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A. General information about the Federal Republic of Germany

I. Geographical, historical, demographic, social, cultural, economic and judicial characteristics

1. Geographical category

- 1 The Federal Republic of Germany has an area of 357,104.07 km², 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. Especially the up to 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 particularly reflected 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 had become 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 by the experience not only from 1919 to 1933 in the area of application of the Weimar Reich Constitution, but also by the signals going out 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 contents of the Basic Law. It 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 the 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 early in October 1989 the GDR leaders celebrated the 40th 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 million inhabitants on 31 December 2007. The population hence fell by 0.12 percent in comparison to the previous year. There was

also a slight drop with regard to population density, which fell to 230 inhabitants per sq km in 2007. The comparative figures of the preceding years are contained in the table below:

Year	Population size (in millions)	Population growth rate (in percent)	Inhabitants (per km ²)
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 percent of the population lived in the rural territories of Germany in 2007. In the semi-urban – that is semi-densely settled – territories, the population share was 35.75 percent; in the urban territories, the population share was 49.14 percent.
- 12** The number of persons under 15 was 11.282 million (male: 5.789 million, female: 5.493 million) in the same year; that of 65-year-olds and older was 16.519 million persons (male: 6.945 million, female: 9.574 millions). The population groups named above can be compared with 54.417 million persons in the age group of 15- to 64-year-olds (male: 27.541 million, female: 26.877 million). For 2007 this leads to a quotient of dependants (the ratio of the population under 15 and from 65 upwards to the population aged from 15 to 64) of 51.1.
- 13** 8.3 live births, as well as 10.1 deaths, per 1,000 inhabitants were recorded in the Federal Republic of Germany in 2007. The number of births and deaths of the preceding years can be found in the table below:

Year	Birth-rate (live births per 1,000 inhabitants)	Mortality (deaths per 1,000 inhabitants)
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 76.9.¹

b. Shares of the population with foreign nationality

15 Statistical data on the ethnic composition of the population living in Germany are not collected with regard to 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 under report 2007:

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

¹ The average life expectancy stated relates to the period under report from 2005 to 2007. The calculation takes place in each case for a three-year period.

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

Year	Share of the foreign population among the total population		
	Total	Male	Female
	(in persons)	(in persons)	(in persons)
2006	7,255,949	3,737,409	3,518,540
2005	7,289,149	3,766,501	3,522,648
2004	7,287,980	3,786,456	3,501,524
2003	7,341,820	3,840,068	3,501,752

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 under report 2007:

Religious community	No. of members	No. of members
	(in persons)	(in percent)
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 statement of the number of members of the Roman Catholic Church, the Protestant Church and the Jewish religious community are 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. It was 32.5 percent in 2005.

4. Social and cultural characteristics

a. Most frequent causes of death

19 The ten most important causes of death in the Federal Republic of Germany are broken down in the table below:²

Cause of death	2003 (deaths)	2004 (deaths)	2005 (deaths)	2006 (deaths)	2007 (deaths)
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)

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

	17,437	17,768	17,700	17,553	17,029
Malignant	(m: 264)	(m: 176)	(m: 245)	(m: 267)	(m: 249)
tumour of the	(f: 17,173)	(f: 17,592)	(f: 17,455)	(f: 17,286)	(f: 16,780)
mammary gland					

b. Infant and maternal mortality rate

20 The mortality 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 percent of women and 73 percent of men or their partners used birth control in 2007.³

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. Numbers of cases of reportable infectious disease

23 All infectious diseases listed in section 6 of the Infection Protection Act (*Infektionsschutzgesetz*) and the evidence of pathogens named in section 7 are reportable in the Federal Republic of Germany. The following case numbers emerge in the last five years as to these reportable illnesses:

³ 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 past twelve months.

Reportable illness ⁴	Year					
	2007			2006		
	total	male	female	total	male	female
Adenovirus in the conjunctival smear	375	189	185	574	268	306
Botulism	9	6	3	6	2	4
Brucellosis	21	13	8	37	14	23
Campylobacter enteritis	66,128	34,177	31,823	52,059	27,252	24,762
Cholera	2	1	1	1	1	0
CJD	99	43	56	98	40	58
Dengue fever	264	133	131	175	102	73
Diphtheria	2	0	2	0		
Ebola fever	0			0		
E. coli enteritis	6,435	3,275	3,099	6,473	3,400	3,051
Echinococcosis	93	45	48	130	64	65
EHEC (not incl. HUS)	839	411	427	1,180	560	615
Fleck typhus	0			0		
FSME	238	151	87	546	340	206
Yellow fever	0			0		
Giardiasis	3,654	2,090	1,547	3,670	2,066	1,595
Haem. influenzas	93	47	46	121	68	53
Hantavirus	1,688	1,227	458	72	55	17
Hepatitis A	939	459	478	1,229	662	559
Hepatitis B	1,003	690	309	1,184	808	373
Hepatitis C	6,868	4,128	2,696	7,562	4,585	2,956
Hepatitis D	9	5	4	21	15	6
Hepatitis E	73	49	24	51	33	18
Hepatitis Non A-E	0			0		
HUS, enteropathic	44	22	21	63	37	26
Influenza	18,900	9,694	9,115	3,805	2,026	1,778
Cryptosporidiosis	1,459	754	701	1,204	605	596
Lassa fever	0			1	1	
Lice relapsing fever	0			0		
Legionellosis	535	374	161	577	393	184
Leprosy	0			2	2	

⁴ 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.

Leptospirosis	166	116	50	46	36	10
Listeriosis	356	207	149	513	286	227
Malaria	541	364	173	569	379	188
Marburg fever	0			0		
Measles	566	251	315	2,308	1,218	1,088
Invasive meningococcus	439	234	205	555	308	247
Anthrax	0			0		
Norovirus gastroenteritis	201,227	72,364	128,214	75,865	25,928	49,838
Ornithosis	12	9	3	26	16	10
Paratyphoid fever	72	38	34	73	41	32
Plague	0			0		
Poliomyelitis	0			0		
Query fever	83	53	30	204	119	85
Rotavirus	59,368	29,305	29,833	67,030	33,163	33,794
Rubella, connatal infection	0			1	1	
Salmonellosis	55,408	26,459	28,778	52,607	25,441	27,070
Shigellosis	869	392	475	817	368	448
Syphilis	3,278	3,010	266	3,165	2,835	328
Rabies	1	1		0		
Toxoplasmosis, connatal infection	20	7	13	11	7	4
Trichinellosis	10	5	5	22	12	10
Tularaemia	20	13	7	1		1
Abdominal typhus	59	32	27	75	44	31
Atrial fibrillation	32	11	21	53	26	27
Yersiniosis	4,988	2,730	2,243	5,162	2,788	2,365
TOTAL	437,285	193,584	242,271	289,944	136,415	153,127

Reportable illness ^{5 6}	Year								
	2005			2004			2003		
	total	male	female	total	male	female	total	male	female
Adenovirus in the conjunctival smear	138	71	67	658	488	168	397	184	213
Botulism	24	17	7	6	4	2	8	3	5
Brucellosis	31	13	18	32	25	7	27	15	12
Campylobacter enteritis	62,147	32,784	29,334	55,808	29,395	26,400	47,937	25,464	22,456
Cholera	0			3	2	1	1	1	0
CJD	91	39	52	81	37	44	78	34	44
Dengue fever	144	79	65	121	66	55	131	63	68
Diphtheria	1	0	1	1	1	0	0		
Ebola fever	0			0			0		
E. coli enteritis	5,883	3,000	2,879	5,584	2,836	2,743	5,477	2,897	2,579
Echinococcosis	126	56	69	105	43	59	85	41	43
EHEC (not incl. HUS)	1,161	551	608	926	453	473	1,140	585	555
Fleck typhus	0			0			1	1	0
FSME	432	288	144	275	182	93	277	187	90
Yellow fever	0			0			0		
Giardiasis	4,520	2,416	2,100	4,627	2,498	2,126	3,219	1,804	1,411
Haem. influenzas	71	38	33	67	39	27	77	46	31
Hantavirus	447	323	124	242	167	75	144	110	34
Hepatitis A	1,218	602	614	1,939	1,044	895	1,368	776	592
Hepatitis B	1,234	827	404	1,274	866	407	1,314	908	405
Hepatitis C	8,305	5,007	3,287	9,038	5,430	3,600	6,917	4,128	2,779
Hepatitis D	15	10	5	8	7	1	10	8	2
Hepatitis E	54	30	24	53	34	19	33	27	6
Hepatitis Non A-E	0			0			0		
HUS, enteropathic	79	35	44	55	21	34	82	48	34
Influenza	12,736	6,593	6,134	3,494	1,846	1,647	8,488	4,421	4,067
Cryptosporidiosis	1,309	655	654	936	456	480	885	445	440
Lassa	0			0			0		
Lice relapsing fever	0			1	1		0		
Legionellosis	559	376	183	477	314	163	396	272	124

⁵ 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.

⁶ Since not all reports state gender, the total number may be higher than the total of numbers given as “female” and “male”.

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
Invasive meningococcus	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
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
Rabies	4	2	2	1	1		0		
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
Abdominal typhus	80	48	32	82	42	40	66	37	29
Atrial fibrillation	0			0			0		
Yersiniosis	5,629	3,056	2,572	6,184	3,355	2,829	6,577	3,462	3,112
TOTAL	283343	138060	145054	258237	124427	133648	243047	119265	123609

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 emerge⁷:

Year	Cases	Incidence rate cases per 100,000 inhabitants
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

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

25 The incidences of new AIDS infections are estimated as follows:

Year	Cases	Incidence rate cases per 100,000 inhabitants
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

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

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

26 The incidence rates of newly-diagnosed tuberculosis cases have been distributed as follows in recent years⁸:

Year	Cases	Incidence rate (cases per 100,000 inhabitants)
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)

27 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

28 The education system in the Federal Republic of Germany is sub-divided 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.

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

The proximity to vocational practice and to the employment system here frequently ensure 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.

- 29** The public funds in the educational sector are not only spent on public schools, as certain private schools also receive considerable state support.
- 30** 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.
- 31** A total of 806,000 pupils and students in the Federal Republic of Germany received assistance under the Federal Education Promotion Act in 2007. Euro 2.2 billion was spent on these benefits in the same year. Of this sum, Euro 697 million was accounted for by the promotion of pupils, and roughly Euro 1.49 billion by the promotion of students. Pupils received an average of Euro 301, and students Euro 375 per month.
- 32** 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	Populati on on 31.12.20 06	School kinder gartens , prelimi nary classes	Primar y schools	Secon dary genera l school s ¹⁾	Types of school with several streams	Special schools	Interme diate schools	Gramm ar schools	Integra ted compr ehensi ves ²⁾	Evenin g school s and univer sity entan ce prepar ation college s
	1,000				% of the population of this age					
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 - 0	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 - 1	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 - 2	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 - 3	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 - 4	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 - 5	843 (m: 432) (f: 411)	-	-	21.5 (m: 23.7) (f: 19.2)	6.4 (m: 6.7) (f: 6.1)	5.6 (m: 6.9) (f: 4.2)	25.2 (m: 24.3) (f: 26.1)	31.1 (m: 28.3) (f: 34.1)	9.0 (m: 9.0) (f: 9.1)	-
15 - 6	877 (m: 450) (f: 427)	-	-	19.0 (m: 21.2) (f: 16.7)	6.4 (m: 6.6) (f: 6.1)	5.3 (m: 6.5) (f: 4.0)	24.9 (m: 24.0) (f: 25.9)	29.3 (m: 26.3) (f: 32.5)	9.0 (m: 9.0) (f: 9.1)	-

1 6	-	1 7	966 (m: 496) (f: 470)	-	-	10.3 (m: 11.6) (f: 9.0)	4.7 (m: 5.1) (f: 4.3)	3.4 (m: 4.1) (f: 2.6)	16.1 (m: 16.1) (f: 16.2)	28.6 (m: 25.2) (f: 32.1)	7.2 (m: 7.1) (f: 7.2)	-
1 7	-	1 8	957 (m: 490) (f: 467)	-	-	3.0 (m: 3.4) (f: 2.6)	1.1 (m: 1.3) (f: 0.9)	1.6 (m: 1.9) (f: 1.3)	4.8 (m: 5.2) (f: 4.4)	27.5 (m: 23.9) (f: 31.3)	4.3 (m: 4.0) (f: 4.5)	-
1 8	-	1 9	987 (m: 506) (f: 481)	-	-	0.4 (m: 0.5) (f: 0.4)	0.2 (m: 0.2) (f: 0.1)	0.9 (m: 1.0) (f: 0.7)	0.7 (m: 0.8) (f: 0.6)	24.4 (m: 21.2) (f: 27.8)	3.0 (m: 2.7) (f: 3.4)	0.6 (m: 0.6) (f: 0.5)
1 9	-	2 0	974 (m: 499) (f: 475)	-	-	-	-	0.3 (m: 0.3) (f: 0.2)	-	13.7 (m: 12.6) (f: 14.8)	1.8 (m: 1.6) (f: 2.0)	0.4 (m: 0.4) (f: 0.4)
2 0	-	2 1	968 (m: 493) (f: 475)	-	-	-	-	0.1 (m: 0.1) (f: 0.1)	-	2.6 (m: 2.7) (f: 2.4)	0.5 (m: 0.5) (f: 0.5)	0.5 (m: 0.5) (f: 0.5)
2 1	-	2 2	948 (m: 482) (f: 466)	-	-	-	-	0.1 (m: 0.1) (f: 0.1)	-	0.4 (m: 0.4) (f: 0.3)	0.1 (m: 0.1) (f: 0.1)	0.7 (m: 0.7) (f: 0.7)
2 2	-	2 3	955 (m: 485) (f: 470)	-	-	-	-	-	-	0.0 (m: 0.0) (f: 0.0)	0.0 (m: 0.0) (f: 0.0)	0.7 (m: 0.7) (f: 0.7)
2 3	-	2 4	972 (m: 492) (f: 480)	-	-	-	-	-	-	0.0 (m: 0.0) (f: 0.0)	0.0 (m: 0.0) (f: 0.0)	0.7 (m: 0.7) (f: 0.7)
2 4	-	2 5	1 005 (m: 509) (f: 496)	-	-	-	-	-	-	-	-	0.6 (m: 0.6) (f: 0.6)

1) incl. orientation grade regardless of type of school

2) incl. independent waldorf schools

33 23.7 percent 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 percent 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 percent (14,068), and the general qualification to attend a university was obtained by 26.8 percent of graduates (258,980). In the same period, 7.3 percent of the pupils left the secondary general school without a suitable qualification (70,547). The comparative figures of the previous years are found in the table below:

Year	Leavers without secondary general school qualification (share in percent)	Graduates with secondary general school qualification (share in percent)	Graduates with intermediate school qualification (share in percent)	Graduates entitled to attend a <i>Fachhochschule</i> (share in percent)	Graduates entitled to attend a university (share in percent)
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

34 The ratio between teachers and pupils is broken down as to educational field and type of school. For instance, there were an average of 19.0 pupils per primary school teacher in the general schools in 2007. In the secondary general schools, it was one 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 were an average of 13.5 pupils per teacher. The following pupil-teacher ratios have emerged in previous years:

Year	Primary schools (pupils per teacher)	Secondary general schools (pupils per teacher)	Intermediate schools (pupils per teacher)	Grammar schools (lower secondary) (pupils per teacher)	Grammar schools (higher secondary) (pupils per teacher)
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

35 The class size in the general school sector was an average of 21.9 pupils per class in the same year under report (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 a value of 26.9 and 27.4 pupils, respectively, per class. The comparative data of the previous years are listed in the table below:

	Primary schools (pupils per class)	Secondary general schools (pupils per class)	Intermediate schools (pupils per class)	Grammar schools (lower secondary) (pupils per class)	Grammar schools (supper secondary)⁹ (pupils per class)
Year					
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	-

g. Literacy rate

36 As to the German population, the manifestation almost exclusively occurring in the Federal Republic of Germany is that of 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 of promotion in the field of adult education for development tasks in research and science. The Federal Ministry of Education and Research is making a total of Euro 30 million available for literacy and fundamental training work up to 2012.

h. Social security

37 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 Art. 20 para. 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 for its citizens¹⁰. 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.

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

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

- 38** 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 – in relation to a population of 82.2 million – to a share of a good 10 percent. 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.
- 39** Indications of the share of the population living below the national poverty line can be indirectly deduced from the rate of those who are at risk from poverty, which was 12 percent in 2004 and 13 percent in 2005. The basis for the stated percentages is formed by 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 sub-divided into a part which is at risk of poverty and a part which is not. Here the share of those at risk of poverty have at their disposal less than 60 percent of the median net equivalence income (weighted in accordance with the new OECD scale) of the total population.
- 40** 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):

Social protection benefits	2002	2003	2004	2005	2006
	(share of GDP in percent)	(share of GDP in percent)	(share of GDP in percent)	(share of GDP in percent)	(share of GDP in percent)
(by functions)					
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 dependants	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
Total	29.0	29.3	28.7	28.5	27.6

41 In millions of Euros, the social protection benefits provided in recent years are broken down as follows:

Social protection benefits	2002	2003	2004	2005	2006
	(in bill. Euro)	(in bill. Euro)	(in bill. Euro))	(in bill. Euro)	(in bill. Euro)
(by functions)					
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
Total	621.2	634.7	634.4	640.3	640.6

i. Composition and consumption conduct of households

42 Average household size in the Federal Republic of Germany was 2.07 members per household in 2007. The share of lone parents among all families was 21.4 percent in the same year; among all households the share of households with a female main bread-winner was 34.0 percent. Household composition was as follows in the previous years:

Year	Average household size	Share of lone parents among all families	Share of households with female bread-winner among all households
	(in persons)	(in percent)	(in percent)
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

43 Households' average consumption expenditure in the last five years under report was subdivided as follows among the areas below:

Year	Food (not incl. alcoholic beverages, tobacco)	Housing	Health	Education
	(in percent)	(in percent)	(in percent)	(in percent)
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

44 Median net equivalence income was Euro 15,617 in 2005; the Gini coefficient, which reflects the inequality of the income spread, was 27 percent.

5. Economic characteristics

a. Employment

- 45** Related to the total population aged 15 to (not incl.) 65 years (according to the EU's Labour Force Survey), the employment rate in the Federal Republic of Germany was 69.4 percent in 2007. An employment rate of 67.5 (2006), 66.0 (2005), 64.3 (2004) and of 64.9 percent (2003) had been recorded in the previous years.
- 46** The employment rate among women was 64.0 percent in 2007. It comes to note that the mothers' employment rate in the Federal Republic of Germany depends greatly on the age of the youngest child. Whilst it was 29.8 percent among mothers of children below the age of three years, as many as 57.9 percent of mothers with children aged three up to, but not including, six years old and 64.8 percent of mothers with children aged six up to, but not including, ten years old were employed.
- 47** 2.1 percent of all persons in gainful employment were employed in the economic sector of agriculture and forestry, as well as fishery, in the year under report 2007. Roughly one-quarter of all persons in gainful employment (25.5 percent) belonged to the economic sector of the production industries. By far the largest share was, however, recorded in the service sector. This economic sector accounted for a total of 72.4 percent of all persons in gainful employment. The following shares of persons in gainful employment emerged in the years covered by the report:

Year	Agriculture and forestry, fishery	Production industries	Service sector
	(in percent)	(in percent)	(in percent)
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

- 48** There are no statistical surveys of the share of trade union members among persons in gainful employment. The basic right of coalition freedom entrenched in the constitution in Art. 9 para. 3 of the Basic Law, however, grants to the individual the option to form and

participate in associations for the purpose of maintaining and supporting working and economic conditions. The basic rights constitute an obligation not only to all public legal entities, but also to private legal subjects. Trade union members hence enjoy comprehensive protection in the Federal Republic of Germany.

- 49** The unemployment rate related to all persons in gainful employment (according to the EU's Labour Force Survey) was 8.4 percent in 2007, whilst it was 9.8 percent (2006), 10.7 percent (2005), 9.8 percent (2004) and 9.3 percent (2003), respectively, in the previous years.

b. Economic power

- 50** Per capita income (national income per inhabitant) was an amount of Euro 22,210 per inhabitant in 2007. The following per capita income was reached in the Federal Republic of Germany between 2003 and 2006:

Year	Per capita income
	(in Euro per inhabitant)
2006	21,436
2005	20,575
2004	20,270
2003	19,385

- 51** The value of economic activities created in Germany reached a volume of Euro 2,422.90 billion in 2007 (gross domestic product). Hence, the annual growth rate of gross domestic product recorded an increase of 4.4 percent in a year-on-year comparison. The development of gross domestic product in the previous years was as follows:

Year	Gross domestic product (GDP)	Growth rate of GDP
	(in billion Euro)	(in percent)
2006	2,321.50	3.5
2005	2,243.20	1.5
2004	2,210.90	2.2
2003	2,163.80	1.0

52 Gross national income – previously referred to as gross national product – reached a value of Euro 2,464.19 billion in 2007. The following development in gross national income took place between 2003 and 2006:

Year	Gross national income
	(in billion Euro)
2006	2,362.44
2005	2,270.82
2004	2,232.08
2003	2,148.67

53 On the expenditure side, public debt amounting to Euro 1,553 billion was recorded in the year under report 2007. It includes all credit market debts and bank lendings of the overall public budget, and was broken down in the previous years as follows:

Year	Debt
	(in billion Euro)
2006	1,545
2005	1,490
2004	1,430
2003	1,358

54 Of this, the foreign debt of the territorial administrative authorities amounted to the values below in 2007:

Quarter	Foreign debt
	(in billion Euro)
2007.4	765.4
2007.3	732.9
2007.2	726.6
2007.1	698.6

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

c. Public development cooperation

56 The expenditure of the Federal Republic of Germany on public development cooperation increased from Euro 6 billion in 2003 to Euro 9.64 billion in 2008. The share of public development cooperation as a part of gross national income (GNI) can be found in the table below:

	2004	2005	2006	2007	2008 ¹¹
Public development cooperation					
(in millions Euro)					
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
Share of GNI					
(in percent)					
	0.28	0.36	0.36	0.37	0.38

57 The bilateral gross benefits were broken down from 2005 to 2007 among the following promotional areas (sectors):

Promotional area (sector)	2005		2006		2007	
	in millions Euro	in percent	in millions Euro	in percent	in millions Euro	in percent
Total	7,208.9	100.0	6,890.3	100.0	6,827.0	100.0
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
<i>of which: fundamental education</i>	56.7	0.8	68.5	1.0	62.1	0.9
Healthcare	117.5	1.6	131.3	1.9	156.3	2.3
<i>of which: basic healthcare</i>	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

¹¹ The information on the calendar for 2008 is provisional.

Transport and storage	145.2	2.0	106.6	1.5	161.3	2.4
Communication	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, fishery	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
Development-orientated 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 judicial characteristics

a. Data from the judiciary and public security

58 For each 100,000 inhabitants in the Federal Republic of Germany in 2006 there were an average of 6.17 public prosecutors, 18.10 judges of ordinary jurisdiction, as well as 6.30 judges of the various specialist jurisdictions. A differentiated breakdown – including for the previous years – emerges from the statistics below:¹²

Relative figures (per 100,000 inhabitants)	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

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

Instance	2002	2003	2004	2005	2006
Type of court	(per labour share of 1.0)	(per labour share of 1.0)	(per labour share of 1.0)	(per labour share of 1.0)	(per labour share of 1.0)
<i>Criminal proceedings</i>					
Initial instance					

¹² 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.

¹³ 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 with a labour share of 0.5.

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

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
Appeals					
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
<i>Fine proceedings</i>					
Initial 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

Instance	2002	2003	2004	2005	2006
Type of court	(per labour share of 1.0)	(per labour share of 1.0)	(per labour share of 1.0)	(per labour share of 1.0)	(per labour share of 1.0)
<i>Civil cases</i>					
Initial 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
<i>Family cases</i>					
Initial 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
<i>Commercial cases</i>					
Initial instance					
Regional courts	119.4	121.2	118.4	118.4	113.7

60 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 share of respondents and detainees requesting legal aid.

61 411,845 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.

62 The share of expenditure by 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 on public security and order here 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.

Expenditure of public budgets (by task area)	2002 (in millions Euro)	2003 (in millions Euro)	2004 (in millions Euro)	2005 (in millions Euro)	2006 (in millions Euro)
Total	992,688	1,003,307	993,125	1,002,244	1,004,943
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 data

63 The crime statistics data 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.

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

Type of criminal offence/criminal provision	Criminal offences coming to notice (No.)	Solved criminal offences (No.)	Solving rate (in percent)
Crimes against sexual self-determination (total) (sections 174-184b of the	52,231	41,032	78.6

Criminal Code)			
of which:			
Sexual abuse of children (sections 176, 176a and 176b of the Criminal Code)	12,765	10,459	81.9
Rape, sexual coercion (section 177 subs. 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 316a 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 acc. to Narcotics Act	255,019	241,390	94.7
Total	6,304,223	3,492,933	55.4

65 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 relates to criminal offences of both the Criminal Code and the Narcotics Act (*BtMG*). The information covers German and foreign offenders.

Type of criminal offence/criminal provision	2002	2003	2004	2005	2006
Criminal offences against the State, public order and in office (sections 80-168 and 331-357 of the Criminal Code, not incl. 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)	6.770	7.333	7.900	7.882	7.485

of which:					
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 subs. 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 (section 170 of the Criminal Code)	4,260	4,509	4,306	3,942	3,256
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 subs. 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	8,622	7,903	7,547	6,750	6,123

the Criminal Code)					
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

66 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

67 64,700 criminal convicts and persons in preventive detention were in the State's care on 31 March 2007. The reason for their criminal detention or preventive detention can be taken from the table below:

Type of criminal offence	Number of criminal convicts and persons in preventive detention		
	Total	Male	Female
Criminal offences against the State, public order and in office (sections 80-168 and 331-357 of the Criminal Code, not incl. section 142 of the Criminal Code)	1,217	1,150	67
Criminal offences against sexual self-determination (sections 174-184b of the Criminal Code)	4,997	4,955	42
Insult (sections 185-189 of the Criminal Code)	239	227	12
Criminal offences against life (sections 211-222 of the Criminal Code)	4,543	4,286	257
Criminal offences against physical integrity (sections 223-231 of the Criminal Code)	7,525	7,299	226
Criminal offences against personal freedom (sections 232-241a of the Criminal Code)	727	712	15
Other criminal offences against individuals (sections 169-173 and 201-206 of	344	336	8

the Criminal Code)

Theft and misappropriation (sections 242-248c of the Criminal Code)	13,523	12,633	890
Robbery and blackmail, assault on a motor vehicle driver resembling robbery (sections 249-255 and 316a of the Criminal Code)	8,063	7,850	213
Aiding the perpetration of a crime and receivership (sections 257-261)	368	362	6
Fraud and breach of trust (section 263-266b of the Criminal Code)	6,926	6,174	752
Falsification of documents (sections 267-281 of the Criminal Code)	1,322	1,188	134
Other criminal offences against property (sections 283-305a of the Criminal Code)	342	330	12
Crimes causing a public danger (sections 306-323c and 316a of the Criminal Code)	706	679	27
Crimes against the environment (sections 324-330a of the Criminal Code)	18	17	1
Criminal offences in traffic	3,099	3,022	77
Offences acc. to Narcotics Act	9,665	9,077	588
Other criminal offences	10,668	10,032	636

68 The duration of the individual detention sentences was spread as follows as on the same key day:

Likely duration of criminal detention	Age group								
	Juveniles (14 but not yet 18)			Adolescents (18 but not yet 21)			Adults (from 21)		
	total	male	female	total	male	female	total	male	female
less than 1 month	-	-	-	20	17	3	988	910	78
1-3 months	1	1	-	41	36	5	5,645	5,148	497

3-6 months	30	28	2	142	126	16	8,542	7,934	608
6-9 months	66	59	7	250	229	21	5,812	5,478	334
9-12 months	115	104	11	437	413	24	5,068	4,807	261
1-2 years	341	327	14	1,420	1,362	58	10,702	10,235	467
2-5 years	215	212	3	1,183	1,153	30	15,090	14,445	645
5-10 years	12	10	2	72	70	2	5,173	5,015	158
10-15 years	-	-	-	-	-	-	935	907	28
Life	-	-	-	1	1	-	1,972	1,870	102

69 The numbers of deaths in detention can be taken from the table below – differentiated by cause of death:

Year	Deaths		
	total	of which	
		Accident	Suicide
2007	173	3	72
2006	163	2	76
2005	159	1	82
2004	161	1	81
2003	150	1	80

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

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

7. Other characteristics

a. Media access among the population

72 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. It also contains a large section about the media in Germany from data that are generally available.

b. Non-governmental organisations

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

II. The constitutional, political and legal system

74 The Basic Law of 23 May 1949 continues to be the Constitution of the Federal Republic of Germany also after 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*.

75 The political framework for 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 the organisation. The main principles of the Basic Law governing state structure 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

76 The state structural principle entrenched in Art. 20 para. 1 and Art. 79 para. 3 of the Basic Law unmistakably rejects the state form of monarchy. A monarch as the head of state is not permissible. The head of state is elected.

2. Head of state and the state leadership

77 The head of state and the highest representative of the Federal Republic of Germany is the Federal President. He 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.

78 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 has several extraordinary competences to which he 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.

79 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. Federal state principle

80 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.

- 81** 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. Art. 28 para. 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*.
- 82** 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.
- 83** 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

- 84** Municipalities and associations of municipalities (counties, association 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 of the Basic Law). 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

85 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 is structured in the shape of representative and parliamentary democracy. The people hence exercises 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 practiced to differing degrees in the *Länder* and at local level.

a. Political parties

86 In accordance with the Basic Law, the parties are constitutionally necessary tools for the political opinion-forming of the people, and they are raised to the status of a constitutional institution. They form the links between 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 to the popular representations of the *Länder* and the local authorities.

87 The free formation of parties is constitutionally guaranteed. Their formation does not require state approval or another state act of recognition. Also the free activity of the parties is guaranteed by the Basic Law. The parties decide freely, in 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.

- 88** The statutes and the manifesto, as well as the name of the members of the board, are to be submitted to the federal returning officer, who keeps these documents ready for inspection for everyone in the interest of the publicity of the circumstances in the parties. The number of the parties developed as follows in the period under report:

Year	No. of parties
	<small>(documents deposited with the federal returning officer)</small>
2007	109
2006	111
2005	103
2004	95
2003	90

- 89** 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.

- 90** 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 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

- 91** 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.
- 92** 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.
- 93** 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 takes 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:

Party	No. of seats
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	46

Soziale Union in Bayern e.V.- CSU)	
Alliance 90/Greens (Bündnis 90/DIE GRÜNEN - Grüne)	51
Free Democratic Party (Freie Demokratische Partei - F.D.P.)	61
The Linke (DIE LINKE)	54

- 94** With regard to the distribution of seats listed here, it should be noted that only the lists of parties are taken into account in distributing the seats that received at least 5 per cent of all second votes cast in the election area or have received at least three constituency mandates directly. 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.
- 95** The share of women in the current 16th German Federal Parliament is 32.0 percent, and hence fell slightly in comparison to the share of women in the 15th German Federal Parliament – which was 32.5 percent. It should be noted in this respect that almost all the parties represented in the German Federal Parliament have imposed internal quota or quora regulations for equal participation of women. In an EU-wide comparison, the share of women in the German Federal Parliament and in the Federal Cabinet is far above average.

c. Suffrage

96 The people, in which state power is vested, is formed by German nationals in accordance with the Basic Law. The share of those with suffrage who have German nationality as against the German population and the total population in the elections at federal level has developed as follows in the period under report:

Year	Share of those with suffrage	
	(in percent)	
	among the German population	among the total population
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

97 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 per: 31 December 2003) of voting age, 133,465 persons were entered in a voting registry. This corresponds to a share of approx. 6.8 percent of all eligible Union citizens in Germany.

d. Turnout

98 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 percent of all those entitled to vote took part in the elections. This was 1.4 percentage points fewer than in the elections to the 15th German Federal Parliament in 2002.

99 Turnout at the elections to the Parliaments of the *Länder* averaged 58.0 percent in the same period under report. A turnout of 51.1 percentage points was achieved with the elections to the local representative bodies. The details are contained in the table below:

Turnout with <i>Land</i> Parliament and local elections		
<i>Land</i>	Turnout <i>Land</i> Parliament election	Turnout Local elections
	(year of the most recent election)	(year of the most recent election)
Baden-Württemberg	53.4 % (2006)	53.0 % (2004)
Bayern	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

100 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.

101 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

102 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 takes resolutions with a majority of votes. The number of votes to which a *Land* is entitled in the Federal Council is in line with the number of inhabitants of the *Land* in question. As to the member states' contribution to the legislative procedure of the Federation, a distinction is to be made between so-called objection and approval statutes. The positive approval of the Federal Council is necessary for an approval statute to come into being. If an objection statute is to be dealt with, 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

103 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.

104 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

105 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 be neither 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.

106 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 carried out in their 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).

107 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.

108 The Federal Constitutional Court consists of two Senates of eight judges each. The period of office of the judges is twelve 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.

109 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 the 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 their 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

110 A further major pillar of German constitutional law is formed by 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.

111 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

112 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.

113 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

114 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 the Church and the State and the Church's self-determination right.

115 The constitutional basis for guaranteeing individual and collective freedom of faith can be found in Art. 4 paras. 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.

116 The separation of the Church and the 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 the State and the Church however experiences several caesuras, 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 Art. 140 of the Basic Law and Art. 137 para. 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 their service circumstances.

12. Recognition of non-governmental organisations

117 Non-governmental organisations do not require state approval in the Federal Republic of Germany, but they are subject to the provisions of general law on associations. They are granted charitable status on the basis of section 52 subs. 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

118 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.

119 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

120 The protection of basic rights is embodied in the following general clause in Article 6 (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 54 articles of the Charter will become legally binding in accordance

with Art. 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.

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

I. Acceptance and ratification of international and regional human right agreements

1. Fundamental international human right agreements

a. The state of ratification

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

- International Convention of 1966 on the Elimination of All Forms of Racial Discrimination (including the amendment of Article 8 of the International Convention of 1966 on the Elimination of All Forms of Racial Discrimination)
- International Covenant of 1966 on Civil and Political Rights
- Optional Protocol of 1966 to the International Covenant on Civil and Political Rights, on communications from individuals
- Second Optional Protocol of 1989 to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- International Covenant of 1966 on Economic, Social and Cultural Rights
- Convention of 1979 on the Elimination of All Forms of Discrimination against Women (including amendment of Article 20, para. 1 of the Convention on the Elimination of All Forms of Discrimination against Women)
- Optional Protocol of 1999 to the Convention on the Elimination of All Forms of Discrimination against Women, regarding complaints by individuals and investigation procedures
- Convention of 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (including amendment Article 17 para. 7 and 18 para. 5 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)
- Optional Protocol of 2002 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, regarding regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty

- Convention of 1989 on the Rights of the Child (including amendment of Article 43 para. 2 of the Convention on the Rights of the Child)
- Optional Protocol of 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict
- Optional Protocol of 2000 to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- Convention of 2006 on the Rights of Persons with Disabilities
- Optional Protocol of 2006 to the Convention on the Rights of Persons with Disabilities

122 The Federal Republic of Germany has not ratified the International Convention of 1990 on the Protection of the Rights of All Migrant Workers and Members of Their Families. Signing and ratification are also not considered to be indicated. The reasons for this were expressed at that time on acceptance of the Convention at the UN General Assembly in a declaration, and continue to apply: The fundamental basic rights are already deposited 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 migrant workers without exception.

123 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 hence be suited to 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

124 The Federal Republic of Germany has submitted reservations and declarations to the following international basic right agreements¹⁵:

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

Convention	Reservation/ declaration	Content	Reasoning for the reservation/ declaration
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 of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms.</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) In the case of criminal offences of minor gravity the review by a higher tribunal of a decision not imposing imprisonment does not have to be admitted in all cases.</p> <p>4. Article 15 (1) of the Covenant shall be applied in such manner that when provision is made by law for the imposition of a lighter penalty the hitherto applicable law may for certain exceptional categories of cases remain applicable to criminal offences committed before the law was amended.</p>	<p><u>Re No. 1 of the reservation:</u></p> <p>Art. 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><u>Re No. 2 of the reservation:</u></p> <p>This reservation was submitted with regard to section 350 subs. 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 called up, defence counsel must be appointed for him/her on his request, cf. section 350 subs. 2 sentence 1 of the Code of Criminal Procedure.</p> <p><u>Re No. 3 b) of the reservation:</u></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 subs. 1 of the Code of Criminal Procedure, in cases in which the accused has been sentenced to a criminal fine of not more than fifteen daily rates, the reserved punishment in the case of a reprimand is not more than fifteen 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 subs. 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>
Optional Protocol of 1966 to the International Covenant on Civil and Political Rights, 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</p>	<p>As regards (a) of the reservation, it should be pointed out that, given that the committee is not competent for 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</p>

		<p>investigation or settlement, or</p> <p>b) by means of which a violation of rights is reprimanded having its origin in events occurring prior to the entry into force of the Optional Protocol for the Federal Republic of Germany</p> <p>c) by means of which a violation of article 26 of the [said Covenant] is reprimanded, if and insofar as the reprimanded violation refers to rights other than those guaranteed under the aforementioned Covenant.</p>	<p>complainants was also to be avoided in the interest of the 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.</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination</p>	<p>Declaration (30 August 2001)</p>	<p>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 her 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 insofar 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.</p>	<p>With the second sentence of this declaration, the Federal Republic of Germany wishes to avoid that the race discrimination committee also deals 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 Art. 14 of the Anti-Racism Convention have included the same restriction in their declarations.</p>
<p>International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</p>	<p>Declaration with regard to Article 3 (1 January 1990, upon ratification)</p>	<p>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 that are met by the Federal Republic of Germany in conformity with the provisions of its domestic law which is in accordance with the Convention.</p>	<p>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.</p> <p>Direct application of the Convention is prescribed in an exceptional case by special German legal provisions. Section 6 No. 9 of the Criminal Code orders that German criminal law is to apply, 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</p>

			to clarify Article 3 para. 2 of the Convention against Torture: The judgment as to whether the person to be deported is at risk from 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.
Convention on the Rights of the Child	Declarations (5 April 1992, upon ratification)	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 establishes state obligations under international law that the Federal Republic of Germany fulfils in accordance with its national law, which conforms with the Convention.	<u>Re No. I of the declaration:</u> It emerges from the wording of the Convention that primarily state obligations were to be created. Thus, the states are named as the addressees of the obligations governed in almost all provisions of the Convention on the Rights of the Child. 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 the Member States 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 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.
		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	<u>Re No II of the declaration:</u> 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 para. 1 of the International Covenant on Civil and Political Rights, to which the child has a right. This 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 their parental right to bring up a child or that of other persons having custody of them.

		<p>on a case- by-cases basis, particularly where the parents cannot agree on the joint exercise of custody.</p> <p>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>a) legal representation of 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 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 a higher competent authority or judicial body.</p>	<p><u>Re No. III a) of the declaration:</u></p> <p>With the declaration re No. III a), the Federal Government intended to ensure that Article 40 (2) (b) (2) 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 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</p>	<p>The declaration at No. IV was submitted upon ratification of the Convention in order to avoid misinterpretations or overinterpretations 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 United Nations Convention on the Rights of the Child of 20 November 1989. This also applies with regard to Article 22 of the UN Convention on the Rights of the Child. 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>

		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.	
		V. The Government of the Federal Republic of Germany regrets the fact that under article 38 (2) of the Convention even fifteen-year-olds may take a 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 fifteen years.	
Optional Protocol of 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict	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

125 There are no cancellations, limitations or restrictions with regard to the human rights conventions listed at B.I.1.a.

2. Other United Nations human rights conventions and associated conventions

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

- 1926 Slavery Convention in the version of the Protocol amending the Slavery Convention dated 7 December 1953
- Convention of 1948 on the Prevention and Punishment of the Crime of Genocide
- Convention of 1951 relating to the Status of Refugees and its Protocol of 31 January 1967
- Convention of 1954 relating to the Status of Stateless Persons
- Convention of 1961 on the Reduction of Statelessness
- Rome Statute of 1998 of the International Criminal Court
- United Nations Convention of 2000 against Transnational Organized Crime and its Protocols of 15 November 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and against the Smuggling of Migrants by Land, Sea and Air

127 The Convention of 2006 for the Protection of All Persons from Enforced Disappearance 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

128 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

- Convention (No. 29) concerning Forced or Compulsory Labour, 1930
- Convention (No. 81) concerning Labour Inspection in Industry and Commerce, 1947
- Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise, 1948
- Convention (No. 97) concerning Migration for Employment, 1949
- Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949
- Convention (No. 100) concerning Equal Remuneration, 1951
- Convention (No. 102) concerning Minimum Standards of Social Security, 1952
- Convention (No. 105) concerning the Abolition of Forced Labour, 1957
- Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation, 1958

- Convention (No. 118) concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, 1962
- Convention (No. 122) concerning Employment Policy, 1964
- Convention (No. 129) concerning Labour Inspection in Agriculture, 1969
- Convention (No. 132) concerning Annual Holidays with Pay (Revised), 1970
- Convention (No. 138) concerning Minimum Age for Admission to Employment, 1973
- 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 of 1960 against Discrimination in Education

c. Conventions of the Hague Conference on Private International Law

- Convention of 1956 on the law Applicable to Maintenance Obligations towards Children
- Convention of 1958 Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children
- Convention of 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants
- Convention of 1973 on the Law Applicable to Maintenance Obligations
- Convention of 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations
- Convention of 1980 on the Civil Aspects of International Child Abduction
- Convention of 1980 on International Access to Justice (signed but not yet ratified)
- Convention of 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
- Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (signed but not yet ratified)
- Convention of 2000 on the International Protection of Adults

d. Geneva Conventions and other conventions in the field of the humanitarian international law

- Geneva Convention of 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

- Convention of 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- Geneva Convention of 1949 relative to the Treatment of Prisoners of War
- Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War
- Protocol of 1977 Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol I)
- Protocol of 1977 Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
- Convention of Ottawa of 1997 on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction

4. Regional human right conventions

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

- European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms
- Protocol of 20 March 1952 to the Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocol No. 2 of 6 May 1953 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
- Protocol No. 3 of 6 May 1953 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention
- Protocol No. 4 of 16 September 1963 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
- Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention
- Protocol No. 6 of 28 April 1983 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty

- Protocol No. 8 of 19 March 1985 to the Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocol No. 11 of 11 May 1994 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby
- Protocol No. 13 of 3 May 2002 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances
- Protocol No. 14 of 18 October 1961 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention
- European Social Charter of 18 October 1961
- European Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data
- Additional Protocol of 8 November 2001 to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows
- European Convention of 26 November 1987 for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Protocol No. 1 of 4 November 1993 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Protocol No. 2 of 4 November 1993 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Charter of 5 November 1992 for Regional or Minority Languages
- Framework Convention of 1 February 1995 for the Protection of National Minorities
- European Convention of 25 January 1996 on the Exercise of Children's Rights
- European Agreement of 5 March 1996 relating to persons participating in proceedings of the European Court of Human Rights
- Sixth Protocol of 5 March 1996 to the General Agreement on Privileges and Immunities of the Council of Europe of 1949

II. Legal and institutional framework for the protection and the promotion of human rights at national level

130 The protection and the 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

131 The 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 here guaranteeing personal liberty rights protecting the individual against impairments to 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 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. Rather, the Basic Law has ruled on the tension between the individual and society in the interest on his/her relation to and tie to society, without detracting from his/her individual value.

aa. Personal liberty rights

132 The basic rights are guaranteed partly in the shape of general basic rights, and partly in the shape 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).

133 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 render war 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). Art. 9 para. 3 of the Basic Law guarantees for all and for all professions freedom of coalition, 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, posts 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).

134 Freedom of assembly (Art. 8 of the Basic Law) and of association is reserved for German nationals – unless already protected by Art. 9 para. 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 Art. 16 of the Basic Law, Germans enjoy both protection of their citizenship and protection against extradition to another country.

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

136 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 for instance beyond the standard contained in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

bb. Rights similar to basic rights

137 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 European Convention for the Protection of Human Rights and Fundamental Freedoms and in the International Covenant on Civil and Political Rights. These are in detail 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 Art. 19 para. 4 of the Basic Law, anyone whose rights have been violated by public authority has recourse to the courts. The following are also guaranteed: the right to one's lawful judge (Art. 101 of the Basic Law), the right to a hearing in accordance with the law, the ban on retroactive punishment and on multiple

punishment (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).

cc. Equality rights

138 The general constitutional principle of equal treatment is guaranteed in Article 3 para. 1 of the Basic Law. Additionally, Article 3 para. 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 Art. 3 para. 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. Art. 33 paras. 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 according to his/her aptitude, qualifications and professional achievements.

dd. Economic rights

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

ee. Cultural rights

140 The freedom of art and scholarship is guaranteed by Art. 5 para. 3 of the Basic Law. Art. 5 para. 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 for the freedom of art, it sets the modern state, which regards itself as a cultural state, the task of maintaining and encouraging a free cultural life. Art. 7 para. 4 of the Basic Law guarantees the right to establish private schools.

ff. Social rights

141 The social state principle already explained at A.II.9 is interdependent on the freedom and equality rights of the Basic Law. Particular significance attaches here to the elementary basic right contained in Art. 1 para. 1 of the Basic Law (human dignity). Thus, it is possible to derive from Art. 1 para. 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 coalition and the equality rights from Art. 3 para. 2 sentence 2 and para. 3 sentence 2 (promotion of the equal rights of women and men, prohibition of disadvantages for persons with disabilities) that are entrenched in Art. 9 para. 3 of the Basic Law.

b. Further development of basic rights

142 The basic rights contained in the Basic Law are given concrete form and are further developed by decisions given 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 informational self-determination derived from the right to free development of the personality in conjunction with Article 1 para. 1 of the Basic Law, and the resulting power of individuals to decide for themselves about when, and within which 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

143 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 world-wide implementation of human rights. Accordingly, the Federal Republic of Germany has ratified the fundamental international conventions for the protection of human rights. The Covenant on Civil and Political Rights and the 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

144 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 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.

145 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 para. 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

146 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 Art. 1 para. 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 Art. 19 para. 4 of the Basic Law.

147 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 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.

148 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 para. 1 of the Basic Law, it must stay the proceedings and obtain a decision from the Federal Constitutional Court. Article 1 para. 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 a 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

149 A further important instrument serving the protection of basic rights is also the constitutional complaint. As a result of it, any person may address the Federal Constitutional Court claiming that one of his/her basic rights guaranteed by the Basic Law or one of the rights under Article 20 para. 4, Articles 33, 38, 101, 103 and 104 has been infringed by public authority. On 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 on 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 however admissible immediately if there is no other legal remedy, for instance in the case of a statute which directly affects a citizen's rights.

150 A constitutional complaint is conditional on it 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

151 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 are made more concrete through specific civil law anti-discrimination provisions.

d. Provisions on compensation

152 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 on principle with the State or with the public body employing him/her (Article 34 first sentence of the Basic Law and section 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

153 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, on 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

154 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 where members concern themselves with the matters brought forward by the petitioners.

155 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

156 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 para. 2 second sentence in order to maintain the privacy of letters, posts 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, posts and telecommunications.

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

157 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 human rights aspects 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.

158 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) at printed paper number 16/10037.

d. Defence Commissioner of the Federal Parliament

159 By means of Article 45 b of the Basic Law, a special control body has been created for the federal armed forces in the shape 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

160 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

161 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 Commission on Human Rights.

162 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 Anti-torture Convention, the 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

163 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

164 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.

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.

He campaigns for the promotion of understanding for 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.

The Commissioner is also the central point of call for the national minorities in Germany - Danes, Frisians, Sorbs and Sinti and Roma.

h. Commissioner of the Federal Government for the Interests of the Disabled

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

i. Antidiscrimination Agency of the Federation

166 The Federation's Antidiscrimination Agency is an independent federal agency to protect against racist 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.

167 Individuals who consider themselves to have been discriminated against, or who have questions about the General Equal Treatment Act, can approach the Federation's Antidiscrimination Agency. Entrepreneurs also find at www.antidiskriminierungsstelle.de a guideline answering fundamental questions on the implementation of the General Equal Treatment Act.

168 The Federation's Antidiscrimination 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 Antidiscrimination Agency inspects research on the topic of discrimination/equal treatment, identifies gaps in research and works towards closing them. Once per legislative period, the Antidiscrimination Agency submits a report to the Federal Government and the German Federal Parliament.

4. German Institute for Human Rights

169 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 public opinion-forming process in topical areas relevant to human rights. The field of human rights education takes up 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 towards strengthening the European and international human rights mechanisms.

170 The German Institute for Human Rights receives its basic financing from the State, but determines its work projects independently 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

171 An especially important role in the protection of human rights is played by organisations within society which in addition to international bodies work towards world-wide protection of human rights. Non-governmental organisations are increasingly influential world-wide. 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 co-operation.

172 On the occasion of the UN 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 by now has 50 member organisations. This working group of non-governmental organisations aims at improved and comprehensive protection of human rights world-wide, 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 co-operation with non-governmental organisations. Non-governmental organisations for instance participate in drawing up the state reports by means of consultation.

6. European Court of Human Rights

173 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. Breaches of the Convention can be complained of both by individual applicants and by the contracting states themselves. The Committee of Ministers guards 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

174 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.

175 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 enquirers free

of charge or for a small fee, as well as portrayals 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 Additional 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.

176 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 UN committees, are also published on the Internet in German and English (www.auswaertiges-amt.de and 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

177 All the *Länder* in the Federal Republic of Germany view education on the respect for human dignity to be a substantial task and a major goal of schools. The group of topics is fixedly 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.

178 A major contribution towards human rights education is also made by the German Institute for Human Rights (cf. B.II.4 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.

179 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

180 The media carry out special functions and tasks in society. They serve the free individual and public opinion formation 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 documentations, fictional productions (for instance crime series), discussion programmes, as well as discussion fora. 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, both 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.

181 A significant factor in the efforts to create significance and bring about implementation for human rights in even more countries of this 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 transformation.

10. Development cooperation

182 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, Euro 520 million have been provided for projects with a human-rights relevance in 2008, and roughly Euro 628.5 million are earmarked for 2009. A comparison with the figures of the previous year 2007, when a total of roughly Euro 400 million were spent on development cooperation with a human-rights relevance, shows that the realisation of basic rights in development cooperation is on a sound financial footing.

183 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 the sectors and country cooperations. 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.

III. Reporting process at national level

1. Reporting

184 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, of the Federal Ministry of Education and Research, of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, of the Federal Ministry of Finance, of the Federal Ministry of Health, of the Federal Ministry of the Interior, of the Federal Ministry of Justice, of the Federal Ministry for Economic Cooperation and Development, of the Federal Office of Justice, of the Federal Statistical Office, of the Commissioner of the Federal Government for Culture and the Media and the Antidiscrimination 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 on figures on religious affiliation.

185 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 and www.bmj.bund.de).

2. Follow-up measures to the final remarks of the contracting bodies

186 The final remarks and recommendations of the contracting bodies are systematised and

analysed in the preparation 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.

C. Information regarding non-discrimination and equality

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

1. Constitutional law

187 The principles of equality and non-discrimination are guaranteed by the constitution of the Federal Republic of Germany. The principle of equality contained in Art. 3 para. 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 Art. 3 para. 3 of the Basic Law (cf. on this already the information on freedom and equality rights, as well as the rights similar to basic rights and social rights at B.II.1.a.aa./bb./cc./ff.). 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 Art. 1 para. 3 of the Basic Law. Art. 3 para. 1 and Art. 3 para. 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.

188 With regard to the exercise of political rights, the specific principle of equality of elections gains significance in particular (cf. on this the information on the principles of electoral law of Art. 38 of the Basic Law dealt with at A.II.3.b). It typifies both the active and passive right to vote.

189 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

190 Manifestations of constitutional equality principles can be found in many forms in non-constitutional law. Examples that can be mentioned are for instance the provisions of the Life Partnership Act (*Lebenspartnerschaftsgesetz*), which applies to same-sex co-

habitation, 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 ruling court to consider a racist conviction of the offender as an incriminating circumstance.

191 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 directives¹⁶ 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 civil law, amongst other things, hence creates a comprehensive anti-discrimination law in Germany for the first time.

192 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, of gender, religion or belief, of disability, of 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 (section 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 Antiracism 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 (section 19 of the General Equal Treatment Act). The fourth Part of the Act, finally, deals with legal protection of those concerned, which has been sustainedly improved by virtue of

¹⁶ 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.

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, in 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 (section 17 subs. 2 of the General Equal Treatment Act). Section 22 of the General Equal Treatment Act, finally, 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 Antidiscrimination Agency of the Federation are entrenched in the sixth Part of the Act.

II. Institutional anchoring of the protection of equality and non-discrimination

193 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 the principles of equality and non-discrimination.

194 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 Antidiscrimination Agency of the Federation in combating discrimination, whose function as an ombudsman and advisor has already been fully discussed at B.II.3.i. It is supported in its advisory function by the work of the local anti-discrimination agencies.

III. Educational programmes and information campaigns

195 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) or by having publications mailed by the Federal Government. For instance, information is offered on balances 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.

196 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.

197 The Antidiscrimination 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 or publikationen@ads.bund.de. Over and above this, the publication of brochures for employees and for juveniles is planned for 2009. Further, the Antidiscrimination 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 Antidiscrimination Agency of the Federation has also commissioned the drawing up 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 implemented.

198 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). 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 presents 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.

199 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 “Job – 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.

IV. Legal recourse

200 Reference is made to the information provided at B.II.2.a.-d with regard to the implementation of the protection of equality and of non-discrimination.

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