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EUROPEAN SOCIAL CHARTER

32nd National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF GERMANY

(Articles 7, 8, 16, 17, 19)

for the period

01/01/2010 – 31/12/2013)

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Berlin, November 2014

32nd Report

submitted by the Government of the **Federal Republic of Germany**

for the period from 1 January 2010 to 31 December 2013

in accordance with the provisions of Article 21 of the European Social Charter,
the instrument of ratification of which was deposited on 27 January 1965.

In accordance with Article 23 of the European Social Charter
copies of this report shall be sent to
the Confederation of German Employers' Associations
(Bundesvereinigung der Deutschen Arbeitgeberverbände)
and
the National Executive Board of the German Confederation of Trade Unions
(Bundesvorstand des Deutschen Gewerkschaftsbundes)

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Preliminary remark

The 32nd report is a follow-up to the Federal Government's earlier reports on the national implementation of the obligations laid down in the European Social Charter. It does not refer to the individual provisions of the Charter unless either the remarks of the European Committee for Social Rights of the European Social Charter (by way of simplification hereinafter referred to as "Committee") in Conclusions XIX-4 give reason for this, or the questionnaire makes this necessary or if significant amendments in the material and legal situation have occurred in the reporting period.

Insofar as the situation within Germany differs as a consequence of reunification, the 32nd report also differentiates between the old and new Länder (Federal States). The term "new Länder" covers the Länder of Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt and Thuringia as well as the eastern part of the Federal State of Berlin.

Article 7 – The right of children and young persons to protection

Paragraph 2 – Higher minimum age for specific occupations

In Germany the employment of young persons is regulated by the Youth Employment Protection Act (JArbSchG) of 12 April 1976 (Federal Law Gazette I, p. 965). Alongside the legal regulations, where children of 13 years and above, and those young people required to attend school full-time, are employed in light and suitable jobs, the Ordinance on Child Labour Protection (KindArbSchV) of 23 June 1998 (Federal Law Gazette I, p. 1508) must be adhered to.

As regards the employment of young persons on merchant vessels, this is not covered by the Youth Employment Protection Act but by the Maritime Labour Act (SeeArbG) adopted in line with Article 1 of the Act to Implement the International Labour Organisation's 2006 Maritime Labour Convention of 20 April 2013 (Federal Law Gazette I, p. 868). It replaced the former Seafarers' Act on 1 August 2013. The occupational health and safety regulations for young crew members contained in the earlier Seafarers' Act have been largely adopted in the Maritime Labour Act. This applies in particular to the occupational restrictions applicable to young people. These are supplemented by a catalogue of activities which the captain must take special care to ensure are not carried out by young crew members.
A new regulation states that where young crew members are not employed by the vessel's owner, their employer and/or the trainee and the captain together have responsibility for adherence to the occupational health and safety regulations.

In the reporting period, on 1 August 2013, the Youth Employment Protection Act was amended by Article 3, Paragraph 7, of the Act to Implement the International Labour Organisation's 2006 Maritime Labour Convention of 20 April 2013 (Federal Law Gazette I, p. 868). § 1, Paragraph 1, JArbSchG makes clear that this Act also applies in the Federal Republic of Germany's exclusive economic zone (EEZ). There are no provisions for exceptions to the existing level of protection for young people.
A change to § 31, Paragraph 2, Sentence 2, JArbSchG prohibits the employer from giving tobacco products to young persons. The general prohibition on supplying young persons with tobacco products in public places contained in § 10 of the Protection of Young Persons Act is thereby also present in the Youth Employment Protection Act. This prohibits an employer from supplying these to young people over 16 years of age as was previously permissible.

There is no change in the legal position otherwise.

Paragraph 3 – Safeguarding the full benefit of school education

Please refer to statements in previous reports. The legal position remains unchanged.

The Committee requests clarification as to whether the situation in Germany with its principles of interpretation complies with Article 7, Paragraph 3, of the Charter. It asks whether there are at least two consecutive weeks of time off from work during the summer holidays. It would also like to know about time off from work during the other school holidays.

School holidays in Germany comprise a total of 75 working days (including 12 Saturdays), as laid down in the "Hamburg Agreement" of 28 October 1964. This is an agreement signed by the Minister Presidents of the individual Länder to ensure uniformity across the general school system in the Federal Republic of Germany. The Agreement also states that the individual Länder are to "make pedagogical considerations paramount" in scheduling the holidays. The holiday periods are coordinated by the Länder Conference of Ministers of Education and Cultural Affairs.

§ 5, Paragraph 4, JArbSchG allows young people with the requirement to attend school full-time to work in a "holiday job" for a maximum of four weeks in the calendar year. It is not specified how young persons may spread these 20 (4 weeks of 5 days) available working days across the officially-defined 75 days of holiday. Young people have in any case at least two consecutive weeks in the summer holidays and at least 55 days off each calendar year when they can rest and recuperate.

The Federal Government is therefore still of the opinion that the regulation in § 5, Paragraph 4, JArbSchG does not prevent young people of compulsory school age from enjoying the full benefits of their school education, if they work for a maximum of 20 days during the holidays.

The Committee would like to know whether and under what conditions children of compulsory school age are allowed to work before school.

§ 5, Paragraph 1, JArbSchG prohibits the employment of children and young people of compulsory school age. Children of 13 years and above and young people of compulsory

school age may be employed in line with the regulations in § 5, Paragraph 3, JArbSchG and the Child Labour Protection Ordinance. One requirement is that this employment has no adverse effect on school attendance or the children's ability to benefit from tuition. Children may never work more than two hours (or more than three hours in agricultural family-owned businesses) five days per week and not before 8 a.m. or after 6 p.m. Any employment in the morning before school or during school time is expressly forbidden. This means that the delivery of newspapers from 6 a.m. on a school day, for example, would not be permissible in Germany for children and young people required to attend school full-time.

Paragraph 4 – Working hours of young employees and apprentices

Please refer to statements in previous reports. The legal position remains unchanged.

Paragraph 5 – Fair wages for young employees and apprentices

In response to the Committee's request for information on the lowest (net) wages paid to employees between the ages of 15 and 17 and the lowest wages paid to adult employees, the following table is provided. Please note that in current industry-wide collective agreements there are only four sectors in which wages have been negotiated for the under-18s. Most collective agreements no longer differentiate between adolescent and adult workers.

Training allowances and wages agreed in collective bargaining in selected wage categories

The first figure in each table field shows the gross monthly wage in euros, while the figure below shows the net monthly wage for an individual in tax category 1 - a single person with no children - after social security contributions have been deducted. Where possible, an example is given of a collective agreement from both western and eastern Germany.

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Status: 31 August 2014

Economic sector	Training allowances				Adult starting salary for employees with training	Lowest salary for young employees without training
	Year 1 Gross *Net*	Year 2 Gross *Net*	Year 3 Gross *Net*	Year 4 Gross *Net*		
	€ per month					
Horticulture and landscaping western Germany	620 *493*	720 *573*	810 *645*	-	2276 *1499*	-
Horticulture and landscaping eastern Germany	620 *493*	720 *573*	810 *645*	-	2174 *1445*	-
Chemical industry Bavaria	833 *663*	887 *706*	965 *766*	1039 *815*	2676 *1707*	1990 *1350*
Chemical industry Eastern Germany	846 *673*	892 *710*	938 *746*	987 *780*	2700 *1716*	1979 *1342*
Steel industry Germany	798 *635*	819 *652*	860 *684*	912 *726*	2087 *1400*	-
Metal and electrical industries Bavaria	915 *728*	964 *765*	1026 *806*	1068 *833*	2706 *1723*	-
Metal and electrical industries Saxony	890 *704*	941 *745*	992 *730*	1043 *812*	2543 *1629*	-
Timber processing industry Bavaria	680 *541*	730 *581*	800 *637*	850 *676*	2340 *1535*	-
Timber processing industry Saxony	636 *503*	678 *537*	720 *570*	762 *603*	2079 *1389*	-
Paper industry Bavaria	862 *686*	940 *748*	1007 *793*	1092 *849*	1873 *1287*	-
Paper industry Eastern Germany	748 *595*	809 *644*	872 *694*	971 *770*	2026 *1367*	-
Printing industry Schleswig-Holstein/ Hamburg/Mecklenb.-Vorp.	882 *702*	933 *742*	984 *778*	1035 *812*	1674 *1178*	-
Printing industry Saxony/Saxony-Anhalt Thuringia	882 *698*	933 *739*	984 *774*	1035 *807*	1910 *1299*	-
Textile industry Southern Bavaria	772 *614*	833 *663*	912 *726*	988 *781*	1661 *1173*	-
Textile industry Eastern Germany	667 *531*	718 *571*	770 *613*	821 *653*	1995 *1351*	-
Confectionery industry Lower Saxony/Bremen	710 *565*	795 *633*	881 *701*	992 *784*	2291 *1507*	*1673* *1178*
Confectionery industry Eastern Germany	647 *515*	751 *598*	852 *678*	930 *740*	2195 *1457*	*1649* *1158*
Baking industry North Rhine-Westphalia Coblenz/Trier	430 *342*	550 *438*	670 *533*	-	1570 *1124*	-
Baking industry Brandenburg	430 *342*	550 *438*	670 *533*	-	1413 *1044*	-
Construction Western Germany	685 *545*	942 *750*	*1231* *937*	-	2674 *1703*	-
Construction Eastern Germany	602 *479*	744 *592*	973 *771*	-	2458 *1593*	-

Economic sector	Training allowances				Adult starting salary for employees with training	Lowest salary for young employees without training
	Year 1 Gross *Net*	Year 2 Gross *Net*	Year 3 Gross *Net*	Year 4 Gross *Net*		
	€ per month					
Painting and decorating Western Germany (excluding Saarland)	505 *402*	555 *442*	690 *549*	-	2175 *1446*	-
Painting and decorating Eastern Germany	505 *402*	555 *442*	690 *549*	-	1827 *1260*	-
Wholesale and foreign trade Lower Saxony	746 *594*	820 *653*	873 *695*	-	1950 *1326*	-
Wholesale and foreign trade Saxony-Anhalt	694 *552*	762 *606*	806 *641*	-	1785 *1237*	-
Retail trade Berlin	624 *497*	703 *559*	804 *640*	-	1863 *1280*	-
Retail trade Saxony/Thuringia/ Saxony-Anhalt	625 *495*	705 *558*	805 *637*	-	1862 *1274*	-
Private transport industry Hesse	680 *541*	725 *577*	770 *613*	-	2075 *1393*	-
Private transport industry Thuringia	530 *422*	550 *438*	630 *501*	650 *517*	1909 *1304*	-
Private banking trade Germany	876 *697*	938 *746*	1000 *789*	-	2308 *1516*	-
Private insurance industry Germany	853 *679*	928 *739*	1007 *793*	-	2436 *1582*	-
Hotel and catering trade Bavaria	692 *551*	780 *621*	869 *692*	-	1983 *1346*	-
Hotel and catering trade Thuringia	530 *422*	630 *501*	680 *541*	-	1546 *1112*	-
Private waste disposal industry Germany	610 *485*	660 *525*	730 *581*	800 *637*	1844 *1269*	-
Housing industry Germany	775 *617*	885 *704*	995 *785*	-	2745 *1738*	-
Public sector (TVAöD-BT-BBiG - collective agreement for trainees - BBiG) Germany	833 *663*	883 *703*	929 *739*	993 *784*	1996 *1351*	-
Public sector (TVAöD-BT-Pflege - collective agreement for trainees - care sector) Germany	956 *760*	1017 *800*	1118 *865*	-	2054 *1382*	-

Average training allowances in collective agreements

Status: 31 August 2014

	Western Germany		Eastern Germany	
Year of training	Gross	*Net*	Gross	*Net*

	€ per month			
1st year of training	691	*550*	638	*508*
2nd year of training	764	*608*	707	*563*
3rd year of training	876	*697*	849	*676*
4th year of training	767	*610*	708	*563*

Calculations of pay for civil service candidates, which is regulated in law, have not been included because, unlike all the salaries presented here, such pay is not subject to compulsory social insurance contributions and would therefore be out of line with the gross/net calculations of salaries which are subject to compulsory social insurance contributions.

The following changes affecting the public sector have occurred since the previous report:

The "Collective Agreement for Public Sector Trainees (TVAöD)" of 13 September 2005 (most recently amended by modified collective agreement no. 4 of 1 April 2014) gives public sector trainees the right to negotiate independently. The TVAöD covers basically all public sector occupations requiring training and is supplemented by specific regulations.

The TVAöD contains provisions for trainees in those occupations requiring training, as stipulated in the Vocational Training Act (BBiG), in its "BBiG section", and provisions for students of healthcare and nursing in its "Care section".
These also contain regulations determining trainee pay.
Wages for trainees in the public sector are higher than average.

Federal public sector trainees from 01.03.2014

TVAöD – BBiG		TVAöD – Care	
Year of training	Salary	Year of training	Salary
1	€833.26	1	€955.69
2	€883.20	2	€1017.07
3	€929.02	3	€1118.38
4	€992.59		

Paragraph 6 – Time for vocational training as part of the working day

Please refer to statements in previous reports. The legal position remains unchanged.

Paragraph 7 – Paid annual leave

Please refer to statements in previous reports. The legal position remains unchanged.

Paragraph 8 – Prohibition of night work

Please refer to statements in previous reports. The legal position remains unchanged.

The Committee requests information on the monitoring that is done with regard to approval being given for exceptions to the ban on night work for the under-18s.

According to § 14, Paragraph 1, JArbSchG, young people who are no longer of compulsory school age may only be employed between the hours of 6 a.m. and 8 p.m. The Act specifies exceptions in certain sectors. Therefore young people aged 16 and above may be employed in bakeries and confectioners from 5 a.m. (17-year-olds may work in bakeries from 4 a.m.), in agriculture from 5 a.m. or until 9 p.m., and in catering and at fairs and exhibitions until 10 p.m. Young people aged 16 and above may be employed until 11 p.m. in businesses with shift work (§ 14, Paragraphs 2 and 3, JArbSchG). In any case, employment on the day before a school/training day is only permissible until 8 p.m., if tuition begins before 9 a.m. (§ 14, Paragraph 4, JArbSchG).

Further exceptions for young people arise from issues relating to transport connections, and they are then allowed to work until 9 p.m. It is possible for young people aged 16 years and above to be employed from 5.30 a.m. or until 11.30 p.m. in businesses working shifts, if this means that unnecessary waiting times are avoided (§ 14, Paragraph 5, JArbSchG). During the warm summer months young people may be employed from 5 a.m. in businesses where work is done in high temperatures (§ 14, Paragraph 6, JArbSchG). Young people may do creative work in media and the arts until 11 p.m. (§ 14, Paragraph 7, JArbSchG).

Provided the conditions specified in the Act are met, the employer can make use of these exceptions. Approval is not required; the requirement for approval of exceptions in line with § 14, Paragraphs 6 and 7, JArbSchG was abolished on 1 July 2005 (see statements in the

28th Report). The regulatory authorities need only be informed if work starts earlier or finishes later to avoid unnecessary waiting times caused by transport connections.

Sufficient night-time rest is ensured by the stipulation in § 13, JArbSchG that young people must always be guaranteed an uninterrupted period of at least 12 hours of leisure time after the end of work each day. Young people doing creative work in media and the arts are entitled to an uninterrupted period of at least 14 hours of leisure time (§ 14, Paragraph 7, JArbSchG).

Supervision of the implementation of the Youth Employment Protection Act in general - including therefore the regulations on the prohibition of night work - is the responsibility of the regulatory authorities under federal state law.

Paragraph 9 – Regular medical control

Please refer to statements in previous reports. The legal position remains unchanged.

Paragraph 10 – Protection from physical and moral dangers

1. Protecting children and young people from sexual violence and exploitation

The protection of children and young people is one of the Federal Government's top priorities.
Many victims of sexual abuse broke their silence at the beginning of 2010 and this resulted in politicians and society discussing a subject that had previously been taboo. As a result, in March 2010, the Federal Cabinet voted to set up a "Round Table on the Sexual Abuse of Children in Relationships of Power and Dependency in Public and Private Institutions and Within the Family" as well as an independent body on child sexual abuse issues. The 2003 Action Plan to Protect Children and Young People from Sexual Abuse and Exploitation was expanded on the basis of recommendations from the Round Table and the then Independent Commissioner for Questions related to Child Sexual Abuse. The 2011 Action Plan to Protect Children and Young People from Sexual Abuse and Exploitation was passed by the Federal Government in September 2011. Consequently, in its final report in November 2011, the Round Table made recommendations which were and continue to be implemented as part of a variety of measures on a statutory and non-statutory level. Further policies will focus on protection for girls and boys, plus improvements in victim support, within the framework of an overall plan. There are five points of particular importance:

- Improvements to criminal law and prosecution
- Protection of and support for children and young people during criminal proceedings
- Implementing the right to protection from sexual violence
- Improved help and therapies for those affected
- Combating violations of privacy in the digital media

Criminal prosecutions, prevention, counselling and support must go hand in hand with each other. To implement the overall plan, there needs to be close cooperation between Federal Government departments, the Länder, local authorities, associations, experts and the Independent Commissioner for Questions related to Child Sexual Abuse.

Supplementary material:
National Action Plan (NAP) "For a Germany Fit for Children 2005-2010"

Following on from "A World Fit for Children", the plan of action adopted by the Special Session of the UN General Assembly in May 2002, the Federal Government took a decisive step towards making Germany a better place for children to live in by means of its "National Action Plan for a Germany Fit for Children 2005-2010" (NAP). The NAP results were presented at the closing conference on 9 December 2010 with the participation of the United Nations Special Representative on Violence against Children.

NAP guidelines and perspectives continue to have an impact. A host of policies in recent years for children and young people, such as the expansion of child care and the "Frühe Hilfen" programme for early years support, have been based on its guiding principles: "protecting - nurturing - involving". The Federal Government is building on what NAP achieved by developing "stand-alone youth policies" and focusing on adolescence. The "Quality Standards for Involving Children and Young People" developed as part of the NAP are helping to consolidate and improve their level of involvement.

All materials and results relating to this work are available at *www.kindergerechtes-deutschland.de*: local authorities and non-governmental organisations are invited to avail themselves of the concepts and methods developed in the NAP, to create their own initiatives.

Article 8 – The right of female employees to protection

Paragraph 1 – Maternity leave

The Maternity Protection Act (MuSchG) applies to all (expectant) mothers in employment as well as to those working from home and the like. It also applies to those in part-time employment, domestic workers and women in vocational training, if the training forms part of an employment contract.
The period of time off from work (known as the maternity period) totals a minimum of 14 weeks before and after the birth.

The maternity period begins six weeks before the birth (§ 3, Paragraph 2, MuSchG) and usually ends eight weeks or, following a pre-term birth for medical reasons or multiple births, twelve weeks after delivery (§ 6, Paragraph 1, MuSchG). Following a pre-term birth or any other premature delivery, the maternity period extends after the birth by the amount of time which the mother was unable to take before the birth. If the baby is born later than expected, there is no reduction of the maternity period following the birth. It still lasts eight or, where appropriate, twelve weeks.

From six weeks before the birth of her child, an expectant mother may only be employed if she herself has expressly stated a wish to continue working. She is free to reconsider this at any time.

The ban on employment during the maternity period after childbirth is absolute. Women are not permitted to work during this time even if they wish to. In exceptional cases, following the death of their child and if they expressly wish it, women may be allowed to work again before the end of the post-natal statutory leave period (but no earlier than three weeks after delivery), if there are no medical reasons why they should not.

Women receive maternity benefit from the statutory health insurance fund during maternity leave periods (§§ 13 and 14, MuSchG). The amount of benefit is based on the average wage in the last three months preceding the start of the statutory leave period. Health insurance pays a maximum of 13 euros per calendar day, and the employer pays the difference between that and their average net wage for the duration of the leave period. For other women (e.g. those who are unemployed and receiving benefits in line with Book

Three of the Social Code (SGB III) or self-employed persons with sickness benefit insurance), maternity benefit is calculated in the same way as sickness benefit.
Women without health insurance receive additional maternity benefit from the Federal Government in accordance with the requirements relating to maternity benefit in Book Five of the Social Code (SGB V), to a maximum of (one single payment of) 210 euros, if they are employed when the statutory leave period begins, are working from home or their contract of employment was lawfully terminated by their employer while they were pregnant.

Paragraph 3 – Work-time breaks for nursing mothers

After returning to work, a female employee with a child to nurse can take breastfeeding breaks during the working day. Time for breastfeeding is guaranteed by § 7, MuSchG: at least half an hour twice daily or an hour once a day. If the work period lasts longer than a consecutive eight hours and the woman requests it, two periods of at least 45 minutes or, if there is no suitable breastfeeding area close to her place of work, one period of at least 90 minutes should be granted. The work period is considered to be consecutive here if it is not interrupted by a rest break of at least two hours.
There must be no wage deduction in relation to the breastfeeding period. In addition, the nursing mother must not be expected to make up the time for breastfeeding either before or afterwards, and this time must not be deducted from established rest breaks.

Article 16 – The right of the family to social, legal and economic protection

The Committee requests information on the definition of "family" in domestic law. The following information is provided:

There is no universally-valid legal definition of the family and its various manifestations. According to Article 6, Paragraph 1, of the Basic Law (GG), the family, inter alia, enjoys the special protection of the state. The family is thereby safeguarded as the primary living and nurturing community for children and their parents. Marriage is not relevant here. The protection in Basic Law thereby covers many family types such as e.g. single parents, stepfamilies and foster families, as well as unmarried couples with children. The family unit assumes its particular significance from the fact that the parents live with their growing children, because the physical and psychological development of vulnerable children is largely dependent on the family and the upbringing provided by the parents. Basic family law is not restricted to this however. It has a general aim to protect specific family ties, such as

can also exist between adult family members and also - less commonly perhaps - across several generations between the members of an extended family. Close ties of a familial nature between near relations are also protected by Article 6, Paragraph 1 of the Basic Law (see the Federal Constitutional Court order of 24.06.2014 - 1 BvR 2926/13). A unit made up of civil partners and a child is also a family, as long as it is a long-term arrangement and incorporates all aspects of day-to-day living. Whether parents are joined by marriage or civil partnerships, it is irrelevant, as far as the existence of a family is concerned, whether the child is their own flesh and blood or adopted, and whether both partners are parents in the legal sense (Federal Constitutional Court decision 133, 59, recitals 61, 63).

Inclusion of family associations

In its conclusions on Article 16 of the ESC, the Committee says: "To ensure that the interests of families are taken into account when family policies are being drawn up, the relevant authorities must consult family associations." In response to the Committee's request that the next report should contain details of how the appropriate family associations are involved in the formulation of policies relating to the family, the following information is provided:

By family associations[1] we mean those organisations which represent the interests of families in Germany vis-à-vis the legislature and the executive. The family associations, with the exception of the Zukunftsforum Familie, have joined together to form the Association of German Family Organisations (AGF). Where there are questions of family policy which do not affect an individual association's interests, it takes a common approach or prepares joint policy papers. More details can be found at: http://www.ag-familie.de/home/index.html. The AGF cooperates with family policy associations and organisations across Europe. Topics of family policy with cross-border significance are discussed, common approaches are formulated, and they are introduced into European politics and/or forwarded to the relevant decision-making committees and commissions. The AGF is a German member of COFACE (Confederation of Family Organisations in the European Union).

[1] German Family Association (DFV), Protestant Working Group Family (eaf), Catholic Family Association (FDK), Association for Single Parents (VAMV), Association of Binational Families and Partnerships (iaf), Zukunftsforum Familie (ZFF)

The Federal Government formally involves the family associations at an early stage of the legislative process, and they formulate their position. They also take part in parliamentary hearings. In addition to this formal participation process, the Federal Government and family associations are engaged in an ongoing exchange of information relating to topics and questions of family policy.

The family associations have received substantial financial support from the Federal Government over many years for the statutory role they play in carrying out their association work. Alongside staffing costs, this support also funds the organisation of family policy conferences.

Reform of family court procedures

There have been no procedural changes since the last report. Therefore please refer to this report.

The results of the reform of voluntary jurisdiction (FGG) are still being examined in the evaluation process. An outcome is not expected before 2018.

Law relating to parents and children

The Act to reform parental responsibility of parents who are not married to one another which came into force on 19 May 2013 takes account of changing relationships in society. They are characterised by a constant increase in the percentage rate of children born out of wedlock and the growing wish of fathers to be actively involved in bringing up their children. Since the new regulation came into force, unmarried fathers find it easier to exercise rights of custody for their children. Previously, fathers who were not or had never been married to the mother were unable to enforce joint custody rights against the wishes of the mother. According to the example set by the reform act, both parents have a fundamental right to joint custody, as long as this is not detrimental to the child's welfare. In individual cases, the rights of custody can be transferred solely to the father even without the mother's consent, when there is no question of joint custody and it is likely that transfer to the father is in the child's best interests.

In future the father can obtain joint custody more quickly and possibly more easily, if the mother makes no response to the application or only gives reasons which do not appear to have anything to do with the child's welfare and the court is unaware of any other reasons relevant to the child's welfare. The child's best interests are always the top priority therefore.

The Act to improve the rights of a biological but not legal father of 4 July 2013 gave the biological father the right of access and information. If the child is born during an existing marriage, the child is considered to be the husband's child (§ 1592, No. 1, BGB). The biological father has no right to challenge the husband's paternity, if the latter has a social/family relationship with the child. This meets the child's need for an unambiguous legal position and the protection of the family life already existing. The new § 1686a, BGB guarantees a biological father, who has shown serious interest in the child, right of access to the child, when access is in the child's interest, and a parent's right to know how the child is being cared for, as long as his interest is justified and it does not contradict what is best for the child. This takes account of the situation where the biological father, excluded from legal paternity, can still wish to have contact with his child and to be kept informed about how the child is being cared for.

Right to non-violent upbringing

Corporal punishment in the upbringing of a child is completely prohibited. As a result of the Act to outlaw violence in the upbringing of children and to amend the child maintenance law of 2 September 2000 (Federal Gazette I, page 1479), the provision in § 1631, Paragraph 2, of the German Civil Code (BGB) is now worded as follows:

(2) Children have a right to non-violent upbringing. Physical punishments, psychological injuries and other degrading measures are inadmissible.

Previously the provision in § 1631, Paragraph 2, BGB was worded thus:

(2) Degrading methods of upbringing, especially physical and psychological abuse, are inadmissible.

The change was made because the legislature wanted to make clear that violence against children is no legitimate way of bringing up a child. Furthermore, we now know that violent behaviour is "learned" and passes from one generation to the next. Studies show that people who have experienced violence in their childhood are more likely to be violent themselves in later life. The new regulation is intended to break this so-called "cycle of violence". The law is principally aimed at parents and must be considered by family courts when, in line with the provision in § 1666, BGB, they have to ascertain whether action needs to be taken to avert a risk to child welfare.

Protection Against Violence Act

The Act on Civil Law Protection from Acts of Violence and Stalking (GewSchG), which came into force on 1 January 2002, has proved its worth in practice.

Since 1 September 2009, the judicial responsibility for matters relating to protection from violence, which had been shared between various courts until then, was concentrated on the family courts, so that all forms of recorded acts of violence or harassment be put into the hands of their judges with proceedings subject to rules of procedure rather more characterised by the principle of ex-officio investigation.

Also since 1 September 2009, the courts are legally bound to inform without delay the relevant police authorities, and other public bodies affected by the implementation of an injunction, of any injunctions in line with GewSchG. The intention here is to ensure that the victim receives effective protection during enforcement of the judicial ruling as a result of information being shared between the relevant state bodies. It will be easier to achieve the goal of violence prevention, as the authorities will be able to take any necessary emergency measures, while complying with the court order, should further attacks be threatened.

Detailed statistical data since 2006 show that there has been a moderate increase in court proceedings in line with GewSchG.

47,623 cases arising from GewSchG passed through district courts in 2012. We can therefore assume that there has been a further increase in the number of cases in comparison with the previous report. Now that proceedings are assigned exclusively to family courts, the proportion of all civil and family law cases no longer appears in Federal Statistical Office statistics.

Insofar as the Committee requests information on the outcome of the reform carried out in September 2009, in particular with regard to the transfer to the family courts of jurisdiction for cases relating to protection from violence, it should be noted that this is still being evaluated. An outcome is not expected before 2018.

Out-of-court conflict resolution, mediation and family mediation:

The Mediation Act (Act to promote mediation and other out-of-court conflict resolution practices) came into force in Germany on 26 July 2012. Mediation thereby acquired its own legal framework for the first time. This will help it to have more legal certainty and greater prominence. The Act additionally implements EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (the Mediation Directive).

When partners separate or divorce, they often want an amicable resolution of family relationships. In these cases mediation processes are a good alternative to court proceedings.

The law provides various incentives to promote amicable conflict resolution in the individual rules of procedure (for example, in the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction - FamFG).

Amongst other things FamFG aims to promote judicial and out-of-court conflict resolution in suits resulting from divorce. Pursuant to § 135, Sentence 1, FamFG, the court can order the spouses, singly or together, to meet a person or body nominated by the court, for a free consultation about mediation or some other means of settling their remaining differences out-of-court, and to provide confirmation that they have done so. This order may not be contested independently and parties may not be forced to comply (§ 135, Sentence 2, FamFG). However, refusal to obey such an order can result in a fine (§ 150, Paragraph 4, Sentence 2, FamFG).

In matters relating to children too, affecting parental custody following separation and divorce, the child's place of residence, access rights or return of the child, the courts should make more effort at every procedural stage to secure an amicable resolution between the parties concerned (§ 156, Paragraph 1, Sentence 1, FamFG). The court points to the counselling opportunities available from the advice centres and services maintained by youth welfare service providers to specifically create an amicable way of resolving parental custody and responsibility (§ 156, Paragraph 1, Sentence 2, FamFG). Pursuant to § 156, Paragraph 1, Sentence 3, FamFG, the court can order the parents, singly or together, to meet a person or body nominated by the court, for a free consultation about mediation or some other means of settling their differences out-of-court, and to provide confirmation that they have done so. It can also order the parents to attend counselling at advisory centres run by youth welfare service providers (§ 156, Paragraph 1, Sentence 4, FamFG). The orders may not be contested independently and parties may not be forced to comply (§ 156, Paragraph 1, Sentence 5, FamFG).

The previous report contained a Federal Government review of mediation in CCAICA cases (Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction).

As good results had already been achieved, mediation was used more often in CCAICA cases and continues to be a great success in practice.

In July 2008 the Federal Association for Family Mediation (BAFM) and the Federal Mediation Association (BM) founded Mediation in International Conflicts Involving Parents and Children (MiKK e.V.), a non-profit organisation. The association aims to pursue mediation in international conflicts involving parents and children by means of mutual bi-national co-mediation and to help resolve these conflicts for the good of the families involved. First and foremost, the association advises the parents concerned and professionals working in this field (the judiciary, legal profession, social workers). A network of mediators specialising in bi-national mediation has been created and is being constantly updated and expanded. In addition, the association cooperates with the Federal Office of Justice as a central authority, the Federal Ministry of Justice and Consumer Protection, the International Social Service, the Hague Conference and the Council of Europe.

In November 2011, the Federal Government entrusted the German branch of the International Social Service (ISD) with the task of setting up the Central Contact Point for Cross-border Family Conflicts (ZAnK). This central contact point acts as a guide to advise and support parents in family conflicts with a foreign aspect, also with regard to mediation.

Access to family mediation services in Germany is generally unproblematic. The first points of contact are the mediation associations and organisations such as the Federal Association for Family Mediation (www.bafm-mediation.de), the Federal Mediation Association (www.bmev.de) or the Centrale für Mediation (www.centrale-fuer-mediation.de). In the case of family conflicts with a foreign aspect, parents can contact the Central Contact Point for Cross-border Family Conflicts at the International Social Service German branch (www.zank.de) or MiKK e.V. (www.mikk-ev.de). In the case of CCAICA cases the Federal Office of Justice acts as the central authority in Germany to inform the parties - usually the parents - and the lawyers about the possibility of bi-national co-mediation and also refers to cooperation with MiKK e.V.

As a rule the costs of the mediation process must be borne by the parties concerned. In particular, mediation costs are not covered by the legal aid for court proceedings taking place concurrently.

Situation on the housing market

Insofar as the Committee requests that future reports present more detailed information on the various aspects of families' living conditions, the current position is as follows.

Protection from eviction, means of redress, alternative accommodation measures, financial help, adherence to procedural safeguards during eviction

Accommodation rental agreements in Germany are generally unlimited and may not be terminated without due notice by the landlord either. If the house or flat is sold, the tenancy continues with the new owner. A tenant who is abiding by the rental agreement may only have his or her tenancy terminated if the owner has justifiable grounds, i.e. proven personal need.

Provisions in the German Civil Code (BGB) also provide appropriate notice periods: pursuant to § 573c, BGB, the landlord must give statutory notice of termination by the third working day of a calendar month at the latest for the agreement to terminate at the end of the second month thereafter. The notice period for the landlord is extended, by three months in each case, five and eight years after the tenant is permitted to use the residential space. Other periods apply to specific types of accommodation rental (self-contained flat, furnished or temporary accommodation, for example) due to the particular nature of these rental agreements.

Pursuant to §§ 543 and 569, BGB, either party to an agreement can terminate without notice in exceptional circumstances with good cause. One valid reason is a particularly severe breach of contract by the tenant, when the landlord cannot be reasonably expected to continue the rental agreement to the end of the notice period or until the lease is terminated in another way, bearing in mind all the circumstances of the case in question, with particular regard to fault or arrears, and the interests of both parties. As a rule such a notice to terminate must be preceded by a warning, so that an extraordinary termination without notice represents the "ultima ratio".

The tenant is not without protection if he or she is given notice, as it is possible to have this verified by the courts. The tenant also has the opportunity to contest the notice to terminate in line with § 574, BGB and to demand that the rental agreement be continued, if the end of the rental agreement would constitute hardship for the tenant, his or her family or another member of the household, which cannot be justified even when taking into account the landlord's valid interests (the so-called social clause; typical cases: illness, pregnancy, disability, old age, but also the lack of alternative accommodation on reasonable terms). This does not apply however if a reason exists that entitles the landlord to terminate the lease for cause without notice (§ 574, Paragraph 1, Sentence 2, BGB).

Forced eviction from accommodation is only possible on the basis of a judicial eviction order issued after completion of due civil procedure. In the course of a civil suit the ten-

ant/resident is guaranteed a legal hearing and so has the equal opportunity to present pleas and arguments and to file applications.

Furthermore, at every stage of the proceedings the court should be mindful of an amicable resolution of the legal dispute or its individual points of contention. The oral procedure is preceded by a conciliation hearing so as to encourage an amicable resolution of the legal dispute. In the conciliation hearing the court must discuss the current status of the facts and the dispute with the parties concerned, taking all the circumstances into account. The parties here present should be heard, as also applies to eviction proceedings. Furthermore the court can refer the parties to a conciliation judge for the conciliation hearing as well as for further attempts at conciliation. The conciliation judge can use all conflict resolution methods including mediation.

If the tenant/resident does not have the personal and economic resources to cover the costs of the proceedings, or can pay them only in part or in instalments, he or she may receive legal aid on application, if the proposed legal action or defence has sufficient chance of success and does not appear to be wilful. As a legal aid component, the tenant/resident will be assigned a lawyer <u>of his or her choice</u> who is willing to represent him or her, if legal representation is compulsory or appears to be necessary (as is generally the case in disputes over eviction law) or if the opponent is being represented by a lawyer.

The start of court proceedings in relation to an action for eviction on the grounds that the tenant has fallen into arrears should be communicated without delay to the municipal welfare provider with local responsibility for the costs of heated accommodation or the provider of social security for job seekers, pursuant to Section 2 IV/1 of the Ordinance on Notification in Civil Actions of 1 June 1998 (MiZi). Should these bodies commit to meet the landlord's demands at the latest by the end of two months after the eviction claim is pending, the notice of termination becomes ineffective in line with § 569, Paragraph 3, Number 2, BGB (the so-called grace period provision). This provision can only be made use of every two years.

If the court ultimately finds that the notice to terminate the rental agreement is justified, and no amicable agreement is reached, it issues an eviction order. The court can hereby grant the tenant an adequate period of time to vacate the property. Even if no application is made, the court has an ex officio duty to consider whether an adequate period of time to vacate the property should be granted. The period of time to vacate the property may not total more than one year. Enforcement of the eviction demand can also be temporarily

postponed on application. This provision serves to protect the debtor and should make it easier to find alternative accommodation.

The tenant/resident can appeal against the eviction order within one month of it being issued. Legal aid can also be approved for this, subject to the preconditions already mentioned. A decision on the appeal and the corresponding application for legal aid is taken by the court on the next level up. During the appeal the initial judgment is reviewed from a legal and to a certain extent also from a factual perspective. Under certain conditions the appeal judgment can be challenged as far as the Federal Court of Justice.

Moreover, the court can grant the tenant protection from enforcement, if eviction constitutes a hardship for the tenant which is considered to be immoral (contra bonos mores). The landlord must commission a bailiff to carry out the eviction if the tenant refuses to vacate the property despite the eviction order. The bailiff announces its enforcement in an eviction notice. This notice must be given to the tenant as proof of access. If it is to be expected that the tenant will be made homeless by the eviction being enforced, the bailiff shall inform the administration authorities responsible for housing the homeless without delay. Creditors, debtors and third parties are able to avail themselves of a legal reminder against the eviction process. By means of this reminder, applications and objections regarding the manner of the compulsory enforcement or of the procedure which the bailiff must adhere to, can be brought to the enforcement court for a judgment. As part of its judgment, the enforcement court can also temporarily postpone the compulsory enforcement with or without security provision.

Compensation for unlawful eviction

Should the bailiff breach duties in relation to a third party in the course of the eviction, this may lead to official liability claims pursuant to § 839, BGB in connection with Art. 34 of Basic Law, e.g. if goods removed during the eviction are not transported in the proper fashion and damage occurs as a result. Insofar as the eviction order is itself unlawful, § 839, Paragraph 2, BGB states that, in line with court order privilege, there can be a claim for compensation only if the official breaches his duties in a judgment by committing a criminal offence. Compensation resulting from official liability is paid in cash.

An unlawful eviction beyond the public domain, e.g. carried out by a landlord acting without authorisation, also leads to claims for compensation. These can arise on the one hand from a breach of obligations in the rental agreement, but also from damage to the tenant's

possessions (§ 823, Paragraph 1, BGB). The compensation must cover all the losses and damages caused to the tenant (§§ 249 ff, BGB).

Child benefit: entitlement of foreigners without the right to freedom of movement

The entitlement of foreign nationals to child benefit was newly regulated in the light of European Court of Human Rights and Federal Constitutional Court case law by the Act on the Entitlement of Foreign Nationals to Child Benefit, Child-raising Allowance and Advance Maintenance Payments (AuslAnsprG) of 1 January 2006. The details of the regulation were given in the previous report. In its conclusions on family benefits the Committee has maintained that the situation in Germany is not in conformity with Article 16 of the ESC, because nationals of other Contracting Parties to the ESC are not guaranteed equal treatment, which is also the case with regard to the granting of state child-raising allowance in Bavaria. It also requests information on developments in Baden-Württemberg and Bavaria.

The Federal Government is currently reviewing to what extent the provisions of the current regulation, under which foreign nationals without the right to freedom of movement receive child benefit, can be amended on the basis of the requirements of European and constitutional law. The review is still ongoing. The immediate requirements of European and constitutional law are already taken into consideration in the administrative process however.

State child-raising allowance in Baden-Württemberg and Bavaria

Baden-Württemberg:

With regard to the comments on page 15 of Conclusions XIX-4 (2011) concerning state child-raising allowance in Baden-Württemberg, the position of the State Government of Baden-Württemberg is as follows:

In its session on 25 September 2012 the Council of Ministers of the State of Baden-Württemberg decided to end the eligibility for state child-raising allowance for all children born on or after 1 October 2012. Consequently, the support programme has been terminated and no further considerations with regard to the expansion or reorganisation of the support programme are necessary.

Bavaria

With regard to the remarks on pages 15 and 16 of Conclusions XIX-4 (2011) in respect of child-raising allowance provided by Bavaria, the position of the Bavarian State Government is as follows:

The Law amending the Bavarian Child-raising Allowance Act of 24 July 2012 came into effect on 30 August 2012. The previous regulation was replaced by a regulation (Art. 1, Para. 5, of the Bavarian State Child-raising Allowance Act (BayLErzGG), amended version), which is identical in content to § 1, Para. 7, of the Federal Parental Allowance and Parental Leave Act (BEEG). The entitlement of foreign parents was therefore partially revised in line with federal law, without being linked to the aspect of nationality. Should there be a change in federal law, the extent to which such changes are to be incorporated into Bavarian state law shall be subject to review.

Childcare benefit

Childcare benefit is paid to parents whose children were born on or after 1 August 2012 and do not receive early years support in day centres or child daycare facilities in line with § 24, Paragraph 2, of Book Eight of the Social Code (SGB VIII). Childcare benefit is usually paid after the parental allowance, i.e. from the child's 15th month, for up to 22 months, and ends at the latest when the child reaches 36 months. In the first year of its introduction the benefit was 100 euros per month and, since 1 August 2014, stands at 150 euros per month.

Article 17 – The right of mothers and children to social and economic protection

Status of the child

In its decision of 17 December 2013 the Federal Constitutional Court declared the provisions of § 1600, Paragraph 1, No. 5, of the Civil Code, under which the competent authority was entitled to challenge paternity, if there was no social/family relationship between the person acknowledging paternity and the child, and if the acknowledgement of paternity created the legal conditions for the authorised entry or the authorised stay of the child or one of the parents, to be unconstitutional.

Anonymous childbirth

The Law governing the expansion of assistance for pregnant women and the regulation of anonymous childbirth, which came into force on 1 May 2014, reinforces the rights of the child. The fundamental right of the child to know his or her origin is guaranteed in that he or she is able to inspect the mother's data and obtain information on her name, address and date of birth.

Guardianship and curatorship

The Act amending the Guardianship and Custodianship Law of June 2011 has brought about improvements in the relationship between the guardian and his or her ward. A child is under guardianship if it has no legal representative, i.e. if its parents have died or custody of the child has been removed from them. In most cases the youth welfare office is appointed the legal guardian and transfers guardianship to a member of staff who acts as the "official guardian". Previously an official guardian was often responsible for many wards, with the result that there was not enough time for personal contact. It can also mean that dangers to the ward are not identified in time. § 1793, Paragraph 1 a, of the Civil Code now explicitly stipulates that all guardians, including official guardians, must maintain personal contact with the ward. He or she must visit the ward at least once a month in the latter's usual environment. In line with § 55, Paragraph 2, P. 4, of Book Eight of the Social Code (SGB VIII), no official from the youth welfare office may manage more than 50 guardianships or curatorships. This ensures that personal contact with the individual ward is possible and that the official guardian can look after the interests of each individual child adequately.

Inheritance law

Children born in and out of wedlock are treated equally under inheritance law. In the last reporting period there was one exception for the group of children born out of wedlock before 1 July 1949. They had no right to inherit from their father or his relatives. In 2011, however, a law was passed with retrospective effect to 29 May 2009, whereby children born in and out of wedlock are treated equally in cases of inheritance arising from this date onwards. This date, 29 May 2009, was chosen because of the judgment passed on the previous day by the European Court of Human Rights in the case concerning B. ./. Germany (individual complaint no. 3545/04). For cases which predate this, the previous legal situation continued to apply due to the constitutionally protected legal status of heirs and the principle of non-retroactivity under constitutional law. The reform bill makes provision for one exception, namely where the State has become the legal heir in cases of inheritance which occurred before 29 May 2009 and on behalf of a child born out of wedlock be-

fore 1 July 1949. In such cases the State is obliged to repay the child born out of wedlock the value of the inheritance.

Protection of child victims and witnesses during criminal proceedings

In criminal proceedings in Germany, provision is made for a variety of regulations aimed at protecting child victims and witnesses of crime, in particular, from the stresses and strains associated with a criminal trial, as well as keeping them informed.

The position of victims - in particular child victims - during criminal proceedings had already been improved with the enactment on 1 December 1998 of the Witness Protection Act (ZSchG, Federal Law Gazette I, p. 820,1998): the German Code of Criminal Procedure (StPO) was extended to include the possibility of video-recording witness testimonies at any stage of the trial (§ 58a, StPO) and presenting them during the trial in lieu of a witness examination (§ 255a, StPO) or transmitting testimonies via a dedicated video link (§ 247a, StPO). The Law to strengthen the rights of victims of sexual abuse (StORMG) of 26 June 2013 (Federal Law Gazette I, p. 1805) means that, with effect from 1 September 2013, there are now greater opportunities for incorporating video recordings of testimonies. The aim of this is to ensure that the examination of witnesses during the investigative proceedings is carried out more frequently by the judge than was previously the case and is also recorded on video, in order that the court, during the subsequent trial, can assess the video recording of the previous examination and refrain from re-examining the witness.

All victims of crime can draw on the services of a lawyer during criminal proceedings or be represented by one (§ 406f, Paragraph 1, StPO). They are able - usually through a lawyer - to inspect the case files (§ 406e, StPO). The victim's lawyer is granted permission to be present during the examination of the victim by the court or public prosecutor (§ 406f, Paragraph 2, StPO). If the victim is being examined as a witness, he or she must be permitted, upon application, to have a person he or she trusts present during the examination (§ 406f, Paragraph 2, StPO). Witnesses, whose legitimate interests cannot otherwise be taken into account, are entitled to the assignment of counsel during their examination (§ 68b, StPO). Pursuant to §§ 397a Paragraph 1, and § 406g, Paragraph 3, StPO, a lawyer must be appointed on request and at public expense to provide assistance in particular to victims of sexual crimes and attempted murder, and to child victims of sexual offences or of abuses of a position of trust (victim lawyer). The 2nd Victims' Rights Reform Act of 29 July 2009 (Federal Law Gazette I, p. 2280) resulted in the list of criminal offences which entitle victims to assistance, provided free of charge, by a victim lawyer, particularly for under-age

and vulnerable victims of crime, being extended even further. Victims under 18 years of age are appointed, inter alia, a victim lawyer, if they have been victims of human trafficking offences, forced marriage or sexual offences, regardless of whether these involve a crime or not. Following the revision of StPO § 397a by the Law to strengthen the rights of victims of sexual abuse (StORMG), civil parties, who were under-age victims of sexual offences and have decided only in adulthood to process what has happened to them through the criminal courts, shall now be entitled, and to a greater extent than previously, irrespective of their financial situation, to assistance provided free of charge by a victim lawyer.

The following regulation introduced via the Victims' Rights Reform Act of 30 June 2004 (Federal Law Gazette I, p. 1354) serves to prevent multiple witness examinations: in cases where victims (witnesses) have a special need for protection, charges can be preferred before the regional court as per § 24 of the Courts Constitution Act (GVG), to prevent child victims of sexual offences, in particular, from having to go through a second trial court. With StORMG this regulation was extended even further with effect from 1 September 2013: In future, any decision as to whether charges should be preferred directly before the regional court will be focused more on victims in particular need of protection and the avoidance of multiple examinations. Nevertheless, should an examination be necessary during the court trial, witnesses under the age of 18 will be examined solely by the presiding judge (§ 241a, Paragraph 1, StPO). All other parties to the proceedings must direct any questions to the witnesses via the presiding judge.

In addition, with trials involving under-age victims, charges can be preferred before the juvenile courts, where judges are well experienced in dealing with young persons. The aim here is to pool expertise in such courts with a view to protecting young and adolescent witnesses, e.g., by using video conferencing technology for examinations. The Law to strengthen the rights of victims of sexual abuse (StORMG) led, with effect from 1 September 2013, to a revision of the rules set out in GVG § 26 to take greater account of the idea of protecting under-age victims giving testimony.

The conditions for removing the defendant and the public from the courtroom during the examination of young and adolescent witnesses have been made easier (§ 247, StPO; § 172, No. 4, GVG); moreover, the child may be examined in another place, separately from the other parties to the proceedings (§ 247a, StPO). The age of consent for these regulations has also been increased from 16 to 18 in line with the 2nd Victims' Rights Reform Act. StORMG also led to a further extension to such exclusion options, which came into force on 1 September 2013: when deciding whether the public should be excluded,

explicit consideration must be given to the particular burdens of a trial on children and juveniles in line with § 171b, Paragraph 1, Sentence 3, of the Courts Constitution Act. In addition, the courts can take into account the interests of all injured persons who were under age when aggrieved by the criminal offence, even if they are already of legal age during the examination. Furthermore, § 268, Paragraph 2, Sentence 3, of the Code of Criminal Procedure also stipulates that the courts must look to protect the interests of participants in the proceedings, of witnesses or of aggrieved persons, when orally communicating the reasons for the judgment. This can be achieved, for example, by disclosing only the essential content of the reasons for the judgment instead of reading the reasons out, and in doing so omitting any details on the private lives of those concerned which could infringe on interests meriting protection.

Over and above the statutory regulations mentioned, there is also a variety of special provisions in the Guidelines for Criminal and Regulatory Fine Proceedings (RiStBV), which serve to protect children and adolescents. For example, No. 19, Paragraph 1, RiStBV states that the multiple examination of children and adolescents at the trial should be avoided if possible, due to the associated psychological burden on such witnesses. No. 135, Paragraph 3, RiStBV stipulates that children and adolescents should be examined before other witnesses wherever possible, and also be supervised and, if possible, cared for in waiting areas. In the case of sexual offences, an official who has special knowledge and experience in the field of child psychology should be appointed to assist with the examination of children, as per No. 222, Paragraph 1, RiStBV. If a person charged with a sexual offence shares a common household with the victim or can directly influence the victim, and is discharged from custody, the youth welfare office must be notified immediately in line with No. 221, Paragraph 2, RiStBV, in order that measures required to protect the victim can be taken.

No. 222a, RiStBV, which came into force on 1 April 2012 and applies to all victims of sexual offences, also stipulates that the aggrieved party must be given the opportunity to express his or her particular need for protection - a significant factor when deciding whether any charges are to be preferred before the regional court or juvenile court (§ 24, Paragraph 1, Number 3, or § 26, Paragraph 2, GVG). Additionally, No. 222a, RiStBV states that in the event of an intention to dismiss criminal proceedings for discretionary reasons, the public prosecutor must give a person aggrieved by a sexual offence the opportunity to make a statement on the proposed dismissal.

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It is also important that children and adolescent victims, in particular, are informed of their rights and that the authorities concerned have awareness of how to deal appropriately with children and young people during criminal proceedings. Back in 2000 the Federal Ministry of Justice published its "Bundeseinheitliche Handreichung zum Schutz kindlicher (Opfer-)Zeugen im Strafverfahren" (National Guidelines for the Protection of Child Victims and Witnesses in Criminal Proceedings). These contain information on how all the authorities and offices involved are to treat child victims and witnesses, not least with the goal of ensuring that children are treated sensitively and with care during criminal proceedings.

In November 2004 the Federal Ministry of Justice published a brochure entitled "Ich habe Rechte" (I have rights) aimed specifically at children and juveniles. Using child-appropriate language, the brochure describes what happens in the course of criminal proceedings, as well as the role and rights of child victims and witnesses. Providing information to the victim of a criminal offence is stipulated, in certain cases, in the statutory regulations laid out in the Code of Criminal Procedure. Pursuant to § 406d, Paragraph 1, StPO, the aggrieved person shall, upon application, be notified of the termination of the proceedings and of the outcome of the court action to the extent that they relate to him or her. Paragraph 2 of this regulation also states that the aggrieved person shall be notified of any custodial measures (especially when they are ordered or terminated) in respect of the accused or convicted person. The extension of § 406d, StPO, which came into effect on 1 September 2013 and takes into account the Law to strengthen the rights of victims of sexual abuse, is aimed at improving the rights to information of such victims of crime by providing them with information in future on not just whether a convicted person is granted a relaxation of the conditions of detention or leave for the first time, but whether such a relaxation or such leave is granted again.

Aggrieved persons must also be informed of their rights and powers in line with § 406h, StPO. These obligations to inform were again extended considerably as a result of the 2nd Victims' Rights Reform Act. Victims must now be informed as early as possible, regularly in writing, and in a language they understand, of their rights and powers and of any entitlement to benefits they may have in accordance with the Crime Victims Compensation Act as well as to support and assistance through victim support institutions. To protect them from violence victims can also apply for orders to be issued against the accused.

A StORMG regulation which came into force on 30 June 2013 is also paving the way for an extended period of liability to prosecution for sexual offences under criminal law, as well as an extension of the limitation period for associated claims under civil law. The limitation

period for prosecutions of offences under criminal law now only begins - in the same way as is already the case in civil law - once the victim of a crime has reached 21 years of age, in line with §§ 174 to 174c and 176 to 179 of the German Criminal Code (StGB): therefore the limitation period is suspended up to this point (§ 78 b, Paragraph 1, Number 1, of the German Criminal Code). This harmonisation results in a longer period of liability to prosecution for such offences as well as - from the victim's point of view - to a clearer legal situation. From now on claims for damages under civil law are statute-barred only after thirty years, and not after three years, as was previously the case. This extension applies not only to claims for damages based on intentional violation of the right to sexual self-determination, but also to those based on intentional injury to life, limb, health and liberty. This gives victims an added advantage in practical terms. Those affected can bring their claims for damages against the perpetrators more effectively and over a longer period.

With effect from January 2014, the Law to strengthen the rights of victims of sexual abuse has also brought with it, in § 36 of the Youth Courts Law, a revision of the qualification process for youth public prosecutors. In matters involving juveniles, for example, the prosecution may no longer in future be represented by junior or trainee lawyers. Probationary judges and civil servants should not be nominated as youth public prosecutors in the first year following their appointment to the post. One of the particular aims of this is to create a stronger awareness among decision-makers within the criminal justice field dealing with the sexual abuse of children and adolescents and the interests of such under-age victims.

Child-appropriate implementation of investigative measures

With regard to the child-appropriate implementation of investigative measures there have been no changes since the previous report.

Penalties imposed with convictions under youth criminal law

Following on from the previous report, the tables below contain information on the penalties imposed under youth criminal law. They show both the youth penalties imposed and the supervisory and disciplinary measures.

Table 1 shows the total number of convictions as well as the penalties imposed. Figures for 2013 are not currently available. It should be noted that figures for the whole of the Federal Republic of Germany have been published only since 2007.

Table 1: Total convictions for criminal offences based on type of ruling

Absolute figures

Year		Convictions under youth criminal law (a = youth penalty, b = supervisory measures)										Total no. of im-posed discip. measures	Super-vis. measures
		Total no.	acc. to most severe penalty			acc. to individually or jointly imposed penalties							
			a	b	c	only a	a, b and c	a and b	a and c	only b	b and c		
2012	t	91 695	14 803	67 389	9 503	14 127	183	151	342	47 363	20 026	97 205	30 054
	m	76 637	13 865	55 381	7 391	13 238	171	144	312	38 552	16 829	80 247	24 703
	f	15 058	938	12 008	2 112	889	12	7	30	8 811	3 197	16 958	5 351
2011	t	102 175	16 168	75 668	10 339	15 457	202	178	331	54 574	21 094	110 124	31 966
	m	85 720	15 162	62 586	7 972	14 489	192	168	313	44 761	17 825	91 493	26 302
	f	16 455	1 006	13 062	2 367	968	10	10	18	9 813	3 269	18 631	5 664
2010	t	108 464	17 241	81 377	9 846	16 450	168	230	393	59 674	21 703	118 262	32 110
	m	91 684	16 139	67 717	7 828	15 392	161	217	369	49 373	18 344	98 765	26 702
	f	16 780	1 102	13 660	2 018	1 058	7	13	24	10 301	3 359	19 497	5 408
2009	t	116 879	18 684	89 408	8 787	17 903	209	213	359	66 411	22 997	129 880	32 352
	m	99 983	17 565	75 330	7 088	16 830	200	197	338	55 644	19 686	32 352	28 894
	f	16 896	1 119	14 078	1 699	1 073	9	16	21	10 767	3 311	97 528	3 458
2008	t	116 278	19 255	88 976	8 047	18 324	223	273	435	67 569	21 407	129 066	30 203
	m	100 448	18 137	75 778	6 533	17 264	214	264	395	57 364	18 414	110 446	25 632
	f	15 830	1 118	13 198	1 514	1 060	9	9	40	10 205	2 993	18 620	4 571
2007	t	121 354	20 480	93 145	7 729	19 199	319	456	506	72 687	20 458	133 315	29 085
	m	104 845	19 172	79 423	6 250	17 973	310	417	472	61 690	17 733	114 078	24 821
	f	16 509	1 308	13 722	1 479	1 226	9	39	34	10 997	2 725	19 237	4 264
2006	t	105 902	16 886	82 233	6 783	15 932	248	304	402	64 005	18 228	117 410	25 740
	m	91 125	15 632	70 029	5 464	14 773	229	269	361	54 353	15 676	100 185	21 797
	f	14 777	1 254	12 204	1 319	1 319	19	35	41	9 652	2 552	17 225	3 943

2005	t	106 655	16 641	82 516	7 498	15 558	316	437	330	65 543	16 973		117 837	25 221
	m	92 133	15 495	70 518	6 120	14 497	295	408	295	55 857	14 661		100 979	21 445
	f	14 522	1 146	11 998	1 378	1 061	21	29	35	9 686	2 552		16 858	3 776
2004	t	105 523	17 419	80 553	7 551	16 495	242	370	312	64 814	15 739		113 458	23 901
	m	91 492	16 265	68 983	6 244	15 402	227	348	288	55 481	13 502		97 494	20 303
	f	14 031	1 154	11 570	1 307	1 093	15	22	24	9 333	2 237		15 964	3 598
2003	t	101 562	17 288	77 273	7 001	16 353	266	380	289	62 509	14 764		109 299	22 411
	m	88 121	16 060	66 313	5 728	15 205	252	357	266	53 593	12 720		94 027	19 038
	f	13 441	1 208	10 960	1 273	1 148	14	23	23	8 916	2 044		15 272	3 373

Source: Federal Statistical Office (publ.) - Prosecutions, Tables 2.3 and 4.3
Up to 2006 the figures refer to the former federal territory of Germany, including the whole of Berlin

Table 2 provides more detailed information on youth penalties imposed and their duration, and to what extent the execution of youth penalties was subject to probationary suspension.

Table 2: Total youth penalty convictions and duration

Absolute figures

Year		Duration of youth penalty												
		together		6 months		more than … up to and incl. …								
				Min. penalty		6 - 9 months		9 months - 1 year		1 - 2 years		2 - 3	3 - 5	5 - 10
			spec. prob. suspension	together	spec. prob. suspension	together	spec. pr. sus.	together	spec. pr. sus.	years				
2012	t	14 803	8 864	2 020	1 751	2 307	1 927	2 904	2 163	5 409	3 023	1 405	662	96
	m	13 865	8 190	1 817	1 577	2 093	1 756	2 683	1 992	5 150	2 865	1 374	655	93
	f	938	674	203	174	214	171	221	171	259	158	31	7	3
2011	t	16 168	9 948	2 122	1 878	2 745	2 281	3 232	2 441	5 820	3 348	1 486	646	117
	m	15 162	9 227	1 892	1 675	2 502	2 089	3 013	2 275	5 557	3 188	1 451	634	113
	f	1 006	721	230	203	243	192	219	166	263	160	35	12	4
2010	t	17 241	10 858	2 348	2 074	2 840	2 383	3 427	2 615	6 313	3 786	1 588	645	80
	m	16 139	10 051	2 134	1 880	2 598	2 184	3 184	2 440	5 948	3 547	1 559	637	79
	f	1 102	807	214	194	242	199	243	175	365	239	29	8	1
2009	t	18 684	12 010	2 548	2 307	3 224	2 749	3 901	2 991	6 537	3 963	1 733	647	94
	m	17 565	11 169	2 293	2 082	2 962	2 518	3 651	2 801	6 236	3 768	1 691	641	91
	f	1 119	841	255	225	262	231	250	190	301	195	42	6	3
2008	t	19 255	11 990	2 754	2 415	3 357	2 762	4 106	3 044	6 642	3 769	1 626	633	137
	m	18 137	11 184	2 498	2 187	3 108	2 559	3 846	2 856	6 333	3 582	1 592	625	135
	f	1 118	806	256	228	249	203	260	188	309	187	34	8	2
2007	t	20 480	12 425	3 363	2 645	3 516	2 864	4 113	2 954	7 080	3 962	1 639	648	121
	m	19 172	11 534	3 033	2 384	3 237	2 642	3 827	2 755	6 744	3 753	1 586	627	118
	f	1 308	891	330	261	279	222	286	199	336	209	53	21	3
2006	t	16 886	10 211	2 631	2 144	2 889	2 312	3 553	2 584	5 732	3 171	1 426	564	91
	m	15 632	9 329	2 337	1 903	2 595	2 069	3 265	2 383	5 414	2 974	1 384	548	89
	f	1 254	882	294	241	294	243	288	201	318	197	42	16	2

2005	t	16 641	10 106	2 654	2 193	2 886	2 278	3 454	2 461	5 723	3 174	1 327	514	83
	m	15 495	9 320	2 389	1 975	2 652	2 087	3 193	2 273	5 393	2 985	1 286	504	78
	f	1 146	786	265	218	234	191	261	188	330	189	41	10	5
2004	t	17 419	10 823	2 798	2 364	3 045	2 452	3 728	2 720	5 881	3 287	1 364	507	96
	m	16 265	9 980	2 516	2 127	2 801	2 246	3 455	2 519	5 564	3 088	1 337	496	96
	f	1 154	843	282	237	244	206	273	201	317	199	27	11	-
2003	t	17 288	10 642	2 633	2 182	3 042	2 426	3 673	2 638	5 955	3 396	1 392	490	103
	m	16 080	9 784	2 361	1 951	2 777	2 227	3 392	2 437	5 619	3 169	1 352	478	101
	f	1 208	858	272	231	265	199	281	201	336	227	40	12	2

Source: Federal Statistical Office (publ.) - Prosecutions, Table 4.1
Up to 2006 the figures refer to the former federal territory of Germany, including the whole of Berlin

Youths aged between 14 and 18 may also be remanded in custody before the primary proceedings get under way if the court issues a custody order. Following an arrest on suspicion of a criminal offence, the youth must be brought before the judge of the juvenile court immediately, at the latest on the day following arrest (§ 128, StPO). The judge then decides whether a custody order should be issued. If the custody order was issued before the youth was apprehended, the youth must likewise be brought before the juvenile court judge immediately, who must question him or her at the very latest on the following day and decide whether the custody order is to be upheld (§§ 115 and 115a, StPO).

In the first instance, conditions for imposing a custody order on a juvenile are the same as those for adults, namely the strong suspicion of an offence being committed, grounds for an arrest such as a risk of flight or of tampering with evidence, and that the principle of proportionality is preserved (§§ 112, 112a, StPO). As with adults, enforcement of a custody order is suspended if it appears sufficiently substantiated that the purpose of remand detention may be achieved by less severe measures (§ 116, StPO).

The Youth Courts Law (JGG) contains further conditions for the remand detention of young persons. For example, a custody order may not be issued if the purpose of remand detention can be achieved by preliminary supervision orders or by other measures (§ 72, Paragraph 1, JGG). Other measures include, in particular, a temporary placement in a youth welfare service home. In assessing the proportionality of remand detention, consideration shall also be given to the particular stresses which custody has on youths. The custody order must also detail the reasons why the remand detention is not disproportionate. In addition, a remand detention order on 14 to 15-year-olds may only be imposed due to a risk of flight, if the youth in question has already absconded from the proceedings or made specific efforts to do so, or if he or she has no fixed abode or residence within the area in which

this Law is applicable (§ 72, Paragraph 2, JGG). The Youth Court Assistance Service must be informed without delay of the enforcement of a custody order (§ 72a, JGG). The Youth Court Assistance Service is a social services body whose tasks include looking after young persons throughout the duration of the proceedings and identifying at an early stage whether youth welfare services could be considered, possibly as an alternative to remand detention or formal penalties imposed by the youth courts (§ 52, Paragraphs 2 and 3, Book Eight of the German Social Code). Defence counsel must be appointed immediately for young persons if they are to be remanded in custody (§ 68, No. 4, JGG).
As with adults, there is no absolute limit to the duration of remand detention. However, in the case of ongoing detention, consideration must likewise be given to the fact that its continuation must always be proportionate. If a youth is being held in remand detention, the proceedings must be conducted particularly expeditiously (§ 72, Paragraph 5, JGG). The remand detention must not last for more than six months before a custodial sentence is passed. This period may only be exceeded if the particular difficulty or the unusual extent of the investigation or some other important reason do not yet permit pronouncement of judgment and justify the continuation of remand detention (§ 121, StPO).

Young persons in remand detention

In response to the Committee's question as to the number of cases in which a court order extending the remand detention of youths was issued and how the issue of proportionality was dealt with, no information is available.

According to the Federal Statistical Office (Federal Statistical Office publication on the administration of justice; number of prisoners and those held in custody in German penal institutions), the number of young persons in remand detention in Germany as at 31 March 2013 totalled 348, of which 25 were female. These figures have gone down considerably in recent years (2008: 558 / 2009: 435 / 2010: 468 / 2011: 405 / 2012: 358 / 2013: 348 - each as at 31.03.). No current information on the duration and location of remand detention for young persons in prison custody is available here.

The enforcement of remand detention, youth penalties and custodial sentences, and since 1 September 2006 the legislation relating to this, are incumbent on the 16 Länder. All Länder have now laid down statutory regulations on the enforcement of remand detention in respect of young prisoners and have laws regulating how youth penalties are enforced.

Provisions are made in the statutory regulations of the Länder to ensure that young prisoners are always placed in dedicated penal institutions for young offenders for the purpose of serving a youth penalty, or separately from adult prisoners in special departments within penal institutions for adults. If it is not possible to separate a small number of prisoners for organisational reasons, young prisoners may, in exceptional cases, be placed together with other persons convicted under general criminal law, in order to serve their youth penalty, provided this does not jeopardise the objective of enforcement. A further exception where the joint placement of young and adult prisoners is permitted are cases where such joint placement permits young prisoners to participate in treatment or supervisory measures.

The principle of separation from other prisoners also applies to the enforcement of remand detention for young prisoners. The statutory regulations of the Länder stipulate here that young prisoners on remand are placed separately in special departments within penal institutions for young offenders or in other penal institutions or dedicated facilities. Exceptions to this principle are only possible under strict conditions, for example when creating opportunities for young prisoners on remand to work and take part in educational or training courses or leisure activities; admitting them to the sick ward of a penal institution or a prison hospital; or for reasons associated with the security and order of the penal institution, institutional organisation or other significant reasons. In all cases young prisoners on remand must continue to be protected from harmful influences. Furthermore, in some Länder prisoners on remand who have not yet reached their eighteenth birthday (young prisoners on remand) should be separated from the other young prisoners.

The education and training of young prisoners on remand is a key element of the statutory regulations governing youth penalty enforcement of the Länder and is an important tool in their reintegration into society: For educational and developmental reasons young prisoners on remand are obliged, or may be obliged, as a matter of priority, to participate in educational and vocational guidance and training measures, or special measures to promote their educational, professional or personal development.

Children in state custody

The Committee asks which criteria are applied for restricting custody or other parental rights and what the extent of such restrictions is. It wishes to know which procedural guarantees are in place to ensure that children are only removed from their families in exceptional cases.

The care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them (Article 6, Paragraph 2, of the Basic Law (GG)). Therefore it is the duty of parents first and foremost to ensure the well-being and protection of their children. However, if parents fail in their duty, then the State and society shall also assume responsibility for a child.

Encroachments on the rights of parents are subject by law to strict conditions, with consideration given to Article 6, Paragraph 2, of the Basic Law. Pursuant to § 1666 of the German Civil Code (BGB), these are only permitted when the physical, mental or psychological well-being of the child is endangered and the parents do not wish or are not able to avert the danger.

The court may impose instructions or prohibitions on the parents, e.g. instructions to seek public assistance or to ensure that the obligation to attend school is complied with. If the court instructs parents to make use of child and youth welfare services or healthcare services, these may already suffice to avert danger to the child. However, if the danger can be averted by measures which fall short of removing parental custody, then only such measures may be permitted. As the most severe form of encroachment on the rights of parents and of the child, the separation of a child from its parents is subject to strict conditions. Measures which entail the separation of the child from its parental family are admissible only if the danger cannot be countered in another way, not even through public support measures (§ 1666 a, Paragraph 1, P. 1, of the German Civil Code).

Decisions relating to this are incumbent on the independent courts. All decisions must be based on the best interests of the child. In the event of proceedings involving the endangerment of a child's best interests, it is the family court which discusses with the parents and the youth welfare office how such danger can be averted. This discussion may be held during the investigative phase, which is often a time when the endangerment of the child's best interests is not yet established with certainty. This allows the family court to exert greater influence on the parents in advance, irrespective of any measures concerning custody rights. The court's objective is to use this discussion to highlight to the parents the severity of the situation and remind them of the potential consequences. Such a discussion

therefore also acts as a warning and serves to hold parents more to account, in order that they can cooperate better with the youth welfare office and accept youth welfare services and benefits.

In urgent cases the youth welfare office may take custody of the child and place it in accommodation away from the parental home. Pursuant to § 42 of Book Eight of the Social Code, the youth welfare office is also authorised and obliged to take a child or juvenile into custody if the child or juvenile requests this, or if there is an immediate danger to the welfare of the child or juvenile which calls for their removal, and those with custody rights do not object to it or a family court ruling cannot be obtained in time. A court decision must then be sought immediately.

Irrespective of the issue of custody, the parents and the child have the right to contact with each other (§ 1684, Para. 1, BGB). The best interests of the child generally include contact with both parents (§ 1626, Para. 3, P. 1, BGB). Even if the child is living with a foster family, the parents must always have the opportunity of personal contact with the child. The right of contact may only be restricted or excluded if the protection of the child requires it based on the circumstances of the individual case. The family court is responsible for taking decisions on individual cases.

Article 19 – The right of migrant workers and their families to protection and assistance

Paragraph 1 – Services and information relating to migration

Immigrants with legal resident status and good prospects of remaining in Germany, regardless of their origin, are offered a basic range of state-provided integration services. The standard services comprise an integration course (language course and orientation course) and a migration advisory service. The integration course has already been dealt with in previous reports.
The migration advisory services have a support function in terms of Article 19, Paragraph 1, of the European Social Charter. As part of the German Federal Government the Federal Ministry of the Interior is responsible for the Migration Advisory Service for adult immigrants (MBE), whereas advice provided to young immigrants under the age of 27 is the responsibility of the Youth Migration Service within the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. Both advisory services work together and are established, professional points of contact for all matters relating to the integration course. The MBE is primarily geared towards new immigrants in respect of

'catch-up integration' and to those migrants who have been living in Germany for some time and still have a need for integration assistance. Furthermore, recognised asylum seekers and refugees who gone through humanitarian admission procedures to enter the country can also draw on the services of the MBE. The MBE helps with the integration process. The advice offered takes the form of needs-based case management with an exploratory discussion and individual skills analysis.

The Federal Office for Migration and Refugees (BAMF) publishes brochures and leaflets which provide target groups with information on topics such as language promotion, migration advice and project funding. "Welcome to Germany - Information for Immigrants" is a brochure published in several languages offering guidance to new immigrants. It offers advice and information as well as contact addresses for important areas of life. The contents of the brochure can also be viewed on the website. In addition, the multilingual website of the Federal Office for Migration and Refugees contains information on integration course providers, migration advisory centres and other important points of contact.
What's more, the "Bürgerservice Integration" (public information service for matters relating to integration) at the Federal Office for Migration and Refugees is available to help with any questions regarding migration or integration. It replies to enquiries by telephone or e-mail in either German or English.
The Federal Office for Migration and Refugees also provides a telephone hotline on behalf of the Federal Government to provide information and advice related to the recognition of foreign occupational qualifications. The hotline points callers in the right direction when it comes to having professional qualifications obtained abroad recognised in Germany.

2. *In response to the Committee's request for an explanation in the next report of the criteria for admission to German-language courses, the following information is provided:*

A general prerequisite for taking part in the integration course (as well as other Federal Government integration measures) is that participants must be living lawfully in Germany on a permanent basis, in line with § 43, Paragraph 1, of the Residence Act (AufenthG).

Since those whose deportation has been suspended and asylum seekers (provided their application has not yet been successfully completed) are not resident in Germany on a permanent basis, no provision has been made for the participation of either of these immigrant groups in the integration course.

When looking at those persons who are permitted to attend an integration course, a distinction should be made between those who are entitled to attend and those who are only authorised to attend when there are course places available.
At present the following target groups are entitled to attend an integration course as per § 44, Paragraph 1, Sentence 1, AufenthG):

- Immigrants arriving for employment purposes (§§ 18, 21, AufenthG);
- Immigrants arriving as part of subsequent immigration by dependants (§§ 28, 29, 30, 32, 36, AufenthG);
- Immigrants arriving on specific humanitarian grounds (§ 25, Paras. 1 and 2, AufenthG);
- Long-term residents pursuant to § 38a, AufenthG; and
- Immigrants who have been granted admission by the Federal Republic of Germany when special political interests apply, in line with § 23, Paragraph 1, AufenthG.

This entitlement always goes hand-in-hand with a possible obligation to attend an integration course (§ 44a, AufenthG).
The foreigners authority or institution providing basic security benefits for job seekers may **oblige** immigrants to attend the integration course, as per § 44a, Paragraph 1, AufenthG, in the following cases:

- He or she is unable to communicate at least at a basic level in the German language or does not have a sufficient command of the German language (language level B1 GER) for a residence title to be granted pursuant to § 23, Paragraph 2, § 28, Paragraph 1, or § 30, AufenthG;
- He or she is in receipt of benefits in accordance with Book Two of the Social Code (SGB II); or
- He or she has special integration needs.

All other immigrants (in particular immigrants with residence titles granted on humanitarian grounds pursuant to §§ 22, 23, Para. 1, 23a, 25, Para. 3, 25, Para. 5, 25a, Para. 2 or § 104 a, Para. 1, Sentence 1, of the Residence Act) - insofar as they are living lawfully in Germany on a permanent basis - as well as German nationals may be permitted to attend an integration course if there are course places available. This option is also available to EU citizens in line with § 11 of the Freedom of Movement Act (FreizügG) in conjunction with § 44, Paragraph 4, of the Residence Act.

These immigrant groups cannot be obliged to attend an integration course.

Exceptions:

- 45 -

- He or she is in receipt of benefits in accordance with SGB II and the integration agreement provides for participation in an integration course or
- He or she has special integration needs (this exception does not apply to EU citizens, as their status must be equal to that of German nationals).

3. *In response to the Committee's question regarding the circumstances under which the obligation for newly arrived immigrants, whose command of the German language is below Level A1 of the Common European Framework of Reference for Languages, to attend integration courses does not apply, the following information is provided:*

   The obligation to attend shall be revoked where it is unreasonable to expect a foreigner to attend an integration course in addition to pursuing an economic activity (§ 44a, Paragraph 1, Sentence 6, AufenthG). This obligation shall likewise not apply to foreigners who are undergoing vocational training or any other form of training in the federal territory of Germany; who provide evidence of attendance of comparable educational measures; and for whom attendance on a sustained basis is infeasible or unreasonable (§ 44a, Paragraph 2, AufenthG).

4. *In response to the Committee's question as to who assesses an applicant's prospects of obtaining a permanent residence title and on which criteria this assessment is based, the position is as follows:*

   The relevant authorities - usually the foreigners authorities - are responsible for assessing whether an immigrant is entitled to attend an integration course.
   Immigrants with legal residence status always have a chance of obtaining a permanent residence title in cases where residence is not limited to a certain length of time from the outset. It can be assumed therefore that an immigrant who is sent to Germany for two years by a company with international operations, for example, will be granted only temporary residence with no prospects of obtaining a permanent residence title. By contrast, an employee who initially has only a temporary employment contract in Germany has a chance of remaining in the country on a permanent basis, as the employment contract may be extended.

Paragraph 2 – Departure, journey and admission within the scope of the Residence Act

The Committee has established that there is no specific information on measures taken to alleviate the departure, journey and admission of migrant workers and their families or to provide them with the requisite health services, medical attention and good hygienic conditions during their journey, and requests that specific, up-to-date information is included in the next report. The Committee points out that "admission" must be granted at the time of arrival and for the period immediately following arrival, i.e. in the weeks in which migrant workers and their families are in a particularly difficult position (interpretation - Conclusions IV, 1975), and that admission includes not only assistance with the placement and integration into work, but also helps to overcome problems such as short-term accommodation, illness, shortage of money and appropriate healthcare provision (see Conclusions IV, Germany).
Pending receipt of the information requested, the Committee defers its conclusion.
The response to this is as follows:

A condition of entry for immigrants to Germany is that he or she is able secure his or her subsistence by independent means. This also applies to entry with a visa in accordance with § 5, Paragraph 1, Number 1, AufenthG. Cases involving entry with no visa requirement are regulated by Regulation (EC) No. 562/2006 in Article 5, Paragraph 1, Letter c. According to the definition of subsistence in § 2, Paragraph 3, Sentence 1, AufenthG, a foreigner's subsistence shall only be secured when he or she is able to earn a living, including adequate health insurance coverage, without recourse to public funds.
Consequently, the fact that all foreigners must have adequate health insurance when they enter Germany also ensures that they are able to use any necessary health services or medical assistance during their journey and the period immediately thereafter.

Paragraph 3 – Co-operation between social services in emigration and immigration countries

It is important that migrant workers are given impartial advice with no misleading propaganda regarding the country of destination. This has been the purpose of the Emigrant Protection Act, which applies to persons emigrating from Germany, since its introduction at the end of the 19th century. The Emigrant Protection Act is there to ensure emigrants are given objective, factual information on their entry options and living conditions abroad and protect them from emigrating without due and proper consideration.

The emigration advisory centres, which are increasingly also providing advice and assistance to returnees, are maintained by the voluntary welfare associations and receive financial support from the Federal Government coordinated at federal level through the Raphaels-Werk e.V. association. The Federal Office of Administration provides, among other things, information on emigration and return migration. Regular contact between Raphaels-Werk and the authorities responsible for immigration in the main countries of destination, usually their embassies in Germany, forms part of the nationwide coordination efforts being supported.

Paragraph 4 – No less favourable treatment of migrant workers in respect of employment

Insofar as the Committee requests up-to-date information on cases of discrimination (in respect of employment, wages and other employment and working conditions) as well as the countermeasures taken with regard to persons with a migrant background, it should be pointed out that the Federal Government is not aware of specific cases of discrimination such as these.

Furthermore, insofar as the Committee requests specific, up-to-date information on measures taken to ensure that migrant workers do not receive less favourable treatment than German nationals in terms of joining trade unions or enjoying the benefits provided by collective agreements, as well as details of all recorded cases of discrimination and action taken in this regard, the Federal Government can report that it does not have any information on this. Furthermore, Article 9, Paragraph 3, of the Basic Law guarantees that every individual has the right to form or join associations to safeguard and improve working and economic conditions.

Pursuant to § 16, Paragraph 6, of the Workplace Protection Act (ArbPlSchG), migrant workers from Contracting Parties to the Charter of 1961, who are lawfully resident within the territory of the Federal Republic of Germany, shall be treated no less favourably in respect of the employment conditions for persons returning from military service than German nationals and nationals of EU Member States or Contracting Parties to the Agreement on the EEA.

Against this background the Committee finds the situation in Germany in respect of this point to be in conformity with Article 19, Paragraph 4a, of the European Social Charter.

The aforementioned legal situation remains unchanged. Cases where this has been applied are not known.

With regard to Conclusions XVIII-1 (Germany) on Article 19, Paragraph 4, of the European Social Charter, stating that the situation in Germany is not in conformity with this norm, as nationals of certain States are excluded from the scope of the Workplace Protection Act on being called up for military service, and it cannot therefore be ensured that they are treated no less favourably than German nationals, the following information is provided:

Paragraph 6 below was added to § 16 of the Workplace Protection Act when Article 9 of the Act to amend Military Law (WehrRÄndG) of 31 July 2008 (Federal Law Gazette I, p. 1629) came into force on 9 August 2008: "(6) § 1, Paras. 1, 3 and 4, and §§ 2 to 8 of this Act shall also apply to foreign nationals employed in Germany if they are called to their homeland to fulfil their obligation to perform compulsory military service applicable in that country. This applies only to foreigners who are nationals of the Contracting Parties to the European Social Charter of 18 October 1961 (Federal Law Gazette 1964 II, p. 1262) and who are lawfully resident in Germany." Consequently, the provisions of the Workplace Protection Act, in respect of individuals who are called to perform military service, also apply to migrant workers from the Contracting Parties who are lawfully resident within the territory of the Federal Republic of Germany. This assures treatment which is no less favourable than that of their own nationals with regard to, inter alia, employment conditions for those returning from military service.

Accommodation

Reference can essentially be made here to the statements on Article 16 of the ESC regarding the promotion of social housing and the corresponding regulations under state law as well as the ban on discrimination under civil law in the General Equal Treatment Act. As a rule migrant workers also have access to social housing, provided they fulfil the general requirements. Since no distinction is made with regard to origin when social housing is allocated, no information on the number of migrant workers in social housing is available.

Paragraph 5 – Equality in respect of taxes, dues and contributions

No changes since the previous report.

Paragraph 6 – Facilitation of family reunification

Reference is made to the comments in the previous report. In 2011 the Act to combat forced marriages and better protect the victims of forced marriages and amend further provisions governing residence and asylum law brought with it an increase, from two to three years, in the minimum period a marriage must exist before a spouse can obtain his or her own residence title following subsequent immigration. 2013 saw extensive amendments made to the provisions governing the subsequent immigration of children (§ 32, AufenthG) with the enforcement of the Act to Improve the Rights of Persons with International Protection Status and Foreign Employees. The same Act granted persons with a residence title for the purpose of family reunification unlimited access to the labour market (§ 27, Paragraph 5, AufenthG).
The current version of the Residence Act, including the regulations governing the subsequent immigration of dependants (AufenthG §§ 27 - 36), is available in German and English at http://www.gesetze-im-internet.de/englisch_aufenthg/index.html.
With regard to the subsequent immigration of dependants from non-EU and non-EEA countries, the following changes to the law, which came into force in 2011 and 2013, are particularly relevant:
The minimum period of time in which a marriage must exist was increased from two to three years in § 31, Paragraph 1, Sentence 1, Number 1, of the Residence Act (Independent right of residence of spouses). Once the three years have elapsed the spouse is granted a right of residence which is independent of the existence of marital cohabitation (there are exceptions, for example in the event of the death of the marital partner whom the spouse rejoined). The independent right of residence shall also be granted in cases of particular hardship (e.g. domestic violence) before the end of the three-year period.
§ 32 of the Residence Act (Subsequent immigration of children to join third-country nationals) was revised in 2013. A regulation was created to deal with the subsequent immigration of a child for the purpose of joining just one parent, in cases where parents share the right of care and custody. Subsequent immigration is now possible if the parent remaining in the country of origin has given his or her consent, or if the relevant binding decision has been taken by a competent authority.
In § 27 of the Residence Act (Principles pertaining to the subsequent immigration of dependants) the addition of a new paragraph, Paragraph 5, guaranteed unlimited access to the labour market for all persons living in Germany and holding a residence title for the purpose of reuniting with family members.
These amendments are in conformity with European law, in particular with Directive 2003/86/EC (Directive on the right to family reunification).

General preconditions for the granting of a residence title and family reunification:

- Secured subsistence
  The Committee concludes that German law is not in conformity with the Charter on the basis of the fact that social benefits, to which the person concerned is entitled, are not taken into consideration when calculating subsistence costs. The general preconditions for the granting of a residence title, as set out in § 5 of the Residence Act, are considered standard requirements - they do not apply in absolute terms, rather in standard cases only. Deviations from the requirement are possible in non-typical cases.

  Furthermore, the calculation of secured subsistence does not exclude all state benefits based on previous monies paid in by the person concerned, for example unemployment benefit.

  The requirement relating to secured subsistence serves to prevent immigration for the purpose of using social welfare systems. The question of whether the person concerned is entitled to the state benefit claimed cannot play a decisive role here. In principle, everyone has a right to a secured minimum subsistence level (social benefits which are independent of any previous monies paid in and membership of the statutory health insurance funds).

- Sufficient living space
  The Committee points out that the requirement with regard to sufficient living space, which must, as a matter of principle, be taken into account in the event of the subsequent immigration of dependants to join a third-country national (§ 29, Paragraph 1, Number 2, of the Residence Act), may not impede the reunification of families.

  The purpose of the requirement concerning sufficient living space is to prevent a social gap between the German population and the foreign nationals coming to live in Germany.
  It stipulates that persons who wish to arrange for the subsequent immigration of dependants must provide evidence of living space which is considered to be normal for a family of a comparable size in the same region and which meets the gen-

erally applicable health and safety standards. Accommodation in state-subsidised social housing is used a benchmark for comparison purposes.

Insofar as the Committee requests figures for rejected applications for family reunification based on insufficient living space, the Federal Government is not able to provide such information. Data on the number of applications and the number of applications accepted are stored. However, in relation to this question, no conclusions can be drawn from the difference between both sets of figures, as the reasons for rejecting applications are not recorded.
The same applies to the request for information on applications rejected due to a lack of secured subsistence.

Requirements concerning the residence title of the person with principal entitlement in respect of the subsequent immigration of a spouse
The Committee concludes that German law is not in conformity with the Charter as the requirement to hold a temporary residence title for two years is too restrictive.
By way of derogation from the conclusions of the Committee, a third-party national with principal residence entitlement (already living in Germany) can arrange for the subsequent immigration of a spouse, if he or she is in possession of a settlement permit or an EU long-term residence permit (permanent right of residence), an EU Blue Card or a residence permit (temporary right of residence). A further distinction is made with the residence permit: it is only in the case of new marriages that the principal person with residence entitlement needs to be in possession of a residence permit for two years before arranging for a spouse to join him or her. If the principal person entitled is already married, or if he or she is entitled to asylum, is a recognised refugee or a research scientist, this minimum period does not apply.
All spouses of third-country nationals who are living in Germany and fulfil the relevant requirements (residence title, sufficient living space, secured subsistence, etc.) have a right, as a matter of principle, to subsequent immigration to join his or her spouse. Contrary to the Committee's assumption it is not relevant whether the person concerned is a first-generation or second-generation foreign national.

Proof of language proficiency for subsequent immigration of spouses
The Committee declares that German law is not in conformity with the Charter on the basis of the requirement that before a spouse is allowed to enter the country to rejoin a partner settled there, he or she must show proof of an elementary proficiency in German.

It remains the case in principle that a spouse wishing to join his or her partner must show proof of an elementary proficiency in German even before entering the country (§ 30, Paragraph 1, Sentence1, Number 2, AufenthG). The Committee is aware of the existing exceptions (on the basis of the nationality of the principal person with entitlement when the spouse is joining a national of one of the states mentioned in § 41, Paragraphs 1 and 2, AufenthV, or an EU citizen, and the exceptions in § 30, Paragraph 1, Sentences 2 and 3, AufenthG, such as disability or positive integration prospects. There have been no changes in this respect since the last report.

In the light of the ECJ judgment in the case of Dogan (Case C-138/13) of 10 July 2014, regarding a spouse joining a principal person with entitlement, who has acquired a protected legal position arising from the EEA/Turkey Association Agreement, the Federal Government has resolved to implement a general hardship provision. German embassies and consulates are instructed to check for instances of hardship in those cases of subsequent immigration of spouses wishing to be reunited with Turkish nationals with Association entitlement. If there is evidence of hardship, the embassy or consulate will issue a visa in future even without proof of basic proficiency in German. Subsequent immigration of spouses of other non-EU nationals is unaffected by the ECJ judgment. Nevertheless, similar cases of hardship are considered in such cases too and, where appropriate, proof of basic proficiency in German is waived in these cases also.

It is considered to be a hardship case when the foreign spouse cannot be expected, to make efforts to gain basic language skills in German before entering the country, or despite having made serious efforts over the course of a year, he or she has failed to reach the necessary level of language proficiency.

Entitlement to subsequent immigration of children

The Federal Government is pleased to confirm that in line with the Committee's request in the Conclusions, under-age unmarried children are also entitled to join their family if just one parent is living in Germany (§ 32, Paragraph 3, AufenthG). The parent remaining in the country of origin must be in agreement or there must be a corresponding judgment by a competent authority. Special hardship is irrelevant in this respect. § 32, Paragraph 4, AufenthG also contains a general hardship clause however, by which a permit can still be granted to preclude a special hardship, even in the absence of the conditions in Paragraphs 1 to 3 (entitlement to a residence permit).

As the Committee correctly notes, it is only under-age unmarried children who are entitled as a matter of principle to subsequent immigration for the purpose of joining their family. They are considered to be members of the core family only while they are under-age. Between the ages of 16 and 18, if they are not moving to live in Germany with both parents or

just one (with either the approval of the parent possessing the sole right to care and custody and/or the agreement of the parent remaining behind or a competent authority) or they have no positive integration prospects otherwise (§32, Paragraph 2, AufenthG), they must prove their proficiency in German.

Adult children (over 18 years of age) can receive a residence permit for family reunification purposes under the conditions in § 36, Paragraph 2, AufenthG. Being adults, they are not considered to be core family members and are therefore subject to the regulation which applies to the subsequent immigration of other relatives. The condition for granting a residence permit for subsequent immigration of a family member in such cases is that there is particular family-related hardship.
Insofar as the Committee requests details of the number of adult children who have had their application to join their family rejected, Germany is unable to provide such information. All applications pursuant to § 36, Paragraph 2, AufenthG are recorded, but without the age or the family relationship of the applicant.

Paragraph 7 – Equality in respect of legal proceedings

No changes since the previous report.

Paragraph 8 – Guarantees against expulsion

The Committee came to the conclusion that the situation in Germany is not in conformity with Article 19, Paragraph 8, ESC, because migrant workers and their family members (provided they are not EU citizens) can be expelled if they claim social assistance, are homeless or misuse drugs. The response to this is as follows:

On the rights of family members of persons who are not nationals of an EU member state, with regard to expulsions

The Residence Act (AufenthG) is currently being revised and about to be comprehensively amended. Expulsion rights will also be revised as part of this amendment of the Act. This applies in particular to the former grounds for discretionary expulsion in § 55, AufenthG. The draft law will place particular emphasis on a comprehensive consideration of each individual case. Thereafter it is envisaged that there will no longer be a difference between

the offences leading to compulsory, routine and discretionary expulsion. It would be preferable to consider how far expulsion serves the public interest and to weigh this up against the individual's wish to remain.
The grounds for discretionary expulsion represented by long-term homelessness (§ 55, Paragraph 2, No. 5) and a claim for social assistance (§ 55, Paragraph 2, No. 6) are not included in the draft law as standard reasons why an individual should be expelled in the public interest.
The possibility of expelling a foreigner if he or she uses heroin, cocaine or a comparably dangerous narcotic and is not prepared to undergo a necessary course of rehabilitation treatment or evades such treatment (§ 55, Paragraph 2, No. 4) will also be included in the new draft law however, as persistent drug consumption and drug addiction lead not only to problems for the individual but also create dangers for public safety and law and order. Persistent drug abuse can lead not only to violations of the Narcotics Act, but also in certain cases to a violation of other criminal laws. Long-term drug use is often accompanied by drug-related crime, which can lead people into criminal activity far beyond the constraints of the Narcotics Act. Public safety and law and order include, amongst other things, the integrity of the objective rule of law, which is put in direct jeopardy by drug-related crime and violations of the Narcotics Act.

On the current legal position:

§ 55 of the Residence Act is a discretionary clause, such that an expulsion pursuant to this section requires the exercise of discretion and is in no way automatic. Consideration is subject to the limits of discretion and must be especially proportionate.
The discretionary grounds for expulsion - claiming social assistance, homelessness and drug abuse - currently found in the Residence Act, are seldom used in practice. Moreover, circumstances which present an argument against expulsion, in particular having roots in Germany and family ties, can always be considered in an individual case when discretion is being exercised. In addition, certain foreigners, as noted in § 56, Paragraph 1, AufenthG, enjoy special protection from expulsion. Expulsion is then possible only on serious grounds pertaining to public safety and law and order (§ 56, Paragraph 1, Sentence 2, AufenthG).

On the rights of the family members of EU citizens with regard to expulsions

Please see the statement in the previous report for a comprehensive description of the legal position.

For family members, who are not EU citizens themselves, the special protection from expulsion in § 6, FreizügG/EU, for children and the parent bringing them up continues even after the death or departure of the EU citizen until the end of schooling and moreover until the death of or separation from the EU citizen with principal entitlement.

This applies only in the first five years of residence however. After five years of continual lawful residence with the EU citizen with principal entitlement, family members who are not nationals of an EU member state also acquire permanent right of residence pursuant to § 4a, FreizügG/EU. Family members with a permanent right of residence then enjoy the increased protection from expulsion in § 6, Paragraph 4, FreizügG/EU, pursuant to which the withdrawal of their right to freedom of movement only comes into question on serious grounds pertaining to public safety and law and order. Please see previous reports for further details of this also.

Guarantees against expulsion within the scope of the Act on the Freedom of Movement of EU Citizens

Please see the statements in previous reports for the basics of the current legal position. In response to the Committee's request for information on the rights of migrant workers' family members with regard to expulsions, the following should be noted:

Protection from expulsion for the family members of EU citizens derives from § 6 of the Act on the Freedom of Movement of EU Citizens (FreizügG/EU). Accordingly, family members of EU citizens, irrespective of their nationality, always enjoy the same level of protection as EU citizens. Please see the previous reports and Conclusions for the precise wording of § 6 of the Act on the Freedom of Movement of EU Citizens.

Paragraph 9 – Transfer of earnings and savings

No changes since the previous report.

Paragraph 10 – Extension to self-employed persons

Please refer to the statements on Art. 19, Paras. 6 and 8 of the ESC, as no difference is made between migrant worker employees and those who are self-employed.