



**International
Human Rights
Instruments**

Distr.
GENERAL

HRI/CORE/1/Add.75/Rev.1
31 January 2003

Original: ENGLISH

CORE DOCUMENT FORMING PART OF THE REPORTS OF STATES PARTIES

GERMANY

[15 November 2002]

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. COUNTRY AND POPULATION	1 - 40	3
A. Geography and climate	1 - 3	3
B. Demographic data	4 - 21	3
C. Economy	22 - 40	6
II. GENERAL POLITICAL STRUCTURE	41 - 84	9
A. History	41 - 52	9
B. The constitutional framework	53 - 84	12
III. GENERAL STATUTORY FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED	85 - 132	20
A. Implementation of human rights in Germany	85 - 125	20
B. International agreements	126 - 132	28
IV. INFORMATION AND PUBLICATIONS ON HUMAN RIGHTS	133 - 138	31

I. COUNTRY AND POPULATION

A. Geography and climate

1. The Federal Republic of Germany has an area of 357,020 km². It stretches from the North Sea and the Baltic Sea to the Alps in the south. Geographically it can be divided into five parts:

- the North German Plain south of the North Sea and Baltic coasts and the offshore islands;
- the Mid-German Highlands that separate the north of Germany from the south;
- the South-West German terraced highlands;
- the southern German Alpine Plateau that covers a wide expanse before the Alps;
- and the Bavarian Alps that comprise only a narrow section of the folded mountain range of the European Alps.

2. The Mid-German Highlands reach heights of almost 1,500 m; the highest mountain of Germany is the Zugspitze at 2,962 m located in the Alps.

3. Germany's position in the temperate zone is decisive for its climate of frequent weather changes, predominantly westerly winds and precipitation in every season. Progressing from the north-west towards the east and the south-east a gradual transition from an oceanic to a continental climate can be detected. The average temperatures of the coldest month of the year (January) range from +1.5° C to -0.5° C in the Plain to below -6° C in the mountains, depending on the altitude. The average July temperatures are up to between +17° C and +18° C on the North German Plain, up to +20° C in the Upper Rhine Valley. The average annual temperature is +9° C.

B. Demographic data

1. Demographic development in 2000

4. At the end of 2000 the Federal Republic of Germany had 82,260,000 inhabitants, 96,000 or 0.1 per cent more than at the end of 1999 (82,163,000). Compared to the previous year, there was an increase of 126,000 in 1999 and a decrease of 20,000 in 1998. The population density remained unchanged in comparison to 1999 at 230 inhabitants per sq km. The slight population increase is due to the large number of immigrants which was 202,000 in 1999 and 167,000 in 2000.

5. In 2000, 649,000 foreigners moved across the Federal borders to settle in Germany (1999: 674,000) and 562,000 left the country (1999: 556,000). The resulting excess of immigration was 86,000 in 2000 and 118,000 in 1999. The emigration balance of the foreign

population in 2000 is principally based on an excess of immigration in comparison with Asia (+58,000), in particular in comparison to Kazakhstan (+9,700), Iraq (+9,200) and China (+9,200).

6. In 2000 some 192,000 Germans came to Germany (1999: 200,000). The main countries of origin - as a result of immigration by repatriates (2000: some 85,000 compared to 89,000 in 1999) - were once again the Russian Federation and Kazakhstan. The number of Germans who left Germany in 2000 was 111,000 (1999: 116,000). Of those Germans who left the country most of them registered in another EU country (38,500 or 34.7 per cent). In total in 2000 the 192,000 Germans settling in Germany and 111,000 who left the country resulted in an immigration balance of 81,000 Germans.

2. Life expectancy

7. Life expectancy in 1997-1999 in Germany was 74.4 years for men and 80.6 years for women. In 1986-1988 the average life expectancy for men was 71.7 and 78.0 years for women (by means of comparison 1900: 44.8 years for men and 48.3 years for women).

3. Infant mortality

8. In 1990 infant mortality (deaths in the first year of life) reached 7.1 infant deaths per 1,000 live births, one fifth of the 1960 level. This mortality rate is continuing to decrease and was 4.5 in 1999 and 4.4 in 2000.

4. Maternal mortality rate

9. The number of maternal deaths per 100,000 live births was 5.6 in 2000.

5. Fertility rate

10. In 1999 the fertility rate was 1.36 children per woman of child-rearing age. In 1990 it was 1.45 children.

6. Proportion of people under 15 years of age and over 65 years of age

11. In 2000 the proportion of persons under 15 years of age was 15.5 per cent and the proportion of those over 65 years of age was 16.6 per cent of the total population.

7. Rural and urban population

12. The rural area comprises approximately 59 per cent of the area of Germany. Some 19 per cent of the population live there.

8. Single mothers

13. Of 16,044,000 working women, 6,773,000 are single (i.e. unmarried or separated); 1,457,000 of the single women have children (May 2000).

9. Illiteracy rate

14. In the Federal Republic of Germany the manifestations of illiteracy among the German population are almost exclusively those of the so-called "secondary illiteracy", i.e. the persons concerned have major reading and writing deficiencies in spite of having gone to school. There is no reliable information on the exact number of illiterate people. According to UNESCO estimates it is between 468,667 and 1,847,666 people. With an adult population (persons over 15 years of age) of approximately 62,489,000 (1991), that is 0.75 per cent to 3 per cent of the adult population.

10. Proportion of the population with foreign nationality

15. At the end of 2000 there were 7,297,000 foreign nationals living in the Federal Republic of Germany. The larger groups of these are primarily nationals of the following States:

EU States	1,893,000
(including Italy and Greece)	619,000 365,000
Successor States of Yugoslavia	1,066,000
(incl. Federal Republic of Yugoslavia and Croatia)	622,000 217,000
Turkey	1,999,000
Successor States of the Soviet Union	365,000
Poland	301,000

16. At the end of 2000 the proportion of foreigners in the total population was 8.9 per cent (2000 total population: 82,260,000; 2000 foreign population: 7,297,000).

17. Of the 7,297,000 foreigners resident in Germany at the end of 2000, 833,000 were former asylum-seekers. Of these, 164,000 were recognized as entitled to asylum, 54,000 people had been granted protection against deportation under the Geneva Convention. Two hundred thousand foreigners are still in the process of the asylum procedure. More than half of the foreigners in Germany have been living here for at least 10 years, one third for 20 years or longer.

11. Religions

18. Current figures on membership of religious communities in Germany are as follows:

Roman Catholic Church	27,017,401 members
Protestant Church (EKD)	26,848,000 members
Free Protestant Churches (VEF)	291,200 members
Independent Protestant Church in Germany (SELK)	40,000 members
Old Catholic Church	30,000 members

Orthodox Christian Churches in Germany	1,000,000 members
Jewish religious community	95,000 members
Islamic religious community	about 3,500,000 members

19. The figures for the Roman Catholic Church and for the Protestant Church (EKD) are from the year 2001 and are based on Church statistics. Also, the figures for

- the Christian Free Churches which are combined in the Association of Free Protestant Churches (VEF) (of October 2001);
- the Lutheran Protestant Free Churches Organization (SELK);
- the Old Catholic Church

are based on Church statistics.

20. The figures for the Jewish Community are collected by the central welfare agency of the Jews. The figure stated here is from the end of 2001.

21. The data for the Orthodox and Islamic Communities are estimates based, inter alia, on the number of foreigners resident in Germany taking into account their countries of origin.

C. Economy

1. Gross domestic product (GDP) and gross national product (GNP) in current prices

22. The GDP figures are as follows:

Gross domestic product (billion EUR)

1995: 1,801.30	1996: 1,833.70
1997: 1,871.60	1998: 1,929.40
1999: 1,974.30	2000: 2,025.50
2001: 2,063.00	

Gross domestic product per capita (EUR)

1995: 22,100	1996: 22,400
1997: 22,800	1998: 23,500
1999: 24,100	2000: 24,600
2001: 25,000	

Gross domestic product per gainfully employed person (EUR)

1995: 48,200	1996: 49,200
1997: 50,300	1998: 51,300
1999: 51,800	2000: 52,300
2001: 53,200	

23. According to calculations of the Federal Statistical Office of the gross domestic product, the value of the work done in Germany increased in 2001 in comparison to 2000 by 0.6 per cent in real terms, after it had increased by 3.0 per cent in 2000 in comparison to 1999.

24. The GNP figures are as follows:

Gross national product (billion EUR)

1995: 1,791.80	1996: 1,825.63
1997: 1,862.48	1998: 1,915.53
1999: 1,962.01	2000: 2,017.86
2001: 2,054.57	

Gross national product per capita (EUR)

1995: 21,900	1996: 22,300
1997: 22,700	1998: 23,400
1999: 23,900	2000: 24,600
2001: 25,000	

25. The total German gross national product rose in 2001 by 0.5 per cent in real terms.

2. Employment

26. The proportion of employed people in the population was 52.9 per cent in 2000; in the 15 EU member States it was 51.3 per cent (Source: Eurostat AKE 2000).

27. The proportion of women among employed people was 44.8 per cent in the same year (in the 15 EU member States: 42.3 per cent).

3. Unemployment

28. The number of people in employment fell in the course of 2001. But due to the favourable situation at the beginning of the year, the level of employment in the year 2001 was the highest since reunification (38.8 million). Although unemployment had markedly risen due to weak economic development since the beginning of 2001, the number of registered unemployed was, at an annual average of 3.58 million, a little lower than the previous year. In the years 1997 to 1999 the number of unemployed had been over 4 million.

29. The unemployment rate, in relation to the number of dependent civilian employed persons (ILO concept), was 7.7 per cent in 2001 (1992: 6.4 per cent; 1995: 8.0 per cent; 2000: 7.8 per cent).

4. Inflation rate

30. The cost of living index in all private households (1995 = 100) in Germany in comparison to previous years developed as below:

1992:	+5.0	1993:	+4.5
1994:	+2.7	1995:	+1.7
1996:	+1.4	1997:	+1.9
1998:	+1.0	1999:	+0.6
2000:	+1.9	2001:	+2.5

31. In December 2000 the Federal Republic of Germany had DM 2,719,327 million in assets and DM 2,645,220 million in equity and liabilities; public bodies had DM 65,659 million in assets and DM 638,931 million in equity and liabilities.

5. Disposable income in current prices

32. The overall disposable income per inhabitant in 2001 in Germany was 20,900 EUR.

33. The disposable income of private households per inhabitant in Germany in 2001 was 16,300 EUR.

6. Social assistance benefits

34. Social assistance is governed by federal law in Germany. It forms the lowest network of social security. The task of social assistance is, in addition to providing help for self-help, to enable the recipient to lead a life corresponding to accepted standards of human dignity. The prerequisite for social assistance is the fact that the recipient cannot help himself or does not receive assistance from other parties, in particular family members, or other social benefits. Social assistance comprises two types of assistance: benefits to help with living expenses and assistance in particular circumstances. Benefits to help with living expenses are paid to people who cannot afford to keep themselves from their own resources, particularly income and savings. The level of benefits to help with living expenses has risen considerably since the Federal Social Assistance Act (*Bundessozialhilfegesetz*) came into force in 1962. The second large area of social assistance benefits covers the special needs of specific groups of people in particular circumstances (e.g. sickness benefit, integration assistance for the disabled and help with long-term care).

35. According to figures from the Federal Statistical Office, Germany spent DM 45.6 billion on social assistance benefits in 2000; DM 19.1 billion (42 per cent of expenditure) covered benefits paid to help with living expenses while the remaining DM 26.5 billion (58 per cent) went for assistance in particular circumstances.

36. At the end of 2000 almost 2.7 million people in Germany were receiving benefits to help with living expenses. This is a decrease of 4.2 per cent (previous year's decrease: 3.2 per cent). The number of recipients of assistance for particular circumstances was over 1 million people at the end of the year 2000.

7. Promotion of education

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

38. In 2000 almost 559,000 pupils and students in Germany received assistance under the Federal Education Promotion Act. That was 17,500 or 3.2 per cent more than in the previous year. However, in many cases this assistance was not for a full year. On average 359,000 people per month received assistance.

39. In 2000 the Federation and the Länder spent DM 2.5 billion on grants under the Federal Education Promotion Act, DM 91.6 million more than in the previous year. DM 720 million were provided for assistance for pupils at school and about DM 1.77 billion for assistance for students. A pupil with a grant received on average DM 471 and a student with a grant DM 637 per month.

40. Assistance is also available for the vocational training of young people. In 2001 over 63,000 apprentices and trainees under the age of 25 were receiving vocational training remuneration. Fifty-four thousand young people participated successfully in training schemes preparing them for professional life. About 108,000 young people were helped by aid accompanying their training, by training in extra-company institutions or by transitional schemes. The expenditure for this was about €3.7 billion in 2001. In addition, over 84,000 young people were helped under the immediate programme to reduce juvenile unemployment at an amount of about €2.1 billion.

II. GENERAL POLITICAL STRUCTURE

A. History

41. The history of Germany as a constitutional State which guarantees its citizens basic and human rights starts with the constitutions of the individual German States enacted at the beginning of the nineteenth century.

42. The basic rights based on the example set by the Charte constitutionnelle of Louis XVIII of 4 June 1814 included in the Bavarian Constitution of 25 May 1818 and in the Baden Constitution of 22 August of 1818 as well as in the Württemberg Constitution of

25 September 1819 were conceived as civil and political rights, which - intensified by the legislative rights of participation by the representative bodies of the people - were designed to limit the absolute power of the monarch. Among other things, this included the right to equal access to public offices, the right to be legally judged, the freedom of conscience, the independence of clerical powers, the freedom of the press, the equality of the ranks, the exclusion of serfdom, the security of the individual and of property, the exclusion of unlawful persecution and arrest, the equality of the Christian religious communities and the freedom to emigrate.

43. In the spirit of the French declaration of human and civil rights of 26 August 1789, the National Assembly in the Paulskirche (St. Paul's church) in Frankfurt, a result of the bourgeois revolution of 1848, adopted a catalogue of basic rights within the framework of the Paulskirche Constitution. This was supposed to serve as a model for the constitutions of the individual States and actually did so in some cases - in spite of the failure of the 1848 revolution. However, States such as Bavaria, Hanover, Austria and Prussia withdrew from the Paulskirche Constitution. Once the authority of the Frankfurt National Assembly has been swept aside upon the action of the reinforced monarchies and the Bundestag (parliament) of the old German Confederation had been reinstated, in 1851 the latter declared the basic rights to be legally invalid and obliged those States in which they had taken effect to invalidate these provisions.

44. After the brief transitional period of the North German Confederation (1867-1870), its expansion after the accession of the Southern German States in November 1870 led to the founding of the German Empire on 18 January 1871. The Constitution of the German Reich provided for a federal State with a constitutional monarchy. However, just as the Reich was not the result of a national mass movement, the Constitution did not come about on the basis of popular sovereignty. The power of the Reich was borne by the total of the allied governments represented in the Bundesrat, which in turn were determined by the Princes of the member States. The new constitution of the Reich did not include any basic or human rights.

45. Once the monarchy had come to an end after the abdication of Kaiser Wilhelm II after World War I and the "German Republic" was proclaimed, the newly elected National Assembly adopted the Weimar Constitution, which entered into force on 14 August 1919. The Weimar Constitution was made up of an organizational section and a basic rights section according to which, however, the "Basic Rights and Duties" of German citizens applied only in line with and within the framework of the legislation. The Weimar Constitution provided for a democratic republic with presidential and parliamentary elements. The authority of the State was vested in the people. The Reich remained a federal State in which the authority of the State was divided among the Federation and the constituent States. The Länder were newly divided and were given fewer powers, while the legislative and administrative responsibilities of the Reich were extended.

46. The Weimar Republic was faced with many difficulties and crises. But there were also important achievements, in particular the reintegration of Germany into the European and international community of States. Nevertheless, the Republic experienced a decisive weakening in the years from 1929 to 1932. This was due to a number of factors, including the world economic crisis. It led to impoverishment and political radicalization of large parts of the

population, especially the up to then insignificant National Socialist German Workers' Party (NSDAP) of Adolf Hitler, which combined an anti-democratic attitude with radical anti-Semitism and agitated unscrupulously against the Republic and the middle-class and social-democratic parties representing it. The NSDAP rapidly gained strength from 1930 and became the strongest party in Parliament in 1932. From this point at the latest there were no longer any majorities in the Reichstag capable of forming a government. Although the national socialists suffered losses in the November 1932 elections, Reich President von Hindenburg on 30 January 1933 appointed Hitler Chancellor.

47. Although in the new Government the National Socialists were in the minority, they immediately began to persecute their political opponents and to consolidate their power. The Reichstag fire in the night of 27 to 28 February 1933 served as a pretext for the "Decree to protect the people and the State" (Reichstag Fire Decree) which the Reich President put into force as early as 28 February 1933. This emergency decree set aside important basic rights, such as freedom of opinion, freedom of the press, freedom of association and assembly, suspended the privacy of correspondence and telecommunications, cancelled the inviolability of the home and tightened the penal provisions concerning certain offences - in particular by introducing the death penalty for high treason and arson - and legalized preventive detention. The "Act to remedy the plight of the people and the Reich" ("Enabling Act") of 24 March 1933, which the Reichstag adopted with the votes of all parties except the SPD, which voted no, and the Communists, which had been excluded, totally abolished the separation of powers between the Reich Government and the Reichstag. Now the Reich Government could itself pass ordinary statutes as well as statutes amending the Constitution. In the next stage the federal structure of the Reich, which was divided into Länder, was dissolved; the unitary State was created.

48. The NS regime from 1933 to 1945 was a time of total disregard of basic and human rights. The National Socialist rule was based on persecution and suppression. It pursued the mass extermination of Jewish and other citizens outlawed for political or ideological, particularly racist, reasons. In spite of individual attempts of resistance it was only the total defeat in the Second World War, prepared and waged by the NS regime, that ended it. In particular, a coup attempt backed by military officers, civil servants, clergymen and the trade unions failed on 20 July 1944. Hitler survived the attack carried out by officers in his headquarters. As a reaction, over 4,000 people from all walks of life were executed in the following months. Only the capitulation of the German Wehrmacht on 8 May 1945 enabled the return to a constitutional order based on the respect of human rights in the area of application of the Basic Law for the Federal Republic of Germany.

49. In 1948 the Parliamentary Council assembled in the western part of Germany to draw up a new constitution: the Basic Law for the Federal Republic of Germany. The Parliamentary Council was made up of 65 representatives of the Länder who had been elected by the Land parliaments of the 11 Länder in three Western zones of occupation. It followed the lines of the Weimar Constitution of 1919 but was also guided by the experience that had been gained with this constitution between 1919 and 1933. The Basic Law is therefore a response to historical development. The creators of the Constitution also took their lead from the Universal Declaration of Human Rights of the United Nations of 10 December 1948. The Basic Law was proclaimed on 23 May 1949 and entered into force at midnight on that date.

50. By contrast, the development in the eastern part of Germany was characterized by convergence with the State system of the Soviet Union. The Soviet occupying power and, with its assistance, the Socialist Unity Party of Germany (Sozialistische Einheitspartei Deutschlands - SED) set up a regime in line with their ideas of a social and political system. The Constitution of the German Democratic Republic (GDR), founded in 1949, paid lip service to the basic rights; however, it did not really guarantee individual freedom and defensive rights against the State's powers. The centralized structure of the State, a rejection of the principle of the separation of powers and the subjugation of all State functions to the leadership of the SED served to ensure the dominance of the SED, even against the will of the people. Political persecution, infringements of human rights and the "wall" with its life-threatening border protection formed the public image throughout the world of the State system of the GDR.

51. In September 1989 Hungary opened its border permitting thousands of GDR citizens to pass through to Austria and from there into the Federal Republic. In the GDR more and more people took part in protest activities, including growing numbers outside the Church. When early in October 1989 the GDR leaders celebrated the fortieth anniversary of the founding of the GDR with great pomp and ceremony, mass demonstrations were held, primarily in Leipzig. This led to the resignation of Erich Honecker, long-term Chairman of the Council of State of the GDR. Continued pressure from the people finally led to the opening of the Berlin Wall and other border crossings on 9 November 1989. Following the first free elections to the GDR Peoples' Chamber on 18 March 1990, negotiations were started between the Governments of the Federal Republic of Germany and the GDR with the aim of agreeing on the details of the unification of both partial States.

52. On 30 June 1990 the German-German Treaty Establishing a Monetary, Economic and Social Union entered into force as did, on 3 September 1990, the German-German Agreement on the preparation and implementation of the first all-German election to the Bundestag. The reunification process was ensured as regards foreign policy with the Agreement of 12 September 1990 on the final regulations with respect to Germany, the so-called "Two Plus Four Treaty" which was concluded between both German States, France, the Soviet Union, the United Kingdom and the United States of America. The Länder Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringa, which had been abolished in 1950 with the conversion of the GDR into a united State, were reintroduced with effect from 3 October 1990 by a statute of the GDR of 22 July 1990. On 23 August 1990 the People's Chamber in Berlin proclaimed the accession of the GDR to the area of application of the Basic Law of the Federal Republic of Germany with effect from 3 October 1990. Upon entry into effect on 3 October 1990 of the Unification Treaty between the GDR and the Federal Republic of Germany of 31 August 1990 the two German States were reunited.

B. The constitutional framework

53. The Basic Law of 23 May 1949 continues to be the Constitution of the Federal Republic of Germany also after the achievement of German unity. In 1992 a Constitutional Commission was established which had the task of drawing up proposals in response to the questions arising from German unity. The Bundestag and the Bundesrat largely accepted the recommendations of the Commission in the Act to Amend the Basic Law adopted on 27 October 1994. Of particular

importance was the strengthening of the legislative powers of the Länder. Furthermore, environmental protection was introduced into the Basic Law as a fundamental aim of State policy.

54. The political framework for action and organization of the State is determined on the one hand by the Basic Law and on the other hand by the constitutional law governing the organization. The fundamental structural principles of the constitutional law governing the organization of the State are the republican principle, the principle of democracy, the principle of the rule of law, the principle of the federal State, and the principle of the social State.

1. Republic

55. The republican structural principle is characterized by the rejection of the State form of monarchy: the Head of State is elected.

2. The Federal President

56. The Head of State and the highest representative of the Federal Republic of Germany is the Federal President. He is elected for five years by the Federal Assembly, which is made up of members of the Bundestag and an equal number of members elected by the Land parliaments.

57. The principal powers of the Head of State under constitutional law are to carry out functions to represent, integrate and embody the State in addition to certain extraordinary powers in crisis. The Federal President represents the Federal Republic of Germany at home and abroad, signs the federal laws and proclaims them, appoints and dismisses the Federal Chancellor, federal ministers, federal judges, federal civil servants and officers and non-commissioned officers. He can dissolve parliament in certain special situations as well as being able to declare a legislative state of emergency. However, the actual running of the State is the responsibility of the Federal Government. The position of the President as the Head of State is not, thus, a counterbalance to the parliament or the Federal Government. On the whole, the office is designed for restraint, neutrality and political integration.

3. Democracy

58. All State authority shall emanate from the people and is subject to control by the people. The structural principle of democracy under the Basic Law is designed as representative or parliamentary democracy. The members of the Bundestag are elected every four years in general, direct, free, equal and secret elections. The members of the Bundestag are representatives of all the people and are not bound by orders or instructions and are only subject to their conscience. Parliament has comprehensive legislative rights and supervises the Government. The deciding principle is the principle of majority. However, a certain degree of protection of minorities is also part of democracy, e.g. the right of minorities to be heard in parliament, the possibility of political opposition and the freedom of assembly as an opportunity for the articulation of discontent and as a contribution towards the formation of political will.

4. Political parties

59. The Constitution provides for the political parties to play a decisive role in shaping political will and letting the people develop an informed opinion, with the result that the German form of democracy is frequently called a party democracy. The parties are not part of organized statehood. They cannot be identified with the State or with the people but are independent factors of constitutional life that adopt an intermediate role between both.

60. Parties may be freely established. The parties are financed by members' contributions and donations which they have to account for on a regular basis. In addition to this, they also receive financial aid from the State so that they can fulfil their tasks. Their internal organization must correspond to democratic principles. Parties whose aim is to impair or abolish the free democratic basic order can be banned by the Federal Constitutional Court. This possibility, which was introduced into the Constitution in view of the NS regime, was used twice in the past. In a third case in 2001, the Federal Government, the Bundestag and the Bundesrat filed an application to ban the radical right-wing National Democratic Party of Germany (NPD). The relevant proceedings are still pending.

61. The parties are active not only at the federal level but also in elections to the parliaments of the Länder and local government. The party spectrum comprises, among others, the following parties represented in the German Bundestag; the Social Democratic Party of Germany (Sozialdemokratische Partei Deutschlands - SPD), the Christian Democratic Union of Germany (Christliche Demokratische Union Deutschlands - CDU), the Christian Social Union in Bavaria (Christliche Soziale Union in Bayern e.V. - CSU), Alliance 90/Greens (Bündnis 90/DIE GRÜNEN - Grüne), the Free Democratic Party (Freie Demokratische Partei - FDP.), and the Party of Democratic Socialism (Partei des Demokratischen Sozialismus - PDS). Furthermore, particularly local public life in many places is also influenced by independent groupings of voters.

5. The Bundestag

62. The parliament of all the people is the German Bundestag, which currently comprises 666 representatives. From the next election for the Bundestag in the autumn of 2002 the number of representatives will be reduced to 598. Two hundred and ninety-nine representatives are elected directly according to the principle of first past the post voting (so-called first votes); another 299 representatives receive their mandate according to the principle of proportional representation. The seats are distributed in proportion to the votes cast for the Land lists of the parties (second votes). Sometimes so-called excess mandates can arise (currently 13), resulting in an increase in the total number of legal mandates. However, when the seats are allocated - with the exception of a special regulation for the first all-German election in 1990 - only those parties are taken into account that received at least 5 per cent of all second votes cast in the election area or have received at least three constituency mandates directly. Parties that remain below the 5 per cent threshold are not represented in parliament in principle. This is intended to counteract party splitting which could endanger the scope for action and the stability of the Government, as occurred during the Weimar Republic. The Bundestag elects the Federal Chancellor who then has the sole right to nominate federal ministers.

6. The Federal Government

63. The Federal Chancellor and the federal ministers form the Federal Government. The Federal Chancellor determines policy direction and bears the responsibility for it. Within these directions, each federal minister executes his portfolio independently and bears responsibility for it.

64. The Bundestag can express no confidence in the Federal Chancellor only by electing a successor with a majority of its members and requesting the Federal President to dismiss the Federal Chancellor (constructive vote of no confidence).

7. State based on the rule of law

65. The structural principle of the State based on the rule of law binds all State powers to adhere to law and justice, especially to basic rights. The executive and judicial powers are bound by legal norms of every type, even unwritten law (common law, general legal principles). The legal norms have priority over all other State acts. A special form of this priority of the law applies to the principle of the priority of the Constitution, according to which no State act may contradict the Constitution. Even parliament itself, the democratically elected representative of the people, is bound by the constitutional order. This binding of parliament to the Constitution was a central concern of the creator of the Basic Law. Even the author of the Constitution is bound to a core of basic constitutional principles which cannot be amended (see para. 78 below).

66. Further elements of the principle of a State based on the rule of law are the independence of the judiciary and the possibility of legal protection in court for everyone whose rights are violated by public authorities, the setting up of constitutional jurisdiction, the constitutional precept of legal certainty and the requirement that the State may interfere with a citizen's rights only on the basis of a statute, as well as the requirement of the proportionality of means and ends of such interference. The principle of the State based on the rule of law helps to ensure the impartial execution of State power and to protect the State and the law from becoming mere instruments of political dictators. As a counter-principle to the dynamism of the democratic political process, the principle of a State based on the rule of law aims for continuity and stability.

8. Jurisprudence

67. In the system of the State based on the rule of law with a separation of powers, jurisprudence is given a particularly strong position by the Basic Law. It is entrusted to independent judges who are subject only to the law. During their periods in office judges cannot in principle be dismissed or transferred. Judicial power is divided into ordinary jurisdiction (civil and criminal jurisdiction) and four specialist jurisdictions: labour jurisdiction, general administrative jurisdiction, social jurisdiction and finance jurisdiction. Ordinary jurisdiction has a four-tiered structure in the Länder and the Federation. Within the specialist jurisdictions there are two instances at Land level (with the exception of the finance jurisdiction) and at federal level the third - highest - instance of the federal courts. In addition to the five jurisdictions there is the Federal Patents Court as well as the organs of disciplinary jurisdiction. The latter primarily deal with infringements of duty which someone may have committed in his/her

capacity as a civil servant, judge or soldier or in connection with the membership of a legally regulated profession (e.g. lawyers, tax consultants, accountants, architects, doctors, veterinary surgeons and pharmacists).

68. In addition to this, constitutional jurisdiction is exercised by the Federal Constitutional Court at federal level and the Land Constitutional Courts at Land level. It is outside the instances of the specialist courts and deals only with infringements of specific constitutional law.

9. Federal Constitutional Court

69. The Federal Constitutional Court comprises two panels with eight judges each. The period of office of the judges is 12 years or until age 68 at the most. Re-election is not possible. The judges of a panel are elected by the Bundestag and the Bundesrat equally by means of a qualified majority.

70. The Federal Constitutional Court only becomes active when it is called on. It exercises its duty as the highest guardian of the Constitution in various ways. It supervises parliament to see whether, in issuing laws, it has acted according to the provisions of the Basic Law in form and substance. Complaints of unconstitutionality may be submitted to the Federal Constitutional Court by anybody claiming that his basic rights have been infringed, enabling the Court to monitor authorities and courts to see whether they have observed the Constitution in their actions and decisions. It arbitrates in disagreements between the highest State organs and decides in proceedings between the Federation and the Länder. Furthermore, it also decides, among other things, on the validity of Bundestag elections and the unconstitutionality of political parties as well as on the forfeiture of basic rights.

10. Federal State

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

72. The Länder are members of the Federation. The constitutional order in the Länder must comply with the principles of the republican, democratic and social State under the rule of law in the meaning of the Basic Law. In this framework, the Länder are States with their own constitutions, parliaments and governments, and are even entitled to conclude international agreements with foreign States to the extent that they have legislative competence and the Federal government gives its consent.

73. The Länder are bound by federal legislation - federal law overrides Länder law. The Basic Law contains comprehensive lists of competencies with regard to those areas where the Federation is allowed to pass legislation. These include almost all important areas of life. Some of the areas where legislation originates in the Länder are : culture (schools, wide sections of higher education, radio and television), communal self-administration and the police.

74. In the last few decades, there has been a shift of emphasis in the field of legislative power further and further towards the Federation. In the administration of justice and the implementation of statutes, the emphasis is, however, clearly on the Länder. The federal model thus lives on the tension between a unitarian tendency on the one hand and a federal tendency on the other. Not only does the Federation have an effect on the Länder, but the Länder have an effect on events in the Federation. Via the federal organ of the Bundesrat, the Länder contribute to the legislation and administration of the Federation, and in matters concerned with the European Union.

75. The relationship both between the Federation and the Länder, and that between the Länder themselves, is generally characterized by cooperation, so that it is possible to speak of cooperative federalism. Constitutionally the institutionalized forms of cooperation consist of the so-called joint tasks performed by the Federation and the Länder. These include, for instance, improving the regional economic structure, supporting research and extension of the higher education system.

76. The federal principle also guarantees cultural and regional variety. It ensures that it is possible for experiments to be carried out on a small scale and institutionalizes competition between the Länder. At the same time, it enables those who hold government posts in the Länder to formulate alternatives to the policy of the governing parties in the Federation. The path to power in the Federation is frequently via government power in the Länder. Often, the political balance is different at the federal level from that at Länder level. If the political majorities in the Bundestag and in the Bundesrat disagree, because of the right of the Bundesrat to participate in the legislative procedure the opposition can considerably influence the law-making ability of the governing parties in the Bundestag and therefore, in the end, of the Federal Government. This is a consequence of the German-style federal structure which balances and controls power.

77. The federal principle combines a decentralized State structure with a vertical division of powers, which supplements the classical division between legislative, executive and judicial powers. By dividing these competencies between the Federation and the Länder, independent areas of competence, and thus of responsibility, are created.

11. The Federal Council (Bundesrat)

78. The Länder are involved through the Bundesrat in legislation and administration of the Federation, as well as in forming a consensus with regard to matters concerned with the European Union. The Bundesrat consists of members of the Länder governments who are subject to instructions. The number of votes available to a Land depends on the number of residents in that Land. With regard to participation in the legislative procedure, one should differentiate between so-called objection laws and consent laws. The positive consent of the Bundesrat is required for the creation of the latter. With regard to the former, the Bundesrat is able to file an objection, but the Bundestag may reject it.

12. Municipalities and associations of municipalities

79. Municipalities and associations of municipalities (counties, association municipalities, associations of towns and the surrounding area) are part of the Länder in accordance with the Basic Law. On the one hand, they form the lowest level of general public administration; on the other hand, they are self-governing bodies. Municipal self-government is guaranteed in the Basic Law. Self-government comprises a cluster of sovereign rights: territorial, personal, financial, planning, organizational and legislative sovereignty. Municipalities and associations of municipalities are subject to State supervision which in matters of self-government is limited to supervision on points of law. Municipal self-government in Germany is an important and indispensable prerequisite of a living and active democracy.

13. Allocation of finances

80. In order to guarantee the financial independence of the Federation and the Länder, the Basic Law ensures that they are provided with sufficient funds, primarily by apportioning the various sources of tax revenue. The Federation and the Länder jointly receive income tax, corporate income tax and turnover (value added) tax, which make up about 70 per cent of all taxes levied. The Federation alone has the right to most excise duties (such as mineral oil tax, tobacco tax, coffee tax), insurance tax and the supplementary tax on personal and corporate income tax. The Länder alone receive, inter alia: income from gift/inheritance tax, road tax, land acquisition tax and beer tax. The local authorities keep for themselves income from trade tax, land tax and other local authority taxes such as income from dog licences. They are also entitled to a portion of the income and turnover tax gathered. The local authorities also get a share of the Länder income from the combined taxes and the other Länder taxes in accordance with the relevant legislation. The Federation and the Länder are given a share of the trade tax. In addition, the Basic Law contains as a special system of regulations the horizontal financial equalization between the Länder and supplemental federal allocations in order to ensure a reasonable equalization of the disparate financial capacities of the Länder remaining after the apportionment of tax revenue.

14. Social State

81. According to the structural principle of the social State parliament has the prime obligation to ensure freedom from need, an existence worthy of human beings and suitable participation in the general prosperity. These are achieved through the concluding of social contracts and resolution of conflicts, the structuring of society via State planning, the provision of services for the public, and social and economic progress. However, the principle of the social State is not intended to do away with all inequalities, nor does it contain any general obligation to maintain the status quo. The primary aim is to deal with situations of social need and disadvantage, such as those caused by illness, age, disability, unemployment and other disadvantageous circumstances. The social limitation of property also flows from the principle of the social State. The inclusion of this principle in the Basic Law constitutes a decision to guarantee the social human rights by means of an instruction to parliament regarding political structure. This principle does not compete with the other four structural principles, but rather the principles are structured in such a way as to supplement and limit each other.

15. Membership of the European Union

82. Germany is a member of the European Union (EU) established by the Treaty on European Union. The EU presently consists of 15 member States. It forms the common roof for three pillars: first, the original three European Communities established by separate treaties, i.e. the EC (European Community), the ECSC (European Coal and Steel Community) and the EAEC (European Atomic Energy Community); second, the common foreign and security policy; and third, police and judicial cooperation in criminal matters. The European Community has its own organs (the European Parliament, the Council, the Commission) with far-reaching legislative powers. The EC Treaty authorizes the passing of legal instruments in the form of regulations and directives in many fields. Regulations - like, in principle, the treaties - are directly applicable in the member States, while directives have to be transformed into national law. The treaties establishing the European Communities as well as the provisions passed on the basis of the treaties are superior to the national law of the member States. The Court of Justice of the European Communities (CoJEC) ensures observance of Community law.

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

16. Basic rights in the European Union

84. The protection of basic rights is embodied in the following general clause in article 6 (2) of the Treaty on European Union: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law". To the extent that the Federal Republic of Germany has transferred sovereign power to the European Community the protection of basic rights is largely safeguarded by the European Court of Justice in Luxembourg. On 7 December 2000, after approval by the European Council, the European Parliament, the Council and the Commission solemnly proclaimed, as a political declaration, the Charter of Fundamental Rights of the European Union which in 54 articles contains the legal opinion of the institutions and the member States regarding the concrete content of fundamental rights.

III. GENERAL STATUTORY FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Implementation of human rights in Germany

85. Human rights play an essential role in the constitutional order of Germany. In the Basic Law they are placed at the very beginning. Article 1 of the Basic Law reads as follows:

“(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all State authority.

“(2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.

“(3) The following basic rights shall bind the legislature, the executive, and the judiciary as directly applicable law.”

1. The list of basic rights contained in the Basic Law

86. The basic rights contained in the Basic Law are primarily personal liberty rights, protecting the individual from State interference in his/her freedom. At the same time, they present the picture of a person who can develop freely within society and whose individuality, independence, self-determination and responsibility for his/her own actions are to be respected by the State. The picture of a person which is painted by the Basic Law is not that of an isolated, sovereign individual, but of an individual drawn into society and bound to it, without damage to his individual value.

(a) Personal liberty rights

87. The list of basic rights contained in the Basic Law is headed by the obligation placed on all State authority to respect and protect the dignity of man (art. 1, para. 1). The basic rights are guaranteed for all, except for those civil rights reserved for German nationals.

88. General human rights are constituted in particular by the right to free development of the personality (art. 2, para. 1), the right to life and to physical integrity, as well as to individual freedom (art. 2, para. 2), the right to freedom of faith, of conscience, and freedom to profess a religion (art. 4) including the right to refuse, on grounds of conscience, to perform military service, as well as the right freely to express and disseminate opinions and freely to inform oneself, which includes the guarantee of freedom of the press (art. 5). Special guarantees advantageous to marriage and the family, as well as to the school system, are contained in articles 6 and 7; article 9, paragraph 3, guarantees “to every individual and to every occupation or profession ... the right to form associations to safeguard and improve working and economic conditions”.

89. Outside the area governed by article 9, paragraph 3, the freedom of assembly and association, supplemented by the right to form political parties, is guaranteed to all German nationals by means of article 8, as well as by article 9, paragraph 1, article 21, paragraph 1,

second sentence, of the Basic Law, as is the right to freedom of movement (art. 11) and the basic right freely to choose an occupation and place of work (art. 12). This also applies to access for women to the armed forces; only service involving the use of arms is prohibited for women (art. 12a).

90. Article 10 ensures for everyone the inviolability of privacy of letters, post and telecommunications and article 13 that of the home. Property enjoys protection under articles 14 and 15. Pursuant to article 16, no German national may be deprived of German citizenship. Based on a statute, German nationals may be extradited only to a member State of the European Union or to an international court of justice. Pursuant to article 16a, those who are politically persecuted have a right to asylum. Article 17 gives to everyone the right to address complaints to the competent agencies and to parliament. Article 19, paragraph 4, enables anyone whose rights have been violated by public authority to have recourse to the courts.

91. Apart from the basic rights laid down in the first section of the Basic Law in articles 1 to 19, a number of other rights are protected in the same way as basic rights. In detail, these are the right to resist any person seeking to abolish the constitutional order (art. 20, para. 4), the active and passive right to elect (art. 38), and elementary guarantees of court procedure (basic judicial rights): the right to one's lawful judge (art. 101), the right to a hearing in accordance with the law, the ban on retroactive punishment and on multiple punishment (art. 103), as well as legal guarantees in the event of deprivation of liberty (art. 104). In addition, article 33, paragraphs 1 to 3, guarantees every German equal enjoyment of his/her civil and political rights and equal eligibility for any public office.

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

(b) Equality rights

93. The general principle that all persons are equal before the law is guaranteed in article 3, paragraph 1 of the Basic Law. Article 3, paragraph 2, stipulates equal rights for men and woman as well as the obligation of the State to promote the actual implementation of equal rights for women and men and to take steps to eliminate disadvantages that now exist. The prohibition of discrimination in article 3, paragraph 3, means that no one may be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions, and that no one may be disfavoured because of disability. Article 33, paragraphs 1 and 2, states that every German has the same civil and political rights and duties and is equally eligible for any public office according to his/her aptitude, qualifications and professional achievements.

(c) Economic rights

94. The freedom of the individual to engage in economic activity is protected under article 2, paragraph 1, and articles 12 and 14 of the Basic Law. Article 2, paragraph 1 and article 12 concern entrepreneurial freedom in the proper sense. Article 14 protects not only the position of

ownership, but also the use of this position, as well as the sale or disposal of property. The freedom to practise an occupation or a profession in the entrepreneurial field is protected by article 12, paragraph 1. Article 11 grants the right to take up residence anywhere on German territory.

(d) Cultural rights

95. The freedom of art and scholarship (research and teaching) is guaranteed by article 5, paragraph 3, and article 7, paragraph 4, of the Basic Law. Article 5, paragraph 3, contains first of all a right to freedom for all artists and all those who participate in the performance and dissemination of works of art from intervention by public power in the artistic sphere. At the same time it sets the modern State, which regards itself as a cultural State, the task of maintaining and encouraging a free cultural life. Article 7, paragraph 4, guarantees the right to establish private schools.

(e) Social rights

96. The social State principle emerges from article 20, paragraph 1, and article 28, paragraph 1, of the Basic Law. It obliges the State to engage in socio-political and welfare activity, and to create social justice. It prohibits State abstinence in the social area, whilst interacting with personal liberty rights. In essential and elementary areas the obligation incumbent on the State to provide protection becomes a commandment to act in compliance with the principles of the social State. Article 20, paragraph 1, in conjunction with article 1, paragraph 1, and article 2, paragraph 1, of the Basic Law obliges the State to provide those who are in need, especially in cases of sickness, inability to work or unemployment, with the subsistence minimum (see paragraphs 34-36 and 81).

97. The social State principle as a mandate for the legislator is given concrete form by the above-mentioned provisions on fundamental rights. The duty of the State to provide protection for marriage and the family, as well as to protect mothers (article 6, paragraph 1 and article 4 of the Basic Law), and that incumbent on parliament to provide children born outside marriage with the same opportunities for their physical and mental development and for their place in society as those born within marriage (article 6, paragraph 5 of the Basic Law) influence social law.

98. In the area of labour and professional law, the right guaranteed in article 9, paragraph 3, of the Basic Law to form associations to safeguard and improve working and economic conditions (freedom of association and autonomy in collective bargaining) is of particular significance, as is the right rooted in article 33, paragraph 2, to equal eligibility for any public office, especially according to aptitude. The general principle of equality (art. 3, para. 1) and the specific principles of equality (art. 3, paras. 2 and 3) also have an impact in the social field (see also paragraph 93).

2. Further development of basic rights

99. The basic rights contained in the Basic Law are given concrete form and are further developed by decisions given by the domestic courts, especially by the Federal Constitutional Court. An example of the further development of the basic rights is the right to informational

self-determination derived from the right to free development of the personality in conjunction with article 1, paragraph 1, of the Basic Law, and the resulting power of individuals to decide themselves about when, and within which limits, to disclose information regarding their lives. This plays an increasingly important role in connection with modern automatic data processing.

3. Relationship between basic rights and human rights

100. The declaration of belief in human rights as the basis of every community, as embodied in the Basic Law (art. 1, para. 2; cf. also paras. 84 and 86), contains not only the commitment to human rights but also the obligation for Germany to contribute to the worldwide implementation of human rights. Accordingly, the Federal Republic of Germany has ratified the international conventions for the protection of human rights: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the protocols thereto formulate personal liberty rights and political rights in general terms. These rights have become binding at national level not only through ratification of these instruments. By virtue of article 25 of the Basic Law they take precedence over the ordinary statutes and directly create rights and duties for the inhabitants of the federal territory, to the extent that they can be interpreted as general rules of international law. These international instruments for the protection of human rights provide important suggestions and impulses for national legislation. They must also be taken into account in interpreting the Basic Law, in determining the content and the scope of the principle of the rule of law and of the basic rights, as well as in interpreting the ordinary statutes. In addition to ratification and national implementation, the Federal Government is supporting in various ways the establishment of international norms in the field of human rights. Thus, it supports clarification of legal issues in connection with an additional protocol to the international Covenant on Economic, Social and Cultural Rights and of legal issues concerning individual economic, social and cultural rights, such as the right to adequate housing and education. In this way, international human rights and basic rights complement and support one another.

4. Maintaining basic rights

101. The Basic Law may only be amended by a qualified majority of the Bundestag and the Bundesrat. In view of the experience of the National Socialist regime, those who created the Basic Law saw to it that the free, democratic basic order cannot be removed by parliament. Article 79, paragraph 3, therefore declares amendments to the Basic Law to be inadmissible if they affect “the basic principles laid down in articles 1 and 20”. Hence, these basic principles also include the acknowledgement of “inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world” (art. 1, para. 2). Furthermore, the basic decision taken in article 20 opting for a republican, democratic and social federal State based on the rule of law is not subject to amendment.

102. Furthermore, basic rights may only be subject to the restrictions specified in the Basic Law itself and only to the extent stated therein. In any case, parliament is prohibited from encroaching on the essence of a basic right (art. 19, para. 2).

5. Implementation of domestic basic rights

103. The basic rights contained in the Basic Law are directly applicable and binding on the legislature, the executive and the judiciary (art. 1, para. 3). Independent courts ensure protection of these rights. Article 19, paragraph 4, grants to any person whose basic rights have been violated by State power the right of recourse to the courts.

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

105. The decisions of the Federal Constitutional Court are binding on the constitutional bodies of the Federation and the Länder, as well as on all courts and authorities, and have the force of law subsequent to more detailed statutory provision. The Federal Constitutional Court thus performs a central task in protecting basic rights and ensures that the basic rights have an exceptionally high degree of effectiveness.

106. The courts must examine *ex officio* whether the statutory provisions which they have to apply are in compliance with the basic rights protected by the Basic Law. Where a court considers that a statute on whose validity the court's decision depends is unconstitutional, pursuant to article 100, paragraph 1, of the Basic Law it must stay the proceedings and obtain a decision from the Federal Constitutional Court.

107. Since article 1, paragraph 3, of the Basic Law is also binding on parliament, those who assist in legislating must examine whether a bill which is in preparation is constitutional.

108. Where there are differences of opinion or doubts as to the constitutionality of statutory provisions, the Federal Constitutional Court takes a decision once the statute has been passed if the Federal Government, the government of a Land or one third of the members of the Bundestag apply for it to do so.

(a) Constitutional complaints

109. An important instrument serving the protection of basic rights is also the constitutional complaint pursuant to article 93, paragraph 1, No. 4 a, of the Basic Law. According to this provision, any person may file a constitutional complaint by claiming that one of his/her basic rights guaranteed by the Basic Law or one of the rights under article 20, paragraph 4, or articles 33, 38, 101, 103 and 104 has been infringed by public authority. On principle, all sovereign acts of the legislature, the executive and the judiciary may be challenged by this extraordinary legal remedy. The constitutional complaint serves exclusively to protect basic rights and the constitutional rights which have the same standing as the former. As an extraordinary legal remedy, it is only admissible if the applicant has previously exhausted all other legal remedies in respect of the alleged violation of rights. Exceptionally, a constitutional complaint is admissible immediately, *inter alia* if there is no other legal remedy, for instance in

the case of a statute which directly affects an individual's rights. A constitutional complaint is conditional on it being accepted for adjudication by the Federal Constitutional Court. It must be accepted if it is of fundamental constitutional significance or if it has been filed in order to implement basic rights or rights which have the same status as basic rights. This may also be the case if the applicant suffers a considerable disadvantage by a decision not being taken in respect of the matter.

(b) Basic rights under civil law

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

(c) Compensation

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

**6. State bodies for the protection of human rights
in addition to the courts**

112. Because of the comprehensive judicial protection, it is not considered necessary to create a State body with general competence for the protection of human rights. Under the German legal system, in principle individuals must themselves claim violation of their rights. Assistance is provided by a highly developed network of legal professions and special interest groups. In specific areas, the Basic Law provides for special procedures and institutions such as petition committees serving to protect basic rights.

(a) Petition committees

113. Pursuant to article 17 of the Basic Law, everyone has the right individually or jointly with others to address written requests or complaints to the competent agencies and to parliaments. Anyone who submits a petition has a right to have it processed and to receive a reply. There are special petition committees in the Federal and Länder parliaments where members concern themselves with the matters brought forward by the petitioners. Also in this way, the Bundestag can examine measures taken by the Federal Government and by other State agencies. The petition committee of the Bundestag can demand information from the Federal Government and from the Federal authorities, as well as hear petitioners, witnesses and experts.

In referring petitions to the Federal Government, the Bundestag may not give instructions, but may request that the petition be considered. The President of the Bundestag informs the sender of the decisions of the Bundestag with regard to his/her petition. In processing petitions, shortcomings in legislation or administration may come to light and be remedied by statutory provisions or administrative measures. Similar regulations exist for the petition committees of the land parliaments.

(b) Commission pursuant to the statute relating to article 10 of the Basic Law

114. Article 10 of the Basic Law protects the privacy of letters, post and telecommunications. The Bundestag has appointed a commission pursuant to article 10, paragraph 2, second sentence, in order to maintain these rights. The commission examines, and adjudicates on, complaints of individuals claiming a violation of rights under article 10 by secret service surveillance of which they were not informed at the time.

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

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

116. In its resolution of 5 December 1991 the Bundestag has asked the Federal Government "to provide information on its human rights policy at least every two years at regular intervals". With this decision the Bundestag amended an earlier decision which required the Federal Government to report about its human rights policy once in each legislative term. On 4 April 2001 the Bundestag asked the Federal Government to include in its human rights reports domestic policies to a greater extent than in the past. Meanwhile, the sixth report of the Federal Government "on its human rights policy in foreign relations and other policy fields" has been completed (see also paragraph 135).

(d) Defence Commissioner of the Bundestag

117. By means of article 45b of the Basic Law, a special control body has been created for the federal armed forces: the Defence Commissioner of the Bundestag. He is appointed by the Bundestag to safeguard the basic rights of soldiers and to assist the Bundestag in exercising parliamentary control. The Act on the Defence Commissioner (*Gesetz über den Wehrbeauftragten*) contains more precise provisions on appointment, legal position and tasks. He/she acts on instruction of the Bundestag or the Defence Committee for the examination of certain events. Furthermore, he/she is obliged to act within his duty-bound discretion on

becoming aware of circumstances pointing to a violation of the basic rights of soldiers or of the principles of internal management. He/she must inform the Bundestag of his/her determinations by means of individual reports or in an annual report.

(e) Federal Data Protection Commissioner

118. The task of the Federal Data Protection Commissioner is to monitor adherence by federal public agencies, by the Deutsche Telekom AG and the Deutsche Post AG to the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) and other provisions concerning data protection. The Federal Data Protection Act is intended to protect the individual from detriment to rights of privacy caused by the use of personal data. The Data Protection Commissioner submits a report to the Bundestag every two years. The Commissioner is independent in the exercise of his/her office and can only be released from duty at his/her own request or because of gross breach of duty. Observance of data protection provisions by the authorities of the Länder is controlled by the Länder commissioners.

(f) Commissioners of the Federal Government for Human Rights

119. The Federal Government's Commissioner for human rights policy and humanitarian aid in the Foreign Office has the task of observing developments in the field of human rights worldwide and participating in the bilateral and multilateral human rights dialogue. He contributes to shaping human rights policy in international relations and maintains close contacts at home and abroad with institutions and groups active in this field.

120. The Commissioner for Human Rights Issues in the Federal Ministry of Justice is the agent of the Federal Government to the European Court of Human Rights in Strasbourg. He is also in charge of making observations to the United Nations Commission on Human Rights in proceedings pursuant to Economic and Social Council resolution 1503 and pursuant to the Optional Protocol to the International Covenant on Civil and Political Rights. In addition, the Commissioner is responsible for the various State reports on human rights to be submitted to the United Nations (under the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the core document). The Commissioner for Human Rights is also involved in the work of the intergovernmental committees of the Council of Europe to improve the protection of human rights.

(g) Commissioner of the Federal Government for Foreigners' Issues

121. The Federal Government Commissioner for Foreigners' Issues supports the Federal Government in its efforts in respect of policy on foreigners and makes proposals for the further development of the policy of integration, including in the European framework. The Commissioner is a contact for creating the conditions to enable Germans and foreigners to live together without tension. In particular, he/she should suggest and support initiatives for integration in the Länder and in local communities, as well as in groups within society, in order to further the mutual understanding of Germans and foreigners.

(h) Commissioner of the Federal Government for the Interests of the Disabled

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

7. German Institute for Human Rights and Non-Governmental Organizations

123. On 7 December 2000 the Bundestag, conscious of its responsibility for human rights policy in Germany and abroad, unanimously decided to establish an independent institute for human rights. The German Institute for Human Rights (Deutsches Institut für Menschenrechte, Zimmerstraße 26/27, 10969 Berlin; Internet address: institut-fuer-menschenrechte.de) was founded in Berlin in the spring of 2001 and has meanwhile taken up its work. The Institute is an institution which receives basic financing from the State, but determines its work projects independently of any State influence. Its managerial board is composed of personalities from non-governmental organizations, academic circles or politics; Federal ministries and the Bundesrat are also represented without the right to vote. The Institute is to work out, on the basis of research, practice-related contributions to the examination, assessment and resolution of concrete human rights problems and themes. This includes documentation, information, research and political guidance, human rights education in Germany, international cooperation and the promotion of dialogue and cooperation at home.

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

125. On the occasion of the World Conference on Human Rights held in Vienna in June 1993, 19 human rights organizations of the Federal Republic of Germany joined forces in a "Human Rights Forum" (Sekretariat des Forum Menschenrechte, Haus der Demokratie und Menschenrechte, Greifswalder Straße 4, 10405 Berlin; e-mail: Forum.Menschenrechte@debitel.net) which now has over 40 member organizations. This working group of non-governmental organizations in the field of human rights aims at an improved and comprehensive protection of human rights worldwide, in particular regions of the world and in individual States as well as in the Federal Republic of Germany. The Federal Government attaches great importance to cooperation with non-governmental organizations.

B. International agreements

126. In the area of human rights, the Federal Republic of Germany has in the main opened itself up to international control, it has acceded to the main human rights conventions and assumed obligations to protect these rights, as well as granted powers to international control

agencies. This comprises, in respect of the United Nations, the International Covenant on Civil and Political Rights of 16 December 1966, the International Covenant on Economic, Social and Cultural Rights of 19 December 1966, the International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, and the Convention on the Rights of the Child of 20 November 1989. Within the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987 have gained particular importance. The Framework Convention for the Protection of National Minorities of 1 February 1995 has been in force since 1 February 1998.

127. These Conventions provide for mechanisms for reviewing the protection of human rights in States parties on a regular basis which can be used either upon specific request by other States parties or by individuals whose rights have been violated. The International Covenant on Civil and Political Rights and the Conventions against Racial Discrimination and Torture provide that a State party may, in the general interest, complain by means of a State communication against the human rights situation in another State party. So far, the Federal Republic has not been the subject of such communication.

128. A more important instrument which is used more often is the communication by individuals. It presupposes the declaration by the State party concerned that it accepts the relevant proceedings. The Federal Republic of Germany made this declaration under the Optional Protocol to the International Covenant on Civil and Political Rights of 19 December 1966, under article 14 of the Convention against Racial Discrimination, under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Any written communication by an individual presupposes that all domestic remedies have been exhausted and that the case is not pending before any other international body. Proceedings under the United Nations conventions are concluded with the observations of the committee concerned which are included in its annual report to the United Nations General Assembly.

129. In addition, there are the proceedings under resolution 1503 of the Economic and Social Council of the United Nations. The purpose of these proceedings is not to decide on an individual case. Rather, it is to examine whether, on the basis of complaints, there is a pattern of severe and evidenced human rights violations in a State.

130. An additional possibility of complaint which is of importance for the Federal Republic of Germany is the application to the European Court of Human Rights in Strasbourg. Here, violations of the European Convention on the Protection of Human Rights and Fundamental Freedoms can be claimed by individuals as well as by Contracting States. The Committee of Ministers monitors the enforcement of judgements to which the Contracting States have bound themselves.

131. The Federal Republic of Germany is also taking action within the meaning of Articles 55 and 56 of the Charter of the United Nations to promote universal respect for, and observance of, human rights. This includes, inter alia, activities of development cooperation: at the level of international agreements Germany supported, for instance, the inclusion in agreements between the EU and more than 70 States in Africa, the Caribbean and the Pacific (ACP-EU Partnership Agreements) of provisions on human rights, democracy, the rule of law and good governance. Its financial contributions to multilateral and European institutions of development cooperation are promoting, directly or indirectly - depending on the focus of the organization concerned - human rights in the countries of cooperation. In 2001, more than €80 million were spent on the promotion of human rights in connection with bilateral governmental development cooperation. Further expenditure (about €350 million per year) contributes to the implementation of human rights at least as an important by-product. In addition, the Federal Government is funding the work of the Churches, of political foundations and non-governmental organizations in the field of human rights with more than €100 million per year.

132. In addition to the United Nations and European instruments mentioned above, the Federal Republic of Germany has ratified the following multilateral agreements having human rights aspects:

International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour of 28 June 1930;

International Labour Organization Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize of 9 July 1948;

Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;

International Labour Organization Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively of 1 July 1949;

Convention relating to the Status of Refugees of 28 July 1951;

Convention on the Political Rights of Women of 31 March 1953;

Convention relating to the Status of Stateless Persons of 28 September 1954;

Convention on the Nationality of Married Women of 20 February 1957;

International Labour Organization Convention No. 105 concerning the Abolition of Forced Labour of 25 June 1957;

Agreement relating to Refugee Seamen of 23 November 1957;

International Labour Organization Convention No. 111 concerning Discrimination in Respect of Employment and Occupation of 25 June 1958;

Convention against Discrimination in Education of 15 December 1960;

Convention on the Reduction of Statelessness of 30 August 1961;

European Social Charter of 18 October 1961;

Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 6 May 1963;

The two Optional Protocols to the International Covenant on Civil and Political Rights;

Protocol relating to the Status of Refugees of 31 January 1967;

Convention on the Reduction of Statelessness of 13 September 1973;

Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979 (withdrawal of the German reservation on article 7 (b) on 10 December 2001);

European Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of 28 January 1981;

Rome Statute of the International Criminal Court of 17 July 1998;

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999.

IV. INFORMATION AND PUBLICATIONS ON HUMAN RIGHTS

133. The Basic Law and the basic rights are covered in detail in school. Each pupil receives a copy of the Basic Law and of the Constitution of his/her Land.

134. The work of the Federal Central Agency for Political Education (Bundeszentrale für politische Bildung) is of particular significance. This agency distributes free of charge documentation and declarations of the United Nations and of the Council of Europe, as well as portrayals of the protection and support of human rights.

135. A collection of the texts of human rights conventions and other Council of Europe and United Nations documents has appeared as a supplement to the Federal Bulletin (*Bundesanzeiger*). The text of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols is also distributed in various languages, including German, by the Council of Europe in Strasbourg, and can be sent through the post on request. These texts are also available via the Federal Ministry of Justice.

136. Teaching materials in the area of human rights are supplied for non-school education by the German UNESCO Commission in Bonn.

137. The Federal Government publishes the reports submitted to the United Nations in compliance with its obligations arising from the United Nations conventions (e.g. the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination). Some of the reports are distributed in brochure form and the reports, including the final observations of the United Nations committees, are also published on the Internet (in German and English at www.auswaertiges-amt.de and www.bmj.bund.de). The sixth report on human rights policy in foreign relations and other policy fields submitted to the Bundestag in June 2000 is also available on the Internet; a print version will be published in the course of 2002.

138. Further training of judges and public prosecutors is provided by the German Academy of Judges which includes human rights aspects in its programmes. Finally, it is expected that the German Institute for Human Rights as an information centre will complement the institutions and activities.
