



Bundesministerium  
der Justiz

**Sixth Periodic Report  
by the Federal Republic of Germany  
under Article 40 of the International Covenant on  
Civil and Political Rights**

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<b>A. INTRODUCTION.....</b>	<b>5</b>
<b>B. KEY ISSUES.....</b>	<b>6</b>
<i>I. Protection from Violence .....</i>	6
1. <i>Victim protection in criminal proceedings (see also Concluding Observations Nos. 14 and 18).....</i>	6
a) Fair Trial.....	6
b) Victims’ Rights .....	6
c) Act on Compensation for Victims of Violent Crime .....	11
2. <i>Statistical Recording of Violent Crime .....</i>	12
<i>II. Protection from Discrimination and Dealing with “Hate Crime” .....</i>	14
1. <i>Equal Rights.....</i>	14
a) General Equal Treatment Act .....	14
b) Anti-Discrimination Agency .....	15
c) Equal Treatment Policy .....	16
2. <i>Protection against discrimination.....</i>	19
a) Discrimination based on ethnicity – example of the Sinti and Roma peoples .....	19
b) Religious discrimination using the example of the religiously motivated wearing of headscarves .....	21
3. <i>Hate crime .....</i>	23
a) The case of A.-S. ....	23
b) Aggravation of penalty for hate crime.....	25
<i>III. Extraterritorial applicability of the rights arising from the Covenant ( see also Concluding Observations no. 11) .....</i>	26
<i>IV. Situation in Nursing Homes( see also concluding Observations no. 17).....</i>	28
a) Reform of the provisions regulating nursing homes .....	28
b) External quality controls .....	29
c) Reporting on the quality of care .....	30
d) More transparency for consumers .....	31
e) Development of professional care services and continuing to strive for quality content in care services.....	31
f) Charter of rights for persons requiring assistance and care.....	32
g) Special needs of elderly and mentally ill persons.....	33
<i>V. Individual communications .....</i>	34
<b>C. RESPONSE TO THE CONCLUDING OBSERVATIONS .....</b>	<b>35</b>
<i>I. On Concluding Observations, No. 10 .....</i>	35
<i>II. On Concluding Observations, No. 11 (see also Key Issue III.).....</i>	36
<i>III. On Concluding Observations, No. 12.....</i>	36
<i>IV. On Concluding Observations, No. 13.....</i>	36
1. <i>Equality of men and women in the public service.....</i>	36
2. <i>Equal participation of women on the labour market .....</i>	37
<i>V. On Concluding Observations, No. 14 (see also Key Issue I.1.) .....</i>	39
<i>VI. On Concluding Observations, No. 15 (see also Key Issue I.2.).....</i>	40

1. <i>On Concluding Observations, No. 15a</i> .....	40
2. <i>On Concluding Observations, No. 15 b</i> .....	41
VII. <i>On Concluding Observations, No. 16 (see also Key Issue I.2.)</i> .....	41
VIII. <i>On Concluding Observations, No. 17 (see also Key Issue IV.)</i> .....	43
IX. <i>On Concluding Observations, No. 18 (see also Key Issue I.1.)</i> .....	45
X. <i>On Concluding Observations, No. 19 (see also Key Issue II.2.)</i> .....	48
XI. <i>On Concluding Observations, No. 20</i> .....	50
1. <i>On Concluding Observations, No. 20a</i> .....	50
2. <i>On Concluding Observations, No. 20b</i> .....	50
XII. <i>On Concluding Observations, No. 21 (see also Key Issue II.2.)</i> .....	50
<b>D. CONCLUSION</b> .....	<b>51</b>
Annex 1.....	52
Annex 2.....	53
Annex 3.....	72
Annex 4.....	73

## **A. Introduction**

- 1** The Federal Government hereby submits its Sixth Periodic Report under Article 40 of the International Covenant on Civil and Political Rights to the Human Rights Committee. This Report covers the period starting from the presentation of the Fifth Period Report in March 2004 until March 2010.
- 2** In this sixth periodic report, the Federal Republic of Germany has for the first time in its reports to the Human Rights Committee applied the principles of the new reporting procedure introduced with the Harmonized Guidelines of 21 May 2007 for all reporting to the human rights treaty monitoring bodies of the United Nations. The common core document of the Federal Republic of Germany – revised in accordance with the Harmonized Guidelines – was adopted by the Federal Cabinet on 3 June 2009 and has already been submitted to the United Nations.
- 3** The constitutional principles of human rights protection in Germany, which also encompass the specific principles of the German legal system that protect the rights guaranteed in the Covenant, are covered in detail within the common core report. The Federal Government has therefore refrained from including a repetitive description of these principles in this Periodic Report.
- 4** This report is instead focused on four key issues. In addition, the report contains a brief summary of petition proceedings instituted against Germany under the First Optional Protocol. It concludes with a statement by the German Government on the concluding observations of the Human Rights Committee of 4 May 2004. By concentrating on the most important key issues, the report seeks to address important and current problems despite its shorter form in accordance with the Harmonized Guidelines. In the event that the Committee desires discussion of other issues, the German Government trusts that the Committee will give a timely indication before presentation of the report.
- 5** Lastly, the Federal Government would like to emphasise at the outset that promoting human rights is the guiding principle of German foreign policy and development policy. German development policy is, in the sense that it represents a human rights approach, systematically oriented towards human rights principles. The United Nations human rights conventions ratified by Germany are authoritative in this

context. The update of the Development Policy Action Plan on Human Rights 2008 – 2010 underlines the great importance of human rights in establishing a sustainable development policy.

## **B. Key Issues**

### ***I. Protection from Violence***

#### **1. Victim protection in criminal proceedings (see also Concluding Observations Nos. 14 and 18)**

##### **a) Fair Trial**

- 6 For criminal proceedings in Germany, the principle of a fair trial is derived from the guarantee that proceedings pursue the objective of being just and comply with the principle of the rule of law. On the basis of Article 2 para. 1 in conjunction with Article 20 para. 3 of the Basic Law (*Grundgesetz*, GG), the Federal Constitutional Court has deemed this principle to be a constitutional right.<sup>1</sup> The principle of a fair trial applies to all participants in proceedings, which means that it also applies to victims who may be involved in the proceedings as witnesses.

##### **b) Victims' Rights**

- 7 During the period under review, the rights of injured parties in criminal proceedings have been improved several times. This has primarily been achieved by virtue of the First Victims' Rights Reform Act, which entered into force on 1 September 2004, and subsequently by virtue of the Second Victims' Rights Reform Act, which entered into force on 1 October 2009. The legal situation following entry into force of the Second Victims' Rights Reform Act, i.e. since 1 October 2009, is described below.

##### ***aa) Protection from strain in criminal proceedings***

- 8 The Code of Criminal Procedure (*Strafprozessordnung*, StPO) and the Courts Constitution Act (*Gerichtsverfassungsgesetz*, GVG) contain a large number of provisions concerning the protection of witnesses, and hence at the same time also the

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<sup>1</sup> *BVerfGE* (Official collection of decisions of the Federal Constitutional Court) 57, 250, 274 et seqq., *BVerfGE* 66, 313, 318, *BVerfGE* 89, 120, 129.

protection of victims, who are frequently the most important witnesses. Over and above the protection of witnesses (and victims in the role of witness), these statutes also contain provisions specifically benefiting the victims of criminal offences independently of their role as witnesses.

- 9** The protective provisions range from the duty to conduct examinations in a way that places the least possible strain on the person concerned (sections 68a, 238, 241a and 242 of the Code of Criminal Procedure) to the exclusion of the accused and/or the public during examination (section 247 of the Code of Criminal Procedure, sections 171b and 172 – 174 of the Courts Constitution Act). To protect the witness, the examination may also take place separately from the other parties involved in the proceedings, with the witness being at a remote location and audio-visual transmission of the examination taking place via video link (sections 168e and 247a of the Code of Criminal Procedure). As a result, it is possible to spare the victim having to encounter the accused person in the courtroom or having to give testimony in the presence of members of the public (section 247a, first sentence, Code of Criminal Procedure). Lastly, a lawyer may, subject to certain preconditions, be appointed for a witness for the duration of the examination (section 68b of the Code of Criminal Procedure). This applies above all to victims of sexual offences and of organised crime. With regard to child witnesses (individuals aged under 18 who are to be examined as witnesses), a number of the above provisions (e.g. exclusion of the accused or of the members of the public during examination of the witness) are applicable subject to less strict preconditions.
- 10** To reduce repeated examinations, which place an additional strain on the victim, the possibility has been created for the indictment to be brought directly with the Regional Court instead of with the Local Court if there is a particular need to protect the injured parties. This spares the victims a second factual instance, which does not exist against judgments handed down by a Regional Court (section 24 subs. 1 No. 3 of the Courts Constitution Act). For this reason, in 2006 the possibility was also created under juvenile criminal law for the public prosecution office to bring an indictment with the youth division at the Regional Court instead of with the juvenile court judge or the juvenile bench with lay judges at the Local Court, due to the special need to protect victims of crime who are potential witnesses. In addition, it was stated unambiguously in the law that, apart from (minor) victims, their parents/guardians and legal

representatives also have a right to be present during main hearings against juveniles, which are as a rule held in camera.

- 11 As far as witnesses are concerned, for the entire duration of criminal proceedings there is the possibility, subject to certain conditions, for them not to have to state their place of residence if a danger may be posed to their legal interests.. This possibility also exists if there is reason to fear that attempts may be made to exert improper influence on the witness on account of his testimony (section 68 (2) Code of Criminal Procedure). Witnesses who may be at risk must be informed by the criminal prosecution authorities of their rights and be supported by them in stating a different address at which documents can be served (section 68 (4) Code of Criminal Procedure).

***bb) The victim's rights in criminal proceedings***

- 12 The procedural rights of victims of crime are governed by the fourth part of the Fifth Book of the Code of Criminal Procedure. These rights include the right of the injured party to receive certain communications regarding the status of the proceedings (section 406d of the Code of Criminal Procedure), the right to examine the files and to obtain information and copies from the files (section 406e of the Code of Criminal Procedure), the right to obtain legal advice (sections 406f, 406g of the Code of Criminal Procedure) as well as the right to obtain information concerning his rights (section 406h of the Code of Criminal Procedure).
- 13 It has been made easier for the injured party to make use of the possibility during the trial itself to obtain and enforce compensation from the accused for the damage incurred as a result of the criminal offence. To this end, the so-called "adhesion procedure" has been expanded, by which civil-law claims arising from the criminal offence can already be awarded in the criminal proceedings upon motion, thus making separate civil proceedings unnecessary.
- 14 Information for the injured party on his or her rights and on the course of the criminal proceedings has been improved. Over and above the information on the outcome of the court proceedings previously provided for by the law, the injured party may now receive notification of termination of the proceedings and on custodial measures, placement, release or relaxation of conditions of detention (section 406d of the Code



of Criminal Procedure). The obligation to notify injured parties of their rights in terms of protection, obtaining legal advice and information, as well as of their procedural rights was also strengthened and expanded, including in particular rights that they have by virtue of sources other than the Code of Criminal Procedure, such as entitlement to benefits pursuant to the Victims' Compensation Act or rights deriving from civil law protection from violence (section 406h of the Code of Criminal Procedure).

- 15** It will in future be easier for individuals who have been the victim of crime committed elsewhere in Europe to report these crimes in Germany (section 158 (3) of the Code of Criminal Procedure).

***cc) Private accessory prosecutor***

- 16** The legal institution of private accessory prosecutor (whereby the injured party may join the public charges preferred by the public prosecution office) enables victims of certain types of crime to take an active role in criminal proceedings. This is primarily designed to enable participation by victims of serious crimes committed against highly personal legal interests. Private accessory prosecutors may, among other things, submit evidentiary motions and make statements; they have the right to ask questions and also the right to object to orders made by the presiding judge. Furthermore, as a rule they enjoy the entitlement to be heard to the same extent as the public prosecutor (section 397 (1) of the Code of Criminal Procedure).
- 17** Adjustments to the rules governing admissibility of a private accessory prosecutor (section 395 of the Code of Criminal Procedure) were made as part of the Victims' Rights Reform Acts. The respective requirements are now more consistently aligned with the degree of vulnerability of the victim, which stems primarily from the severity of the offence and the consequences of the crime for the victim. In future, every person who has been seriously affected by a criminal offence is to have the possibility of acting as private accessory prosecutor (section 395 (3) of the Code of Criminal Procedure). Furthermore, the types of offences which automatically entitle the victim to act as private accessory prosecutor have been broadened. Thus, forced marriage, trafficking in human beings, exploitation of prostitutes and pimping, for example, as well as cases of domestic violence, are always covered (section 395 (1), nos. 4 and 5 of the Code of Criminal Procedure). Injured parties entitled to act as private accessory

prosecutor in criminal proceedings have the right to be present during the entire main hearing (section 406g (1) of the Code of Criminal Procedure).

- 18** In juvenile criminal law, the possibility has also been introduced for the person injured by a crime to join the proceedings as private accessory prosecutor where the accused person is a juvenile (aged from 14 to 17 at the time the offence was committed). The possibility of the “adhesion procedure” (see margin no. 12) has been introduced in cases against young adults (18 – 20 years old at the time the offence was committed) even if juvenile criminal law is applied in their case.

***dd) Legal counsel for victims and witnesses***

- 19** Certain victims have a right, upon motion, to have an attorney appointed as legal counsel at state expense and without regard to their circumstances in terms of income and assets (sections 397a, 406g of the Code of Criminal Procedure). This applies, *inter alia*, for victims of sex offences and of attempted homicide. This facilitates the safeguarding of the interests of particularly vulnerable victims. Victims of sexual offences, for example, have an automatic right to such free legal counsel if they are evidently unable to sufficiently safeguard their own interests.
- 20** It is now possible for family members of a victim of a homicide, as victims entitled to join proceedings as private accessory prosecutors, to have legal counsel appointed free of charge (victim’s attorney, section 397a (1) of the Code of Criminal Procedure). This also applies for victims of certain serious violent offence such as robbery, extortion resembling robbery, kidnapping or serious bodily injury who suffer considerably as a result of this offence. Victims entitled to join criminal proceedings as private accessory prosecutor who are unable to speak German, or who are hearing or speech impaired, are to have appointed a translator or interpreter in order to assert their procedural rights (section 187 (2) of the Courts Constitution Act). In addition, a person enjoying the trust of the injured party in principle has the right to be present at the examination (section 406f (3) of the Code of Criminal Procedure).
- 21** The right to make use of the services at any time of an attorney as counsel for the witness, a right that has been already been acknowledged through judgments at highest judicial level by the Federal Constitutional Court, has been established in law (section 68b (1) of the Code of Criminal Procedure). In addition, the possibility for

particularly vulnerable witnesses to have an attorney appointed as counsel has been simplified (section 68b (2) of the Code of Criminal Procedure).

### **c) Act on Compensation for Victims of Violent Crime**

- 22** Any individual who sustains personal injury on the territory of the Federal Republic of Germany as the result of a deliberate, unlawful attack or while preventing such an attack (injured person) is entitled to claim compensation in accordance with the Act on Compensation for victims of Violent Crime (Victims Compensation Act (*Opferentschädigungsgesetz, OEG*)), which entered into force on 16 May 1976. The Victims Compensation Act also governs provision for surviving dependents of victims of crime who died as the result of the attack. The notion that lies at the heart of the Victims Compensation Act is that the state has an obligation to provide for innocent victims of deliberately committed acts of violence. The Act thus governs independent compensation by the state which is in principle made independently of the general social system and social welfare for any person whom the German state was unable to protect, by means of its police bodies, from a deliberately committed violent act. Compensation under the Victims Compensation Act is provided upon motion, for which there is no time limit. The objective of the Victims Compensation Act is to compensate for health-related and financial consequences of violent crimes. As a result of the Third Act to Amend the Victims Compensation Act, which entered into force on 1 July 2009 (*Dritte OEG-Änderungsgesetz, 3. OEG-ÄndG*), violent crimes committed abroad against Germans or against non-German citizens who have been residing lawfully in Germany for at least three years, have now – subject to limited conditions – been included within the scope of the Victims Compensation Act.
- 23** The extent and amount of benefits to be provided under the Victims Compensation Act depend on the rules of Social Compensation Law, which are also applicable for provision to disabled veterans and surviving dependants of deceased veterans, for example. What is characteristic of this system of provision is that the benefits are determined by the extent and severity of the consequences arising from the injury as well as the respective need for various specific services (therapeutic treatment, rehabilitation and integration measures, a basic pension unrelated to income, further pension elements dependent on income, welfare assistance), which can, in cases of serious injury, add up to considerable payments, in principle amounting to full

compensation for the injury to health. Non-German citizens, too, may receive benefits under the Victims Compensation Act; here, citizens of other EU Member States are on an equal legal footing with German nationals, whilst other non-German citizens' entitlement to receive payment in principle depends on the duration of their residence in Germany. When compensation under the Victims Compensation Act is awarded, no differentiation is made based on the motive of the perpetrator in question, be it criminal or racist, for example. Thus the case of ill treatment of persons by the police, including foreigners and members of ethnic minorities, as referred to in No. 16 of the Concluding Observations, can in principle come within the scope of the Victims Compensation Act. The provisions of this Act are also relevant for those affected by trafficking in human beings (see Concluding Observations, No. 18). Non-governmental organisations (NGOs) have, however, pointed out that problems repeatedly occur in practice when those affected attempt to assert their claims. A study into this issue has been conducted by the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*, DIMR)<sup>2</sup>. The Federal Government will continue to engage with this subject.

- 24 The fact that the perpetrator's motives are irrelevant in terms of the Victims Compensation Act is in fact in the victim's interest. If this were not so, the competent authority would have to undertake an "investigation of the motives" when examining the application, something that is, in substantive terms, completely alien to their tasks, and which would cause a delay in the administrative procedure. Furthermore, not only would it often be difficult to prove the motives, it could also cause further strain to the victim.

## 2. Statistical Recording of Violent Crime

- 25 The Police Crime Statistics (*Polizeiliche Kriminalstatistik*, PKS) serves the purpose of observation of crime and individual categories of crime, the extent and make-up of the group of suspects, as well as changes in crime quotients. As a result of the data collected, findings can be drawn for the purpose of fighting crime through preventive measures and law enforcement, organisational planning and decision-making, as well as criminological / sociological research.

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<sup>2</sup> Petra Follmar-Otto, Heike Rabe (2009): *Menschenhandel in Deutschland – Die Menschenrechte der Betroffenen stärken* (Human trafficking in Germany – strengthening the human rights of those affected). German Institute for Human Rights, Berlin.

- 26** The Police Crime Statistics cover only offences of which the police gain knowledge and which they process to conclusion, including attempts that incur criminal liability and narcotics offences dealt with by the customs authorities. The statistics do not include offences against state security, traffic offences (except violations of sections 315, 315b of the Criminal Code (*Strafgesetzbuch*, StGB) and section 22a of the Road Traffic Act (*Straßenverkehrsgesetz*, StVG)), crimes committed outside the territory of the Federal Republic of Germany, or violations of criminal law of the *Länder*, with the exception of the relevant provisions of the *Land* data protection acts.
- 27** In order to obtain a picture of the security situation that is as complete as possible, the recording of data for the Police Crime Statistics also includes offences committed by children below the age of criminal responsibility and mentally ill persons without criminal capacity. It is for the judiciary, and not the police, to decide on the question of guilt. Furthermore, with regard to unsolved cases the perpetrator's age and criminal capacity are, as a rule, not known in any case.
- 28** The recording is based on a list of criminal offences structured partly according to criminal law aspects and partly according to criminological aspects. Offences of which the authorities have become aware are not recorded until the police investigation has been concluded and before the files are passed on to the public prosecution office or the court. The statistical data is transmitted from the Land criminal offices to the Federal Criminal Police Office in a pre-determined tabular form (aggregated data), and is then collated for the Police Crime Statistics for the Federal Republic of Germany.
- 29** The validity of the Police Crime Statistics is, however, limited by unreported crime. Since unreported crime concerns offences that have not come to the attention of the police, this cannot be reflected in the Police Crime Statistics. The attitudes of the general public in reporting crime also has a significant influence on the figures contained in the Police Crime Statistics. Thus the Police Crime Statistics do not constitute an exact reflection of the actual situation of crime, but, depending on the type of crime, merely present a more or less close approximation of the real situation.
- 30** No. 16 of the Committee's Concluding Observations regarding Germany's last periodic report gave the Federal Government cause to improve the statistical recording of possible ill-treatment of persons – including foreigners and members of ethnic

minorities – by the police. In order to achieve this, following intensive discussions with the *Land* authorities competent for compiling the statistics, new categories were introduced into the criminal justice statistics which are intended to cover specifically offences committed by police officers. Recording of this data began on 1 January 2009. Since the data are collected by the Land Statistical Offices of the federal *Länder* and transmitted to the Federal Statistical Office on set dates, no findings are yet available. For this reason no statement can yet be made with regard to the offences referred to.

## ***II. Protection from Discrimination and Dealing with “Hate Crime”***

### **1. Equal Rights**

#### **a) General Equal Treatment Act**

**31** The Act of 14 August 2006 Enacting European Directives Implementing the Principle of Equal Treatment, Article 1 of which contains the General Equal Treatment Act (*Allgemeine Gleichbehandlungsgesetz*, AGG), entered into force on 18 August 2006. The Federal Republic of Germany thus transposed four European equal treatment directives (Directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC) into German law. The objective of the General Equal Treatment Act is to prohibit or eliminate discrimination based on race or ethnic origin, gender, religion or beliefs, disability, age or sexual identity. The Act does not aim to protect certain groups but rather aims to protect each individual from discrimination based on any of these factors. This constitutes an important step towards a society free from discrimination. The scope of the General Equal Treatment Act extends to labour law, civil law and public law. In the field of civil law, specific prohibitions on discrimination are enshrined not only with regard to factors of race/ethnic origin and gender, as required by the European directives, but, going beyond Community law, the factors of religion, disability, age and sexual identity are brought under the civil law protection from discrimination, because otherwise significant elements of life within society would have been excluded from the protection from discrimination as laid down in law. The civil law prohibition on discrimination applies first to the conclusion of so-called mass transactions. These are business transaction which as a rule occur irrespective of the person concerned or only with subordinate regard to the person concerned, subject to

similar conditions, and in a large number of cases. In addition, it also applies to contacts with private insurance companies.

- 32** The General Equal Treatment Act contains rules on sanctions that can be imposed in the event of violation of the prohibition on discrimination. In particular, it also contains provisions on damages and compensation. It relaxes the burden of proof for persons who have been discriminated against, and anti-discrimination associations also have the right, in certain circumstances, to represent the victim of discrimination in court hearings within the framework of judicial proceedings. The court decisions given so far with regard to the General Equal Treatment Act indicate that labour law disputes account for most judicial proceedings. In contrast, recourse to the courts has only rarely been sought for claims of a violation of the civil law prohibition of discrimination.

#### **b) Anti-Discrimination Agency**

- 33** With the entry into force of the General Equal Treatment Act, the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes, ADS*) was set up. The Agency's remit includes, apart from public relations and research activities, in particular giving advice to individuals who believe that they have been subjected to discrimination. The statistics kept by the Agency show that persons affected approach them primarily due to discrimination on grounds of disability, sex, age and ethnic origin. From the establishment of the Agency in August 2006 until March 2010 over 9,300 individuals seeking advice had approached the Agency, of whom more than 4,500 individuals approached them regarding the characteristics of discrimination prohibited under the General Equal Treatment Act.
- 34** Following a feasibility study, the information and address database planned by the Agency was programmed in the third quarter of 2009. The aim is to make it easier for any individual or institution concerned with or interested in the subject of (prevention of) discrimination to look for court judgments, press releases, research reports and literature on this subject with the aid of the database. In addition, institutions, associations and individuals have the possibility of networking with other organisations and persons active in this field. In this way, individuals affected by discrimination are able to obtain an overview of facilities offering advice locally. Scholars and academics can obtain information about research and literature on the

subject of discrimination. There is a separate section containing information for journalists. Lawyers and other individuals interested in current developments in jurisprudence can obtain information regarding court judgments and legislation. It is expected that the database will go online in the third quarter of 2010.

- 35** Since the Agency was set up, specialist conferences, congresses and a large number of training events for multipliers (equal opportunity officers, employee representation bodies, associations) have been held on the subject of the General Equal Treatment Act. Pursuant to section 27 (4) of the General Equal Treatment Act, the Federal Anti-Discrimination Agency and those commissioners who come within their remit (e.g. the Commissioner For Matters Relating to Disabled Persons, the Commissioner for Migration, Refugees and Integration, the Parliamentary Commissioner for the Armed Forces and the Commissioner for Matters Related to Repatriates and National Minorities in Germany) must submit a joint report to the German Bundestag every four years. The report should also contain recommendations on how to prevent discrimination.
- 36** At the end of 2009, the Federal Anti-Discrimination Agency conducted a campaign under the motto “Diversity instead of Simplemindedness – Working Together for Equality”. The campaign seeks to promote equal treatment of all people in day-to-day and in working life and encourages the idea of social recognition of diversity among the general public.
- 37** A criticism voiced repeatedly with regard to the Federal Anti-Discrimination Agency is that there is only a single federal body. There are calls for the creation of agencies at *Land* level in order to facilitate accessibility for those affected. However, the Federal Anti-Discrimination Agency participates in exchanges on substantive issues with the existing anti-discrimination and advice agencies within the individual federal *Länder*. For example, an expert discussion took place in November 2009 concerning standardised collection of data.

### **c) Equal Treatment Policy**

- 38** As an illustration of further activities undertaken by the Federal Government concerning the policy of equal treatment mention should be made at this juncture of the Act on Registered Same-Sex Partnerships and the Act on Transsexuals.



- 39** The Federal Government took steps to reduce discrimination against gays and lesbians and promote respect for different ways of life at an early stage, with the Act on Registered Same-Sex Partnerships (*Gesetz über die Eingetragene Lebenspartnerschaft*, LPartG) which entered into force on 1 August 2001.
- 40** As a result of the reform of the Act on Registered Same-Sex Partnerships, which took effect on 1 January 2005, the legal position of registered civil partners has been further approximated to that of married spouses. The reforms are described in detail in Annex 1.
- 41** In the study on the situation of children in registered same-sex partnerships<sup>3</sup>, which was commissioned by the Federal Ministry of Justice and presented on 23 July 2009, the statement is made that the Act on Registered Same-Sex Partnerships and adoption of step-children had proven effective in practice and that, with all types of family constellations, it is the quality of relationships within the family and not the parents' sexual orientation that is a decisive factor in child development. The study constitutes a basis for the necessary broad social and political debate regarding this question.
- 42** Further amendments were made to the Act on Registered Same-Sex Partnerships in the years 2007 to 2009<sup>4</sup>. Registered same-sex partners can now, like married spouses, officially register their partnership at the registry office. They thus enjoy equal rights to married spouses in many legal areas.
- 43** In its decision of 7 July 2009 (ref. no. 1 BvR 1164/07), published on 22 October 2009, the Federal Constitutional Court declared that the unequal treatment of marriage and registered same-sex partnerships with respect to occupational surviving dependants' pension schemes for employees within the public service who have a supplementary pension with the Supplementary Pensions Agency for Federal and Länder Employees

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<sup>3</sup> Rupp, Marina (ed.) (2009): *Die Lebenssituation von Kindern in gleichgeschlechtlichen Lebenspartnerschaften* (The life situation of children in same-sex registered partnerships). Publisher: Bundesanzeiger Verlag, Cologne.

<sup>4</sup> Civil Status Reform Act of 19 February 2007, Federal Law Gazette I 2007, 122

Act of 21 December 2007 to Amend the Law of Maintenance, Federal Law Gazette I 2007, 3189

Act of 17 December 2008 to Reform Procedure in Family Matters and Non-Contentious Matters, Federal Law Gazette I 2008, 2586

Act of 3 April 2009 to Reform the Structure of Equalisation of Pension Rights, Federal Law Gazette I 2009, 700

Act of 6 July 2009 to Reform the Law of Equalisation of Accrued Gains and Guardianship Law, Federal Law Gazette I 2009, 1696

was incompatible with the requirement of equal treatment enshrined in the Basic Law (Article 3 para. 1 of the Basic Law).

- 44 The coalition agreement of the Federal Government dated 26 October 2009 provides that any discrimination in violation of the requirement of equal treatment that is contained in tax law or public service law of the Federation is to be eliminated and, in particular, the decisions of the Federal Constitutional Court on equal treatment of same-sex registered partners and married spouses are to be implemented.
- 45 A further positive development in the field of equal treatment policy has been achieved through the amendment of the Act on Transsexuals.
- 46 The Act on the Changes to First Names and the Establishment of Sexual Identity in Special Cases (Act on Transsexuals (*Transsexuellengesetz*, TSG) has been in force since 1 January 1981. This Act serves the purpose of enabling individuals who possess a sexual identity that is different to their physical gender to lead their lives in the role of the gender of their sexual identity. The Act on Transsexuals provides either that merely the person's first names are changed, or that the entry as to gender in the register of births and in the person's birth certificate are changed as well (so-called change of personal status).
- 47 There was a considerable need to revise the Act on Transsexuals, not least because of decisions of the Federal Constitutional Court, but also due to more recent scientific findings. The Act to Amend the Act on Transsexuals (*Transsexuellengesetz-Änderungsgesetz*, TSG-ÄndG)<sup>5</sup> was adopted by the Bundestag on 19 June 2009 and entered into force in July 2009. The amending act removed the requirement from the Act on Transsexuals that a person must be unmarried in order for a determination to be made that he or she is a member of the opposite sex. Consequently, married transsexuals are able to remain in their existing marriage even if they change to the opposite sex. The rights and obligations of married spouses remain unaffected by the gender change undertaken by one of the partners and, even after the decision obtains final and binding force, are governed by the provisions of the law governing marriage. The coalition that has been in government since October 2009 has undertaken in its

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<sup>5</sup> The Act of 22 July 2009 to Amend the Act on Transsexuals, Federal Law Gazette I 2009, 1978

programme of government to make further reforms to the Act on Transsexuals in the course of the legislative term.

## **2. Protection against discrimination**

### **a) Discrimination based on ethnicity – example of the Sinti and Roma peoples**

- 48** The German legal system has taken the following measures to respond to the Human Rights Committee's concerns that the Roma people suffer discrimination in access to housing, in the workplace, and in terms of participation in social services and access to education:
- 49** Protection against discrimination based on ethnicity in legal transactions under civil law (Concluding Observations No. 21a), for example in renting residential premises and in employment relationships, has been achieved by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz, AGG*) (see margin nos. 30, 31). Persons affected by discrimination may seek redress at the Federal Anti-Discrimination Agency (see margin nos. 32 et seqq.). The Anti-Discrimination Agency is supported by an Advisory Board; one of its current members is the chairperson of the Central Council of German Sinti and Roma. Furthermore, the Federation and the *Länder* provide support to the Central Council of German Sinti and Roma; among its functions is to inform the public about the historical fate of the Sinti and Roma and about their culture. These informational measures at the civil-society level are supplemented by general tolerance-promoting programmes organised by both the Federation and the *Länder*.
- 50** Non-German Roma – as do all other non-German nationals – receive appropriate social service benefits provided by the state, including provision of residential premises and medical care if necessary, based upon their legal residency status. Non-Germans with a perspective to remain in the country legally over the long term receive the same services as German nationals. Of course, Sinti and Roma who have German nationality have the same rights and obligations as all other German nationals.
- 51** Sinti and Roma who belong to the national minority of German Sinti and Roma who are documented to have been in Germany for centuries, are protected in terms of their culture and language, which forms part of the traditional cultural wealth of Germany, pursuant to the Framework Convention of the Council of Europe for the Protection of

National Minorities and, to the extent that those affected so desire, pursuant to the European Charter for Regional or Minority Languages. In contrast, for Sinti and Roma with an immigrant background, the focus is on efforts to integrate them into the German environment – as it is for all other groups in a comparable situation.

- 52** Educational institutions from elementary education up to higher education are open to all people in Germany based upon their aptitude, performance and abilities. Students with learning difficulties are supported by many measures, such as mentor programmes which foster close cooperation between the schools and the parental home. Relevant programmes have also been developed and are offered to children and teenagers of Sinti and Roma ethnicity.
- 53** Regarding the fears of the Committee that Roma are being discriminated against in the practice of forced returns (Concluding Observations no. 21b), it should be noted that, as mandated by international standards, the nationality of an affected person (obligated to leave the country) is the only relevant factor for such returns and not, for example, ethnicity. For that reason, Germany does not have any statistical material that would show how many people from a certain ethnic group are returned to a country of origin; and it is therefore not possible to confirm that an above average number of people are affected.
- 54** However, in the exceptional case of persons from Kosovo who are required to leave the country, ethnicity is recorded because these people required a different level of protection due to the armed conflict there, and are therefore returned according to the rules established between Germany and UNMIK, which apply their respective rules. In such cases, however, the people affected identify themselves as belonging to a certain ethnic group.
- 55** The German legal order itself governs compliance with the principle of non-discrimination. For example, both the German Basic Law as well as various ordinary laws and legal norms set down relevant prohibitions against discrimination. Of course, this also applies to the area of forced return, and is true both for the determination of an existing requirement to leave the country by the foreigners authorities of the German *Länder* or the Federal Office for Migration and Refugees, as well as for enforcement of deportation orders. If they must be carried out with accompaniment,

this is done by police officers specially trained for that activity. If necessary, persons subject to deportation are also accompanied by a physician.

- 56** Police and medical accompaniment as well as the potential use of measures involving physical force always take place in compliance with the principle of proportionality and without taking into account the affected person's membership of a certain ethnic group.

**b) Religious discrimination using the example of the religiously motivated wearing of headscarves**

- 57** Freedom of faith, conscience, and to profess a religious or philosophical creed is guaranteed by Article 4 of the Basic Law. The term "faith" is not limited to the world's large religions; rather, it includes divergent and new faiths as well. This basic right encompasses the right to form and maintain a faith, including its expression to the outside world, as well as the right to direct one's overall conduct to the tenets of this faith and to act accordingly. Negative freedom of faith; i.e., the freedom to reject a certain religion or world view, is protected along with affirmative freedom of faith. This also encompasses the rejection of religious symbols. Negative freedom of faith is restricted by "a situation created by the state in which the individual is subjected, without the possibility of avoidance, to the influence of a certain faith, the conduct with which this is manifested, and the symbols with which it is portrayed" (BVerfGE 93, 1, 16).

- 58** Religiously motivated wearing of a headscarf is protected by freedom of religion. Thus, girls are generally allowed to wear headscarves during classes at school. A different rule may be applicable to teachers. If the teacher stands before the class wearing a headscarf, this could affect the negative freedom of religion of the students (Article 4 para. 1 Basic Law), as well as the right of parents to the care and upbringing of their children, also protected by the Constitution (Article 6 para. 2 Basic Law), and the state's educational mandate, which is to be fulfilled in compliance with the obligation for neutrality in terms of world view or religion (Article 7 para. 1 Basic Law).

- 59** With regard to the problematic issue of wearing religious symbols in public service, the Federal Constitutional Court decided by judgment of 24 September 2003 that there

must be a statutory basis for a prohibition against wearing of headscarves by teachers (for religious reasons) in the school and classroom (BVerfGE 108, 282, 294 et seqq.). The court stated that resolving the relationship of tension between the affirmative freedom of faith of a teacher on the one hand, as well as the state obligation of neutrality with regard to world view and religion, the parents' right to determine upbringing and the students' negative freedom of faith on the other, was a task for the democratic *Land* legislature, in compliance with the duty of tolerance; the legislature must seek a compromise reasonable for all sides by means of the public opinion formation process (BVerfGE 108, 282, 302).

- 60** The judgment of the Federal Constitutional Court relates to state schools. Wearing religious symbols is allowed in private schools (e.g. denominational schools).
- 61** State school teachers do not have a civil service relationship with the Federation. As such, the Federal Constitutional Court's decision did not result in a necessity to take legislative action for the public service at the federal level. In contrast, the *Länder* of Baden-Württemberg, Bavaria, Berlin, Bremen, Hesse, Lower Saxony, North Rhine-Westphalia and Saarland have drawn up rules in their school and/or civil service laws which are designed, with various emphases, to preserve the state's neutrality with regard to religion and world view, particularly for educators at state schools.
- 62** The *Land* of Berlin prohibits educators in public schools, civil servants in the sovereign area of administration of justice, prisons and police, without any differentiation, from wearing visible symbols denoting religion or world view which demonstrate to the viewer their belonging to a certain religious or world-view community, as well as wearing of noticeable pieces of clothing influenced by religion or world view.
- 63** In contrast, the school laws of the *Länder* of Baden-Württemberg, Bavaria, Hesse and North Rhine-Westphalia contain clauses, variously formulated, which attach special value to Christian and Western educational and cultural values or traditions. The constitutionality of these *Länder*-law rules has thus far not been the subject of a Federal Constitutional Court decision, although the constitutional courts of Bavaria and Hesse have declared their respective rules compatible with their *Land* constitutions.

- 64** The counselling services of Federal Anti-Discrimination Agency do not deal with many inquiries where Muslim women feel discriminated against because of restrictions on their wearing of a headscarf. The Anti-Discrimination Agency has received a total of 15 such inquiries.
- 65** Most of these inquiries dealt with the area of employment, and therefore the prohibition against discrimination in labour law provided for by the General Equal Treatment Act. For example, a physician's assistant or a bank employee had been forbidden to wear a headscarf during work. There were also inquiries from teachers or in connection with work experience placements.
- 66** Consistent with its statutory mandate, the Anti-Discrimination Agency provides comprehensive information to concerned persons regarding potential claims in such cases pursuant to the General Equal Treatment Act (compensation for damage, just satisfaction) and the possibilities for taking legal action. It is important to note that private employers may not in principle discriminate against their employees for wearing a headscarf as an expression of their religion. Counselling includes information about current jurisprudence dealing with headscarf bans. Special mention should be made of the previous decisions from the administrative courts and the Federal Labour Court, which consider dispensing with the headscarf for Muslim teachers/social educators in the classroom to be justifiable under section 8 of the General Equal Treatment Act due to the state's obligation of neutrality as a substantial and determinative professional precondition for working as a teacher.
- 67** In specific cases, the Anti-Discrimination Agency, with the consent of the women affected, has called for the employer to state its position with the goal of achieving a friendly settlement to the dispute. In the example mentioned above of the bank employee, this led to an offer that she work in the back office area.

### **3. Hate crime**

#### **a) The case of A.-S.**

- 68** A case of hate crime that attracted a great deal of attention, not only among the German public, was the murder of an Egyptian woman in a courtroom in Dresden.

- 69** The perpetrator, a Russian ethnic German repatriate, had stabbed the 31 year old pregnant victim on 1 July 2009 during a court hearing at the Dresden Regional Court, inflicting a total of 16 stab wounds in her chest, back and arms, and stabbed her husband a total of 15 times in the upper body, arm, throat and jaw areas. The victim's husband was seriously injured but survived, while Mrs. A.-S. died in the courtroom. The murder caused outrage and massive protests in the Islamic world.
- 70** The murder case was also the subject of a written inquiry from the Special Rapporteur of the United Nations on racism, racial discrimination and xenophobia. The Federal Government responded to this inquiry by letter dated 20 October 2009.
- 71** The perpetrator was convicted on 11 November 2009 by the penal division with lay judges of the Dresden Regional Court of the murder of Mrs. A.-S. and of the attempted murder of her husband along with aggravated bodily injury, and was sentenced to life in prison. The court found that the elements of murder, malice aforethought and base motives had been fulfilled because the dominant motive for the act was to take revenge on Mrs. A.-S. for initiating a criminal proceeding for defamation combined with a flagrant disregard for her personality and her religious belief as a Muslim woman. With regard to the attempted murder, the court found that the defendant had acted in order to enable to him to kill Mrs. A.-S.
- 72** Furthermore, the court determined that there was a particular gravity of guilt in this case. This was indicated primarily by the fact that the act was committed in the presence of the child of the two victims, that the perpetrator attacked two people, that several elements of murder had been fulfilled, that the perpetrator acted against Mrs. A.-S. with a direct intention to cause death, and that he consciously took the murder weapon with him to the court hearing in order to use it there if necessary. The maximum penalty permissible under German law was imposed. The Egyptian government has welcomed the judgment.
- 73** The court denied the defence motions for auxiliary evidence and granted a motion for a damage claim linked with criminal proceedings (*Adhäsionsantrag*), which determined the defendant's obligation to compensate the husband and the heirs of the murdered victim for damages. Because this verdict has been appealed on points of law, however, the judgment is not yet final and binding.



**74** On 21 and 29 December 2009, the Dresden Public Prosecution Office terminated investigative proceedings against the judge at the time, the President of the Regional Court and the federal police officer who had mistakenly shot at the husband in the courtroom. The office stated that the official could not be held responsible for either intentional or negligent bodily injury. It found that the situation in the courtroom, in which the victim's husband struggled with the perpetrator, had been extremely difficult for the officer, who was trying to provide speedy assistance, to assess. On 5 January 2010, the victim's family's counsel filed a complaint to the Dresden Public Prosecution Office against the termination of the investigative proceedings. The Public Prosecutor General of the Free State of Saxony, by order dated 10 March 2010, did not admit the complaint against the termination of the investigative proceeding against the Federal Police officer. The Public Prosecutor General rejected the complaints against the termination of the investigative proceeding against the then judge and the President of the Regional Court.

#### **b) Aggravation of penalty for hate crime**

**75** The Federal Government is aware that, particularly in the case of racist motives for a crime, the signal emanating from the judgment is of great significance. In the legal policy debate, some demand that "hate" be expressly taken up into the Criminal Code as an element which would aggravate the penalty. However, the opinion of the Federal Government is that this concern has already found adequate expression in the general rule of section 46 of the Criminal Code, pursuant to which the motives and aims of the offender as well as his state of mind are to be taken into account in fixing punishment. Consequently, it is recognised in German legal practice that section 46 of the Criminal Code may as a rule lead to aggravated punishment specifically in the case of racist, xenophobic or other motives evidencing contempt for humanity.

**76** Furthermore, it should be pointed out that as early as 1962, the Federal Court of Justice decided that racial hatred is to be considered a base motive within the sense of the elements of murder pursuant to section 211 of the Criminal Code.

### ***III. Extraterritorial applicability of the rights arising from the Covenant (see also Concluding Observations no. 11)***

77 In 2005, the Federal Government made the following statement to the Human Rights Committee:

*“Pursuant to Article 2 paragraph 1, Germany ensures the rights recognized in the Covenant to all individuals within its territory and subject to its jurisdiction.*

*Wherever its police or armed forces are deployed abroad, in particular when participating in peace missions, Germany ensures to all persons that they will be granted the rights recognised in the Covenant, insofar as they are subject to its jurisdiction.*

*Germany’s international duties and obligations, in particular those assumed in fulfilment of obligations stemming from the Charter of the United Nations, remain unaffected.*

*The training it gives its security forces for international missions includes tailor-made instruction in the provisions of Covenant.”*

78 The Federal Government stands by that declaration.<sup>6</sup>

79 The obligation to protect individual dignity as well as inviolable and inalienable human rights is not only the mission of the Covenant; rather, it has always been a dominant element of basic and advanced training for the *Bundeswehr*, the Federal Armed Forces. This instruction has a priority position, especially during pre-deployment training. In addition to international humanitarian law, members of the armed forces receive instruction on international human rights conventions, for example the Covenant on Civil and Political Rights, the European Convention on Human Rights, the Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture. Various courses and seminars organised within the scope of pre-deployment training teach the content of these instruments.

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<sup>6</sup> For example most recently in the response of the Federal Government to the minor interpellation of the deputy Nachtwei and others and of the party group Alliance 90/The Greens – Bundestag Printed paper 16/6282 of 29 August 2007.

- 80** The Act on the Legal Status of Soldiers (section 33 *Soldatengesetz*, SG) provides that Federal Armed Forces soldiers are to be instructed as to their rights and obligations as citizens and under international law, both in peacetime and during wartime. This statutory mandate of instruction on international humanitarian law is an integral part of the basic training program for all soldiers of the German armed forces. The notion of protecting human dignity and human rights is emphasised and imparted during their training. As part of the annual advanced training programmes for the troops, instruction in obligations under international law is designed to deepen existing knowledge of these topics. Instruction is carried out by supervisors, and at times by law instructors and legal counsellors with the qualification to hold judicial office.
- 81** Training is undertaken at the approx. 100 schools and academies of the Federal Armed Forces. Upon their entry into the armed forces, soldiers of the Federal Armed Forces consistently receive education not only about respecting basic rights, but also about actively working toward their realisation in practice. Their instruction includes being shown and going through the substantive connections to human rights and the International Covenant on Civil and Political Rights, in terms of both legal theory and practical training.
- 82** Furthermore, soldiers to be deployed abroad are taught about the applicable international and national rules in detail during their pre-deployment training. This ensures that human rights as protected by the Covenant are given sufficient treatment in the preparation of the armed forces for their respective imminent foreign deployment. In the foreign countries of deployment themselves, a legal counsellor/staff officer located on site, directly subordinate to the respective commander of the German contingent, ensures that human rights aspects are taken into account in operational planning and issuance of orders; particular focus is placed on the Covenant.
- 83** Overall, a large number of courses and seminars are offered at various training facilities of the Federal Armed Forces in connection with the topics of human dignity and human rights.
- 84** An extensive collection of documents is available to aid in the training of military personnel on the topics of human rights/Covenant rights; large portions thereof may be accessed on the Intranet by all soldiers as well as civilian employees.

#### ***IV. Situation in Nursing Homes (see also concluding Observations no. 17)***

##### **a) Reform of the provisions regulating nursing homes**

- 85** Residents of nursing homes need special protection because their care might involve human rights aspects. This protection has been ensured independently of the provisions of the Social Code, based primarily on the Federal Act on Homes, Residential Homes for the Elderly and Nursing Homes for Major Residents (hereinafter: Act on Residential Accommodation), and the statutory ordinances issued in connection with that statute. In addition to relevant procedural provisions, the Act on Residential Accommodation contains civil law provisions on the contracts to be concluded with the operators of residential homes.
- 86** With the reform of federalism, the first phase of which entered into force in 2006, new rules now govern the legislative competences of the Federation and the *Länder*. Whilst the *Länder* previously had competence for the enforcement of the procedural provisions of the Act on Residential Accommodation by means of the Residential Accommodation Supervisory Authority, they are now also able to substitute their own regulatory provisions for those of the Act.
- 87** Many *Länder* have already issued their own rules with regard to nursing homes. As with the Act on Residential Accommodation, the purpose of these laws is the preservation and promotion of independence, self-determination, self-responsibility and equal participation by persons with a disability or a need for long-term nursing care. Among other things, the rules govern monitoring of the homes to ensure that the homes adequately fulfil their tasks and obligations to the residents.
- 88** The legislative competence for the issuance of civil law provisions continues to lie with the Federation. With the Act on Residential Homes and Care Contracts, which entered into force on 1 October 2009, the civil law provisions of the Act on Residential Accommodation were further developed into a modern consumer protection law. The goal of the new law is to support older adults with a disability or a need for long-term nursing care in leading their lives as independently and with as great a degree of self-determination as possible.
- 89** The law's scope of application is not limited to homes. It includes all contracts where a double dependence on an entrepreneur arises by linking residential accommodations

with care or nursing services. New forms of residential living with a similar need for protection have been included within the scope of application. Protection to consumers is provided by provisions regarding pre-contractual information, transparency of the contract, appropriateness of fee, adaptation of services due to a changed need for care, and termination.

## **b) External quality controls**

- 90** Book XI of the Social Code (SGB XI) – social long-term care insurance – was subjected to a comprehensive reform with the Long-Term Care Enhancement Act, which entered into force on 1 July 2008. One focus of the reform was on measures which would enhance the quality of the care services performed by nursing homes and care service providers. For example, the provisions on monitoring out- and in-patient care facilities were further developed with a view to improving the quality of services and increasing the transparency of results.
- 91** Also, the frequency of quality controls in both the out- and in-patient areas will be increased:
- As of 2011, all licensed care facilities will be monitored once per year (normal monitoring).
  - For a transition period, every licensed care facility will be monitored at least once by the end of 2010.
- 92** As a general rule, all monitoring visits are without prior notice. In the future, the focus of the monitoring by the Medical Service of the health insurance funds (*Medizinischer Dienst der Krankenversicherung*, MDK) will be on the condition of those requiring care and the effectiveness of the measures of nursing and care (quality of results). Also included are the newly introduced additional care measures for persons with limited competence in daily life in nursing homes.
- 93** The law also provides that monitoring results from certifications with respect to the quality of the process and structure may be recognised as a substitute for MDK monitoring under certain preconditions. However, the quality of results in the care facilities is always to be monitored by the MDK.

### **c) Reporting on the quality of care**

- 94** The Federal Government is reacting appropriately and focussed to the quality situation in care facilities with measures provided for in the Long-Term Care Enhancement Act.
- 95** In August 2007, the Medical Service of the central associations of the health insurance funds (MDS) submitted, based on the legal foundation of section 118 (4) SGB XI, the second report on quality in out-patient and in-patient care. The report covers the period from 2004 to 2006. In 2006, the Medical Services' monitoring quota was 18.6% throughout Germany. The breakdown of the monitoring quota into out-patient (13.5%) and in-patient (24.4%) shows that the priority of quality control is with in-patient care. This is a result of the high level of protection that exists due to the special dependence on the care facility by residents needing care. For in-patient care, 56% of all controls were undertaken without advance notice. As the data foundation, monitoring results from 31.1% of all licensed care services and 41.6% of the licensed in-patient care facilities were evaluated, and a total of almost 40,000 persons requiring care were included. In its most recent report, the MDS emphasises the commitment on the part of the care facilities to improve the quality of care; simultaneously, however, it states that more must be done. In terms of the quality of result, a differentiated picture with a slight but steady tendency toward improvement was found.
- 96** The residents' condition of care in the in-patient area was appropriate in 90% of cases (compared with 82.6% in the second half of 2003). This shows that appropriate care is provided in the very large majority of the studied cases. However, deficits were still found with respect to 10% of residents. Although an improvement of 7.4% was discernible compared with the first report (2003), the MDS correctly finds a continuing need for action and optimisation.
- 97** With regard to the documentation of care and the care process, the homes in some cases show a marked improvement compared with 2003; however, due to the low initial values, there is still considerable potential for improvement. One positive result is that the gathering of information and biography work is improving consistently in the in-patient care facilities (which, for example, is especially important for those suffering from dementia), and that prophylactic measures are carried out appropriately.

#### **d) More transparency for consumers**

- 98** The reform provides more transparency in terms of monitoring results, so that good care will be easier to recognise. The results of the evaluation reports are to be published according to certain criteria in a comprehensible and consumer-friendly manner (both on the Internet and in other suitable places). Summaries of the evaluation results must be displayed in a readily visible place in nursing homes and out-patient care service facilities.
- 99** The partners of the so-called “care self-administration” (central association of home-care insurers, the federal working group of the regional social assistance agencies, Federation of German Local Authority Associations and the associations of the operators of care homes at federal level) have, with the participation of the association of the Medical Service of the central association of health insurance funds (MDS), agreed upon criteria for publication and have developed an assessment system in the form of school grades from “very good” to “poor.” Assessing out- and in-patient care facilities with the familiar system of school grades facilitates an orientation about the quality of the services offered. As provided for by statute, groups of stakeholders, consumer organisations and professional associations were included. As such, the agreements have a broad foundation. Due to the number and allocation of the criteria, the system ensures that both good and bad care is reflected in the overall results. This makes it easier for those requiring care and their relatives to obtain a differentiated idea of the quality of a given facility.

#### **e) Development of professional care services and continuing to strive for quality content in care services**

- 100** In the Long-Term Care Enhancement Act of 2008, it was further provided that in the future, expert standards in care services would be worked up scientifically upon a statutory basis, with responsibility by the partners to the agreement of care self-administration. Expert standards make the generally accepted state of medical/care insights more concrete with regard to specific topics and offer professional caregivers support, security and practical expertise in day-to-day care. As the result of a process of debate, professionally organised and oriented to consensus on topics relevant to providing care, they represent a very important instrument of internal quality development in caregiving. Expert standards will in the future be binding for all long-

term care insurers and their associations as well as directly binding for licensed care facilities.

- 101** Until the reform, during the reporting period the Federal Ministry of Health had itself taken initiatives to promote professional instruments to develop quality in care by working up expert standards for care in cooperation with the German Network for Quality Development in Care Services (*Deutsches Netzwerk für Qualitätsentwicklung in der Pflege*, DNQP). The subject matter of the promoted standards included prevention of bedsores, discharge management, and continence promotion.
- 102** The promotion by the Federal Ministry of Health of the “Framework Recommendations on Dealing with Challenging Behaviour among People with Dementia”, published in March 2007, likewise took place within that context. This instrument constituted the preliminary work toward the development of an expert standard for the care of people suffering from dementia.

#### **f) Charter of rights for persons requiring assistance and care**

- 103** The “Charter of Rights for People in Need of Long Term Care and Assistance” (see Annex 2) goes back to the work of the “Round Table for Long Term Care”, which was initiated in autumn 2003. It was founded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth as well as the then Federal Ministry for Health and Social Security in order to improve the situation in life of persons requiring assistance and care. Experts from all areas of responsibility with regard to care in old age (including the *Länder*, local government, bodies responsible for care facilities, charitable associations, private associations of responsible bodies, nursing home supervisory bodies, long-term care insurance funds, advocacy groups for the elderly, scientists/scholars, foundations) were involved in it. This Charter is designed to strengthen the role and the legal position of the people affected and their relatives, and provides information and encouragement in shaping dignified care.
- 104** Many facilities and services already use the Charter as an instrument of their quality management or to support their daily practice. Following the successful conclusion in June 2008 of a project with in-patient care facilities, ten responsible bodies for out-patient care services started a practice project in October 2008 in order to monitor the quality of their services based on the Long Term Care Charter. The goal was to



promote the transfer of the Long Term Care Charter into the practice of out-patient services, as well as to work up and illustrate opportunities and problems associated with implementing the Long Term Care Charter. This project served to make progress throughout Germany with the Long Term Care Charter in terms of its further development and the dissemination of good practices.

**g) Special needs of elderly and mentally ill persons**

- 105** An increasing number of residents with dementia must be cared for in long-term care facilities. The special needs of this group of persons call for a holistic care concept and specially qualified personnel.
- 106** The situation of elderly mentally ill persons in German nursing homes has continually improved in the past several years. This is indicated by the results of the 2<sup>nd</sup> MDS report (2007). However, deficiencies were still found in various facilities.
- 107** But a steadily increasing number of facilities have undertaken serious efforts based upon the “Charter of Rights for People in Need of Long Term Care and Assistance” to achieve improvements. Sustainable support is provided to these efforts by a central office at the German Centre of Gerontology (*Deutsches Zentrum für Altersfragen*, DZA). For example, there are nursing homes in Germany that work without physically restraining the residents in any way. Increasingly, small living groups are being initiated for persons with dementia; some are part of larger facilities, but others are especially planned in smaller units. The introduction into nursing care facilities of quality commissioners with specific areas of focus (e.g. bedsores, guarding against falls, nutrition) has also led to improvements. The portal called “Learning from Critical Events” (“aus kritischen Erfahrungen lernen”), which was conceived by the professionals from the German Foundation for the Care of Older People (*Kuratorium Deutsche Altershilfe*, KDA) with the support of the Federal Ministry of Health, offers the opportunity to report anonymously about critical events or make good recommendations for solutions from the daily practice of caring for the elderly. This portal, which is accessible to everyone, has led to increased level of awareness in care for the elderly and has achieved a high acceptance level.
- 108** It has to be taken into account that the number of people with dementia and very severe behavioural issues with simultaneous somatic multiple morbidity in German

nursing homes is steadily increasing. Currently, the share of those suffering from dementia is presumably between 60 and 70%. It can be concluded that many providers and facilities, and specifically individuals who direct homes and care services, are constantly increasing their efforts to improve the quality of life of these people living in nursing homes. These efforts include concepts for structural improvements and organisational measures. Also, specific concepts for continuing and advanced training in gerontopsychiatric care have been developed and implemented.

- 109** The topic of “violence in long-term care” is being intensively debated in several *Länder*. Professionals from care services, administration and charitable associations are searching for joint ways to deal with the propensity towards violence, but also to work against the criminalisation of care. Toward that end, initiatives have been created which are directed toward breaking down the taboos about this topic and providing valuable information for professional conduct to those working in care services.
- 110** The protection of elderly and mentally ill people has been improved in many nursing care facilities that are especially for mentally ill patients. The *Länder* are making efforts to offer user-oriented approaches to holistic psychiatric care in these facilities. Working groups have been initiated toward that end, and have worked up quality standards in this regard. Upon that foundation, care and nursing concepts may be worked up in the nursing homes as a prerequisite for individual care planning. The services to be provided by the caregivers are based upon the need for care and the need for social-psychiatric assistance.

## ***V. Individual communications***

- 111** The Committee has thus far forwarded to the Federal Government a total of 20 individual communications pursuant to the First Optional Protocol to the Covenant. Of these, 17 have been denied as inadmissible, of which 10 were in the reporting period; two communications are currently still pending. Only in one case a violation of the Covenant was found; this decision is discussed briefly below.
- 112** In her communication, the author complained that in a civil-law dispute in which she was involved as the defendant, the competent Regional Court had ordered an examination of her capacity to take part in legal proceedings without having first heard her personally. In its decision of 23 July 2008, the Committee found that the order in

dispute, issued without a prior personal hearing, had been disproportionate under the existing circumstances and that the author's rights arising from Article 17 in conjunction with Article 14 of the Covenant had therefore been violated. Two members of the Committee added dissenting opinions, in which they come to the conclusion that the court's order was justified under the existing circumstances.

- 113** The Federal Government notified the Committee by note verbale dated 13 February 2009 as to what measures had been taken to implement the opinion of the Committee. It should be emphasised in this context that, in her court proceeding, the author was provided with the opportunity to be personally heard, as called for by the Committee. This information was updated by note verbale of 2 October 2009. The Committee's opinion was forwarded to all Higher Regional Courts and published on the website of the Federal Ministry of Justice.

## **C. Response to the Concluding Observations**

### **I. On Concluding Observations, No. 10**

- 114** Germany will examine the possibility of withdrawing its reservation regarding Article 15, paragraph 1, third sentence, of the Covenant. The Federal Government points out that the reservation is contained in the Act on the Ratification of the International Covenant on Civil and Political Rights (*Gesetz zur Ratifizierung des Zivilpaktes*). It thus follows that the withdrawal thereof would require a new act to be adopted by the German Bundestag.
- 115** However, the Federal Government still considers the reservation, which restricts the Committee's competence with regard to Article 26 of the Covenant, and which was made in ratifying the Option Protocol to the Covenant, to be necessary. The reservation restricts the Committee's competence to cases where a complaint is made of unequal treatment regarding the rights guaranteed in the Covenant. Since it secures the Committee's ability to make sure that the rights enshrined in the Covenant are granted without discrimination, the Federal Government sees no cause to pursue the withdrawal of this reservation.

## **II. On Concluding Observations, No. 11 (see also Key Issue III.)**

- 116** Germany is bound to the International Covenant on Civil and Political Rights in respect of all persons subject to its jurisdiction. This may also be the case outside of the sovereign territory of the Federal Republic of Germany.
- 117** With regard to the instruction as well as the initial and further training of operational forces on international missions, please refer to point B. III.

## **III. On Concluding Observations, No. 12**

- 118** As federal legislation, the Covenant is an integral part of the German legal order. It is therefore binding for the *Länder*, even in areas for which the *Länder* themselves have exclusive competence. The provisions of the Covenant take precedence over any opposing provisions under *Land* law (Article 31 of the Basic Law: “Federal Law shall take precedence over *Land* law”). Each citizen may invoke the provisions of the Covenant before the authorities and bring an action to enforce them before the courts of the Federation and the *Länder*. Furthermore, a large number of coordination bodies exist between the Federation and *Länder*. Federation and *Länder* may bring a matter to these bodies if this is required in order to ensure the full applicability of the Covenant. In view of this, the Federal Government does not consider the creation of a separate formal mechanism necessary.

## **IV. On Concluding Observations, No. 13**

### **1. Equality of men and women in the public service**

- 119** The legal position of women in the public service was further improved with the most recent reform of civil service law. Section 25 of the Act of Federal Civil Servants (*Bundesbeamten-gesetz*, BBG) comprises an explicit ban on discrimination based on pregnancy, maternity leave, parental leave, part time employment, telecommuting and family-related leave.
- 120** Also relevant here is the 2001 Federal Act on Gender Equality (*Bundesgleichstellungsgesetz*), which aims to provide the women and men of the administration with equal opportunities. The second progress report on this act is

currently being compiled, and will be submitted by the Federal Government at the end of 2010.

- 121** As far as executive positions in the supreme authorities of the Federation are concerned, the trend is positive: the number of female Director-Generals, for example, has increased from 10 to 16.5% (autumn 2005 - spring 2010).

## **2. Equal participation of women on the labour market**

- 122** The Federal Government has set itself the goal of doing everything within its capacity to help break down the differences in wages and income between men and women. Within the existing framework, the Federal Government is working actively towards a situation where the principle “equal wages for men and women” applies not only for jobs that are the same, but for work of equal value as well. At the start of 2009 the Federal Government published a comprehensive dossier on wage equality between men and women in Germany. This dossier summarised a large number of research results from the latest studies on the causes of wage inequality.

- 123** The analyses carried out showed that there is a complex interrelationship between the various causes. Within this setting, the potential to eliminate the various causes lies with various actors. In order to achieve progress in this field, all individual efforts are being combined in Germany as part of a strategic alliance. It is decisive here for all partners to work together: politicians, the parties to collective bargaining agreements, employers and female employees, and the associations. At the end of 2009 the Federal Government launched an initiative for the equality of women in the private sector, which has been awarded €110 million for the coming years by the European Social Fund (ESF) and the Federation. This initiative was developed on a joint basis between the Federal Ministry of Labour and Social Affairs, the German Trade Union Confederation and the Confederation of German Employers’ Associations. The aim is to identify possible areas for action where companies and the two sides of industry in particular could improve the employment conditions for women in the long term. Further details are available online at [www.bundesinitiative-gleichstellen.de](http://www.bundesinitiative-gleichstellen.de).

- 124** The labour market remains segregated predominantly along gender lines. This applies both for the skilled sector as well as for graduate occupations. Alongside the natural sciences, men mostly dominate the technical and information technology sectors. With

Federal Government projects such as *Girls' Day* or *Komm, mach MINT* (“Joint in!” – a project to encourage women into Mathematics, Information technology, Natural sciences and Technology), organised in cooperation with various partners, girls and young women are encouraged to expand their career choices by also selecting careers that are considered unusual for women and which they have so far perceived as less of an option. Furthermore, the Federal Government promotes measures to help women broaden their career horizons such as the internet portal [www.frauenmachenkarriere.de](http://www.frauenmachenkarriere.de). Aside from establishing a systematic instrument to monitor the situation of women in executive positions, the Federal Government supports the National Agency for Women Start-ups (bga), created to provide information and support for women in all branches of industry at every stage in setting up their own businesses. The Federal Government is currently developing a step-by-step plan to ensure a long-term increase in the percentage of women in executive positions. The plan, which is yet to be presented, will incorporate both the public sector and private industry.

- 125** Furthermore, labour is unevenly distributed among the sexes. Creating non-discriminatory conditions for women on the labour market, providing women with jobs that give them livelihood security, and ensuring better compatibility of family and career for both men and women are the main focal points of current equality policy. It is important in this respect to provide a suitable framework to make family and career compatible. The Federal Government has taken appropriate measures here by expanding childcare, improving the tax-deductibility of childcare costs and introducing parental allowance (*Elterngeld*) as a wage-replacement benefit. In the longer term, this will alter employer expectations of the roles fulfilled by mothers and fathers. With this, important steps have been taken to eliminate a major cause of the pay gap. The Action Programme *Perspektive Wiedereinstieg* (“Vocational Re-integration as a Perspective”) provides support for women who have spent several years away from work because of family commitments and now want to re-enter the job market. Around €30 million have been made available for this by the ESF.
- 126** Since it is down to the parties of collective bargaining agreements to develop wage structures that respect the principle of “equal wages for work of equal value”, the Federal Government can only play a supporting role in this field. The Federal Government aims to encourage the parties of collective bargaining agreements to

engage in joint initiatives and to promote systematic review and readjustment of the agreements reached. To help achieve this, important advice has been provided for all parties involved in the wage-setting process in the new guidelines entitled *Entgeltgleichheit - Fair p(l)ay* (“Wage Equality: Fair P(l)ay”). Since autumn 2009 a computer programme has been offered to companies, which makes it possible for them to examine wage differences between women and men as a means of self-evaluation. With this software, human resources departments are provided with a tool that considerably simplifies the analysis of payment structures, provides advice, and paves the way for business solutions. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has 200 of these consultancy packages to offer free of charge to interested companies by 2012.

- 127** On 15 April 2008, the association Business and Professional Women (BPW) held the first ever “Equal Pay Day” in Germany. This project received financial and conceptual support from the Federal Government. The second and third “Equal Pay Days” – on 20 March 2009 and 26 March 2010 – were supported by a national alliance for action towards wage equality. The primary goal of this alliance is to raise awareness among, and mobilise, all actors involved. The second and third “Equal Pay Days” also enjoyed the financial support of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

## **V. On Concluding Observations, No. 14 (see also Key Issue I.1.)**

- 128** On 27 September 2007, building on the outcome of the first Federal Government Action Plan to Combat Violence against Women from 1999, and in particular on the results of the first representative study entitled *The Circumstances, Safety and Health of Women in Germany* published in 2004, the Federal Government adopted Action Plan II to Combat Violence against Women.<sup>7</sup>

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<sup>7</sup> German version:

<http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/Service/Publikationen/publikationen,did=100962.html>; English version: <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/aktionsplan-II-gewalt-gegen-frauen-englisch,property=pdf,bereich=bmfsfj,rwb=true.pdf>

- 129** Action Plan II focuses on areas where particular efforts need to be made after Action Plan I, e.g. concerning the specific situation faced by women with a migrant background and by women with disabilities, or in the field of healthcare. The focus is also on prevention at the earliest possible stage, and on interlinking measures to protect children, youth and women. The tried and tested cooperation between Federation, *Länder* and non-governmental organisations in the form of the existing Federation-*Länder* working groups on domestic violence and trafficking of women have been continued, and are to be expanded to cover other issues as well.
- 130** As was the case with Action Plan I, two Federation-*Länder* working groups function as steering committees to supervise the implementation of Action Plan II – one to coordinate measures to combat domestic violence, and another to coordinate measures to combat the trafficking of women for sexual exploitation. Annex 3 to this report contains a list of some of the most important publications to have resulted from the work of the Federation-*Länder* working group on domestic violence as part of Action Plan II.

## **VI. On Concluding Observations, No. 15 (see also Key Issue I.2.)**

### **1. On Concluding Observations, No. 15a**

- 131** The use of firearms by the police in Germany is restricted, as a statutory means of coercion, to the protection of preeminent legal interests. At the same time, any use of firearms against human beings is investigated after the event. Criminal proceedings are generally opened by the competent public prosecution office following any use of firearms by the police that results in the injury or death of a person. Furthermore, immediately after it becomes known that a firearm has been used, disciplinary proceedings are launched by the superior officer in charge, which are subsequently suspended for the duration of the criminal proceedings and continued after the criminal proceedings have been concluded.
- 132** Both sets of proceedings ensure a prompt, thorough and impartial investigation of the use of firearms. If a criminal or disciplinary offence is found to have been committed, the police officers concerned are held to account, with penal or disciplinary measures imposed. Since Article 34, first sentence, of the Basic Law stipulates that the liability



of officers under section 839 of the Civil Code is transferred to the state, the victim always has a solvent debtor against whom he can assert his claim.

## **2. On Concluding Observations, No. 15 b**

**133** In accordance with section 12 (1), first sentence, of the Act on the Use of Direct Force by Federal Enforcement Officers engaged in the Exercise of Public Authority (*Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes*), firearms are to be used as the *ultima ratio* in the context of the tactical alternatives available to the officers of the Federal Police. Only if other uses of direct force do not suffice can the use of firearms be considered. In particular: physical force, means to aid the use of physical force, batons, irritants or other legally permissible coercive measures are prioritised in implementing intervention measures by means of coercion. Such means must (where appropriate) have been used to no effect beforehand or must have no prospect of success from the very outset (principle of subsidiarity of the use of firearms).

**134** This fundamental principle of proportionality is an elementary feature of both the initial and further training received by police officers. Both during their initial training and in the periodic further-training modules that follow, police officers rehearse standard operational scenarios to ensure their ability to handle these situations successfully while on duty. The rehearsals are specially designed to ensure that officers are able to apply the entire available range of tactical and legal situation-solving approaches and strategies. The strategies rehearsed range from entering into dialogue and using tactical action alternatives, to retreat or the use of coercive measures based on the applicable legal provisions.

## **VII. On Concluding Observations, No. 16 (see also Key Issue I.2.)**

**135** Complaints against police officers regarding unlawful use of force are pursued immediately. To the extent that the investigation into the factual circumstances leads to the suspicion that a police officer has committed a criminal offence, investigation proceedings must be launched in accordance with section 163 of the Code of Criminal Procedure. These proceedings are carried out on behalf of the public prosecution office by a police authority other than the one concerned. If the suspicion that a crime has been committed is corroborated, the public prosecution office prefers public

charges upon completion of the investigation. After charges have been preferred before a court of law, and depending on the evidentiary situation, a judge – who is independent and is subject only to the law – renders a judgment. Furthermore, any potential criminal offences or other incidents that give cause to do so are subject to an impartial investigation by police. This too flows from the principle of the division of powers enshrined in Article 20 para. 3 of the Basic Law.

**136** In cases of criminal offences such as bodily harm inflicted in the exercise of official duty, coercion or deprivation of liberty, disciplinary proceedings are generally launched. These are suspended until conclusion of the criminal proceedings so that the outcome of the latter can be considered in the disciplinary proceedings. After conclusion of the criminal proceedings, the disciplinary proceedings are continued. An examination is conducted into whether the act in question gives rise to a disciplinary measure – including beyond any penal sanctions. The *ne bis in idem* principle must be applied in doing so. A decision on disciplinary measures must be taken in all cases. The disciplinary measures that may be considered are contained in section 5 of the Federal Disciplinary Act (*Bundesdisziplinargesetz*), i.e. reprimand, fine, reduction of earnings, demotion and removal of civil servant status. In principle, superiors are responsible for the internal supervision and control of those below them (administrative and professional supervision). Reference is made in this connection to section 48 (1), no. 1, of the Act on Federal Civil Servants. According to this provision, a civil servant who has been sentenced by a German court in ordinary criminal proceedings for an intentional offence to a term of imprisonment of at least one year ceases to be a civil servant upon the judgment becoming final.

**137** Victim rehabilitation is ensured primarily by the Victims' Compensation Act (*Opferentschädigungsgesetz*). The Victims' Compensation Act is a logical result of the state's monopoly on the use of force, and of its sole responsibility for preventing and fighting crime. If victims of violent offences are left unable to work, helpless or in need of long-term care, the state must grant them protection. The Victims' Compensation Act does not contain any separate benefits; instead, the catalogue of benefits contained in the Federal War Victims' Compensation Act (*Bundesversorgungsgesetz*) applies (e.g. treatment of injury, non-income-related pension payments, income-related benefits with wage-replacement function, etc.). For further details please refer to the observations under B. I. 1.

- 138** In addition, victims can lodge a compensation claim against the state for sovereign acts carried out by a police officer which constitute a violation of official duty. Article 34 of the Basic Law forms the basis for the claim in conjunction with section 839 of the Civil Code. For liability to be recognised, however, the officer must have acted culpably and the victim must have suffered injury.
- 139** Unreasonable police behaviour towards citizens or even the perpetration of criminal offences in the course of official duty are not a common occurrence in Germany. However, such incidents do occur. It is difficult to estimate how high the number of cases is. Starting on 1 January 2009, it became possible to keep better track of the relevant criminal offences committed by police officers within the framework of judicial statistics; however, the question remains open of how many offences go unreported and are thus not captured by the statistics.
- 140** The Federal Government and the *Land* governments are obliged to solve these individual cases and impose appropriate sanctions. The Federal Government perceives this obligation as a central component of its system of governance anchored in the rule of law. Criminal and disciplinary law provide sufficient means for fulfilling this obligation that are subject to review by Germany's independent judiciary. Against this background, the Federal Government does not consider that additional independent complaints bodies for police misconduct would provide any added value.

### **VIII. On Concluding Observations, No. 17 (see also Key Issue IV.)**

- 141** Supplementary to Key Issue IV., the following can be pointed out with regard to improving the situation of elderly persons in nursing homes:
- 142** The legislator has also responded to the issue – raised from time to time – of ensuring that care services are provided by staff of the same sex as the patient: with section 2 (2) of Book XI of the Social Code it has obliged institutions to consider, wherever possible, the wishes of those requiring care for this to be provided by staff of the same sex. Whilst this provision does not provide the basis for a right to such provision, it obliges care institutions to take into account, wherever possible, the wishes of those requiring care to be looked after by care workers of the same sex. A right to same-sex care services cannot be stipulated in view of the makeup of the care staff itself, which is very heavily dominated by women.

- 143** The Federal Ministry of Health, together with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, is conducting a research project entitled *Development and Testing of Instruments to Evaluate Quality and Outcomes in Residential Care for the Elderly* (“Entwicklung und Erprobung von Instrumenten zur Beurteilung der Ergebnisqualität in der stationären Altenhilfe”). This project is a milestone for increased quality and transparency in nursing. The goal of the project is to use the results of academic research to supplement and further develop internal quality management as well as external quality control, including the recently adopted transparency agreements for the residential and non-residential care sector.
- 144** The Federal Government supports the work of the German Alzheimer Association. Assistance and relief are provided to those affected and to carers, including in homes, via information and advisory services such as the Alzheimer Hotline, in order to alleviate and prevent the use of force.
- 145** A model project has been carried out to reduce the frequency and duration of use of physical restraints, especially of dementia sufferers in residential homes. With a combination of simple techniques, the project succeeded within three months in significantly reducing the frequency of physical restraint use. *ReduFix Praxis*, a project for the reduction of physical restraint use, has unlocked these achievements for the rest of the nation by training key personnel as disseminators of knowledge and forming regional competence teams. Guidelines for care home inspectorates and the Medical Service of the health insurance funds (MDK) have ensured that these achievements are finding their way into quality control.
- 146** With H.I.L.DE, the *Heidelberg Instrument for Assessing Quality of Life in Dementia Sufferers*, a process has been developed to comprehend the feelings and experiences of seriously ill persons with limited ability for communication, too. Individual preferences and potential areas of support can be captured and used with the aim of helping care workers to improve the quality of life of those suffering from dementia. As the next step, a review is being conducted in cooperation with the Medical Service of the central association of health insurance funds (MDS) to establish to what extent H.I.L.DE’s core criteria are suitable for supplementing the quality control procedures of the Medical Service of the health insurance funds (MDK) with focus on the quality and outcomes of care for dementia sufferers.

## **IX. On Concluding Observations, No. 18 (see also Key Issue I.1.)**

- 147** On the Committee's concerns that, despite the positive measures taken, human trafficking persists within the territory of the Federal Republic of Germany, the Federal Government would like to emphasise that it remains committed to taking vigorous action against human trafficking. In general it can be established that human trafficking is a complex phenomenon that cannot be tackled with police measures alone. A range of factors play a significant part, including human rights abuses, migration policy and the fight against organised crime – in addition to the moral and ethical factors involved. Poverty and a lack of prospects in the states of origin and the demand in the destination states should also not be forgotten.
- 148** Human trafficking is an offence only detected by controls, i.e. its detection is dependent on measures taken by police and/or customs (financial control section of the Federal Customs Administration). Low numbers of proceedings do not necessarily indicate, therefore, that human trafficking is currently not a criminal phenomenon of any major significance; at the same time a large number of proceedings does not permit the conclusion that one country has a disproportionately large trafficking problem compared to other states. For example, the number of registered cases of human trafficking for labour exploitation (section 233 of the Criminal Code) is very low: according to the police crime statistics (PKS), in 2008 only 27 cases (2007: 92) with 96 victims (2007: 101) were registered, above all in the areas of domestic employment, the restaurant and catering sector, farming and construction. It is assumed, however, that the number of unreported cases is much higher.
- 149** The Federal Government intends to optimise the protection offered to persons trafficked for labour exploitation through plans for the creation and expansion of humanitarian victim-protection measures and structures. Experience in the field of human trafficking for sexual exploitation shows that the establishment of networks between all actors (politics, authorities, NGOs) who come into contact with the phenomenon is vital in order to shed light on the large number of unreported incidences and to ensure both the prosecution of the perpetrators and protection of the victims. The Federal Government is therefore also investigating to what extent the structures and instruments for combating trafficking in women can be applied to human trafficking for labour exploitation. In this connection, the Federal Government commissioned a research study (running from December 2009 to August 2010) by the

Federal Association against Trafficking in Women and Violence against Women in the Migration Process. The aim of the study is to take stock as starting point for providing recommendations and concepts for support structures on the federal level. Moreover, the Federal Government is currently in the process of agreeing on possible joint activities with other EU Member States to improve the social integration of this target group.

- 150** The launch of the *Berlin Alliance Against Human Trafficking into Labour Exploitation* project (“Berliner Bündnis gegen Menschenhandel zum Zweck der Arbeitsausbeutung”) in October 2009 is a positive example of this. The International Labour Organization, the International Organisation for Migration, the German Trade Union Confederation, and the Berlin Senate Department for Integration, Labour and Social Issues are partners in this project. The project receives substantial funding from the EU (Xenos), the Federation and the *Land* of Berlin. It serves as a pilot project for finding ways of solving the problem on the national level as well.
- 151** The aim of Alliance is to initiate and coordinate services to help those affected. Furthermore, there are plans to launch a public awareness campaign and publish information materials. Authorities, employers and employees who may come into contact with those who are potentially affected by this are to be made aware of the problem and provided with training where necessary. However, the Berlin Alliance is also about reinforcing cooperation between the relevant organisations and institutions, and developing a joint strategy to make the connection between fighting criminal practices and providing support to those affected. With this purpose in mind, regular round-table discussions are to be held to involve the relevant Senate departments, federal ministries and law enforcement agencies, employers’ associations and trade unions, charitable associations, organisations of migrants and academic institutes. These meetings will include presentation and discussion of the initial findings of the study commissioned by the project on the structural causes of human trafficking in selected branches of industry.
- 152** Information on other Police activities on the federal and *Land* levels to combat human trafficking can be found in Annex 4 to this report.
- 153** In terms of reducing the demand for and preventing human trafficking, special mention should be made of the variety of internationally appraised projects carried out

in the reporting period by non-governmental organisations – in some instances with the support of the Federal Government – in connection with the 2006 FIFA World Cup. These included publicity events, distribution campaigns, TV and radio information, websites and the launch of three national telephone hotlines.

- 154** Furthermore, a campaign carried out by the German Women’s Council with the support of the Federal Government entitled *Final Whistle – Stop Forced Prostitution* (“Abpfiff – stoppt Zwangsprostitution”) attracted a great deal of interest both nationally and internationally, and demonstrated the importance of civil society for creating public awareness of the issue of human trafficking.
- 155** Investigations on suspicion of human trafficking pose particular difficulties for law enforcement agencies on account of the fact that victims must be willing to testify if proof of the offence is to be secured. For this reason, as well as on humanitarian grounds, victim protection is of central significance in the effective fight against human trafficking in the long term. In accordance with the stipulations of the European victim protection directive (2004/81/EC), the victims of trafficking in human beings can be provided with a temporary residence permit for the duration of the criminal proceedings against the suspected perpetrator.
- 156** German criminal law provides comprehensive protection against human trafficking, the victims of which, reality shows, are mostly women. With the 37th Criminal Law Amendment Act of 11 February 2005, remaining gaps were closed by implementing international legal instruments. These consist of the Protocol of 15 November 2000 to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, as well as Council Framework Decision of 19 July 2002 on combating trafficking in human beings. This involved redrafting existing penal provisions against human trafficking (sections 180b, 181b of the Criminal Code) and extending them accordingly (now sections 232 – 233a of the Criminal Code). Legislative action was needed especially with regard to trafficking in human beings for labour exploitation (section 233 of the Criminal Code). In this connection the provisions on trafficking in human beings for sexual exploitation (previously sections 180b, 181b of the Criminal Code) were revised and improved. Aside from this, section 233a of the Criminal Code closed remaining gaps in particular regarding the transposition of the Framework Decision. In addition, mention should be made of the extension of section 154c of the

Code of Criminal Procedure by the 37th Criminal Law Amendment Act. In accordance with this provision, the public prosecution office can waive prosecution of a misdemeanour committed by the victim if this has been revealed through the reporting of a coercion or extortion offence. This makes it easier for the victims of human trafficking, who in many cases are themselves liable to prosecution, to report the perpetrators of human trafficking to the law enforcement agencies, since they themselves can expect impunity.

- 157** The legislative measures taken in the field of victim protection in criminal proceedings, also listed under B. I. 1., help improve the protection available especially for the victims of human trafficking.
- 158** NGOs often criticise, however, that the fight against human trafficking is primarily understood by the state to mean fighting crime and controlling migration, and is carried out as such. Furthermore, there are complaints that the legal framework conditions for those affected by human trafficking are decisively determined by citizenship and residency status, as well as being heavily tied to the will to cooperate with law enforcement agencies. NGOs report that, in practice, those affected by human trafficking face major obstacles such as a lack of information, language barriers, costs and psychological burdens, which they are usually forced to overcome with the help of counselling and advisory services. The study by the German Institute for Human Rights entitled *Human trafficking in Germany – strengthening the human rights of those affected* (“Menschenhandel in Deutschland – Die Menschenrechte der Betroffenen stärken”) highlights that, despite the possibilities provided for under German law, only a small number of victims receive compensation or are able to assert their wage rights before a court of law. As part of a programme of cooperation between the German Institute for Human Rights and the *Foundation “Remembrance, Responsibility and Future”* (EVZ), financial support is to be provided in selected cases in asserting compensation and wage claims and in settling basic legal questions prior to assertion.

## **X. On Concluding Observations, No. 19 (see also Key Issue II.2.)**

- 159** According to section 7 (1), no. 2, of the Act on Federal Civil Servants, a person can only be appointed as a civil servant (*Beamter*) if the authorities are satisfied that he or she will at all times uphold the free democratic basic order within the meaning of the



Basic Law. The duty for civil servants to be loyal to the constitution is a traditional principle of permanent civil service within the meaning of Article 33 para. 5 Basic Law. In accordance with this, civil servants have a special political obligation of loyalty to the state and its constitution. Most employers require a written declaration to this effect, which however is worded in general terms and contains no questions regarding membership of a party or organisation, or even of a religious association. This is in line with the leading decision of 22 May 1975 of the Federal Constitutional Court (BVerGE 39, 334), according to which loyalty to the constitution must be verified in each individual case, taking into account the principle of proportionality, by means of a prognostic evaluation of the applicant's character.

**160** At the start of 1979 the Federal Government adopted principles for verifying loyalty to the constitution in the civil service, and these continue to prove effective today. They consist substantively of the following:

- The general assumption that an applicant wishing to enter the public service is loyal to the constitution;
- General verification in each individual case within the limits of proportionality;
- No routine enquiries at the authorities for protection of the constitution; inquiries made only if specific indications exist of a lack of loyalty to the constitution, and if there is real intention to employ the person concerned, where constitutional loyalty is the only remaining employment criterion left to be verified.

**161** Membership of an organisation that pursues objectives contrary to the constitution and the principles of human rights naturally constitutes cause to doubt the applicant's loyalty to the constitution, and will generally lead to the applicant not being admitted as a civil servant. Furthermore, whether or not an organisation considers itself to be religious cannot play a role in assessing the anti-constitutional nature of its goals. The Federal Government considers that this practice does not in any way run contrary to its obligations under the Covenant.

**162** Please refer to the information provided under B. II. 2 on the wearing of headscarves for religious reasons.

## **XI. On Concluding Observations, No. 20**

### **1. On Concluding Observations, No. 20a)**

**163** In Germany, the conformity of counter-terrorism measures with the Covenant is guaranteed in full. Above all, this is because the human rights enshrined in the Covenant are guaranteed as constitutional rights in the German Constitution. Executive and legislature are directly bound to these in all areas of action, including counter-terrorism. The constitution permits no exceptions to the strict obligation to respect basic rights, including in the fight against international terrorism. These substantive guarantees are effectively secured by the guarantee of legal protection, which is also secured by power of the constitution, i.e. by means of an independent judiciary. The legislator is also subject to review by the judiciary via the Federal Constitutional Court.

### **2. On Concluding Observations, No. 20b)**

**164** The German general public does not associate persons of foreign extraction with terrorism, extremism and fanaticism. The aim of German policy, including in its public communications, is to emphasise the normality of cultural diversity. By singling out certain groups of people, a special information campaign focusing on individual population groups – however well-meaning this may be – runs the risk of labelling and segregation. Germany therefore follows the approach of emphasising social cohesion. With the German Islam Conference and further processes of dialogue with representatives of Muslims in Germany, Muslim civil society, as an integral part of German society, is very deliberately involved in social discourse at the high political level. At the same time, this counteracts any general suspicion that might arise towards fellow citizens who follow Islam. The information provided by the German Islam Conference ([www.deutsche-islam-konferenz.de](http://www.deutsche-islam-konferenz.de)) supports this work. In addition, work has already begun with the Muslim associations in Germany on preparing further information about Islam as a part of our society.

## **XII. On Concluding Observations, No. 21 (see also Key Issue II.2.)**

**165** Regarding the integration of Roma communities (Concluding Observations, No. 21a) and adherence to the principle of non-discrimination in deportations and returns

(Concluding Observations, No. 21b) please refer to the information provided under B. II. 2.

## **D. Conclusion**

**166** The present report has touched upon problems of current significance. The Federal Government would be happy to discuss further matters on the occasion of the presentation of the report.

## Annex 1

Main reforms of Act on Registered Same-Sex Partnerships in detail:

- Like married spouses, same-sex partners are subject to the statutory matrimonial property regime of the community of increased assets in the absence of an agreement to the contrary
- Under the law governing maintenance, there is largely equal treatment following separation. In addition, the possibility of becoming engaged (*Verlobnis*) has been introduced for homosexual partners.
- The possibility of so-called step-child adoption, introduced with the Act, means that homosexuals can adopt the biological child of their same-sex registered partner. The rights of the other biological parent are not prejudiced. The general rules of adoption law are applicable, pursuant to which the other biological parent must give their consent to the child's adoption by the same-sex registered partner. In addition, the competent state authorities must examine each individual case to establish whether step-child adoption is in the child's best interests.
- As a result of the reform, the provisions governing surviving dependants' pension rights in the statutory pension fund have been extended to cover same-sex registered partners.

## **Annex 2**

# **Charter of Rights for People in Need of Long Term Care and Assistance**

## **English Translation**

The German Version of this Charter has been published by the German Federal Ministry of Family Affairs, Senior Citizens, Women, and Youth and the German Federal Ministry of Health in 2007.

## Charter of Rights for People in Need of Long Term Care and Assistance

From Practical Responsibility to Everyday Practice – from Entitlement to Living Reality

People in various situations during their lives can be in need of long-term care and assistance. This Charter of Rights for People in Need of Long Term Care and Assistance is intended to strengthen the role and the legal position of people in this situation and their relatives and to provide information and suggestions for those involved in supplying care and assistance.

The Charter is a result of the work of the “Round Table for Long Term Care” initiated in the autumn of 2003. This body was set up by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the former Federal Ministry of Health and Social Security with the aim of improving conditions for people in Germany who are in need of long-term care and assistance. Some 200 experts from all areas responsible for care in old age (including the federal states, local government, bodies responsible for care institutions, charitable associations, associations of responsible bodies, nursing home supervisory bodies, long-term care insurance funds, advocacy groups for the elderly, researchers, foundations) were all involved. In the period up to the autumn of 2005, working groups formulated recommended courses of action to improve home and residential care and to reduce bureaucracy, and developed as a central measure this “Charter of Rights for People in Need of Long-Term Care and Assistance”. The Charter gives a detailed catalogue of the rights of people in Germany who are in need of long-term care and assistance.

Now is the time for the recommendations of the “Round Table for Long-Term Care” and the Charter to be put into effect in order that those involved in care and in particular the beneficiaries of long-term care services may benefit from the work done by the Round Table. Some organisations and bodies responsible for care institutions already are successfully implementing the Charter. The all-important *step from entitlement to living reality* can only be achieved with wide scale commitment on the part of all actors and beneficiaries in the long-term care sector. The propagation of this “Charter of Rights for People in Need of Long-Term Care and Assistance” is a key component in the *implementation strategy* initiated by Federal Minister Dr. von der Leyen and Federal Minister Ulla Schmidt.

A coordinating office has been established at the German Centre of Gerontology (DZA) in Berlin in order to monitor this implementation process. Information on the coordination office can be found after its inauguration in early 2007 at [www.dza.de](http://www.dza.de). The office can be contacted by E-Mail at [leitstelle-altenpflege@dza.de](mailto:leitstelle-altenpflege@dza.de). The DZA will also be able to help with questions and suggestions by telephone and the coordinating office can be contacted by calling +49-30-260 740 90.

Detailed information on the Round Table for Long Term Care with a special focus on implementation can be found online at [www.bmfsfj.de](http://www.bmfsfj.de) and [www.bmg.bund.de](http://www.bmg.bund.de).

## Preamble

All human beings have an unqualified entitlement to respect for their dignity and uniqueness. People needing assistance and long-term care have the same rights as everybody else and should in no way be disadvantaged as a result of their special circumstances. The state and society have a special responsibility to protect the human dignity of those in need of long-term care and assistance since this group is often not in a position to represent its own interests.

The aim of this Charter is to strengthen the role and the legal position of people in need of long-term care and assistance by summarising the basic and indisputable rights of those people in need of assistance, support and care. These rights are an expression of respect for human dignity and are thus also anchored in numerous national and international legal texts<sup>1</sup>. They are elaborated on in the explanatory notes to the articles in relation to various key aspects and situations in the lives of those needing long-term care and assistance. The Charter also formulates quality criteria and objectives which should be the goals of all good long-term care and support.

People can be in need of long-term care and assistance in various periods in their lives. This is why the rights contained in the Charter basically apply to people of all age groups. In order to explain these rights to people in need of long-term care and assistance, they are addressed directly in the explanatory notes to the articles.

The Charter is also designed as a guideline for people and institutions that have responsibility for long-term care, support and treatment. It appeals to caregivers, physicians and all those who are involved either professionally or as part of their social involvement in supporting the wellbeing of people in need of long-term care and assistance. This also includes those providing out-patient care, residential and semi-residential care facilities as well as those responsible in local government, health and long-term care insurance funds, private insurance companies, charitable associations and other organisations in the health and social sector. They should all be guided in their actions by the Charter. Those with political responsibility at all levels and the funding bodies likewise are obliged to further develop and safeguard the framework required to uphold these rights described in the Charter, especially the financial preconditions.

The responsibility held by the state and society towards people in need of long-term care and assistance does not release individuals themselves from their obligation to adopt a healthy and responsible lifestyle which in itself can play a significant role in delaying, mitigating or overcoming the need for long-term care and assistance.

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<sup>1</sup> The rights listed in the Charter are broadly mentioned in numerous international and European texts and in some cases are bindingly incorporated in these documents. These include in particular the European Social Charter and the EU Charter of Fundamental Rights. Several German laws also include legal guarantees for people in need of long-term care and assistance. In addition to the rights contained in the Basic Laws, these are notably the rights to participate in the life of society (Section 1 SGB IX), the right to self-determination and independence (Section 1 SGB XI), to information and counselling (Section 7 SGB XI) to the priority of prevention and rehabilitation (Section 5 SGB XI) the priority of care at home (Section 3 SGB XI) and the rights included in social welfare laws and the Act on Residential Accommodation and finally, the right to individual benefits which applies to social legislation as a whole (Section 33 SGB 1).

## Articles of the Charter

- ARTICLE 1: SELF-DETERMINATION AND SUPPORT FOR SELF-HELP  
Everyone in need of long-term care and assistance has the right to support for their self-help efforts, so as to enable them to live a life which is as self-determined and independent as possible.
- ARTICLE 2: PHYSICAL AND MENTAL INTEGRITY, FREEDOM AND SECURITY  
Everyone in need of long-term care and assistance has the right to protection against any physical or mental threats.
- ARTICLE 3: PRIVACY  
Everyone in need of long-term care and assistance has the right to the safeguarding and protection of his or her private and intimate sphere.
- ARTICLE 4: CARE, SUPPORT AND TREATMENT  
Everyone in need of long-term care and assistance has the right to qualified, health-promoting care, support and treatment tailored to his or her personal needs.
- ARTICLE 5: INFORMATION, COUNSELLING, INFORMED CONSENT  
Everyone in need of long-term care and assistance has the right to be fully informed of the possibilities and opportunities available for counselling, care and treatment.
- ARTICLE 6: COMMUNICATION, ESTEEM AND PARTICIPATION IN SOCIETY  
Everyone in need of long-term care and assistance has the right to esteem, interaction with others and participation in the life of society.
- ARTICLE 7: RELIGION, CULTURE AND BELIEFS  
Everyone in need of long-term care and assistance has the right to live according to his or her culture and beliefs and to practice his or her religion.
- ARTICLE 8: PALLIATIVE SUPPORT, DYING AND DEATH  
Everyone in need of long-term care and assistance has the right to die in dignity.



## Articles of the Charter with Explanatory Notes

### ARTICLE 1: SELF-DETERMINATION AND SUPPORT FOR SELF-HELP

**Everyone in need of long-term care and assistance has the right to support for their self-help efforts, so as to enable them to live a life which is as self-determined and independent as possible.**

You have the right to respect for your free will and freedom to make decisions as well as to advocacy and care. Those people responsible for your support, care and treatment are obliged to respect your will and adapt their actions accordingly. This also applies if you are not able to articulate verbally and express your wishes and do so, for instance, by the way you act. Individuals whose mental ability is impaired must be included in decision-making processes involving them in a way commensurate with their competence.

*Free will and decision making, advocacy and care.*

You are entitled to expect that any deliberation on how to achieve your individual goals and wishes under the legal and actual circumstances will include you, any trusted persons and those responsible for your support, care and treatment. Even if you yourself are not in a position to make decisions on your own or articulate your wishes, the people named above are obliged to ensure that any action taken is in accordance with your wishes. This involves, for instance, the choice of where you live, the care service to be responsible for you, the residential facility, the physician, the management of household, care and therapeutic measures and the organisation of your daily routine. You should also be able to be treated by your own doctor and dentist and receive your medication from your usual chemist if you are living in a residential care facility.

*Choice of living location, care and treatment and organisation of daily routine.*

The right to self-determination also extends to your financial and legal business and transactions with the authorities (making applications, filling out forms or being accompanied on visits to government authorities) and you should receive the support you require to handle these matters. Those advising and supporting you are obliged to act in your best interests and may not undertake any action which could be to your economic or legal detriment.

*Settlement of financial business and dealings with legal bodies and authorities.*

You have the option of making advance directives (instructions on action to be taken and enduring powers of attorney) for the eventuality that you may not be able to express your wishes at some later date. Wishes expressed by you in this way must be taken into account. Additionally, it is advisable to stipulate in advance who should be appointed as your legal representative by a guardianship court in the event that you should require a legal representative (appointment of legal representative). (You can find further details under Article 8).

*Consideration of  
advance  
directives*

It is not unusual for conflicts to develop between the goal of respecting a dependent individual's right to self-determination and certain care obligations on the part of caregivers and the people treating you (typical situations are refusal to eat or the danger of falling). Should such a situation arise, you can expect an appraisal of the circumstances to be undertaken involving all parties.

*The balance  
between self-  
determination  
rights and care  
obligations*

The scope of self-determination and freedom of decision and conduct is, for example, restricted in situations where the rights and self-expression potential of others are involved. Financial and structural circumstances (i.e. personal funds or a lack of care facilities in a region) can narrow the options in some cases. Nevertheless, all involved in the support, care and treatment of those in need of long-term care and assistance are obliged to implement the right of those in care to self-determination as far as is possible.

*Restrictions*

You have the right to receive the support you need to be able to lead a life which is as independent and self-determined as possible. Even where there is considerable impairment to health or a high-level requirement for long-term care, you have the right for all necessary measures to be taken to prevent further deterioration or to bring about an improvement. This means, for example, that you are entitled to access to a (specialist) physician, to diagnostic procedures, medical treatment, preventive check-ups and vaccinations – regardless of your age or any disablement. This also applies to the access to individual health-promoting guidance designed inter alia to help you be as independent as possible of assistance by others. Nursing care and assistance, as well as medical and therapeutic treatment should be designed to support and enhance mental and physical abilities. They should aim to maintain or improve your quality of life and well-being and serve to assist you in managing your everyday activities yourself as far as possible.

*Support for self-  
help,  
preventive and  
health-promoting  
measures*

ARTICLE 2: PHYSICAL AND MENTAL INTEGRITY, FREEDOM AND SECURITY

**Everyone in need of long-term care and assistance has the right to protection against any physical or mental threats.**

You have the right to protection against physical violence such as being detained or restrained, hit, injured or having pain inflicted, against unwanted medical interventions and sexual abuse. Nobody may behave towards you in a way which is disrespectful, insulting or humiliating. This also means that you should always be addressed by your name.

*Protection against physical and mental violence*

Neglect and lack of diligence in providing support, care or treatment, failure to provide the necessary assistance or insufficient attentiveness are also forms of violence. Specifically this means, for example, that you must receive timely assistance, you should not be kept waiting for an unduly long period if you are hungry or thirsty, want to get up or lie down or need to perform excretory functions. It also includes protection against bedsores and stiffening of the joints. You must also be protected against excessive cold or heat (over- or under-heated rooms, direct sunshine, draughts in the corridors, unsuitable clothing) if you are not able to attend to this yourself.

*Protection against neglect*

You have the right to protection against any harm caused by inappropriate medical and care treatment. This means, for instance, that your medication should be administered in a responsible and appropriate manner. Doctors are obliged to brief you clearly and fully on the effects, side effects and interaction between medications. Your perceptions and comments on signs of any possible side effects and interaction during any treatment or care measures should receive special attention and timely response from medical staff and caregivers.

*Protection against inappropriate medical and care treatment.*

As a general rule, you are entitled to move freely in your surroundings. If your state of health so permits, you must be able to enter, leave and lock your living quarters at all times. If you are in a residential institution and can leave your room of your own accord, you should be given a front door key and room key of your own. Any measure that restricts you in your freedom of movement and to which you have not consented is subject to court approval.

*Protection against unwarranted measures restricting freedom of movement.*

Measures which restrict your freedom can be necessary in exceptional circumstances. This could be the case if you are endangering yourself and others, and all other options for protection have been exhausted. Measures restricting your freedom, such as being locked in, restrained or the administration of tranquillizing medication, can constitute severe stress and endanger your health. This is why a

*Restrictions*

qualified person must be present for the duration of the treatment. Checks should also be made at regular intervals on whether the treatment is still required or justified.

There is no need for you to tolerate any neglect or lack of respect you may encounter and you should not do so. If this does occur, you or a trusted person should make a complaint (you will find contact details on bodies dealing with complaints and emergency telephone numbers in the Annex). You are also entitled to expect caregivers, doctors and therapists to recognise any signs of violence, mistreatment and abuse in the course of their care, support and treatment and – if possible after consulting you – react in an appropriate manner. This could mean, for example, that immediate medical examinations should be initiated if there are clear signs of violence having been used. If signs of violence are discovered, the authorities responsible (nursing home supervisory body, police) must be informed and measures put in place for your protection. You can also expect that psychological assistance to help you cope with the experience of violence will be made available should you so wish.

*Help in coping  
with violence*

#### ARTICLE 3: PRIVACY

**Everyone in need of long-term care and assistance has the right to the safeguarding and protection of his or her private and intimate sphere.**

Your personal sphere must be treated with solicitude and respect. This also applies if you are looked after by a caregiver in your home or if you live in a residential institution. This means that those who wish to enter your home or room should normally ring or knock and – if you are able to call out – await your response.

*Respect for  
privacy*

You are entitled to respect for your need for privacy and the possibility of conversing in private. If you live in a residential institution and do not have a single room, you must nevertheless be given the opportunity of being alone for a while or being able to talk in a secluded place with persons of your choice. This also means that you must have the opportunity to make telephone calls undisturbed. Should you wish to talk to a psychological or spiritual adviser in confidence, you have the right to expect that this will be made possible.

*Opportunity for  
privacy*

You should also be able to feel as much as possible at home living in a residential institution. This means, for example, that you can have your own personal things (small items of furniture, pictures, linen) even if you are sharing the room with somebody else. Agreements on these matters can usually be concluded in contracts with the residential home, including, for instance, the cost of laundering residents' own linen. Should you wish to keep valuables in safe custody, you are entitled to advice and support on the best way of doing so.

*Using items of your own in residential institutions*

Privacy also means that you are able at all times to receive visitors. Should you share a room, the other occupant's need for peace and quiet must also be taken into consideration. Should it be necessary, you may ask the care staff to deny admission to visitors you do not wish to see.

*Receiving visitors*

Respect for the sphere of intimacy is also reflected, for instance, in the regard and consideration given to your feelings of modesty. You are entitled to be treated by your caregivers with the highest possible degree of sensitivity and discretion. This applies in particular to personal hygiene. Should you find the treatment by a particular person disagreeable, you should not accept this but voice your concern directly or to other staff members. You can expect that in such cases the institution involved will exhaust all possibilities in order to assign staff to your care who will treat you as you consider appropriate.

*Respectful attitude to feelings of modesty.*

Your letters or electronic mail may not be received, opened or read by third parties without your consent. Should you live in a residential institution, a pigeon hole or mailbox of your own, for instance, can provide a high degree of discretion because your post will not be handled by several people. Should it not be possible for you to receive or open your post personally or use the channels of communication without help from others, you should determine which trusted person is to assist you (you can determine this in advance in an enduring power of attorney).

*Preservation of privacy of correspondence*

The right to privacy must also be reflected in the confidential handling of your data and documents. Documents and data concerning you may only be processed with your prior consent or that of your representatives and on the basis of statutory provisions.

*Protection of personal data*

Everybody has a basic right to his or her sexuality and respect for his or her sexual identity and lifestyle – regardless of age or the degree of care and assistance required. No one may discriminate against you on the grounds of your sexual orientation. You alone decide on the kind of sexual relations and activities you pursue, provided you

*Respect for sexuality, sexual orientation and life-style.*

do not infringe on the rights of others. The scope for acting out your intimate relations is naturally dependent on the circumstances and surroundings in the setting in question. In this context too it may be advisable to obtain information on the institution before concluding a contract.

Depending on the degree of long-term care and assistance needed, it may not always be possible to guarantee an entitlement to privacy or respect for the sphere of intimacy. It should nonetheless be the goal of all involved in support, care and treatment to keep any restrictions to a minimum.

*Restrictions*

#### ARTICLE 4: CARE, SUPPORT AND TREATMENT

**Everyone in need of long-term care and assistance has the right to qualified, health-promoting care, support and treatment tailored to his or his personal needs.**

If you need professional help, you must receive care, support and treatment from a qualified source that is adapted to your needs. You are entitled to be attended to by staff who have received training, further or advanced training or guidance for the task in hand, who have the necessary qualifications corresponding to your need for support, care and treatment. Methods and measures applied must be in accordance with the current state of the art in medicine and care.

*Competent,  
dedicated care,  
support and  
treatment*

All institutions and professional groups involved in your care, support and treatment should, in your interest, communicate and cooperate with one another and closely align the services they provide. This means, for instance, that when a service provider changes, information which concerns you and affects your care, support and treatment is passed on in an appropriate manner. Statutory data protection provisions must be adhered to in this process.

*Cooperation  
between those  
involved in care,  
support and  
treatment*

Your relatives and other trusted persons and any volunteer care persons should – if you so wish – be involved in your care, support and treatment and kept informed of measures and changes made which relate to your care and health. These groups should be involved in any consultations on your treatment with a service provider or institution and in any decisions made prior to conclusion of a contract if this is what you wish and agree to. Should you so wish, ongoing cooperation should be sought between your relatives/trusted persons and/or volunteer care persons and the service provider or institution.

*Cooperation with  
relatives and  
volunteer care  
persons*

If possible, the care you receive must be agreed upon with you as part of a targeted process. Measures taken should primarily support you in maintaining or regaining your independence and mobility. It is

*Individually  
planned care*

also the responsibility of long-term care to ensure that your medical complaints are alleviated and that you should not feel left to your own devices. Individually planned care is determined by your abilities, limitations, experiences and expectations. Specific objectives and measures should be planned on the basis of this. The objectives, measures and results are to be documented, checked at regular intervals and newly formulated if required.

Care services and institutions should ensure that you have long-term contacts who are familiar with your situation and responsible for all your concerns. There should be a minimum of rotation of staff attending to you. Should you not accept any person assigned to your care and support, this should be taken into consideration in planning schedules.

*Long-term assignments*

Should you wish that certain aspects of your background or routines that are important to you (rest and sleeping patterns, personal hygiene, habits of dressing) be taken into consideration during long-term care, you should ensure that you inform the service personnel or institution of these wishes, or have them informed thereof. You are entitled to these being taken into consideration. Those in need of long-term care and assistance who cannot speak for themselves and in particular those suffering from dementia should be offered the opportunity of recognising habitual and familiar things in order to enhance their wellbeing

*Consideration of personal background and habits*

Your need for movement must be given support and encouragement, as long as there are no medical reasons that prevent this. Your personal movement routine (getting up, walking) must be supported and if necessary suitable aids should be placed at your disposal to ensure that your agility is maintained and to guard against any confinements (i.e. being bedridden). You should also have assistance in going out in the fresh air, should you so wish and if your state of health so permits.

*Support for need for mobility*

Any acute or chronic pains and distressing symptoms you may have, such as shortness of breath or nausea, must be treated professionally and alleviated to the greatest extent possible. This includes any signs of pain or distressing symptoms being recognised and the co-ordination and implementation of adequate therapies as part of your care and treatment.

*Professional treatment and alleviation of distressing symptoms*

You have the right to expect your wishes and needs in respect of eating and drinking to be taken into consideration. Meals served should be sufficient, appetising, varied, suitable for the elderly and healthy. Your preferences and dislikes should be taken into consid-

*Food and drink adapted to individual needs and requirements*

eration as far as possible. Care should be taken not to serve anything known to disagree with you.

If possible you should also be able to take your meals outside regular mealtimes – according to your routine and appetite. Snacks between meals and beverages should always be available. Meals and beverages should be served in a way that makes them easily accessible. If you are being cared for at home and are bedridden, it is particularly important for your caregiver to see that food is placed in your immediate vicinity so that you are always able to eat and drink if no help is at hand. Should you require special utensils or dishes to be able to eat and drink unaided, this must be made available. If you need help with eating and drinking, you must be sure of receiving the portions you want within the time you require to eat them.

*Flexibility  
in serving food  
and beverages*

*Help with eating  
and drinking*

Special attention should be given to the diets of people with dementia, who often require individual enticement and motivation to eat and drink and frequently have a heightened energy requirement.

*Eating, drinking  
and dementia*

Artificial feeding measures (stomach tube, intravenous drip) should only be undertaken with your explicit consent and after a process of appraisal involving the medical, care, ethical and legal aspects. If necessary the consent of your healthcare proxy or your legal representative should be obtained. You have a right to expect recognised ethical and legal guidelines to be adhered to in dealing with nutritional problems.

*Artificial feeding*

If you express criticism and suggestions to the institution and staff members, you are entitled to a timely and sensitive reaction and for these comments to be handled in confidence if you so desire. You should be able to express complaints without having to fear any disadvantages and be informed promptly what action was or will be taken as a result of the complaint. You may lodge your complaints via institutional complaints bodies in the community, the home supervisory body, the district medical association or your health or long-term care insurance fund or private insurance company (you will find further information on complaint channels in the Annex).

*Dealing with  
complaints*

#### ARTICLE 5: INFORMATION, COUNSELLING, INFORMED CONSENT

**Everyone in need of long-term care and assistance has the right to be fully informed of the possibilities and opportunities available for counselling, care and treatment.**

You have a right to comprehensive counselling on the possibilities of help, support and care available and on accommodation issues, if relevant also accommodation adaptation measures. The aim of counselling should be to enable you to remain living in your own four walls

*Comprehensive  
counselling - the  
first step in  
making sensible  
decisions*



in spite of the need for long-term care, should you so wish. If your perceptions of assistance and care are to be realised to the fullest extent possible, you should make an early start in enquiring about the facilities in the region in which you want to live and give timely thought and planning to your individual wishes, the costs involved and the practicality of your ideas. In addition to the counselling and assistance services they offer, long-term care insurance funds, responsible state bodies and also to a certain extent service providers, are obliged to provide information on the counselling and assistance options available. Private long-term care insurers also have information available. In addition to this, you can also make it easier to come to a decision by making trial visits and if necessary trial stays (usually for a fee). (You will find a selection of contact addresses of institutions that offer information and counselling on long-term care and assistance options in the Annex).

If long-term care is partially or wholly the responsibility of your relatives, they must be included in all your considerations regarding care, support and treatment. The experiences and ideas of family carers should be taken up and respected by the professional staff, providing that your needs are taken into account and the requisite care is guaranteed.

Should family carers be temporarily unable to fulfil this function, statutory regulations provide an entitlement to replacement caregivers (for instance by services provided at home, short-term care, day or night care and in certain cases cost reimbursement for care services). Family carers must also have the opportunity to receive guidance and training in order to be able to care for you as competently and properly as possible. (You will find contact details for counselling for family members in the Annex).

*Information,  
relief,  
guidance and  
training of family  
carers.*

You are entitled to full and understandable information on the type of services available and what they cost when you use a service or a facility. It should be clear from this information what services are rendered, the quality and cost of these services, which portion of these costs are covered by a long-term care insurance fund or private long-term care insurer and which portion is to be paid by you or recovered from a social assistance agency. Contracts drawn up by nursing homes and services contain individual regulations and the agreements they contain on services and fees are binding; this means that before concluding or amending an agreement with a service or institution, you must be fully informed on the subject matter of the agreement and the possibility of making any future amendments to the agreement, services and fees. This should include making available to you in advance a list of services with fees, a sample contract and when possible the home's regulations.

*Information on  
content of  
agreements,  
costs and  
services*

Talking to you openly, understandably and tactfully on care and medical diagnoses and measures, as well as the possible risks and alternatives involved, is part of your right to information and to giving informed consent.

*Information on  
medical and care  
measures*

Any participation in research projects is subject to the same prior consent provisos on your part as for any treatment. You should not be disadvantaged in any way should you not wish to participate. You must be fully informed about the mode of implementation, benefits, risks and alternatives to any treatment whose effectiveness and safety is not scientifically supported prior to the commencement of treatment. Should you yourself not be in a position to decide, the consent of your healthcare proxy or legal representatives must be obtained for each case in point. These parties may only agree to you participating in the research project if there is the expectation that it is beneficial to your health.

*Thorough  
information on  
participation in  
research projects*

You have the right to inspect your care documentation and any other documents relating to you and have copies made. This right also applies to your representatives. Your relatives, legal representatives and other persons also have a right to see these documents should they be so empowered, provided they can demonstrate a legitimate interest. Health and long-term care insurance funds only have the right to inspection to the extent permitted by law.

*Inspection of  
documents*

You can obtain further details on information to be given by doctors, participation in research projects and inspection rights from the "Charter of Patients' Rights" published by the Federal Ministry of Justice and the Federal Ministry of Health and Social Security (see Annex).

*Details on further information*

#### ARTICLE 6: COMMUNICATION, ESTEEM AND PARTICIPATION IN SOCIETY

**Everyone in need of long-term care and assistance has the right to esteem, interaction with others and participation in the life of society.**

You are entitled to certain communication needs and requirements being taken into consideration, for instance speaking or gesturing slowly and clearly. Should you need support in the use of aids (hearing or writing aids), you should be assisted in obtaining, using and if necessary correctly utilising these aids. If required, you may and should nominate someone as a speech facilitator or interpreter as the need may be. Some associations offer these services free of charge. (Contact details on these services can be obtained from the long-term care information hotlines, senior citizen organisations, local citizen information centres and charitable associations listed in the Annex).

*Attention to communication needs and requirements*

You should be given the opportunity to participate in social life in accordance with your interests and abilities. This includes having the opportunity to perform professional or volunteer work in line with your strengths and possibilities, as well as taking part in training measures.

*Participation in social life*

If you are interested in politics and current affairs, culture or education, you should be made aware of the available opportunities (a fee may be charged for this).

In order for your needs to be satisfactorily met, you should inform your care and support staff, or have them informed, of your wishes and then – perhaps together with them – look for ways of structuring your time in the way you envisage.

*Wishes and ideas*

If you live at home and are in need of long-term care, you can enlist the support of volunteer or charitable organisations in order to be able to attend entertainment or educational events or if you want to go out for other reasons. You can also receive advice on the possibilities of receiving financial contributions or cost coverage from the social benefit agencies for these offers. The goal is for participation and communication offers to be readily open to people in need of long-term care who live at home to a greater extent than hitherto.

*Opportunities in your own home*

If you are living in a residential institution, you are entitled to possibilities for activity corresponding to your interests and abilities and which you enjoy. These include, for instance, participation in household or handicraft tasks, communal activities, celebrations and functions. At the same time, your wish not to participate in events should also be respected.

*Opportunities in a nursing home*

Should you be living in a residential institution, you have the right to exert influence on important decisions affecting life in the institution either yourself or via a corresponding body (i.e. nursing home advisory council or ombudsman). This includes, for instance, a voice in drawing up model contracts for the home and home rules of procedure, influence on service agreements, quality and remuneration agreements with the long-term care insurance funds and social assistance agencies, a voice in amendments to fees charged in the home and in organisation of everyday routines (i.e. composition of menus) as well as recreation and support options.

*Participation and involvement opportunities in residential institutions*

Through the residents' representative body, you can also participate in the preparation of decisions, for instance on repairs, renovations or consolidation measures. You should also have the opportunity to influence the selection of your fellow residents.

In addition, you are also entitled to the opportunity to exercise your citizen's right of participation. Primarily, this means your right to take part in general elections. If you have a physical impairment, you can be assisted in voting by a person nominated by you and/or postal vote. The person assisting you is obliged to respect your freedom of decision and to maintain secrecy concerning your vote.

*Participation in political elections*

#### ARTICLE 7: RELIGION, CULTURE AND BELIEFS

**Everyone in need of long-term care and assistance has the right to live according to his or her culture and beliefs and to practice his or her religion.**

Your cultural and religious habits and requirements should be respected as far as possible. You should therefore inform or see that

*Respect for cultural and religious values*

those responsible for your care, support and treatment are informed of any forms of conduct, values, rituals or religious acts that are important to you.

Should you wish to observe any religious acts (such as prayer, fasting, ablutions) you should be assisted in doing so. When selecting a service or institution, please bear in mind that organisations with a religious or ideological orientation are guided by certain values and ideas.

*Practising  
religious acts*

You have the right to expect that your fundamental questions about life and your fears will be taken seriously. If you so wish, a member of the clergy or qualified counsellor should be consulted.

*Help with  
fundamental  
questions about  
life*

You can still expect to be treated with respect if you have a belief which is not shared by those supporting you.

*Respect for  
beliefs*

#### ARTICLE 8: PALLIATIVE SUPPORT, DYING AND DEATH

**Everyone in need of long-term care and assistance has the right to die in dignity.**

Everything possible should be done to make the process of dying as dignified and tolerable for you as possible. Those treating and accompanying you during the last phase of your life should respect your wishes and take them into consideration to the greatest possible extent. This includes the application of effective measures and relief of pain and other distressing symptoms. Should you so wish, psychological or religious guidance through this phase should be made available. Regardless of whether you die at home, in a hospital, a hospice, nursing or residential home, the institution involved should exhaust all possibilities to see that this happens in an environment which comes closest to your perception of a dignified death. (Individual end-of-life care for the dying is provided, for example, by outpatient or inpatient hospice services, contact details in the Annex). -

*Individual  
end-of-life care*

Doctors and care staff should – if you so wish – include your relatives and other trusted persons in your end-of-life care and offer them professional support. Should you wish certain people not to be included, this must also be respected.

*Cooperation with  
family members*

As long as you are mentally competent, you yourself can determine whether and to what extent treatment should be initiated or continued in view of the possible imminence of death or whether life-prolonging measures should be implemented or omitted. Doctors and others may not, however, take any measures which would systematically lead to death even if you should explicitly so wish.

*Self-determination at the end of life*

In an advance directive or enduring power of attorney, you can determine in advance who should make decisions on your behalf if you are not mentally competent, concerning how your process of dying should be conducted and who should accompany you during this time. You can also lay down your perceptions on certain kinds of treatment in case you are no longer sufficiently mentally competent. Whatever you determine binds the team treating you, those with power of attorney and legal representatives, as long as these wishes apply to the specific situation in question and there are no concrete factors indicating that a previously expressed directive no longer conforms to your current wishes. Examination should thus be given to whether the wishes you expressed in advance apply to the specific situation in hand and whether the written directive can still be assumed to apply. In the event of mental incompetence on your part and in the absence of an enduring former statement of will, or should this be ambiguous, a decision on the admissibility of medical treatment which is not deferrable will be based on your presumed wishes, ascertained from the views you previously expressed and after questioning your relatives, others close to you and those responsible for your care to date. You can obtain information on advance directives and enduring powers of attorney from, for instance, from the Federal Ministry of Justice, the health authorities, consumer organisations, medical associations, the churches, patient organisations or charitable organisations (contact details in the Annex).

*Advance directives*

You also have the right to be treated with sensitivity and respect as a decedent. The wishes you expressed during your lifetime should be taken into consideration after your death. Your relatives, persons close to you and where applicable, fellow residents, should be given sufficient time to take their leave. You can determine in advance how you wish to be treated after your death and what should be done with your body. This relates for instance to the viewing and type of burial.

*Leave-taking, burial*

You can also make advance directives on the question of donating organs and making your body available for scientific purposes. It is only possible to remove an organ if you have explicitly consented to donation, for instance by means of an organ donor card. Should this not be the case, no organs may be removed without the agreement of your relatives.

*Rights over the  
body*

### Annex 3

Publications from the work of the Federation-Länder working group on domestic violence within the framework of Action Plan II that deserve particular mention:

- Prevention of domestic violence in the context of schools<sup>8</sup>
- Models of good practice in the processing of applications under Book II of the Social Code for women affected by domestic violence<sup>9</sup>

Further important and current publications:

- The study “The Circumstances, Safety and Health of Women in Germany” is the first representative survey on violence against women in Germany. The study evaluates interviews with more than 10,000 women aged between 16 and 85 years old who report on their experience of violence during different stages of life.<sup>10</sup>
- The study “Violence against women in relationships of couples” contains more precise statements regarding the extent of different degrees of gravity and the context of violence against women. There was also investigation into which factors increase or decrease the risk of violence against women and what consequences this has for supporting the woman affected by violence. The study is based on the representative study “The Circumstances, Safety and Health of Women in Germany” which was produced on behalf of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in 2004.<sup>11</sup>
- Final report of the BIG Prevention Project (Berlin Intervention Centre for Domestic Violence) “Cooperation between schools and youth welfare services in the event of domestic violence”.<sup>12</sup>

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<sup>8</sup> <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/praevention-haeusliche-gewalt-tagung-was-kann-schule-machen-pdf,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

<sup>9</sup> <http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/Service/Publikationen/publikationsliste.did=106284.html>.

<sup>10</sup> German version:

<http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/Service/Publikationen/publikationen.did=20560.html>;

English version: <http://www.bmfsfj.de/bmfsfj/generator/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Frauenstudie-englisch-Gewalt-gegen-Frauen,property=pdf,bereich=bmfsfj,rwb=true.pdf>.

<sup>11</sup> <http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/Service/Publikationen/publikationsliste.did=120792.html>

<sup>12</sup> <http://www.bmfsfj.de/bmfsfj/generator/BMFSFJ/Service/Publikationen/publikationsliste.did=110448.html>



## Annex 4

The main activities undertaken by the police within the Federation and the *Länder* to fight the crime of trafficking in human beings:

- Initiation of investigation proceedings and prioritisation of these offences within the Federal Criminal Police Office and numerous *Länder* agencies.
- Cooperation with special advice centres for psycho-social care for victim-witnesses and protection of victims by police officers with special training.
- Use of qualified interpreters during investigation proceedings.
- Since 1997 offence-specific training of police officers at federal level and in the different *Länder*. Contents of training courses include enhancing intercultural competence, how to interview traumatised victims, etc.
- Research regarding this type of offence includes the 2006 study "The offence of trafficking in human beings - numbers of proceedings and determining factors of criminal prosecution" – by Herz and Minthe.
- Research project of the Federal Criminal Police Office to improve victim identification
- Elaboration of trauma guidelines for police, judicial authorities and local authority administration to help in dealing professionally with victims of human trafficking for the purpose of sexual exploitation.
- Joint training measures of special advice centres and police to promote mutual understanding and thus the willingness to cooperate.
- Close cooperation with the police authorities in states of origin and destination states in order to fight the offence in the long term in all states affected. Active cooperation with Europol and Interpol.
- Observation visits by /working meetings with foreign police officers in the Federal Criminal Police Office (e.g. 2009 colleagues from Ghana and Belarus), and conduct of training courses at foreign police authorities, e.g. 2009 in Belarus and Bangladesh.
- Ad-hoc operative working meetings at national and international level at the Federal Criminal Police Office (e.g. 2009 with colleagues from the Netherlands and Hungary, workshop Nigeria, expert meeting Bulgaria).

- Active participation in the Federation-Länder working group on trafficking in women by representatives of the Federal Criminal Police Office and chairing/involvement in sub-working groups on specific subjects.
- Since 1994 annual production of the Federal Situation Report on Trafficking in Human Beings, aimed at the top managerial and decision-making level of police and politics. It contains, in summarised form, current findings on the situation and developments in the field of trafficking in human beings for the purpose of sexual exploitation as well as trafficking in human beings for the purpose of exploitation of labour. The aim of the Situation Report is to put police and political decision-makers into a position where they can evaluate the potential of human trafficking in terms of danger and harm, and its significance for the crime situation in Germany, and to recognise the need for action required. To this extent the objective is for it to contribute to establishing points of focus in line with the actual situation as well as to decisions in terms of action and resources.