7/01/2019 RAP/Cha/DEU/36(2019)

1961 EUROPEAN SOCIAL CHARTER

36th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF GERMANY

Article 7, 8, 16, 17 and 19

for the period 01/01/2014 - 31/12/2017

Report registered by the Secretariat on

7 January 2019

CYCLE XXI-4 (2019)

Berlin, November 2018

36th Report

submitted by the Government of the Federal Republic of Germany

for the period from 1 January 2014 to 31 December 2017

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 Trade Union Confederation
(*Bundesvorstand des Deutschen Gewerkschaftsbundes*).

Preliminary remarks

The 36th 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 "the Committee") in Conclusions XX-4 give reason for this, or the questionnaire makes this necessary, or if significant changes to the material and legal situation have occurred in the reporting period.
Insofar as the situation within Germany differs as a consequence of reunification, the 36th report also differentiates between the old and new *Länder* (federal states). The term "new *Länder*" covers the *Länder* of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia as well as the eastern part of the federal state of Berlin.

Article 7 – Right of children and young persons to protection

Please see the information provided in previous reports. The employment of young people in Germany is governed by the Act on the Protection of Young People at Work (*Jugendarbeitsschutzgesetz*) of 12 April 1976 (Federal Law Gazette I 1976, 965), which was last amended by Article 13 of the Act of 10 March 2017 (Federal Law Gazette I 2017, 420), and the Ordinance on Protection Against Child Labour (*Kinderarbeitsschutzverordnung*) of 23 June 1998 (Federal Law Gazette I 1998, 1508).

Paragraph 2 – Higher minimum age in dangerous or unhealthy occupations

During the reporting period (1 January 2014 to 31 December 2017), the Act on the Protection of Young People at Work has been amended as follows with relevance for Article 7, paragraph 2:

Article 2 of the Act on the Protection of Children and Young People from the Dangers of Smoking Electronic Cigarettes and Shisha (*Gesetz zum Schutz von Kindern und Jugendlichen vor den Gefahren des Konsums von elektronischen Zigaretten und Shishas*) of 3 March 2016 (Federal Law Gazette I 2016, 369) supplemented the existing ban on employers giving tobacco goods to young people with a ban on giving electronic cigarettes and shisha to young people, in Section 31 (2), second and third sentences, and Section 58 (1) numbers 6 and 7 of the Act on the Protection of Young People at Work. This reflected a

change to the Protection of Young Persons Act (*Jugendschutzgesetz*) and ensured it also applies in young people's working lives. The amendments entered into force on 1 April 2016.

Article 13 of the Act Dissolving the Spirits Monopoly Administration (*Branntwein-monopolverwaltung-Auflösungsgesetz*) of 10 March 2017 (Federal Law Gazette I 2017, 420) amended Section 31 (2) and Section 58 (1) number 21 of the Act on the Protection of Young People at Work. In light of the expiry of the Spirits Monopoly Act (*Branntweinmonopolgesetz*) and the entry into force of the Alcohol Tax Act (*Alkoholsteuergesetz*), and to ensure that the ban on giving alcohol to young people enshrined in the Protection of Young Persons Act remained in place, including in the workplace, the terminological changes to the Protection of Young Persons Act were mirrored by amendments to the Act on the Protection of Young People at Work. The amendments entered into force on 1 January 2018.

There is no change in the legal position otherwise.

The following information is provided in response to the Committee's follow-up questions in Conclusions XX-4 (2015):

Section 22 (1) of the Act on the Protection of Young People at Work defines which activities are classified as hazardous work for young people. Section 22 of the Act is to be read in conjunction with the current occupational safety and health regulations. For example, it refers to the Biological Agents Ordinance (*Biostoffverordnung*) and the Hazardous Substance Regulations (*Gefahrstoffverordnung*). Hazardous activities are defined and described in Section 22 of the Act on the Protection of Young People at Work.

Compliance with the Act on the Protection of Young People at Work is monitored by the occupational safety and health authorities of the *Länder* (Section 51 of the Act). In response to an enquiry from the Federal Government, the *Länder* have reported that their occupational safety and health authorities carried out checks on a total of 4,804 organisations in the 2016 calendar year and a total of 4,831 organisations in 2017 specifically to verify their compliance with the legal provisions on the protection of children and young people at work (see the table below in the section of the report concerning Article 7, paragraph 3). If infringements are identified, the authorities respond by providing information about the legal provisions, issuing oral warnings or sending post-inspection notices, among other options. In the case of more serious or repeated infringements, administrative fine proceedings or criminal proceedings are initiated. In addition, follow-up checks take place in the organisations concerned. The infringements identified by the authorities' checks are normally not serious.

Under Section 58 (1) number 18 of the Act on the Protection of Young People at Work, administrative fines may be imposed in the event of non-compliance with Section 22 of the Act.

In the event of persistent repetitions of infringements or an intentional exposure of a young person to danger, it is also possible for a prison sentence to be imposed under Section 58 (5) of the Act. When asked specifically whether infringements of Section 58 (1) numbers 18 to 20 of the Act (hazardous work, piece-work, employment underground) had been identified, most of the *Länder* responded that this was not the case. In the 2016 and 2017 calendar years, three *Länder* identified a total of five cases falling under Section 58 (1) numbers 18 to 20 of the Act. In one case, an administrative fine was imposed. The occupational safety and health authorities passed on four cases to the public prosecution office for prosecution. All four cases involved an infringement of the ban on employing young people in work associated with a risk of accidents (use of machinery).

Paragraph 3 – Prohibition of employment of young persons subject to compulsory education

Please see the information provided in previous reports. The legal position remains unchanged.

In response to the Committee's follow-up questions, the Federal Government reports that the annual length of school holidays in Germany is a total of 75 working days in each of the Länder. Each *Land* either sets a permanent schedule for the holidays independently, or varies it in consultation with other *Länder* from year to year for technical transport-related or holiday-related reasons.

The summer holiday lasts between six and seven calendar weeks in all of the *Länder*. In addition, there are autumn, Christmas and Easter holidays in all of the *Länder*. The length of these holidays varies, lasting between one and three weeks. Some *Länder* have shorter Christmas and Easter holidays, but balance this by having additional winter and/or spring holidays, lasting for a period between a few days and two weeks.

In the case of children subject to full-time compulsory education, Section 5 of the Act on the Protection of Young People at Work does not make any distinction between the maximum daily duration of work during the school term and the maximum permitted during school holidays. Children may not be employed for more than two hours daily, or for more than three hours if they are working on a farm.

The table below shows the number of organisations checked by the occupational safety and health authorities in the 2016 and 2017 calendar years, and the number of infringements of the provisions on the protection of young people at work identified by these checks. Most of the *Länder* do not collect or analyse statistics on the type of infringement. In addition to the procedure set out above in the section of the report dealing with Article 7, paragraph 2, the

occupational safety and health authorities of the *Länder* can also initiate administrative fine proceedings or criminal proceedings under Sections 51 and 58 of the Act on the Protection of Young People at Work in the event of more serious or repeated infringements.

	2016		2017	
Land	Organisations checked	Infringe-ments	Organisations checked	Infringe-ments
Baden-Württemberg	166	76	135	6
Bavaria	1810	555	2372	837
Berlin	58	7	54	8
Brandenburg	456	18	361	12
Bremen	36	2	57	2
Hamburg	118	0	102	0
Hesse	566	181	619	131
Lower Saxony	420	70	206	145
Mecklenburg-Western Pomerania	255	4	192	1
North Rhine-Westphalia	156	50	117	53
Rhineland-Palatinate	276	90	165	22
Saarland	34	6	38	1
Saxony	59	5	88	14
Saxony-Anhalt	143	60	98	23
Schleswig-Holstein	68	2	53	2
Thuringia	183	1	174	1
Total*	4804	1127	4831	1258

Paragraph 4 – Length of working time for young persons under 16

During the reporting period, the Act on the Protection of Young People at Work has been amended as follows with relevance for Article 7, paragraph 4:

Article 12b of the Sixth Act Amending Book IV of the Social Code and other Acts (*Sechstes Gesetz zur Änderung des Vierten Buches Sozialgesetzbuch und anderer Gesetze*) of 11 November 2016 (Federal Law Gazette I 2016, 2500) amended Section 20 and Section 59 (1) numbers 2a and 2b of the Act on the Protection of Young People at Work. This introduced requirements for records to be kept of the daily working time and rest time of young people employed in the commercial inland waterway transport sector. The amendment, which entered into force on 1 January 2017, serves to transpose Directive 2014/112/EU concerning certain aspects of the organisation of working time in inland waterway transport.

The Committee asks for a full and up-to-date description of the situation in law and in practice.

In the case of young people (aged 15 to 17) who are still subject to full-time compulsory education, the rules applicable to children apply (Section 2 (3) of the Act on the Protection of Young People at Work). One difference, however, is that young people subject to full-time compulsory education are permitted to work during the school holidays for a maximum of four weeks in a calendar year. In this respect, their position is equivalent to that of young people who are no longer subject to full-time compulsory education, rather than children. Please also see the information provided about Article 7, paragraph 3.

The following rules apply under the Act on the Protection of Young People at Work to young people who are no longer subject to full-time compulsory education:

Young people may not be employed for more than eight hours daily or for more than 40 hours weekly. They are not allowed to work more than five days a week. The duration of their shift (working time plus breaks) may not exceed ten hours (eight hours in the mining sector; eleven hours in the agricultural sector, livestock farming, and on construction and installation sites) (Section 12 of the Act on the Protection of Young People at Work).

In principle, young people may not be employed on Saturdays, Sundays, after 2 p.m. on 24 and 31 December, or on public holidays. In sectors where it is normal to work on Saturdays and Sundays, exemptions allowing young people to work on these days are possible (Sections 16 to 18 of the Act on the Protection of Young People at Work).

A collective agreement, or an organisation-level agreement based on a collective agreement, may permit working time to be organised differently, allowing young people to work up to nine hours daily, 44 hours weekly and up to five and a half days per week. However, an average weekly working time of 40 hours may not be exceeded over a two-month reference period (Section 21a of the Act on the Protection of Young People at Work).

Young people must receive predetermined breaks lasting at least 30 minutes if they are working for more than four and a half hours, and breaks lasting at least 60 minutes if they are working for more than six hours (Section 11 of the Act on the Protection of Young People at Work). They must receive an uninterrupted rest period of at least 12 hours after the end of their daily working time (Section 13 of the Act on the Protection of Young People at Work).

The Act on the Protection of Young People at Work also applies to the short-term employment of young people in the Federal Republic of Germany.

An employer who intentionally or negligently employs a young person to work for longer than the permitted working time is committing an administrative offence. The administrative offence can result in an administrative fine of up to 15,000 euros. If an intentional act of this kind places a young person in danger, or if the employer persistently repeats it, it constitutes a criminal offence and can result in up to a year's imprisonment or a criminal fine (Section 58 of the Act on the Protection of Young People at Work).

Compliance with the rules on the protection of young people at work is monitored by the occupational safety and health authorities of the *Länder* (see the information provided in relation to Article 7, paragraphs 2 and 3). In addition, young people have the option of seeking legal protection from the competent labour court in the event of a dispute.

Paragraph 5 – Fair pay

Point 3 of Article 7, paragraph 5, of the questionnaire for this report requested that any relevant statistics or other information be supplied on the remuneration of young workers as well as on other appropriate allowances for apprentices, and on the adult reference wage or salary; the table below is provided in response:

Allowances paid to apprentices and wages under collective agreements in selected sectors.

In the table below, the first figure in each field shows the gross monthly amount in euros, while the second figure shows the net monthly amount for a person with tax filing status 1 – an unmarried person with no children – after social security contributions have been deducted. For each sector, a western German and an eastern German collective agreement are shown by way of example (where possible).

As at: 31 August 2017

Economic sector	1st year Gross *Net*	2nd year Gross *Net*	3rd year Gross *Net*	4th year Gross *Net*	Starting wage for adult workers who have completed a vocational training programme	Lowest wage for young workers who have not completed a vocational training programme
	€ per month					
Horticulture and landscaping, western Germany	740 *590*	840 *669*	930 *741*	-	2438 *1632*	-
Horticulture and landscaping, eastern Germany	740 *590*	840 *669*	930 *741*	-	2365 *1592*	-
Chemical industry, Bavaria	920 *733*	977 *778*	1059 *838*	1137 *890*	2834 *1844*	2107 *1450*
Chemical industry	913	960	1007	1058	2859	2095

eastern Germany	*727*	*765*	*802*	*837*	*1857*	*1443*
Steel industry, Germany	875 *697*	897 *715*	939 *748*	992 *790*	2087 *1400*	-
Metal and electrical industries, Bavaria	992 *790*	1045 *828*	1112 *873*	1157 *903*	2934 *1897*	-
Metal and electrical industries, Saxony	965 *769*	1020 *811*	1075 *848*	1130 *885*	2757 *1803*	-
Forest products industry, Bavaria	770 *614*	820 *653*	890 *709*	940 *749*	2496 *1633*	-
Forest products industry, Saxony	685 *546*	729 *581*	763 *608*	817 *651*	2221 *1513*	-
Paper industry, Bavaria	870 *693*	950 *757*	1020 *811*	1100 *865*	2011 *1396*	-
Paper industry, eastern Germany	900 *717*	960 *765*	1020 *811*	1080 *852*	2176 *1488*	-
Printing industry, Schleswig-Holstein/Hamburg/ Mecklenburg-Western Pomerania	930 *741*	981 *782*	1032 *819*	1032 *854*	2004 *1392*	-
Printing industry, Saxony/Saxony-Anhalt/ Thuringia	930 *741*	981 *782*	1032 *819*	1032 *854*	2003 *1392*	-
Textile industry, south Bavaria	851 *678*	914 *728*	995 *793*	1072 *846*	1810 *1282*	-
Textile industry, eastern Germany	745 *594*	795 *633*	845 *673*	895 *713*	2163 *1481*	-
Confectionery industry, Lower Saxony/Bremen	747 *595*	836 *666*	926 *738*	1043 *827*	2470 *1649*	*1810* *1282*
Confectionery industry, eastern Germany	698 *556*	811 *646*	920 *733*	1004 *800*	2369 *1594*	*1780* *1265*
Baking industry, North Rhine-Westphalia/ Koblenz/Trier	500 *398*	640 *510*	770 *614*	-	1719 *1231*	-
Baking industry, Brandenburg	500 *398*	640 *510*	770 *614*	-	1581 *1156*	-
Construction, western Germany	780 *621*	1013 *806*	*1299* *995*	-	2872 *1864*	-
Construction, eastern Germany	698 *556*	815 *649*	1044 *827*	-	2676 *1760*	-
Painting and decorating, western Germany (excluding Saarland)	600 *478*	660 *526*	820 *653*	-	2279 *1545*	-
Painting and decorating, eastern Germany	600 *478*	660 *526*	820 *653*	-	1966 *1371*	-

Economic sector	1st year Gross *Net*	2nd year Gross *Net*	3rd year Gross *Net*	4th year Gross *Net*	Starting wage for adult workers who have completed a vocational training programme	Lowest wage for young workers who have not completed a vocational training programme
	€ per month					
Wholesale and foreign trade, Lower Saxony	796 *634*	870 *693*	923 *735*	-	2260 *1534*	-
Wholesale and foreign trade, Saxony-Anhalt	774 *617*	842 *671*	886 *706*	-	2110 *1451*	-
Retail, Berlin	685 *546*	775 *617*	885 *705*	-	1993 *1386*	-
Retail, Saxony/Thuringia/ Saxony-Anhalt	685 *546*	765 *610*	880 *701*	-	1992 *1385*	-
Private transport industry,	730	765	810	-	2287	-

Hesse	*582*	*610*	*645*		*1549*	
Private transport industry, Thuringia	585 *466*	607 *484*	663 *528*	718 *572*	2120 *1457*	-
Private banking sector, Germany	976 *778*	1038 *823*	1100 *865*	-	2476 *1652*	-
Private insurance industry, Germany	878 *700*	953 *759*	1037 *832*	-	2635 *1738*	-
Hotel and catering industry, Bavaria	755 *602*	850 *677*	950 *757*	-	2148 *1472*	-
Hotel and catering industry, Thuringia	650 *518*	720 *574*	770 *614*	-	1687 *1213*	-
Housing sector, Germany	830 *661*	940 *749*	1050 *831*	-	2880 *1868*	-
Public service (Collective Agreement for Public Sector Trainees – Special Part – Vocational Training Act), Germany	918 *731*	968 *771*	1014 *807*	1078 *850*	2143 *1470*	-
Public service (Collective Agreement for Public Sector Trainees – Special Part – Caring Professions), Germany	1041 *825*	1102 *866*	1203 *933*	-	2205 *1504*	-

Average allowances paid to apprentices under collective agreements

As at: 31 August 2017

	Western Germany		Eastern Germany	
Year of vocational training	Gross	*Net*	Gross	*Net*
€ per month				
1st year	799	*637*	748	*596*
2nd year	875	*697*	822	*655*
3rd year	966	*770*	902	*719*
4th year	998	*795*	971	*774*

No calculations have been provided regarding the remuneration for trainee officials in the civil service as, unlike all of the wages listed here, their remuneration is not liable to social security contributions and therefore would not fit in with the system of gross/net calculations for pay which is liable to social security contributions.

A separate collective agreement exists for apprentices in the public service, in the form of the Collective Agreement for Public Sector Trainees (*Tarifvertrag für Auszubildende des öffentlichen Dienstes – TVAöD*) of 13 September 2005 (last amended by Amending

Agreement No. 6 of 29 April 2016). In principle, this collective agreement covers all training occupations in the public service and is supplemented by specific regulations.

The collective agreement's "Special Part for Apprentices in Occupations Regulated by the Vocational Training Act" (*Besonderer Teil BBiG*) contains provisions relating to apprentices in training occupations regulated by the Vocational Training Act, and the "Special Part for Apprentices in the Caring Professions" (*Besonderer Teil Pflege*) contains provisions relating to apprentices who are training for the caring professions. These parts also contain regulations concerning the pay received by apprentices. Apprentices' pay in the public service is higher than average.

Apprentices in the federal public service, from 1 February 2017

Special Part for Apprentices in Occupations Regulated by the Vocational Training Act		Special Part for Apprentices in the Caring Professions	
Year of vocational training	Pay	Year of vocational training	Pay
1	918.26 euros	1	1040.69 euros
2	968.20 euros	2	1102.07 euros
3	1014.02 euros	3	1203.38 euros
4	1077.59 euros		

Regarding the Committee's request for information in Conclusions XX-4 (2015), please note that the general minimum wage applies to young workers under the age of 18 who have completed a vocational training programme. Since 1 January 2017, the minimum wage has been 8.84 euros gross per hour worked.

Paragraph 6 – Inclusion of time spent on vocational training in the normal working time

There has been no change in the legal situation since the last report. *The Committee asks for a full description of the situation in law and in practice.*

Employers are required to release young people from work to attend vocational school, without a reduction in pay. In addition, employers are not permitted to require young people to work prior to a class beginning before 9 a.m. Young people are to be released com-

pletely from work once a week for a day of vocational school with more than five hours of lessons. In weeks spent at vocational school with a planned block of lessons lasting at least 25 hours over at least five days, young people are not allowed to work. Additional training events in the workplace lasting up to two hours weekly are permitted. Days and weeks spent at vocational school are counted as working time (Section 9 of the Act on the Protection of Young People at Work).

Employers are required to release young people from work to sit exams and attend vocational training, and for the working day immediately preceding the day of their final written examination. Time spent sitting the examination, including breaks and the day before the examination when young people are released from work, is counted as working time (Section 10 of the Act on the Protection of Young People at Work).

Regarding the checks carried out by the occupational safety and health authorities, please see the information provided in the sections of this report relating to Article 7, paragraphs 2 and 3.

Paragraph 7 – Paid annual holidays

There has been no change in the legal situation since the last report. *The Committee asks for a description of the situation in law and in practice.*

Young people are entitled to paid holidays; the duration of the holidays depends on their age. The Act on the Protection of Young People at Work calculates holiday entitlement on the assumption of a week consisting of six business days, including Saturday.

Under Section 19 of the Act on the Protection of Young People at Work, 15-year-olds are entitled to 30 days, 16-year-olds to 27 days, and 17-year-olds to 25 days of annual holiday.

Paragraph 8 – Prohibition of night work

Please see the information provided in previous reports. The legal position remains unchanged.

The Committee requests information on the proportion of young workers not covered by the ban on night work, including on the number of young workers employed in the above-mentioned sectors. The following information is provided in response:

In principle, young people may not be employed between 8 p.m. and 6 a.m. Section 14 of the Act on the Protection of Young People at Work provides an exhaustive list of activities and sectors where it may be permissible for young people to be employed in the evening after 8 p.m. or in the early morning before 6 a.m. The rules on the times permitted vary and depend on the special nature of the sector in question, the young person's age and the time of year. The Federal Government has no valid statistics on how many young people in the specified sectors regularly work in the evening or early morning.

The Committee asks for more detailed information on how the regulatory authorities monitor the possible illegal involvement of young workers in night work. The Committee wishes to know if sanctions are imposed in practice against employers who do not comply with the prohibition of night work and the restrictions provided under Sections 13 and 14 of the Act on the Protection of Young People at Work.

Compliance with the prohibition of night work is monitored by the occupational safety and health authorities of the *Länder*, as is the case for the other provisions of the Act on the Protection of Young People at Work. Please see the information provided in the sections of the report relating to Article 7, paragraphs 2 and 3.

Most *Länder* do not collect statistics on the type of infringement. However, some *Länder* have reported that they identified infringements of the prohibition of night work in 2016 and 2017. Depending on the seriousness of the infringement and the results of previous checks on the employer, oral and written warnings were issued, and administrative fine proceedings initiated.

Paragraph 9 – Regular medical examination

Please see the information provided in previous reports.

Article 8a of the Act to Strengthen Health Promotion and Prevention (*Gesetz zur Stärkung der Gesundheitsförderung und der Prävention*) of 17 July 2015 (Federal Law Gazette I

2015, 1368) amended Sections 37 and 39 of the Act on the Protection of Young People at Work. These sections specify the content and performance of medical examinations for young people before they enter working life and regulate the notification of the person possessing the right of care and custody of the young person of the results of the examination and the certification of the results for the employer. The amendment established that the doctor performing the examination must not only determine whether action is necessary to promote the individual's health, but also consider whether action is required to improve the individual's vaccination status. The amendment entered into force on 25 July 2015.

There is no change in the legal position otherwise.

Paragraph 10 – Special protection against physical and moral dangers

1. Protection of children and young people from sexual violence and exploitation

Protecting children and young people from sexual violence and exploitation remains a priority in the Federal Government's policies for children and young people.
In 2014, an overarching strategy to protect children and young people from sexual violence was published, building in part on the recommendations of the Round Table on the Sexual Abuse of Children in Relationships of Power and Dependency in Public and Private Institutions and Within the Family. The strategy aimed to bring about improvements in the fields of criminal law, criminal proceedings, the right to protection, advice and support for victims, and digital media. The measures set out in the strategy were largely implemented in the last electoral term.

For example, numerous improvements in the field of criminal law entered into force with the 49th Criminal Law Amendment Act (*49. Strafrechtsänderungsgesetz*) on 27 January 2016.

Additional measures to protect victims, especially child victims, during criminal proceedings were implemented in the Code of Criminal Procedure (*Strafprozessordnung*). Particular mention should be made here of the Third Victims' Rights Reform Act (*3. Opferrechtsreformgesetz*) of 21 December 2015 (Federal Law Gazette 2015 I no. 55), which introduced an entitlement to psychosocial assistance in court proceedings with effect from 1 January 2017 (Section 406g of the Code of Criminal Procedure). Psychosocial assis-

tance in court proceedings is an especially intensive form of non-legal assistance during and after the main hearing.

In addition, both the Federation and the *Länder* have taken various non-legislative measures during the reporting period to improve the protection of children and young people from sexual violence and exploitation.

The nationwide initiatives “You Can Do It!” (*Trau Dich!*) and “Schools Against Sexual Violence” (*Schule gegen sexuelle Gewalt*) focus on schools as important forums in terms of protection from sexual violence. As part of the “You Can Do It!” prevention initiative, run by the Federal Government and the Federal Centre for Health Education, children aged between 8 and 12 are educated about and empowered in their right to protection from sexual violence, in an age-appropriate manner, via individual partnerships with the *Länder*. By the end of 2018, the initiative will have reached around 54,000 children in ten *Länder*. The initiative also reaches out to parents and specialists, and the participating schools are put in touch with regional support and advisory services. The initiative is to be continued beyond 2018.

The nationwide “Schools Against Sexual Violence” initiative, which is run by the Independent Commissioner for Child Sex Abuse Issues in partnership with all 16 *Länder*, supports schools in developing strategies on protection from sexual violence. A specialised website provides practical guidance and information specific to the *Land* in question for head teachers and school staff. Between the autumn of 2016 and 2018, all general education schools received an information pack about the initiative and held a high-profile launch in the *Land* in question with press events or specialised conferences.

Improving the protection of girls and boys with disabilities from sexual violence in institutions is the aim of the nationwide pilot project “BeSt – Advise and Strengthen” (*BeSt - Beraten und Stärken*), which was launched in 2015. By the start of 2018, 65 (semi-)residential institutions which support people with disabilities had taken part in the pilot project. Skills development was provided for managers and staff, child protection strategies were developed or updated, and prevention training sessions were run for the girls and boys living in the institutions.

The Federal Government is also seeking to improve access to advice and support for people who experienced sexual violence in their childhood or youth. To this end, the Federal Coordination Office for Specialised Advisory Services to Prevent Sexual Violence in Child-

hood and Youth was set up in 2016. Specialised advisory services support and advise victims, relatives and institutions. The Coordination Office advocates for sufficient long-term funding for the specialised advisory services and for gaps in provision to be closed. Provision is currently not sufficient in rural areas and for vulnerable groups, in particular, such as people with disabilities or people with a migration background.

The Coordination Office channels the interests of the specialised advisory services as their political representative body, supports them at local level in their development and expansion, and advances the development of common quality standards.

To improve protection from sexual violence and exploitation in digital media, the Federal Government launched the “No Grey Areas on the Internet” network (*Keine Grauzonen im Internet*) in 2014 to combat all forms of sexual exploitation of children and drive forward the international prohibition of depictions which fall in the grey area. The grey area includes depictions of minors which do not cross the line to be considered criminal offences in every country, but which are disseminated for sexual purposes. These include depictions which already constitute criminal offences in Germany under Section 184b (1) no. 1 b and c of the Criminal Code (*Strafgesetzbuch*) (which deals with child pornography) and Section 184c (1) no. 1 b of the Criminal Code (juvenile pornography), as well as depictions which are impermissible in light of the law on the protection of young people in relation to media. The network is a forum for existing complaint offices, internet companies and the “Don’t Offend” network (*Kein Täter werden*) to support each other. The complaint offices receive alerts about depictions falling in the grey area, pass on content which constitutes a criminal offence or an offence under the law on the protection of young people in relation to media to investigating authorities and partner hotlines abroad, and contact service-providers to ensure the erasure of the content.

Finally, the coalition agreement between the CDU, CSU and SPD concluded on 12 March 2018 agreed to place the office of the Independent Commissioner for Child Sex Abuse Issues on a permanent footing, including the work of the Council of Victims and Survivors which is affiliated with it.

The following information is provided in response to the Committee’s question as to “whether all acts of sexual exploitation of children, including simple possession of child pornography, are criminalised under 18 years of age”:

Under Section 184b (1) no. 1 of the Criminal Code, whoever disseminates child pornography or makes it publicly accessible is liable to imprisonment from three months to five years. Materials constitute child pornography if they have as their subject sexual activity performed by, on or in the presence of a person under the age of fourteen (letter a), the depiction of a fully or partially unclothed child in an unnatural, sexually suggestive pose (letter b), or the depiction in a sexually suggestive manner of a child's unclothed genitals or buttocks (letter c).

Section 184b (3) of the Criminal Code criminalises the possession or attempt to obtain possession of child pornography reproducing an actual or realistic activity. The law provides for penalties of up to three years' imprisonment or a fine.

The dissemination of juvenile pornography and making it publicly accessible also constitute criminal offences. Under Section 184c (1) no. 1 of the Criminal Code, they are punishable by up to three years' imprisonment or a fine. Materials constitute juvenile pornography if they have as their subject sexual activity performed by, on or in the presence of a person aged fourteen or over but under the age of eighteen (letter a), or the depiction of a fully or partially unclothed person aged fourteen or over but under the age of eighteen in an unnatural, sexually suggestive pose (letter b).

The possession or attempt to obtain possession of juvenile pornography is punishable under Section 184c (3) of the Criminal Code if the material reproduces an actual activity. The law provides for penalties of up to two years' imprisonment or a fine.

Sexual abuse of children (persons under the age of fourteen) is regulated by Section 176 et seq. of the Criminal Code. Under Section 176 (1) and (2) of the Criminal Code ("Sexual abuse of children"), the potential penalties for the basic offence range from six months' to ten years' imprisonment. In special aggravating circumstances, the potential penalties are significantly more severe, in accordance with the provisions of Section 176a of the Criminal Code ("Aggravated sexual abuse of children") and Section 176b of the Criminal Code ("Sexual abuse of children causing death").

Sections 180 and 182 of the Criminal Code set out specific criminal offences to protect young people (persons under the age of eighteen) from sexual abuse and sexual exploitation.

German criminal law provides children and young people with comprehensive protection from sexual exploitation by criminalising the sexual abuse of children and young people, on the one hand, and criminalising the indirect promotion of abuse by child and juvenile pornography, on the other.

In partnership with ECPAT (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes) Deutschland e.V., the Federal Government has developed a Federal Cooperation Strategy on Protection and Assistance regarding Child Trafficking and Exploitation. It sets out recommendations for coordinated cooperation and guidance on the protection of minor victims of human trafficking. The recommendations were drawn up in partnership with experts and practitioners in an intensive consultation process.

The strategy's aim is to offer children and adolescents adequate protection from trafficking and exploitation, to support victims and to ensure effective prosecution, while at the same time avoiding the potential for the victims to be traumatised or victimised further. To this end, structured cooperation is to be used to develop or expand organisational and communicative structures in Germany which facilitate long-term, formalised cooperation and partnership between the specialised stakeholders at local level.

A coordinated cooperation mechanism is intended to help to enhance the identification of victims and enable adequate protective measures to be taken more rapidly. A joined-up cooperative approach is intended to spare children and adolescents from having to deal with various institutions at unnecessary length. In addition, consistent implementation and application of the provisions on the protection of victims facilitates more sensitive handling of criminal cases.

In this context, all forms of exploitation which have been criminalised as human trafficking since the Act Implementing Directive 2011/36/EU (*Gesetz zur Umsetzung der Richtlinie 2011/36/EU*) was introduced in the autumn of 2016 are to be taken into account: exploitation in connection with prostitution or other forms of sexual exploitation; labour exploitation; exploitation in connection with begging, criminal activities, slavery or practices similar to slavery; servitude; and human trafficking for the purpose of the removal of organs.

The Committee notes that the Residence Act makes the provision of residence permits to victims of trafficking, including children, conditional on their cooperation with the law enforcement authorities. It recommends that the State party revise its Residence Act in order to remove any conditions linked to the provision of residence permits to child victims of

trafficking. The Committee asks what follow up has been given to these observations. The following information is provided in response:

Section 25 (4a) of the Residence Act (*Aufenthaltsgesetz*) contains a special humanitarian provision concerning the issuing of residence permits to victims of human trafficking. It stipulates that a permit is to be issued if, among other things, the victim has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence committed against him or her.

However, victims of human trafficking may also be issued residence permits on the basis of other provisions, irrespective of their participation in criminal proceedings. Minors who are victims of human trafficking, in particular, may be issued a permit under Sections 23a and 25 (4) or (5) of the Residence Act, for example. In addition, it is possible for health grounds to constitute an obstacle to deportation under Section 60a of the Residence Act. If such an obstacle exists, the deportation is to be suspended for the duration of the health condition in question, and a temporary suspension of deportation (*Duldung*) is to be issued.

The following information is provided in response to the Committee's request for information about what measures are taken to assist street children who are victims of trafficking:

Child and youth services provided under Book VIII of the Social Code (*Sozialgesetzbuch*) are, in principle, available to all children and young people in Germany, and include a variety of different services. These services take into account the different life situations and needs of the children and young people in question.

A wide spectrum of individual forms of assistance in bringing up children make it possible to tailor assistance to the needs of the specific case. One temporary measure for the protection of children and young people, including street children, is taking them into care, which is regulated by Section 42 of Book VIII of the Social Code.

Article 8 – Right of employed women to protection
Paragraph 1 – Maternity leave

There have been changes to the legal situation regarding the right to maternity leave during the reporting period. A reform of Germany's legislation on the protection of working

mothers was promulgated in the Federal Law Gazette on 23 May 2017 (Federal Law Gazette I, p. 1228). The new legislation is entering into force in several stages.

First stage:

- Since the reform's promulgation in May 2017, it has been the case that the statutory period of maternity leave following the birth of a child with a disability is extended from eight to twelve weeks, upon request, because in many such cases the birth is associated with special physical and psychological stress for the mother.
- A new period of protection against dismissal has been introduced for women who miscarry after the twelfth week of pregnancy.
- In addition, the provisions on health protection have been adapted to reflect the standards enshrined EU law, for example on the labelling of hazardous substances.
- The reform has also brought about a significant improvement in the financial protection of self-employed women with private health insurance during maternity leave. An amendment to the Insurance Contract Act (*Versicherungsvertragsgesetz*) which entered into force on 11 April 2017 stipulates that they must receive the agreed daily sickness benefit during the pre-natal and post-natal maternity leave periods and for the day of the birth as compensation for their loss of earnings if they have taken out private sickness benefit insurance.

The remaining stages of the reform of the legislation on the protection of working mothers are entering into force as follows:

- Second stage – Replacement of the previous Act on the Protection of Working Mothers (*Mutterschutzgesetz*) and the Ordinance on the Protection of Mothers at Work (*Verordnung zum Schutze der Mütter am Arbeitsplatz*) with the new Act on the Protection of Working Mothers on 1 January 2018.

- Third stage – Entry into force of an administrative fine provision on 1 January 2019.

When it comes to the right to maternity benefits (including maternity benefit (*Mutterschaftsgeld*)), there have been no changes to the previous legislation on the protection of working mothers. The Act on the Protection of Working Mothers applies to all (expectant) mothers in employment as well as to those who work from home and those with equivalent status. 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 before and after the birth (known as maternity leave) totals a minimum of 14 weeks.

Maternity leave begins six weeks before the birth (Section 3 (2) of the Act on the Protection of Working Mothers, former version) and usually ends eight weeks or, following a pre-term birth for medical reasons or multiple births, twelve weeks after delivery (Section 6 (1) of the Act). Following a pre-term birth or any other premature delivery, maternity leave is extended 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 maternity leave 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 maternity leave after childbirth is absolute. Women are not permitted to work during this time even if they are willing to do so. In exceptional cases, following the death of their child and if they expressly wish it, women may return to work before the end of the post-natal 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 statutory health insurance during maternity leave (Sections 13 and 14 of the Act on the Protection of Working Mothers, former version). The amount of benefit is based on their average wage in the last three months preceding the start of the statutory leave period. The health insurance fund pays a maximum of 13 euros per calendar day, and the employer pays, for the duration of the maternity leave, the difference between that and the woman’s average net wage. For other women (e.g. those who are unemployed and receiving benefits under Book III of the Social Code, or self-employed persons with sickness benefit insurance), maternity benefit is calculated in the same way as sickness benefit.

Women without health insurance receive maternity benefit from the Federal Government in accordance with the requirements relating to maternity benefit in Book V of the Social Code, up to a maximum of (one single payment of) 210 euros, if they are employed when their maternity leave begins, if they work from home or if their contract of employment has been lawfully terminated by their employer during their pregnancy.

Paragraph 3 – Time off 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 Section 7 of the

Act on the Protection of Working Mothers (former version): 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 breast-feeding area close to her place of work, one period of at least 90 minutes is to 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 as a result of 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 – Right of the family to social, legal and economic protection

In addition to the information provided in the last report on the definition of the term “family” in domestic law, please note that the Act Introducing the Right to Marry for Persons of the Same Sex (*Gesetz zur Einführung des Rechts auf Eheschließung für Personen gleichen Geschlechts*) of 27 July 2017, Federal Law Gazette I, p. 2787, has enabled same-sex couples, who constitute a family if they have a child, to marry since 1 October 2017. Existing civil partnerships can be converted into marriages; no new civil partnerships can be formed.

Reform of family court procedures

As there have been no procedural changes since the last report, please see the information provided in that report.

The results of the reform of non-contentious jurisdiction are still being examined as part of an evaluation process. An outcome is not expected before the end of 2018.

Protection against violence

The Act on Civil Law Protection against Violent Acts and Stalking (*Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen*), which entered into force on 1 January 2002, has proved its worth in practice.

Since 1 September 2009, judicial responsibility for matters relating to protection from violence, which had previously been shared between various courts, has been concentrated on the family courts, with the aim of putting all forms of recorded acts of violence or harassment into the hands of their judges, with proceedings subject to rules of procedure characterised by the principle of *ex-officio* investigation.

Since 10 March 2017, it has been an offence not only to violate an injunction issued to provide protection against violence, but also to violate a settlement confirmed by the court.

In addition, the courts are legally required to inform without delay the relevant police authorities, and other public bodies affected by the implementation of the measures, of any injunctions or settlements confirmed by the courts which contain measures pursuant to the Act on Civil Law Protection against Violent Acts and Stalking. The intention here is to ensure that the victim receives effective protection during enforcement as a result of information being shared between the relevant state bodies. This facilitates efforts to prevent violence, as the authorities are able to take any necessary emergency measures, while complying with the court order, should further attacks be threatened.

Detailed statistical data since 2006 shows that there has been a moderate increase in court proceedings under the Act on Civil Law Protection against Violent Acts and Stalking.

In 2016, 47,146 cases under the Act on Civil Law Protection against Violent Acts and Stalking passed through the local courts. This suggests that there has been a slight decrease in the number of cases in comparison with the last report (2012: 47,623 cases).

In its Conclusions, the Committee requested information on the outcome of the reform carried out in September 2009, in particular with regard to the transfer to family courts of jurisdiction for cases relating to protection from violence.

An evaluation was completed at the start of 2018. The transfer of jurisdiction to the family courts has proved its worth.

Article 17 – 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 Section 1600 (1) no. 5 of the Civil Code (*Bürgerliches Gesetzbuch*) to be unconstitutional, 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 residence of the child or one of the parents. As foreigners authorities in the *Länder* have repeatedly reported that they are seeing an increase in acknowledgements of paternity intended specifically to give foreign children, acknowledging parties or mothers and, where applicable, their other children a right of residence to which they would not otherwise be entitled as the law stands, the Act to Improve Enforcement of the Requirement to Leave the Country (*Gesetz zur besseren Durchsetzung der Ausreisepflicht*) (Federal Law Gazette I, p. 2780) of 29 July 2017 introduced a review process before an acknowledgement of paternity is recorded for cases where there are concrete grounds for suspecting an improper use of acknowledgement of paternity. At the same time, it was clarified in Section 1597a (1) of the Civil Code that paternity may not be acknowledged for the specific purpose of creating the conditions for authorised residence for the child, the acknowledging party or the mother. However, if the acknowledging party is the biological father of the child in question, the acknowledgement cannot be deemed improper (Section 1597a (6) of the Civil Code).

Adoption law

The European Convention on the Adoption of Children (Revised) of 27 November 2008 entered into force for Germany on 1 July 2015. It replaces and modernises the 1967 European Convention on the Adoption of Children – to which the Federal Republic of Germany is a signatory – and gives greater consideration to the child’s best interests. The European Convention on the Adoption of Children (Revised) establishes a framework for the national legislation of the member States.

Guardianship and curatorship

A comprehensive reform of the law on guardianship, curatorship and adult guardianship is to be undertaken. Inadequate care for the person of the child, in some respects, had already led to an amendment of the legislation on guardianship in 2011 (see the last report). Now a comprehensive reform of the law on guardianship is to be undertaken in order to

strengthen care for the person of minors and modernise the provisions on care for the property of the child which apply to the guardian, in particular. A bill is currently being prepared.

Inheritance rights

The European Court of Human Rights (ECHR) found against Germany in three individual cases (judgments of 9 February 2017 (no. 29762/10) and of 23 March 2017 (no. 59752/13 and no. 66277/13)) because of impermissible discrimination against children born outside marriage in terms of inheritance rights. As a result of the cut-off date introduced by the Second Act for Equal Inheritance Rights for Children Born Outside of Marriage (*Zweites Gesetz zur erbrechtlichen Gleichstellung nichtehelicher Kinder*) (see the last report), certain children born outside marriage have no statutory right to inherit from their father if they were born before 1 July 1949 and their father died before 29 May 2009. The Federal Court of Justice regards as lawful a purposive extension in individual cases of the cut-off date criticised by the ECHR (decision of 12 July 2017 – IV ZB 6/15). The Federal Government is still examining the implications of the ECHR's most recent judgments at present.

Protection of child victims and witnesses during criminal proceedings

Protecting child victims, in particular, during criminal proceedings remains an important political aim. Many pieces of legislation in recent years have served to further boost the protection of child victims, above all.

The protection of victims was most recently strengthened by the Third Victims' Rights Reform Act of 21 December 2015. This law transposed the Victims' Rights Directive (Directive 2012/29/EU) into national law and enshrined psychosocial assistance in court proceedings in law.

As the Code of Criminal Procedure already offered a high standard of protection for victims even before the entry into force of the Victims' Rights Directive (see also the information provided in the last report), the Directive's transposition only required isolated changes at federal level, all of which also benefit child victims in criminal proceedings. The changes included, for example, the new provision in Section 48 (3) of the Code of Criminal Procedure as a central starting point for determining which aggrieved parties are especially vulnerable and therefore require special protective measures. The following circumstances can justify certain protective measures under Section 48 (3), second sentence, of the

Code: the imminent risk of serious detriment to the well-being of the witness may require measures under Section 168e of the Code (“Examination of witnesses separately from those entitled to be present”) or Section 247a of the Code (“Ordering the examination of witnesses by audio-visual link-up”). The witness’s overriding interests meriting protection may make it necessary to exclude the public under Section 171b (1) of the Courts Constitution Act (*Gerichtsverfassungsgesetz*). It is also necessary to examine at all times whether it is possible to avoid asking non-essential questions concerning the witness’s personal sphere of life under Section 68a (1) of the Code. In addition, Section 158 of the Code stipulates that the aggrieved party must receive written acknowledgement of the information he or she has provided about a criminal offence. The acknowledgement should contain a short summary of the information supplied by the aggrieved party regarding the time and place where the crime occurred and the nature of the reported crime (Section 158 (1), third and fourth sentences, of the Code). If the aggrieved party does not have sufficient command of the German language, the written acknowledgement must be translated into a language he or she understands (Section 158 (4) of the Code).

Furthermore, the engagement of interpreters for examinations of the aggrieved party by the police and the public prosecution office is expressly regulated in Section 163 (3) of the Code of Criminal Procedure (examination by the police) and Section 161a (5) of the Code (examination by the public prosecution office). An addition to Section 397 of the Code also clarified that private accessory prosecutors have a right to translation of the documents necessary for them to exercise their rights (Section 397 (3) of the Code). Finally, the rights of aggrieved parties to receive information enshrined in Sections 406i – 406l of the Code, which are also of great importance for child witnesses, have been expanded and structured more clearly. The aggrieved party’s rights to obtain information under Section 406d of the Code have also been expanded.

Psychosocial assistance in court proceedings is regulated by Section 406g of the Code and the Act on Psychosocial Assistance in Court Proceedings (*Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren*).

It is a particularly intensive form of non-legal assistance before, during and after the main hearing, and encompasses qualified assistance, the provision of information and support in criminal proceedings. From a victim protection perspective, psychosocial assistance in court proceedings represents a milestone, as it can significantly reduce the stress caused by criminal proceedings for the victim. The provisions are flanked by cost regulations in the Court Costs Act (*Gerichtskostengesetz*).

The needs of children and young people, in particular, were taken into consideration in the creation of the provisions on psychosocial assistance in court proceedings. Children and young people who are victims of serious violent or sexual offences therefore have a legal entitlement to psychosocial assistance in court proceedings free of charge (persons defined in Section 397a (1) nos. 4 and 5 of the Code of Criminal Procedure). Adult victims of serious violent or sexual offences (persons defined in Section 397a (1) nos. 1 and 3 of the Code) or family members of a person killed by an illegal act (persons defined in Section 397a (2) no. 2 of the Code) may also receive psychosocial assistance in court proceedings free of charge if the court takes that view that this is necessary in the individual case.

Penalties imposed in the case of convictions under juvenile criminal law

Following on from the last report, the tables below contain information on the penalties imposed under juvenile criminal law. They show the youth custodial sentences imposed, as well as socio-educational measures and means of correction.

Table 1 shows the total number of convictions as well as the penalties imposed. Figures for 2017 are not yet 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

		Convictions under juvenile criminal law (a = youth custodial sentence, b = means of correction, c = socio-educational measures)	Total no. of imposed:	

Year		Total	disaggregated by most severe penalty			disaggregated by individually or jointly imposed penalties							means of correction	socio-educational measures
			a	b	c	only a	a, b and c	a and b	a and c	only b	b and c			
2016	t	61 728	10 033	43 901	7 794	9 126	106	629	172	28 562	15 339		44 636	23 411
	m	51 413	9 325	36 058	6 030	8 494	96	580	155	23 207	12 851		36 734	19 132
	f	10 315	708	7 843	1 764	632	10	49	17	5 355	2 488		7 902	4 279
2015	t	65 342	10 550	47 035	7 757	9 498	151	712	189	30 898	16 137		47 898	24 234
	m	54 200	9 760	38 403	6 037	8 779	143	667	171	24 923	13 480		39 213	19 831
	f	11 142	790	8 632	1 720	719	8	45	18	5 975	2 657		8 685	4 403
2014	t	72 094	11 772	51 569	8 753	10 712	147	689	224	34 659	16 910		74 557	26 088
	m	60 122	10 967	42 301	6 854	9 985	137	637	208	28 113	14 188		61 464	21 432
	f	11 972	805	9 268	1 899	727	10	52	16	6 546	2 722		13 093	4 656
2013	t	81 737	13 187	59 129	9 421	12 368	167	381	271	41 101	18 028		85 547	27 948
	m	68 398	12 271	48 774	7 353	11 513	161	350	247	33 578	15 196		70 866	23 010
	f	13 339	916	10 355	2 068	855	6	31	24	7 523	2 832		14 681	4 938
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.) – *Strafverfolgung* (Prosecutions), Tables 2.3 and 4.3
Up to 2006 the figures refer to the former territory of the Federal Republic of Germany, including the whole of Berlin

Table 2 provides more detailed information on youth custodial sentences imposed and their duration, and on the extent to which their execution was subject to probationary suspension. Figures for 2017 are not yet available. It should be noted that figures for the whole of the Federal Republic of Germany have been published only since 2007.

Table 2: Total convictions resulting in youth custodial sentences and duration of the sentence

Absolute figures

Year		Duration of the youth custodial sentence												
				6 month minimum sentence		more than… up to and including… 6 - 9 months		9 mths - 1 yr		1 - 2 years		2 - 3 years	3 - 5 years	5 - 10 years
		Total	Sus-pended	Total	Sus-pend-ed	Total	Sus-pend-ed	Total	Sus-pended	Total	Sus-pended			
2016	t	10 033	5 914	1 226	1 066	1 662	1 358	2 043	1 485	3 621	2 005	994	415	72
	m	9 325	5 401	1 074	926	1 492	1 215	1 884	1 364	3 419	1 896	976	408	72
	f	708	513	152	140	170	143	159	121	202	109	18	7	0
2015	t	10 550	6 383	1 308	1 117	1 767	1 466	2 098	1 580	3 847	2 220	980	467	83
	m	9 760	5 804	1 143	973	1 611	1 335	1 931	1 452	3 584	2 044	948	461	82
	f	790	579	165	144	156	131	167	128	263	176	32	6	1
2014	t	11 772	7 222	1 494	1 297	1 928	1 621	2 423	1 850	4 234	2 454	1 074	547	72
	m	10 967	6 635	1 338	1 162	1 746	1 464	2 214	1 692	4 015	2 317	1 044	541	69
	f	805	644	156	135	182	157	209	158	219	137	30	6	3
2013	t	13 187	7 991	1 692	1 470	2 117	1 783	2 656	1 976	4 811	2 762	1 281	564	66
	m	12 271	7 321	1 502	1 301	1 904	1 603	2 444	1 824	4 545	2 593	1 253	558	65
	f	916	630	190	169	213	180	212	152	266	129	28	6	1
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	25	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 m f	16 641 15 495 1 146	10 106 9 320 786	2 654 2 389 265	2 193 1 975 218	2 886 2 652 234	2 278 2 087 191	3 454 3 193 261	2 461 2 273 188	5 723 5 393 330	3 174 2 985 189	1 327 1 286 41	514 504 10	83 78 5
2004	t m f	17 419 16 265 1 154	10 823 9 980 843	2 798 2 516 282	2 364 2 127 237	3 045 2 801 244	2 452 2 246 206	3 728 3 455 273	2 720 2 519 201	5 881 5 564 317	3 287 3 088 199	1 364 1 337 27	507 496 11	96 96 -
2003	t m f	17 288 16 080 1 208	10 642 9 784 858	2 633 2 361 272	2 182 1 951 231	3 042 2 777 265	2 426 2 227 199	3 673 3 392 281	2 638 2 437 201	5 955 5 619 336	3 396 3 169 227	1 392 1 352 40	490 478 12	103 101 2

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

Young people in remand detention

No information is available regarding the Committee's question as to the number of cases in which a court order extending the remand detention of young people was issued and how the issue of proportionality was dealt with.

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 people in remand detention in Germany as at 31 March 2016 totalled 408, 39 of whom were female. These figures had gone down considerably in recent years (2008: 558 / 2009: 435 / 2010: 468 / 2011: 405 / 2012: 358 / 2013: 348 / 2014: 338/ 2015: 319 – as at 31 March in each case) and have now risen again for the first time. No current information is available on the duration and location of remand detention for young people in prison custody.

Protection against the misuse of information technologies

The Committee wishes to receive updated information regarding measures taken in law and in practice to combat sexual exploitation of children through the use of internet technologies, such as by providing that internet service providers be responsible for controlling the material they host and encouraging the development and use of the best monitoring system for activities on the net. The following information is provided in response:

There has been a significant change and increase in the requirements which have to be met by an effective system to protect children and young people in relation to media as a result of the rise in mobile and non-stop use of digital services. Major changes to the law are needed to continue to ensure effective protection of children and young people.

As set out in the coalition agreement for the current electoral term and the Federation-*Länder* key issues paper on the “Protection of Children and Young People in Relation to Media as a Task for Youth Policy” adopted by the Conference of Ministers for Youth and Family Affairs on 3 – 4 May 2018, the forthcoming modernisation of the legislation on the protection of children and young people in relation to media, including new technical possibilities, is to consider, in particular, the interaction risks arising from the social web, such as cyber-grooming, and the spread of sexual violence.

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

Paragraph 1 – Assistance and information on migration

Migrants who are lawful permanent residents of Germany and, since October 2015, asylum applicants with a good chance of being allowed to stay have both rights and responsibilities with regard to integration. They therefore receive access to state integration measures. Alongside integration courses, which are the main state measure to teach participants German and impart German values to them, migrants can also access migration advisory services. The Federal Ministry of the Interior, Building and Community is responsible within the Federal Government for adult migrants.

The Federal Office for Migration and Refugees (BAMF) offers information materials on residence and integration in Germany free of charge. It makes leaflets available for download on its website and provides useful contact addresses relating to important areas of life. In addition, its telephone advice service can be contacted with regard to issues relating to migration, integration and naturalisation.

<u>Developments during the reporting period</u>

In view of the heightened need for integration caused by the rise in immigration by people seeking protection in 2015, additional financial and human resources have since been made available for integration courses, which have been adapted to reflect the new challenges.

Given the rise in the number of refugees arriving in Germany and the resulting change in the structure of those attending the integration courses, more focus is now placed on imparting values, in particular. The orientation course, which forms part of the integration course, was increased from 60 to 100 lessons in August 2016.

In addition to the longstanding literacy course, since March 2017 there has also been a course for those learning a second alphabet, targeting those who are literate in their first language but unfamiliar with the Latin alphabet.

With effect from 1 July 2016, the cost reimbursement rate for providers running integration courses was raised. For every 45-minute lesson, the Federal Office for Migration and Refugees now pays a cost reimbursement rate of 3.90 euros per participant to the course provider. At the same time, the minimum remuneration for the teachers was increased from 23 euros to 35 euros.

The following information is provided in response to the Committee's question on the contribution to costs to be paid by integration course participants:

A general integration course with 700 lessons (600 language lessons and 100 lessons for the orientation course) costs a total of 2,730 euros per participant (as at: 22 August 2018). Participants must pay the Federal Office for Migration and Refugees a contribution to these costs, and this is 50 per cent of the cost reimbursement rate at the time of registration with the integration course provider.

The contribution to costs is currently 1.95 euros per lesson. In the case of an integration course with 700 lessons, this amounts to a contribution of 1,365 euros per participant.

In addition, courses are offered for specific target groups (literacy courses, courses for those learning a second alphabet, integration courses for parents, for women and for young people, catch-up courses), which can consist of up to 1,000 lessons (900 language lessons and 100 lessons for the orientation course); in this case, a participant's contribution to costs can reach up to 1,950 euros.

In addition, course participants can repeat individual units of the language course at their own expense or continue the course at their own expense if they have reached the maximum funding duration of 1,200 lessons.

Participants who receive benefits under Book II of the Social Code, cost-of-living assistance under Book XII of the Social Code or benefits under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) may, on request, be exempted by the Federal Office for Migration and Refugees from paying any contribution to the costs. In addition, participants

for whom the requirement to pay a contribution to the costs represents an unreasonable hardship, in view of their personal and economic situation, may, on request, be exempted by the Federal Office for Migration and Refugees from paying it.

Participants who have duly attended the lessons and who pass the integration course's final examination within two years after receiving their certificate of eligibility to attend the course may, on request, have half of their contribution to the costs reimbursed by the Federal Office for Migration and Refugees.

The following information is provided in response to the Committee's request for confirmation of its understanding that temporary residents, such as posted workers, are not entitled to participate in an integration course:

The aim of the integration courses is to enable immigrants to participate in all areas of everyday life in German society. For this reason, the integration course is targeted at migrants who are lawful permanent residents of Germany. Migrants are assumed to be permanent residents if they receive a residence permit for at least one year or have held a residence permit for more than 18 months, unless their residence in Germany is limited in time from the outset.

The following information is provided in response to the Committee's question as to whether there are costs involved for EU migrants and German nationals wishing to take part in integration courses, and how much these are:

The contribution to the costs set out above also applies to EU migrants and German nationals who are permitted to attend an integration course if there are places available because they do not have a sufficient command of the German language and they have particular integration needs.

EU migrants and German nationals who receive benefits under Book II of the Social Code or cost-of-living assistance under Book XII of the Social Code and who are given permission to attend an integration course may, on request, be exempted by the Federal Office for Migration and Refugees from paying any contribution to the costs – for example, if it is especially difficult for them to find the money to pay the contribution.

The following information is provided in response to the Committee's question regarding the precise nature of the sanctions in the event of an infringement of the obligation to attend an integration course:

The foreigners authorities, the institutions providing basic income support for jobseekers or institutions providing benefits under the Asylum Seekers Benefits Act may require migrants to attend integration courses. To allow these authorities and institutions to react to infringements of this requirement, a range of potential sanctions reflecting the varying severity of the infringement have been introduced, in line with the principle that with rights come responsibilities.

Passing the integration course's final examination serves as evidence of the sufficient command of the German language and the basic knowledge of Germany's legal and social system which are required for a permanent settlement permit to be issued. Furthermore, passing the German Test for Migrants results in a one-year reduction in the eight-year period before an individual is entitled to naturalisation. In the event of an infringement of obligations or non-attendance, the foreigners authorities draw attention to the implications for the individual's residence.

Migrants who receive benefits under Book II of the Social Code can, in the case of non-attendance or an infringement of their obligations, face a 30% reduction in these benefits, and further reductions in the event of repeated infringements.

Migrants who receive benefits under the Asylum Seekers Benefits Act risk losing these benefits in the event of non-attendance or an infringement of their obligations. In such cases, individuals generally only receive benefits in kind to meet their need for food and accommodation, including heating, as well as personal care and health care.

Furthermore, participants with an obligation to attend can, if they infringe this obligation, be charged the estimated course fee in advance. Normally, participants are only charged the contribution to the costs for one unit at a time. In addition, an administrative fine may be imposed, and measures for the enforcement of administrative decisions may be taken.

In addition, in the case of repeated and gross infringements of the attendance obligation, it is also possible, in certain circumstances, for the residence permit not to be renewed.

<u>Migration advisory service</u>

The Migration Advisory Service for Adult Immigrants, which falls under the purview of the Federal Ministry of the Interior, Building and Community, is an advisory service which complements the integration course and is aimed, in principle, at migrants aged 27 and over.

The following information is provided in response to the Committee's request for information regarding usage statistics:

The usage statistics for the Migration Advisory Service for Adult Immigrants have shown a significant increase for several years. The figures during the reporting period are as follows:

	2014	2015	2016	2017
Number of cases where advice is provided	175,508	205,578	259,592	301,417
Persons advised (incl. family members)	271,500	321,000	401,657	525,743
Case management cases	48,423	60,600	77,123	89,660
Staff positions (full-time)	477	592	726	812
Number of cases where advice is provided per full-time staff position	1:368	1:347	1:357	1:371

The breakdown of advice seekers by gender shows that in 2017 more men (56.7%) than women (43.3%) sought advice from the Migration Advisory Service for Adult Immigrants. This consolidates the previous year's trend (in 2016, 53.5% of advice seekers were men and 46.5% women). In 2015 and the preceding years, women outnumbered men.

In 2017, 83.5% of all advice seekers were aged 27 and above. 16.5% of advice seekers are under the age of 27. Although adolescents and young adults are primarily advised and assisted by the youth migration services, people under the age of 27 nonetheless also consult the Migration Advisory Service for Adult Immigrants, for example if there is no youth migration service near them or if they have questions about a specific topic which normally forms part of the advisory services for adults (e.g. young parents' questions relating to bringing up their children). The breakdown by age group reflects the trends in previous years.

Regarding nationality/citizenship, the picture for 2017 is as follows: a total of 63,971 advice seekers came from the European Union, i.e. 21.2% of the total. A far higher percentage (30.2%) was accounted for by advice seekers from Syria (90,987 people). Meanwhile, the

number of advice seekers from the successor states of the former Soviet Union (the Russian Federation, Ukraine, Kazakhstan, Belarus and others) declined to 10.3% (from 12.1%) or 31,183 people. Advice seekers from Turkey accounted for 5.6% (16,738 people). During the 2014 to 2017 reporting period, the number of advice seekers from the European Union remained roughly constant at between 20% and 30%. The balance between these groups has been transformed by the large number of refugees arriving in Germany in 2015 and the opening of the Migration Advisory Service for Adult Immigrants to asylum applicants with a good chance of being allowed to stay. For example, in 2014 the proportion of advice seekers from Syria was just 4.9%, while 12.5% of advice seekers came from Turkey.

The following information is provided in response to the Committee's request for an impact assessment:

A research report published by the Research Centre of the Federal Office for Migration and Refugees in 2015 (Research Report 25 – "Ten Years of the Migration Advisory Service for Adult Immigrants: Achievements, Impacts and Potential from the Clients' Perspective") shows that the Migration Advisory Service for Adult Immigrants plays an important role in the integration process of its clients and is regarded very positively by them. For example, in acute problematic situations it can provide vital support and help to develop potential solutions. In addition, the Migration Advisory Service for Adult Immigrants not only helps to ensure its clients are better informed, but also contributes to a welcoming environment, in part because communication (usually in the client's native language) is seen as "very good", and because great progress has been made on intercultural openness at the Migration Advisory Service for Adult Immigrants. The integration process benefits from the cooperation/integration of the Migration Advisory Service for Adult Immigrants and the youth migration services, especially in their shared task of "advising families". The specially developed recommendations for action were evaluated in 2016 (by INTERVAL GmbH and INBAS GmbH), and the results were positive.

In 2017, 56.6% of advice seekers were found to need support in terms of their language skills, 40.7% of whom were referred to a suitable language course. 5.5% of the advice seekers who were receiving benefits under Books III or II of the Social Code at that point in time were found to need skills development; 16.4% of them were referred to and subsequently took part in a vocational skills development programme. 64.5% of advice seekers were receiving benefits under Book II of the Social Code when they first consulted the mi-

gration advisory service; this proportion declined to 44.8% by the end of the period of advice and support.

Additionally, the results of evaluations in past years confirm that successful integration is significantly more likely if efficient structures, networks and cooperation are in place with regular services and institutions supporting occupational and social integration. For example, cooperation with specialised and regular services improved a living situation which was precarious in economic, family, health or psychosocial terms in 33.1% of the registered case management cases in 2017. Without this type of cooperation, this was achieved in just 2.8% of cases.

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

Regarding the Committee's question about the circumstances in which help may be given to migrants upon reception to assist them to overcome problems, such as short-term accommodation, illness, shortage of money and adequate health measures, the Federal Government's position is as follows:

The original contribution to the last report still applies. It should be added that benefits under Section 24 (5) of Book II of the Social Code can be provided in the form of a loan to assist foreign nationals in overcoming problems, such as short-term accommodation, illness, shortage of money and adequate health measures, which they may face despite having provided evidence that they have adequate means of subsistence and health insurance.

Paragraph 3 – Cooperation between social services of emigration and immigration states

There have been no changes since the last report.

Paragraph 4 – Equality regarding employment, right to organise and accommodation

Under the General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz*), distinctions on the basis of nationality are unproblematic, provided that they do not mask a difference in treatment on the basis of ethnic origin. The provisions of social law which tie the scope of social legislation to nationality are unaffected by anti-discrimination law.

The Federal Anti-Discrimination Agency is therefore unable to provide information relating to Article 19, paragraph 4, of the European Social Charter.

Responsibility for legislation to promote social housing rests with the *Länder*. While the details may vary from one *Land* to another, the following principles underpin the funding of social housing in general:

Funding for social housing aims to support households whose own resources are insufficient to pay for adequate housing on the market. It consists, in particular, of the provision of affordable rented housing and support for the creation of owner-occupied residential property.

Allocation restrictions and rent controls are established in the framework of funding for rented housing. The funding recipients are housing companies, cooperatives and individual house-builders, for example.

A key factor in eligibility for social rented accommodation is meeting certain income limits, which are calculated on the basis of the size of the household. When calculating income, flat-rate amounts are deducted for children and people with a severe disability within the household. Those eligible are issued a certificate of eligibility for social housing.

The certificate of eligibility is issued by the competent authorities if the applicable income limits are not exceeded. People are entitled to be issued a certificate of eligibility if they meet the relevant criteria. No distinctions are made on the basis of nationality or ethnicity.

The funding recipients receive concessional loans or subsidies, particularly for the construction and modernisation of rented accommodation; it is also possible for building land to be provided at reduced rates and for various types of guarantee to be given. In return, funding recipients undertake to charge lower levels of rent on the subsidised accommodation and only to let it to households with a certificate of eligibility for social housing. In principle, it is up to landlords to choose the tenants from the pool of eligible people; they are required to comply with the ban on discrimination enshrined in the General Act on Equal

Treatment.

When it comes to funding for owner-occupied residential property, the funding recipients and beneficiaries are identical. This type of funding is particularly suited to households with two or more children, provided that the specified income limits are met.

Vocational training

Germany's vocational training system is, in principle, open to everyone, provided that the individual is going through the asylum application process and meets the required criteria (e.g. sufficient command of the German language). For example, it is possible to receive a residence permit to attend in-company or school-based vocational training. In addition, the "3+2 provision" allows even rejected asylum seekers to remain in Germany for the duration of a vocational training programme and thus to complete their vocational training. This provision gives people the option to work in Germany for a further two years after completing their vocational training.

It is also possible for foreign professional qualifications to be recognised. Anyone who has obtained a state-recognised professional qualification abroad and who wishes to work in Germany can apply for recognition of this qualification in Germany, regardless of nationality or residence status. The equivalency review compares the foreign qualification with the equivalent German qualification (German reference occupation). The recognition process enables migrants to obtain information about any knowledge gaps or skills and capabilities they lack; allows them to give employers, in particular, a more transparent overview of their foreign qualifications; and opens up new development prospects for them, such as access to upgrading training.

Equal treatment in respect of remuneration and other employment and working conditions

The Committee recalls that it is not enough for a government to demonstrate that no discrimination against migrant workers exists in law alone but also that it is obliged to demonstrate that it has taken adequate practical steps to eliminate all legal and de facto discrimination concerning remuneration and other employment and working conditions. The Federal Government's position is as follows:

In Germany, the same protective provisions in labour law apply in principle to migrant workers, if they are employees, as to all other employees.

In addition, the General Act on Equal Treatment prohibits discrimination in relation to employment and working conditions, including remuneration, on grounds of race, ethnic origin, gender, belief, disability, age or sexual identity. Furthermore, the **general principle of equal treatment under labour law** developed by court decisions and scholarship in this area requires employers to treat all employees equally in principle.

These anti-discrimination provisions apply to migrant workers with employee status, just as to all other employees.

Right to organise

Article 9 (3) of the Basic Law (*Grundgesetz*), the German constitution, guarantees that every individual has the right to form or join associations to safeguard and improve working and economic conditions. All members of a trade union have the same rights, irrespective of their nationality, including the right to hold official positions.

The following information is provided in response to the Committee's request in its Conclusions for information concerning the legal status of workers posted from abroad, and what legal and practical measures are taken to ensure equal treatment in matters of employment, trade union membership and collective bargaining:

When workers are posted to Germany, the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*) must be upheld. The Act enshrines the place-of-work principle, meaning that employers must grant their workers certain working conditions which apply at their place of work in Germany for the duration of the temporary employment in Germany.

The Act applies to employers in all sectors. Where working conditions within the meaning of the Act are regulated by collective agreements, employers based abroad are only required to grant them to workers posted temporarily to Germany if these working conditions are also mandatory for all corresponding German employers (owing to a statutory instrument or a declaration of general applicability within the meaning of the Act).

In the care sector (care for the elderly and outpatient nursing), employers may be required by a statutory instrument to comply with the working conditions proposed by a commission.

Furthermore, various obligations must be met to enable compliance with the stipulated working conditions to be monitored, such as notification requirements and the keeping of working time records.

Since 1 January 2015, all employees working in Germany, i.e. including employees posted to Germany from abroad, have been legally entitled to be paid at least the minimum wage by their employer. The minimum wage has been 8.84 euros gross per hour worked since 1 January 2017.

Paragraph 5 – Equality regarding taxes and contributions

In its Conclusions on Article 19, paragraph 5, the Committee requested "that full and up to date information on the [taxation of migrant workers] be provided in the next report, including details of the laws applicable". The following information is provided in response:

Migrant workers are treated no less favourably in Germany than German nationals regarding taxation. Their treatment for tax purposes depends on whether they have their residence or habitual abode here; see Section 1 (1) and (4) of the Income Tax Act (*Einkommensteuergesetz*). Tax treatment is therefore not connected to nationality.

General legal framework

German income tax law makes a distinction between limited and unlimited tax liability. Individuals whose residence or habitual abode is in Germany are subject to unlimited tax liability (Section 1 (1) of the Income Tax Act). Individuals who do not meet the specified criteria for unlimited tax liability have limited income tax liability if they derive domestic (i.e. German) income within the meaning of Section 49 of the Income Tax Act (Section 1 (4) of the Act). In special cases, however, people who are resident abroad are also treated as having unlimited tax liability. Tax treatment is therefore not connected to nationality.

Domestic income within the meaning of Section 49 of the Income Tax Act includes earnings from non-self-employed work carried out in Germany (Section 49 (1) number 4 letter a of the Act). Income tax on these earnings is deducted from the individual's wages (wages tax) if the wages are paid by a domestic employer (Section 38 of the Act). The income tax liability of individuals subject to limited tax liability is then deemed to be satisfied (Section 50 (2), first sentence, of the Act).

The Federal Republic of Germany's right to tax can be limited by a double taxation agreement with the worker's country of residence.

No reforms have been carried out during the reporting period.

2. *Regarding the Committee's question as to what measures (administrative agreements, programmes, action plans, projects, etc.) have been taken to implement the legal framework, the Federal Government states that it does not have any information of this kind relating to migrant workers.*

3. *Regarding the Committee's request for relevant figures, statistics or any other relevant information, the Federal Government states that it does not have any information of this kind relating to migrant workers.*

Paragraph 6 – Family reunion

Please see the information provided in the last report. In 2011, the Act to Combat Forced Marriages and to Better Protect the Victims of Forced Marriages, and to Amend Further Provisions Governing Residence and Asylum Law (*Gesetz zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer von Zwangsheirat sowie zur Änderung weiterer aufenthalts- und asylrechtlicher Vorschriften*) increased the minimum period, from two to three years, for which a marriage must exist before a spouse who subsequently migrates to Germany can obtain an independent residence permit. 2013 saw extensive amendments made to the provisions governing the subsequent immigration of children (Section 32 of the Residence Act) via the Act to Improve the Rights of Beneficiaries of International Protection and Foreign Employees (*Gesetz zur Verbesserung der Rechte von international Schutzberechtigten und ausländischen Arbeitnehmern*).

The same Act granted persons with a residence permit for the purpose of family reunion unlimited access to the labour market (Section 27 (5) of the Residence Act).

The current version of the Residence Act, including the provisions governing family reunion (Sections 27 to 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 third countries, the following changes to the law, which entered into force in 2011 and 2013, are particularly relevant:

The minimum period of time for which a marriage must exist was increased from two to three years in Section 31 (1), first sentence, 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. In cases of particular hardship (e.g. domestic violence), an independent right of residence must be granted before the end of the three-year period.

Section 32 of the Residence Act ("Subsequent immigration of children to join third-country nationals") was revised in 2013. In particular, 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 a corresponding legally binding decision has been taken by a competent authority.

A new subsection (5) was added in Section 27 of the Residence Act ("Principles pertaining to the subsequent immigration of dependants"), guaranteeing unlimited access to the labour market for all persons living in Germany and holding a residence permit for the purpose of family reunion. These amendments are in conformity with European law, in particular with Directive 2003/86/EC (the Family Reunification Directive).

The current version of the Residence Act, including the provisions governing family reunion (Sections 27 to 36), is available in German and English at http://www.gesetze-im-internet.de/englisch_aufenthg/index.html.

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. The following information is provided in response:

By way of derogation from the Committee's conclusions, a third-country 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 permanent settlement permit or an EU long-term residence permit (permanent right of residence), an EU Blue Card or a temporary residence permit (temporary right of residence). A further distinction is made in the case of a temporary residence permit: only in the case of new marriages does the principal person with residence entitlement need to be in possession of a temporary residence permit for two years before arranging for the subsequent immigration of a spouse. If the

principal person entitled is already married, or if he or she is granted asylum, is a recognised refugee or a researcher, no minimum period applies.

All spouses of third-country nationals living in Germany who fulfil the relevant requirements (residence permit, sufficient living space, secured subsistence, etc.) are, in principle, entitled to subsequent immigration. Contrary to the Committee's assumption, it is irrelevant whether the person concerned is a first-generation or second-generation foreign national.

Entitlement to subsequent immigration of children:

The Federal Government is pleased to confirm, as requested by the Committee in its Conclusions, that minor, unmarried children are entitled to family reunion even if only one parent lives in Germany (Section 32 (3) of the Residence Act).

The parent remaining in the country of origin must give his or her consent or a corresponding legally binding decision must have been taken by a competent authority. There is therefore no need to demonstrate special hardship in such cases. Section 32 (4) of the Residence Act nonetheless contains a general hardship clause, under which a permit can be granted to prevent special hardship even if the conditions set out in subsections (1) to (3) (entitlement to a residence permit) are not met.

As the Committee also correctly notes, only minor, unmarried children are entitled in principle to family reunion. They are considered to be members of the core family only while they are minors. Between the ages of 16 and 18, children must provide evidence of their proficiency in German unless they are relocating their residence to Germany together with both parents or one parent (either a parent possessing the sole right of care and custody or a sole surviving parent) or unless there are other grounds to believe they will be able to integrate in Germany (Section 32 (2) of the Residence Act).

Adult children (aged 18 and above) can receive a residence permit for the purpose of family reunion under the conditions set out in Section 36 (2) of the Residence Act. Being adults, they are no longer considered to be members of the core family and are therefore subject to the provision which applies to the subsequent immigration of other relatives. The condition for granting a residence permit for the purpose of family reunion in such cases is that there is an extraordinary family-related hardship.

The following information is provided regarding the Committee's request for examples and explanations, including official guidelines and/or case law, which define or demonstrate the meaning of "extraordinary hardship":

In assessing whether the condition of "extraordinary hardship" within the meaning of Section 36 (2) of the Residence Act is met, the case law of the Federal Administrative Court provides a yardstick for the decision (e.g. its judgment of 30 July 2013 - BVerwG 1 C 15.12). Under this case law, "extraordinary hardship" must be assumed in cases where "a refusal of the right of residence and therefore of preservation of the family unit would contradict fundamental concepts of justice in the light of Article 6 (1) and (2) of the Basic Law and Article 8 of the European Convention on Human Rights, and would therefore be simply indefensible. An extraordinary hardship in this sense fundamentally presupposes that the family member in need of protection is unable to survive independently, but must necessarily rely on the family's assistance, and that such assistance can reasonably be provided only in Germany (judgment of 10 March 2011 - BVerwG 1 C 7.10 - Buchholz 402.242 Section 7 of the Residence Act, no. 5, at paragraph 10; so held as well concerning the predecessor provision under Section 22 of the Foreigners Act (*Ausländergesetz*): decision of 25 June 1997 - BVerwG 1 B 236.96 - Buchholz 402.240 Section 22 of the Foreigners Act 1990, no. 4). Whether this is the case can be answered only taking account of all relevant, specific factors relating to the need to establish or maintain the family unit (see judgment of 18 April 2013 - BVerwG 10 C 9.12 - InfAuslR 2013, 331, at paragraph 23)."

The Committee requests information concerning the guarantees against expulsion of family members of non-EEA migrant workers, particularly in the event that the migrant worker is expelled.

If family members have an independent right of residence, their right of residence remains intact even in the event that a family member is expelled.

The situation is different if family members' right of residence is the result of family reunion. In such cases, the family members only have an accessory right of residence. This means that a family member's right of residence depends on the existence of the right of residence of the person with principal residence entitlement living in Germany, in this case the migrant worker. If this right of residence ceases to exist, the same is true in principle of the right of residence of the family member who subsequently immigrated for the purpose of family reunion. The provisions on family reunion are a form of protection of marriage and

the family within the meaning of Article 6 of the Basic Law; they aim to preserve the family unit. In the case of an existing marriage, family life would therefore have to continue outside Germany. A spouse who has subsequently immigrated to Germany for the purpose of family reunion has an independent right of residence only in the event of the termination of marital cohabitation in the circumstances set out in Section 31 of the Residence Act. However, children can receive an independent right of residence, which does not depend on their parents, subject to the conditions set out in Section 35 of the Residence Act.

If a foreign national could potentially be expelled on the grounds of a public interest in his or her expulsion, for example because he or she has committed a crime, the legal provision states that his or her individual interest in remaining in the federal territory must be weighed on a case-by-case basis against the interest in expulsion (Section 53 (1) of the Residence Act). Individual interests in remaining which must be considered in this context are regulated in detail by Section 54 (1) and (2) of the Residence Act; factors which play a role include the length of residence, whether the individual is a minor, or whether the individual exercises the right of care and custody for a minor child living in Germany.

The Committee asks for further information on the process of determining whether there is sufficient accommodation for migrants' families, and for examples of any guidelines or standards followed.

In creating the provisions on sufficient living space as a requirement for family reunion, the Federal Republic of Germany has taken into consideration – as called for by the Committee – that the requirements must not represent a *de facto* barrier to family reunion. Against this backdrop, the requirements concerning the need for sufficient living space have been fleshed out in Section 2 (4) of the Residence Act. The General Administrative Regulations relating to the Residence Act (*Allgemeine Verwaltungsvorschriften zum Aufenthaltsgesetz*) define "sufficient living space" as follows in no. 2.4.2: "Sufficient living space shall – without prejudice to provisions in the laws of the *Länder* – always be deemed to exist if twelve square metres of living space is available for each family member aged six and over and ten square metres of living space is available for each family member under the age of six, and the use of ancillary rooms (kitchen, bathroom, toilet) can be shared to an appropriate extent. Falling short of these sizes by around ten per cent shall be unproblematic. Living space which is also used by third parties shall in principle not be considered; shared ancillary rooms may be considered." Determining whether sufficient living space is available is a matter for the foreigners authorities.

The Committee asks which family members' contributions may be taken into account in relation to secured subsistence, and whether this legislation allows for inclusion of the earning capacity of the dependant who wishes to join the migrant in Germany in such calculations.

The provision is intended to take into account contributions to securing the subsistence of the household made by the family member who is joining the migrant in Germany. This refers to all costs which are met as a contribution to the household's income. Against this background, it is in principle only possible to consider costs which are met routinely as a contribution to the household's income, as only such costs serve to secure the household's subsistence (see also the General Administrative Regulations relating to the Residence Act, no. 2.3.4.1 and 2.3.4.2).

Figures provided by the Federal Foreign Office on family reunion visas issued from 2014 to 2017, broken down by individual years.

German family reunion visas issued worldwide	
2014	50,564
2015	72,681
2016	103,883
2017	117,992

By way of context, these figures refer to all family reunion visas issued worldwide via the German missions abroad. They therefore include all types of family reunion, including the subsequent immigration of family members to join migrant workers, German nationals or other third-country nationals living in Germany (e.g. people who have been granted asylum, refugees).

Paragraph 7 – Equality regarding legal proceedings

Any parties who, due to their personal or economic circumstances, are unable to pay the costs of civil proceedings and – if necessary – of an attorney, or are able to pay them only in part or only as instalments, are granted legal aid upon filing a corresponding application, provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects of success and does not seem frivolous (Section 114 (1), first sentence, of the Code of Civil Procedure (*Zivilprozessordnung*)). If legal aid is granted, the party either does not have to pay anything in court costs and the

costs of their own attorney, or only has to pay legally defined instalments. The costs of representation by an attorney are met if the court assigns an attorney, which must be specially requested. The reimbursable costs for the attorney also include the costs incurred by the attorney to engage an interpreter. The court costs covered by legal aid also include the cost of a court-appointed interpreter.

Access to legal aid is designed to be non-discriminatory and enables migrant workers to request legal aid in the same way as German nationals. Refugees and asylum seekers also have equal access to legal aid.

In German law, legal aid is provided in criminal proceedings through the appointment of defence counsel pursuant to Sections 140 to 143 of the Code of Criminal Procedure. Everyone – including a migrant worker – is assigned defence counsel appointed by the court if they are accused of certain types of criminal offences. The accused person is entitled to the appointment of defence counsel, for which they do not initially have to pay, in the cases set out in Section 140 of the Code of Criminal Procedure.

At present, in connection with Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, which is to be transposed into national law by 25 May 2019, the provisions on defence counsel appointed by the court are being adapted to ensure that German law reflects the European requirements.

For court proceedings, the engagement of interpreters is regulated by law. Under Section 185 (1), first sentence, of the Courts Constitution Act, an interpreter is called in if persons are participating in the hearing who do not have a command of the German language. This provision serves to ensure the right to a hearing in accordance with the law and the right to a fair trial.

Who pays the costs for the engagement of interpreters is determined by the provisions of the law on costs and procedural law. In principle, interpretation costs are treated as part of the costs of proceedings, which are to be met by the party liable to pay costs in each case. If an interpreter or translator is called in to assist an accused person in criminal proceedings by translating statements or documents which the accused person is dependent on understanding for his or her defence, the accused person is not required to pay the costs involved, as a matter of principle.

The costs of an attorney assigned within the framework of legal aid or appointed as defence counsel by the court, and the costs of translation and interpretation services incurred as part of the exchange of information between the attorney and the client, are, if they were necessary to properly deal with the matter, reimbursed as part of the entitlement to remuneration from the public purse.

The principles of legal aid set out above apply, *mutatis mutandis*, in proceedings before administrative courts (Section 166 (1), first sentence, of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*)), fiscal courts (Section 142 (1) of the Code of Procedure for Fiscal Courts (*Finanzgerichtsordnung*)) and social courts (Section 73 a (1), first sentence, of the Social Courts Act (*Sozialgerichtsgesetz*)).

If a party has been granted legal aid, under case law this must include the costs of an interpreter. Likewise, the cost of translating the written information provided by the party to the assigned attorney must be reimbursed by the public purse. The expenses of the party's attorney which are to be reimbursed under Section 46 of the Act on the Remuneration of Attorneys (*Rechtsanwaltsvergütungsgesetz*) also include the attorney's use of translation services, if this was the only possible way for information to be properly provided by the party.

Labour courts

Plaintiffs have recourse to the German (labour) courts irrespective of their nationality. The same procedural provisions apply in proceedings involving a foreign plaintiff as in those involving a German national; this includes provisions designed to make it easier to bring actions before the labour courts (such as reduced court fees, and the lack of a requirement to bear the opposing party's attorney's fees).

The legal application offices attached to the courts support litigants – regardless of their nationality – in formulating actions and applications.

Legal aid is granted in accordance with Section 11a of the Labour Courts Act (*Arbeitsgerichtsgesetz*) in conjunction with Section 114 et seq. of the Code of Civil Procedure (in the case of cross-border proceedings, additionally in conjunction with Section 1076 et seq. of the Code) if the applicant is in need and the action has sufficient prospects of success. If these conditions are met, foreign nationals have the same entitlement to legal aid as German nationals.

If the conditions set out in Section 11a of the Labour Courts Act in conjunction with Section 121 of the Code of Civil Procedure are met, a party in labour court proceedings may be assigned an attorney. These provisions stipulate that an attorney is (compulsorily) assigned in proceedings where representation by an attorney is required (Section 121 (1) of the Code of Civil Procedure, for example before the higher labour courts, Section 64 (6) of the Labour Courts Act in conjunction with Section 78 of the Code of Civil Procedure), or if representation by an attorney is deemed necessary or if the opposing party is represented by an attorney (Section 121 (2) of the Code of Civil Procedure). Representation by an attorney can be necessary if, for example, the party lacks the personal knowledge and skills required to properly exercise their rights. This could conceivably include an insufficient command of the German language.

An assigned attorney may not assert claims to remuneration from the party – meaning that legal assistance is free of charge – if legal aid has been granted.

Assistance for the exercise of rights outside court proceedings and in mandatory conciliation proceedings can be granted under the Advisory Assistance Act (*Beratungshilfegesetz*). The prerequisite is that the litigant must be in need, there must be no other possibilities for assistance which the litigant can reasonably be expected to use, and use of advisory assistance must not seem frivolous (Section 1 of the Advisory Assistance Act).

Under Section 10 of the Advisory Assistance Act, advisory assistance can also be granted in cross-border disputes. The granting of advisory assistance ensures that the person providing advisory assistance (generally an attorney) can only charge a fee of 15 euros from the person seeking advice.

Regarding the costs of interpretation, it should be noted that the judge is required, *ex officio*, to call in an interpreter if one of the parties does not have sufficient command of the German language (Section 9 (2) of the Labour Courts Act in conjunction with Section 185 of the Courts Constitution Act). The labour courts do not charge parties for these costs if one of the parties is a foreign national (no. 9005 (5) of Annex 1 to Section 3 (2) of the Courts Constitution Act).

Paragraph 8 – Guarantees concerning deportation

Migrant workers who are lawfully resident in Germany have a right of residence through the residence permit issued to them, and thus are not required to leave the country. After five years, in principle – if the integration criteria set out in the law are met – a permanent right of residence (EU long-term residence permit or settlement permit) is issued, which is

for an unlimited period. Grounds which can lead to an individual ceasing to have a right of residence, besides the expiry of a residence permit without an application being submitted for its extension, include deportation, in particular. If a foreign national could potentially be expelled on the grounds of a public interest in his or her expulsion, for example because he or she has committed a crime, the legal provision states that his or her individual interest in remaining in the federal territory must be weighed on a case-by-case basis against the interest in expulsion (Section 53 (1) of the Residence Act). Individual interests in remaining which must be considered in this context are regulated in detail by Section 54 (1) and (2) of the Residence Act; factors which play a role include the length of residence, whether the individual is a minor, or whether the individual exercises the right of care and custody for a minor child living in Germany.

Paragraph 9 – Transfer of earnings and savings

There have been no changes since the last report.

Paragraph 10 – Equal treatment for the self-employed

The Committee mentions that no legal distinction is made in Germany between migrant employees and self-employed migrants. It concludes from its finding that the situation in Germany is not in conformity with Article 19, paragraphs 4, 6 and 8, of the ESC that the situation in Germany is not in conformity with Article 19, paragraph 10, either.

Regarding the status of migrant workers under labour law, please see the answer relating to Article 19, paragraph 4.

Regarding the distinction between self-employed persons and employees, the following should be noted:

In Germany, a definition of the employment contract and thus of the employment relationship is contained in Section 611a of the Civil Code. This provision, which entered into force on 1 April 2017, sets out the principles used to distinguish an employment contract from other types of contract. Under Section 611a of the Civil Code, an employment contract exists if an employee is engaged, in a relationship of personal dependence, to perform work on behalf of another in accordance with instructions and without control of the work involved. The instructions involved can relate to what work is carried out how, when and

where. Individuals are subject to instructions if they are not essentially free in determining their work and their working time.

By contrast, individuals are self-employed if they are essentially free in determining their work and their working time (see Section 84 (1), second sentence, of the Commercial Code (*Handelsgesetzbuch*)).

To identify whether an individual is employed or self-employed, it is essential to look at all circumstances on a case-by-case basis. What matters is not the formal name of the contract, but rather how the contractual relationship functions in practice.

This definition also allows a distinction to be made between self-employed migrant workers and migrant workers in employment, i.e. employees.