interpreting and applying the non-constitutional law applicable between private individuals (indirect effect of basic rights on third parties). In reaching their decisions, judges must interpret statutes, particularly general clauses and uncertain legal terms, in compliance with the general value system of the basic rights. The basic rights prohibition of discrimination is made more concrete through specific civil law anti-discrimination provisions.

(d) *Provisions on compensation*

154. Under German law, there is no separate compensation system applying when basic rights are violated, but the general provisions apply. For instance, where any person in the exercise of a public office entrusted to him/her culpably violates his/her official obligations to a third party, liability lies in principle with the State or with the public body employing him/her (art. 34, sentence 1, of the Basic Law and sect. 839 of the Civil Code (*Bürgerliches Gesetzbuch*)). The aggrieved party can demand compensation from the State.

**3. Other State bodies for the protection and promotion of human rights**

155. Because of the comprehensive judicial protection, no special State body with general competence for the protection of human rights is considered necessary. Under the German legal system, in principle individuals must themselves claim a violation of their rights. Assistance is provided by a highly developed network of legal professions and special interest groups. Provision has been made in specific areas for special procedures and institutions such as petition committees also serving to protect basic rights.

(a) *Petition committees*

156. In accordance with article 17 of the Basic Law, everyone has the right individually or jointly with others to address written requests or complaints to the competent agencies and to parliaments. Anyone who submits a petition has a right to have it processed and to receive a reply. There are therefore special petition committees in the Federal and Länder



parliaments whose members concern themselves with the matters brought forward by the petitioners.

157. The petition committee of the Federal Parliament can demand information from the Federal Government and from the federal authorities, as well as hearing petitioners, witnesses and experts. This affords it an additional opportunity to examine measures taken by the Federal Government and by other State agencies. Where the committee considers the petitioner's concerns to be justified, it may transfer the petition to the Federal Government and request it to consider the petition. In processing petitions, shortcomings in legislation or administration may come to light and be remedied by statutory provisions or administrative measures.

(b) *Commission in accordance with the Act relating to article 10 of the Basic Law*

158. A democratic, constitutional State also relies on the activity of the intelligence services to protect its citizens. Intelligence services cannot be monitored with the same means as the police. However, the German Federal Parliament has appointed a commission in accordance with article 10, paragraph 2, sentence 2, in order to maintain the privacy of letters, post and telecommunications protected by article 10 of the Basic Law. This review body examines and adjudicates, inter alia, complaints of individuals claiming a violation of rights under article 10 by intelligence service surveillance of which they were not informed at the time. This arrangement constitutes an exception to the fundamental power of the judge to order encroachments on the privacy of letters, post and telecommunications.

(c) *Committee of the Federal Parliament for Human Rights and Humanitarian Aid; human rights reports of the Federal Government*

159. The Federal Parliament established the Committee on Human Rights and Humanitarian Aid in the autumn of 1998. It sees human rights policy as a cross-sectional task, and is therefore involved in an extremely wide range of human rights aspects, covering foreign policy, foreign economic policy as well as development policy and domestic policy. It also constantly receives information from the Federal Government on the human rights situation in different countries, on centres of **crisis** for humanitarian aid and on the Federal Government's policy in these fields. In a dialogue with the Federal Government, the Committee also participates in the further development of national, European and international instruments for the protection of human rights and in the legal and political scrutiny of human rights infringements.

160. In its resolution of 5 December 1991, the Federal Parliament asked the Federal Government "to provide specific information on its human rights policy at least every two years at regular intervals". On 4 April 2001, the Federal Parliament asked the Federal Government to include in its human rights reports domestic policies to a greater extent than in the past. Borrowing from this, the eighth report of the Federal Government "on its human rights policy in foreign relations and other policy fields" was submitted to the German Federal Parliament on 16 July 2008. It can be accessed on the website of the German Federal Parliament ([www.bundestag.de](http://www.bundestag.de)) at printed paper number 16/10037.

(d) *Defence Commissioner of the Federal Parliament*

161. By means of article 45 b of the Basic Law, a special control body has been created for the federal Armed Forces in the form of the Defence Commissioner of the Federal Parliament. He is appointed by the Federal Parliament to safeguard the basic rights of soldiers and to assist the Federal Parliament in exercising parliamentary control. The Act on the Defence Commissioner (*Gesetz über den Wehrbeauftragten*) contains more precise provisions on appointment, legal position and tasks. He acts on instruction of the Federal Parliament or the Defence Committee for the examination of certain events. Furthermore,

he is obliged to act within his duty-bound discretion on becoming aware of circumstances pointing to a violation of the basic rights of soldiers or of the principles of internal management. He must inform the Federal Parliament of his findings by means of individual reports or in an annual report.

(e) *Federal Commissioner for Data Protection and Freedom of Information*

162. The task of the Federal Data Protection Commissioner, who is selected by the German Federal Parliament, is to monitor adherence by federal public agencies, by Deutsche Telekom AG and Deutsche Post AG to the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) and other provisions concerning data protection. The Data Protection Commissioner is to submit a report to the Federal Parliament on his activities every two years. He is independent in the exercise of his office and can only be released from duty at his own request or because of gross breach of duty. Observance of data protection provisions by the authorities of the Länder is controlled by the Länder commissioners.

(f) *Commissioner of the Federal Government for Human Rights*

163. The Federal Government's Commissioner for human rights policy and humanitarian aid in the Foreign Office is to observe the development in the field of human rights worldwide and to participate in the bilateral and multilateral human rights dialogue. He contributes to shaping human rights policy in international relations and maintains close contacts at home and abroad with institutions and groups active in this field. The Commissioner heads the German delegation to the United Nations Human Rights Council.

164. The Federal Government's Commissioner for Human Rights Issues in the Federal Ministry of Justice is the agent of the Federal Government to the European Court of Human Rights in Strasbourg. She is also responsible for applications in accordance with the Convention against Torture, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. In addition, the Commissioner for Human Rights Issues is responsible for several of the State reports on human rights to be submitted to the United Nations, namely the report on civil and political rights, the report on the elimination of all forms of racial discrimination, the anti-torture report and the common core document. She is also involved in the work of the intergovernmental committees of the Council of Europe to improve the protection of human rights.

(g) *Federal Government Commissioner for Migration, Refugees and Integration*

165. The Commissioner for Migration, Refugees and Integration supports the Federal Government in its efforts in respect of policy on foreigners and makes proposals for the further development of national and European integration policy. She is a contact for creating the conditions to enable foreigners and Germans to live together without tension. In particular, she also suggests and supports initiatives for integration in the Länder and in local communities, as well as in groups within society, in order to further the mutual understanding of Germans and foreigners.

(h) *Federal Government Commissioner for Repatriation Issues and National Minorities in Germany*

166. The Federal Government Commissioner is responsible for ethnic German resettlers and repatriates, for the German minorities in the resettlers' areas of origin, as well as for the national minorities in Germany.

167. For ethnic German resettlers and repatriates, he is a central contact at federal level, and is responsible for coordinating measures related to resettlers, in particular acceptance in accordance with the Federal Expellees Act and for integration.

168. He campaigns for the promotion of understanding of the history and situation of Germans from the countries of Central and Eastern Europe, and from the successor States of the Soviet Union, and takes care of the German minorities in these countries.

169. The Commissioner is also the focal point for the national minorities in Germany: Danes, Frisians, Sorbs and Sinti and Roma.

(i) *Commissioner of the Federal Government for the Interests of the Disabled*

170. The Commissioner of the Federal Government for the Interests of the Disabled has the task of working towards the fulfilment in all spheres of life of the Federation's obligation to ensure equivalent living conditions for people with and without disabilities. This includes measures to take into account different living conditions of disabled men and women and to eliminate gender-specific disadvantages.

(j) *Anti-discrimination Agency of the Federation*

171. The Federation's Anti-discrimination Agency is an independent federal agency to protect against racial discrimination or disadvantage because of ethnic origin, disability, age, religion or belief, gender or sexual identity. It was established on the entry into force of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) in August 2006.

172. Individuals who consider themselves to have been discriminated against, or who have questions about the General Equal Treatment Act, can approach the Federation's Anti-discrimination Agency. Entrepreneurs also find at [www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de) a guideline answering fundamental questions on the implementation of the General Equal Treatment Act.

173. The Federation's Anti-discrimination Agency provides information to the public with publications, events and campaigns on the fact that equal treatment is a basic right. Over and above this, the Anti-discrimination Agency inspects research on the topic of discrimination/equal treatment, identifies gaps in research and works towards closing them. Once per legislative period, the Anti-discrimination Agency submits a report to the Federal Government and the German Federal Parliament.

#### **4. German Institute for Human Rights**

174. The German Institute for Human Rights has been in existence since 2003 as an independent national human rights institution. Through publications, academic research projects, public seminars, educational programmes, specialist discussions and other ways in which it advises policy-makers, the Institute provides substantial contributions towards the process of forming public opinion in areas relevant to human rights. The field of human rights education takes a prominent place in the work of the Institute. This includes general information and educational services, as well as offers for work with children and young people and for specific occupational areas, such as the police, the media or development cooperation. The Institute also pays considerable attention to strengthening the European and international human rights mechanisms.

175. The German Institute for Human Rights receives its basic financing from the State, but determines its work projects independent of any State influence. Its managerial board is composed of personalities from non-governmental organisations, academic circles or politics. Federal Ministries and the Federal Council are also represented without the right to vote.

## 5. Non-governmental organisations

176. An especially important role in the protection of human rights is played by organisations within society which in addition to international bodies work towards worldwide protection of human rights. Non-governmental organisations are increasingly influential worldwide. They not only provide assistance in individual cases of concrete violations of human rights, but make important contributions to the establishment of standards by multilateral institutions. Non-governmental organisations also make comprehensive contributions to the protection of human rights in the context of development cooperation.

177. On the occasion of the World Conference on Human Rights held in Vienna in June 1993, 19 human rights organisations of the Federal Republic of Germany joined forces in a "Human Rights Forum", which now has 50 member organisations. This working group of non-governmental organisations aims at improved and comprehensive protection of human rights worldwide, in particular regions of the world and in individual States, as well as in the Federal Republic of Germany. The Federal Government attaches great importance to cooperation with non-governmental organisations. Non-governmental organisations participate for instance in drawing up the State reports by means of consultation.

## 6. European Court of Human Rights

178. The Federal Republic of Germany has not only taken on extensive obligations to protect human rights, but has also granted powers to international control bodies. Particular significance is assumed here by the European Court of Human Rights, which is the guardian of adherence to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Both individual applicants and the contracting States can complain of breaches of the Convention. The Committee of Ministers oversees the enforcement of the judgments, to which the contracting States have undertaken an obligation. The number of judgments against Germany by the European Court of Human Rights is low, both in absolute numbers (2007: 7), and with regard to the number of inhabitants. The European Court of Human Rights makes available in its annual reports extensive statistical data regarding the cases with which it has dealt. The reports also provide appropriate information regarding the German proceedings. They can be downloaded on the Court's website (<http://www.echr.coe.int/echr>).

## 7. Information and publications on human rights

179. The Basic Law and the basic rights are covered in detail in school. Each pupil receives a copy of the Basic Law and of the constitution of his/her Land. Teaching materials in the area of human rights are supplied for non-school education by the German UNESCO Commission in Bonn.

180. The work of the Federal Central Agency for Political Education (Bundeszentrale für politische Bildung) is of particular significance. This agency distributes documentation and declarations of the United Nations and of the Council of Europe to all free of charge or for a small fee, as well as descriptions of the protection and support of human rights. A collection of the texts of human rights conventions and other Council of Europe and United Nations documents has appeared as a supplement to the Federal Bulletin (*Bundesanzeiger*). The text of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols is also distributed in various languages, including German, by the Council of Europe in Strasbourg, and can be sent through the post on request. These texts are also available via the Federal Ministry of Justice.

181. The Federal Government publishes the reports which it submits to the United Nations, in compliance with its obligations arising from the individual conventions. Some

of these reports are distributed in brochure form, and the reports, including the final observations of the United Nations committees, are also published on the Internet in German and English ([www.auswaertiges-amt.de](http://www.auswaertiges-amt.de) and [www.bmj.bund.de](http://www.bmj.bund.de)). The eighth report of the Federal Government on human rights policy in foreign relations and other policy fields is also available on the Internet. A print version has also been published.

## **8. Human rights education**

182. All the Länder in the Federal Republic of Germany view education on respect for human dignity to be a substantial task and a major goal of schools. The group of topics is entrenched in the curricula of the relevant subjects of all types and grades of school, and is also the subject of a large number of extracurricular projects and initiatives.

183. A major contribution towards human rights education is also made by the German Institute for Human Rights (see paras. 174–175 above). Its educational offerings target, for instance, children and juveniles or specific professional groups. For example, the educational work of the German Institute for Human Rights is supplemented by further training measures of the corresponding professional associations and trade unions.

184. Another element of human rights education is, at the same time, the human rights education of office-holders, which differs depending on the career path. Thus, human rights are a fixed element of basic and further training of the prison and police services. Further training of judges and public prosecutors is provided by the German Academy of Judges, which includes human rights aspects in its programmes.

## **9. Awareness-raising of human rights issues by the mass media**

185. The media carry out special functions and tasks in society. They serve the free individual and the formation of public opinion and typify people's attitudes and modes of conduct. This also applies with regard to human rights, which are regularly discussed in the media and in various forms and genres. Thus, human rights issues are not only the subject of current news reporting, but are also dealt with in detail in documentaries, fictional productions (for instance crime series), discussion programmes, as well as discussion forums. Further examples, specifically in the field of broadcasting (radio and television), are the many weekly magazine programmes in established slots which create contributions from home and abroad regarding topics relevant to human rights, such as social standards or cultural self-determination rights. Over and above this, in broadcasting and in the press and on the Internet, major sporting events – such as the Olympic Games – are taken as an opportunity to impart to the users of these media the cultural, social and societal situation of the venue.

186. A significant factor in the efforts to create significance and bring about the implementation of human rights in even more countries of the world is, finally, the Deutsche Welle international broadcaster. By means of training offered for foreign journalists, Deutsche Welle's international training institute, the DW-Akademie, promotes the worldwide promotion of freedom of opinion. Its projects make a contribution towards greater openness, transparency and participation in the electronic media of developing countries and countries in transition.

## **10. Development cooperation**

187. The Federal Ministry for Economic Cooperation and Development, which is responsible for development cooperation, understands the protection and promotion of basic rights as a cross-sectional topic of its development policy. All in all, €520 million have been provided for projects relevant to human rights in 2008, and roughly €628.5 million are earmarked for 2009. A comparison with the figures of the previous year 2007,

when a total of roughly €400 million were spent on development cooperation relevant to human-rights, shows that the realisation of basic rights in development cooperation is on a sound financial footing.

188. Over and above the human rights commitment, reflected in budget figures, the Federal Ministry for Economic Cooperation and Development in 2004 anchored the human rights approach in German development policy. This means the systematic implementation of all human rights and human rights principles in sectoral and country cooperation. With the second development policy action plan for human rights (2008–2010), the Ministry confirms this undertaking and makes a committed contribution towards implementing civil, political, economic, social and cultural rights in development cooperation. Projects to implement women's and children's rights take on major importance here.

## **C. Reporting process at national level**

### **1. Reporting**

189. The drafting of this report was coordinated in the Federal Ministry of Justice with the participation of the other federal ministries and authorities of the Federation within its remit. It is based on contributions from the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Education and Research, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Finance, the Federal Ministry of Health, the Federal Ministry of the Interior, the Federal Ministry of Justice, the Federal Ministry for Economic Cooperation and Development, the Federal Office of Justice, the Federal Statistical Office, the Commissioner of the Federal Government for Culture and the Media and the Anti-discrimination Agency of the Federation. Additionally, data from the Roman Catholic Church, the Protestant Church, the Jewish religious community, of the Religionswissenschaftlicher Medien- und Informationsdienst e.V. (Religious Studies Media and Information Service – REMID) and the Forschungsgruppe Weltanschauungen in Deutschland (Research Group on World Views in Germany – fowid) were used for figures on religious affiliation.

190. The report will be sent for information to the Committee on Human Rights and Humanitarian Aid of the German Federal Parliament, the German Institute for Human Rights and the Human Rights Forum, once it has been adopted by the Federal Government. Furthermore, the common core document will be publicly available on the Internet in German and English at ([www.auswaertiges-amt.de](http://www.auswaertiges-amt.de) and [www.bmj.bund.de](http://www.bmj.bund.de)).

### **2. Follow-up measures to the final remarks of the participating bodies**

191. The final remarks and recommendations of the participating bodies are systematised and analysed in the preparations for the drafting of the respective subsequent State report. If the individual recommendations require corresponding implementation measures, these will be carried out. The results of the corresponding measures will then be input into the respective State report.

### III. Information regarding non-discrimination and equality

#### A. Anchoring of the protection of equality and of non-discrimination in legal provisions

##### 1. Constitutional law

192. The principles of equality and non-discrimination are guaranteed by the Constitution of the Federal Republic of Germany. The principle of equality contained in article 3, paragraph 1, of the Basic Law explicitly provides that all persons are equal before the law. It is supplemented by various specific equality principles, including the prohibition of discrimination contained in article 3, paragraph 3, of the Basic Law (see the information on freedom and equality rights, as well as the rights similar to basic rights and social rights above in section II.B.1) Both principles are structured as basic rights and directly applicable law. The legislature, the executive and the judiciary are directly bound by them on the basis of the binding clause contained in article 1, paragraph 3, of the Basic Law. Article 3, paragraph 1, and article 3, paragraph 3, of the Basic Law do not distinguish between those who have been singly and multiply discriminated against, its protection covering both groups of individuals.

193. With regard to the exercise of political rights, the specific principle of equality of elections gains significance in particular (see on this the information on the electoral system dealt with above). It typifies both the active and passive right to vote.

194. Economic, social and geographical disparities can be countered in federal legislation. However, to protect the legislative powers of the Länder, the use of federal legislative competences is partly contingent on a provision of federal law being necessary to create equivalent circumstances on federal territory or to safeguard legal or economic unity. This applies, for instance, to the field of public services, the law on the economy or State liability law.

##### 2. Non-constitutional law

195. Manifestations of constitutional equality principles can be found in many forms in non-constitutional law. Examples that can be mentioned are the provisions of the Life Partnership Act (*Lebenspartnerschaftsgesetz*), which applies to same-sex cohabitation, the provisions of the Act on Equal Rights of Persons with Disabilities (*Behindertengleichstellungsgesetz*), or those of the Criminal Code. Particular attention should be paid to the assessment-of-punishment rule contained in section 46 of the Criminal Code, which enables the court in sentencing the offender to consider racism as an aggravating circumstance.

196. A special position in protection of equality and against discrimination is assumed by the General Equal Treatment Act, which serves the implementation of four European anti-discrimination directives<sup>16</sup> and entered into force on 18 August 2006. The General Equal Treatment Act, which covers in terms of its area of applicability labour law and parts of

<sup>16</sup> Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Anti-Racism Directive), Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Framework Directive), Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

civil law, amongst other things, creates a comprehensive anti-discrimination law in Germany for the first time.

197. The first Part of the General Equal Treatment Act formulates the objective of preventing or eliminating disadvantages for reasons of race or of ethnic origin, gender, religion or belief, disability, age or sexual identity. Further, the area of application and the definitions of direct and indirect discrimination, harassment and sexual harassment are established. Part 2 of the Act contains labour law provisions on the protection of employees against disadvantages. At the same time, the measures and obligations of the employer, as well as the rights of employees, are described therein. The core is formed by the provisions on compensation and damages (sect. 15 of the General Equal Treatment Act), which link the requirements of the EU directives with German compensation law. The third Part of the Act contains provisions on protection against disadvantages in civil legal transactions. Prohibitions against specific disadvantages under civil law are entrenched in accordance with the prerequisites of the Anti-racism Directive 2000/43/EC and the Unisex Directive 2004/113/EC on gender equality outside employment. Here, the prohibition of disadvantage in civil law covers all characteristics with the exception of belief (sect. 19 of the General Equal Treatment Act). The fourth Part of the Act deals with legal protection of those concerned, which has been improved in a sustained manner by virtue of the introduction of the General Equal Treatment Act. Victims are now able to claim the support of the anti-discrimination associations. Anti-discrimination associations are empowered, within the context of their statutes, to appear in court proceedings as counsel for the disadvantaged in the hearing. The General Equal Treatment Act, however, does not provide for a right to join proceedings. Furthermore, with gross violations of the General Equal Treatment Act, the works council and the trade union represented in the company have recourse to the labour court (sect. 17, subsect. 2, of the General Equal Treatment Act). Section 22 of the General Equal Treatment Act introduces an alleviation of the burden of proof. If ancillary facts are put forward and proven providing evidence that disadvantage has taken place because of gender, the other party bears the burden of proof that there has been no violation. The fifth Part of the Act contains special regulations for employment under public law. Finally, the legal status, tasks and powers of the Anti-discrimination Agency of the Federation are entrenched in the sixth Part of the Act.

## **B. Institutional anchoring of the protection of equality and non-discrimination**

198. Protection of equality and of non-discrimination is guaranteed by a variety of different agencies in the Federal Republic of Germany. At federal level, both the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Labour and Social Affairs and the Federal Ministry of Justice deal with questions relating to the protection of equality and of non-discrimination. Over and above this, all draft bills and ordinances of the Federal Government are examined by the Federal Ministry of Justice for their compatibility with constitutional, international and European law. The subject of this examination is also respect for the principles of equality and non-discrimination.

199. The Federal Government Commissioner for Migration, Refugees and Integration is entrusted with the task of countering unequal treatment of foreigners, whilst the Federal Government Commissioner for Repatriation Issues and National Minorities is committed to the interests of ethnic German resettlers and members of national minorities. The Commissioner of the Federal Government for the Interests of the Disabled is committed to bringing about equivalent circumstances for people with and without disabilities. A major role is also played by the Anti-discrimination Agency of the Federation in combating discrimination, whose function as an ombudsman and advisor has already been fully



discussed at section II.B.3 above. It is supported in its advisory function by the work of the local anti-discrimination agencies.

### **C. Educational programmes and information campaigns**

200. At federal level, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth makes available a large amount of information material on the topic of equality which can be acquired free of charge, either via the Internet ([www.bmfsfj.de](http://www.bmfsfj.de)) or by having publications mailed by the Federal Government. For instance, information is offered on equal opportunities of women in managerial positions or on the annual Girls' Day, which enables schoolgirls from fifth grade onwards nationwide to obtain information on professions in technology and natural sciences. On the campaign day, enterprises and organisations open up all areas in which women are so far under-represented.

201. A further example of the human rights work of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is formed by the First Action Plan to Combat Violence against Women, which entered into force on 1 December 1999. It constitutes for the first time a comprehensive political programme in which measures taken by the Federal Government to combat violence towards women are systematically summarised, announced and published. This action plan has now been completely implemented and will be continued by Action Plan II to Combat Violence against Women, which was adopted on 26 September 2007.

202. The Anti-discrimination Agency of the Federation has published a guideline to the General Equal Treatment Act containing explanations and examples. This can be ordered free of charge at [www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de) or [publikationen@ads.bund.de](mailto:publikationen@ads.bund.de). Over and above this, the publication of brochures for employees and for juveniles is planned for 2009. Further, the Anti-discrimination Agency of the Federation is currently constructing an information database to make it easier for everyone who is interested in the topic of discrimination to search for judgments, press releases, research reports and reference material on the topic. The Anti-discrimination Agency of the Federation has also commissioned the organisation of a picture campaign. In this context, a national poster campaign is being planned in order to increase awareness of the Agency. With the same aim in mind, a short film, which has already been made, is to be launched in German cinemas in the second quarter of 2009. Finally, events and congresses are also to be held.

203. The Federal Ministry of Labour and Social Affairs provides extensive information on the equality of people with disabilities which can be obtained directly from the Ministry or via the Internet ([www.bmas.de](http://www.bmas.de)). In particular, the brochure entitled "A Guide for People with Disabilities" provides extensive information on all benefits and assistance to which people with disabilities are entitled. The brochure describes care and early diagnosis, medical rehabilitation, schooling and vocational training, vocational promotion and tax breaks, and it also contains excerpts of the corresponding legal texts.

204. In order to support an actual improvement in the opportunities for people with disabilities to participate in working life on the general labour market, the Federal Ministry of Labour and Social Affairs has been coordinating the "Jobs without barriers" initiative since mid-2004. The initiative aims to bring about an increase in employers' willingness to train, and to improve in-house training available to juveniles with a disability, as well as to improve the employment of persons with serious disabilities, in particular in small and medium-sized enterprises. What is more, in-house prevention to maintain the employability of the staff in enterprises, companies and service units is to be promoted by introducing in-house integration management.

**D. Legal recourse**

205. Reference is made to the information provided in section II.B.2 with regard to the implementation of the protection of equality and of non-discrimination.

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