

**NATIONAL ACTION PLAN**

OF THE

**FEDERAL REPUBLIC OF GERMANY**

TO

**FIGHT RACISM, XENOPHOBIA,**

**ANTI-SEMITISM AND RELATED INTOLERANCE**

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## **I. BACKGROUND**

*“Human dignity shall be inviolable.”* This commitment to human dignity is the first sentence of the Basic Law for the Federal Republic of Germany. The values and the remaining provisions of Germany’s constitution are based on this one sentence.

*“No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions.”* (Article 3 (3) of the Basic Law). This broad and comprehensive ban on discrimination is directly binding on the legislative, executive and judicial branches of the government. Given the complexity and increasing interdependence of society today in Germany, Europe and the world, this prohibition is more relevant than ever.

- Racism, xenophobia and anti-Semitism are opposed to all the fundamental values to which Germany’s Basic Law is committed and which it calls on citizens to uphold.
- Racism, xenophobia and anti-Semitism stand in clear contradiction to the values of freedom, democracy and social solidarity on which Germany’s society is based.
- The Federal Republic of Germany is deeply committed to condemning and fighting racism, xenophobia and anti-Semitism.

Nonetheless, racist, xenophobic and anti-Semitic crimes, violence, attacks, antagonism and discrimination also take place in Germany. In recent years, the number of reported, punishable incidents has steadily grown or, at best, remained constant at a high level.

Racist, xenophobic and/or anti-Semitic attitudes and stereotypes can also be found outside the right-wing extremist (political) camp. Such attitudes and stereotypes need to be actively addressed in order to keep them from becoming a permanent element at the margins of the political and social mainstream. This is why fighting racism, xenophobia and anti-Semitism means more than simply fighting right-wing extremism.

The Federal Republic of Germany is a federally structured democracy committed to the principle of social solidarity and the rule of law. Fighting racism, xenophobia and anti-Semitism is not a task for the state alone; engagement at all levels of civil society is equally

needed and is therefore expressly promoted and supported by the Federal Government. Where the state is responsible for fighting racism, xenophobia and anti-Semitism, under Germany's constitutional order it is often the task of state and local governments, which are taking a wide range of action to this end.

The Federal Government regards fighting racism, xenophobia and anti-Semitism and all related forms of discrimination as one of the most important and fundamental tasks of the state *and* society. Based on this view, the Federal Government has developed the present National Action Plan to Fight Racism, Xenophobia and Anti-Semitism and Related Discrimination. The National Action Plan is also a response to the call to UN members issued at the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001.

The National Action Plan is not intended to address only those who are interested in this topic; rather, by presenting its means and measures and the public discussion of them, it hopes to reach broad segments of the public by targeting specific groups.

The National Action Plan is also intended to encourage a policy of recognizing and valuing difference.

As a mature democracy committed to social solidarity and the rule of law, the Federal Republic of Germany has already implemented much of the Durban Declaration and Programme of Action adopted at the World Conference Against Racism in 2001.

And yet there are still too many racist, xenophobic and/or anti-Semitic crimes and acts of violence in Germany.<sup>1</sup> This demonstrates that fighting such crime and violence requires more than enacting legislation and regulations. It also requires the constant exertion of influence on social processes and debates, interaction with civil society actors wherever possible and a rigorous confrontation at the intellectual and political level with racist and right-wing extremist ideologies.

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<sup>1</sup> See the 2006 Annual Report of the Office for the Protection of the Constitution.

## 1. The UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, 2001

The fact that, in the Internet age, racism, xenophobia, anti-Semitism and all other conceivable forms of discrimination know no borders and are not limited to particular countries or even continents has led to the realization that concentrating solely on individual national strategies will ultimately fail to provide the desired results. With this in mind, and recalling the failure of the first and second UN world conferences against racism in 1978 and 1983, the Federal Government and its partners in the European Union were especially committed to ensuring the success of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, from 30 August to 8 September 2001 following the resolution of the 52nd General Assembly of the United Nations (1997).

Thanks in large part to the efforts of the EU Member States to reach viable compromises even under difficult conditions (e.g. Israel and the U.S. left the conference on 3 September 2001 to protest what they felt was a tendency to relativize anti-Semitism and the Holocaust), the conference was able to adopt important documents (Declaration, Programme of Action) with the consensus befitting the significance of the issues.<sup>2</sup> Germany also played a prominent role within the EU, driving the search for acceptable compromises in the concluding conference documents.

Since then, the Federal Government and its EU partners have supported the Durban Follow-Up Process and the UN mechanisms put in place for that process, in particular the Anti-Discrimination Unit established within the office of the UN High Commissioner for Human Rights on the basis of the Durban documents; the group of five independent experts appointed by the UN Secretary-General in 2003 to help the High Commissioner monitor the implementation of the Durban documents; the UN working group on people of African descent; and the intergovernmental working group established in 2002 to ensure the effective implementation of the Durban Declaration.

From the beginning, civil society was closely involved in preparing and carrying out the 2001 World Conference Against Racism and the follow-up process to implement its results.

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<sup>2</sup> These documents can be found on the Internet at [www.auswaertiges-  
amt.de/aussenpolitik/menschnrechte/index.html](http://www.auswaertiges-<br/>amt.de/aussenpolitik/menschnrechte/index.html)

## 2. Declaration of the European Union on the Use of the Terms “Race” and “Racism”

The Federal Government opposes on principle any theory asserting the existence of different races of humans. For this reason, the authors of the National Action Plan expressly refer to the declaration of 7 September 2001 by all European Union Member States on the use of the terms “race” and “racism” in the Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance:

*In 1978 the General Conference of UNESCO unanimously proclaimed that ‘All human beings belong to a single species’. This is fundamental. Doctrines that asserted the contrary were used to justify some of the most appalling and disgraceful tragedies in human history, including the Holocaust and also apartheid. Numerous United Nations consensus documents have affirmed the fundamental unity of the human race.*

*Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination states that racial discrimination is ‘any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin’. Our work here is to further the elimination of racial discrimination. The concept of race may, for the purpose of applying the Convention, be helpful in identifying the basis for such discrimination.*

*The Member States of the European Union consider that the acceptance of any formulation implying the existence of separate human ‘races’ could be interpreted as a retrograde step as it risks denying the unity of humanity. Nor is acceptance of such a formulation necessary in order to identify or combat racial discrimination.*

*Clearly the human race is diverse. The Member States of the European Union value diversity. Within our States it is a source of social cohesion and cultural enrichment. We unequivocally condemn racial discrimination and doctrines of racial superiority.*

*The Member States of the European Union are of the opinion that existing terminology covers largely all the differences/diversity between people.*

*The Member States of the European Union strongly reject any doctrine of racial superiority along with theories or doctrines which attempt to determine the existence of separate human races, as well as any implicit acceptance of such theories or doctrines which could emerge from the use of the terms ‘race’ or ‘racial’ in the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.*



*This does not imply the denial of race as a ground for discrimination and the denial of manifestations of racism and racial discrimination, as defined in article 1 of the Convention, which still exist all over the world.*

### 3. The aims of this National Action Plan

The National Action Plan to Fight Racism, Xenophobia and Anti-Semitism and Related Discrimination is not intended to address only those persons who are interested in this topic; rather, it aims with its means and measures and the public discussion of them to reach broad segments of the public by targeting specific groups.

#### a) Target groups

In addition to those who are generally interested in politics, the target groups of the National Action Plan include in particular

- potential victims of racism, xenophobia and anti-Semitism (in order to emphasize the range of options for defending oneself against them, either individually or together with others);
- opinion leaders in the political sphere, in media and civil society (in order to further the necessary networks for counter-measures);
- potential supporters of racist theories and views (in order to show them how isolated their subculture is).

#### b) Protection against violence and discrimination

The National Action Plan is intended to help prevent and protect against violence and discrimination by clearly demonstrating that neither policy-makers, the judicial system nor society at large are willing to accept or tolerate such phenomena.

#### c) Integration and participation

All demographic forecasts indicate that the major cities in Germany and Europe will become multi-ethnic urban areas in the foreseeable future if they have not done so already. It does not matter whether this development was intended or simply happened on its own; the task of society and policy-makers is to find ways to make sure that these different population groups get along with each other as well as possible. To do so, a consistent policy of integration and participation at every level of society, the

economy and the political system is absolutely essential. Only such a policy is capable of bringing about the individual's necessary identification with the larger society, whether he or she belongs to a majority or minority group of whatever kind.

d) Recognizing difference

The National Action Plan is also intended to encourage a policy of recognizing and valuing difference. Heterogeneity, not uniformity, is what drives complex societies and enables them to compete successfully with other heterogeneous societies politically, socially and economically. A policy of recognizing and valuing difference is also the right response to the challenges of globalization, in which heterogeneity is inherent. The more homogeneous societies are or define themselves as being, the less they are able to deal with a globalized environment.

## **II. THE FEDERAL GOVERNMENT'S POLICY**

In 2002, the Federal Government designed a long-term, dynamic and comprehensive strategy to fight racism, xenophobia and anti-Semitism. This strategy rests on the following pillars:

1. human rights policy and human rights education,
2. supporting civil society and strengthening civic values,
3. promoting the integration of immigrants, and
4. measures targeted at perpetrators and their environment.

This strategy continues to be significant today, and each of its components is constantly revised to keep up with the latest problems and information.<sup>3</sup>

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<sup>3</sup> The four-pillar strategy is outlined in the "Report on the current and planned measures and activities of the Federal Government against right-wing extremism, xenophobia, anti-Semitism and violence", which was sent to the UN High Commissioner for Human Rights already in 2003 as the first building-block in Germany's national follow-up to the World Conference Against Racism in Durban.

## 1. Human rights policy and human rights education

### 1.1 Human rights policy

As part of its policy on human rights, the Federal Government gives high priority to combating racism and xenophobia.

The Federal Government's 8th Human Rights Report, its latest report on its human rights policy in the context of foreign relations and other policy areas, contains extensive information on combating racism, xenophobia and anti-Semitism as a priority of German human rights policy in the field of foreign relations. The Federal Republic of Germany works in particular within the framework of the United Nations, the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), among other things supporting the work of the European Union Agency for Fundamental Rights (FRA), established in 2007 as an outgrowth of the European Monitoring Centre on Racism and Xenophobia (EUMC), and the European Commission against Racism and Intolerance (ECRI).

At UN level, Germany ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) of 7 March 1966 already in 1969; since then Germany has worked closely with the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the Convention. The Federal Government provides the Committee with regular country reports on measures taken at national level to prevent and eliminate racial discrimination.

The Federal Government's Human Rights Report also deals with the human rights situation within the Federal Republic of Germany; one area of emphasis is presenting means and methods used to fight racism, xenophobia and anti-Semitism in Germany.<sup>4</sup>

Further, the Federal Government supported the creation of an independent human rights institute in Germany in terms of both substance and structure (by guaranteeing institutional support): The German Institute for Human Rights (DIMR), founded on 8 March 2001, fulfils

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<sup>4</sup> The Report of the Government of the Federal Republic of Germany on Its Human Rights Policy in the Context of Foreign Relations is available in English on the Internet at [www.auswaertiges-amt.de/diplo/en/Aussenpolitik/Themen/Menschenrechte/8.MR.Bericht.html](http://www.auswaertiges-amt.de/diplo/en/Aussenpolitik/Themen/Menschenrechte/8.MR.Bericht.html)

the criteria for independent human rights institutions as defined in the “Paris Principles”. The Federal Government, parliament and non-governmental organizations belonging to the Forum Menschenrechte network of German human rights organizations were all involved in defining the institute’s tasks, powers and organs. According to its by-laws, the DIMR has the following main tasks:

- Information and documentation; the institute is to organize an information network to serve as central point of contact
- Human rights education within Germany, in order to anchor the significance of human rights in the public consciousness
- Praxis-oriented research, in particular studies to develop strategies for avoiding and overcoming relevant conflict situations
- Policy advising
- Promotion of dialogue and cooperation between government and non-governmental institutions and organizations

The Federal Government believes the DIMR should be a civil-society institution and independent of the government; as a result, the government representatives who serve on the institute’s boards do not have voting rights.

Until 1998, only a subcommittee of the German Bundestag’s Committee on Foreign Affairs was devoted to human rights. The Federal Government therefore welcomed the Bundestag’s decision in 1998 to establish a full-fledged Committee on Human Rights and Humanitarian Aid.

Future plans:

The Federal Government will carefully evaluate its human rights reports with regard to the fight against racism, xenophobia and anti-Semitism in order to ensure effective implementation.

## 1.2 Human rights education

Education to increase tolerance and awareness of human rights is certainly a core task for all types of schools. In the Federal Republic of Germany, schools and preschool education are the sole responsibility of the 16 German states (*Länder*). All the states' constitutions and school legislation define human rights education as their highest educational aim. The Standing Conference of Ministers of Education and Cultural Affairs of the *Länder* (KMK) has repeatedly laid great stress on the importance of human rights education in the curriculum and in schools' everyday operations, and has drafted and implemented educational strategies to this end. The Federal Government has expressly welcomed and supported these efforts. In their recommendation on promoting human rights education (KMK decision of 4 December 1980, in the version of 14 December 2000), the ministers stated that human rights cannot be upheld through state action alone, but through the conduct and engagement of every individual.

The United Nations General Assembly adopted relevant resolutions, which Germany expressly supported. For example, after the end of the UN Decade for Human Rights Education (1995–2004), the World Programme on Human Rights Education was unanimously adopted on 10 December 2004 and on 14 July 2005 a plan of action was adopted which calls for national plans of action for schools of general education in order to expand the human rights curriculum. The UN Human Rights Council underscored the outstanding importance of human rights education when it decided on 28 September 2007 to extend the initial phase of the world action plan to 2009. In addition, on 9 November 2007 the UN General Assembly agreed to proclaim an International Year of Human Rights Learning, to begin on 10 December 2008, the 60th anniversary of the Universal Declaration of Human Rights.

The foundations for the significance of human rights should be laid with public and private education and training. Young people in particular need to develop an intellectual and emotional understanding of democracy and fundamental rights. There must be an awareness in society that democracy must be lived, further developed and occasionally fought for.

As part of their task of educating and socializing children and young people, families, kindergartens, youth services and schools play an important role in preventing right-wing extremism, xenophobia, racism and violence, thus helping to sustain and advance democratic culture. The Federal Government places special value on preventive efforts starting at an early



stage. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Ministry of Education and Research in particular have the important task of sharing experience by constantly developing and updating appropriate model projects.

All the German states see it as a substantive task of the schools to teach pupils respect for human dignity and to convey fundamental values as defined in the Basic Law. In addition to learning about the democratic system in the Federal Republic of Germany, children and young people should also develop tolerance and respect for other cultures and a sense of responsibility towards society. On this basis, schools attempt to counteract unequal opportunities and discrimination as far as possible and enable all individuals to develop to their full potential. In this context, everyone has the right to suitable education and training, regardless of background or social status. The states also recognize parents' ordinary rights in raising their children and take these into account in their actions.

The states determine how many hours of instruction per week and year in which subjects can and should be devoted to the issues mentioned above. Subjects such as religion, ethics, philosophy, history and social studies as well as economics/politics, geography and German play an important role. Values and norms as well as human dignity can be discussed in religion, ethics and philosophy classes, while totalitarian systems are often discussed in history classes; the concepts of slavery, oppression and racist ideology are contrasted to the values of enlightenment, freedom and equality. The basic elements of democracy, such as free and fair elections, can be taught in social studies classes, while discussion may focus on issues of social inequality or terrorism. In economics-related courses, it is possible to address the social market system or the concept of globalization and its problems, while German classes can study and reflect on relevant literary texts. And in geography, topics such as developing countries, other cultures and the (unequal) distribution of natural resources are relevant in this context.

Despite the variety of possible topics in various subject fields listed here as examples of human rights education, in most cases schools or departments are usually free to choose the platform they use for human rights education. The topic of human rights can be addressed at every age level if the appropriate subject matter and methods are used.

Various guides and publications are available to help schools with human rights education. There is also a wide range of textbooks for schools and departments to choose from.

In order to ensure effective human rights education, most of the states take targeted measures in the form of in-service training, symposia and teachers' conferences in specialized fields; these measures start already with teacher training, where special attention is given to human rights education as an interdisciplinary theme. At the institutional level, targeted measures are incorporated into the revision of framework lesson plans and objectives as well as legislation on education. Further, the states also provide support for schools and teachers in the form of newsletters and relevant websites. For their part, schools have the possibility to demonstrate their acceptance of social interdependency by carrying out projects, project days and project weeks; establishing partnerships with other schools; and working on behalf of developing countries. Further options include offering internships, acting as a sponsor and supporting institutions active in development aid, as in the case of the UNESCO Associated Schools, for example. In this context, schools have the opportunity to build contacts with non-school partners in addition to working with government institutions. To mention a few examples: UNICEF, UNESCO, the Federal Agency for Civic Education and the state agencies for civil education, as well as partners from the private sector, church organizations, universities and social agencies in general.

### *Human rights education as a component of civic education at the federal level*

The aim of civic education is to promote, throughout society, the understanding of political facts and processes, to strengthen democratic consciousness, and to encourage willingness to participate in the political system. Because civic education conveys the knowledge and insights necessary to deal successfully with right-wing extremism, xenophobia and anti-Semitism, the Federal Government gives it outstanding priority especially in this context.

In its educational work, the Federal Agency for Civic Education must address all important social and current political developments. The Federal Agency has also overhauled its offerings and oriented them more closely on the needs of young people and those in the former East Germany. For example, in addition to its print publications for young people, it also offers Internet publications ([www.fluter.de](http://www.fluter.de)) which are very popular, as indicated by the constantly growing number of visitors to its website [www.bpb.de](http://www.bpb.de). On the Internet, the Federal Agency has also stepped up its activities against racism, xenophobia and anti-Semitism. For example, the website [www.bpb-aktiv.de](http://www.bpb-aktiv.de) offers informational materials, literature, a calendar of events, addresses of relevant initiatives and an annotated list of links on the subject of right-wing extremism.

Human rights education at federal and interregional level is another central task of the German Institute for Human Rights (DIMR). In addition to general informational events and seminars, this can include drafting curriculum for different occupational groups and offering advanced training for specialists in certain fields for whom human rights issues are especially relevant. The German Institute for Human Rights also functions as a national clearinghouse for human rights education and has initiated a human rights education network which is intended to promote cooperation and exchange between those involved in human rights education in various areas.

## 2. Supporting civil society and strengthening civic values

The Federal Government is firmly convinced that, to fight racism, xenophobia and anti-Semitism, state efforts alone are not enough to ensure long-term success. Grounding such strategies in democratic civil society is one of the main factors in their success or failure.

For this reason, the Federal Government has already taken a number of measures to support civil society actors in this field materially, structurally and at the level of ideas, and continues to expand and upgrade these measures depending on the situation.

## 2.1 Major funding programmes of the Federal Government

Already in the years 2001 to 2006, the Federal Government's action programme "Young People for Tolerance and Democracy – Against Right-Wing Extremism, Xenophobia and Anti-Semitism" provided roughly €193 million for more than 4,500 measures in support of civic engagement. A scientific study accompanying the programme showed that the local programme goals were achieved and identified the types of projects and measures which were especially successful. However, the study also revealed the continued need for action and the fact that strengthening civil society is still extremely important.

### *2.1.1 "Youth for Diversity, Tolerance and Democracy"*

In January 2007, therefore, the Federal Government launched the long-term programme "Diversity Is Good for You: Youth for Diversity, Tolerance and Democracy", with annual funding of €19 million, to build on experience gathered thus far. The programme concentrates on promoting the development of integrated local strategies in the form of local action plans, and on promoting and developing model projects related to youth, education and prevention. The programme is primarily anchored in the field of preventive pedagogy, is intended to increase awareness and aims at long-term effectiveness.

Programme implementation concentrates on the following:

- social integration,
- intercultural learning / anti-racist education,
- interreligious learning,
- cultural and historical identity,
- combating right-wing extremist activities among young people,
- democracy and tolerance education,
- strengthening democratic civil society.

Model projects concentrate on the following topics:

- confronting historical and current anti-Semitism (contemporary strategies for dealing with the Holocaust and anti-Semitism among young immigrants)
- working with youth susceptible to right-wing extremist ideology (gender-specific work with male youths; contemporary strategies for approaching right-wing extremist youth; working with parents)
- prevention and education for immigrant society (intercultural and interreligious learning; dealing with ethnic conflicts in immigrant society)
- early prevention (age-appropriate promotion of tolerance and introduction of democratic decision-making, such as majority decisions; developing and testing specific basic and advanced training for nursery and primary school teachers)

The main target groups are

- young people in disadvantaged regions and municipalities
- young males from backgrounds where education is not seen as a priority and who are at risk for xenophobic behaviour
- children and younger adolescents
- immigrants
- parents, teachers and social workers
- multipliers
- influential local actors

Future action:

The programme will continue in this form until 2010. Based on the results of the scientific study and evaluation being carried out in parallel and on the recommendations of the programme board, comprised of representatives of relevant state and civil society organizations, the Federal Government will then have to decide on any modifications.

### 2.1.2 “Competent for Democracy – Advisory Networks to Oppose Right-Wing Extremism”

The programme’s main goal is to offer expert outside advising to those locally responsible or affected by problem situations having a right-wing extremist background in order to resolve such situations. This requires an broad combination of advising skills. The programme is designed to be more reactive than preventive and to complement the programme “Diversity Is Good for You” (see above).

The programme’s main goals are as follows:

- setting up and developing nation-wide advisory networks from which temporary mobile intervention teams can be formed locally at short notice as needed
- developing and testing new model approaches
- organizing ongoing information- and experience-sharing, training members of the mobile intervention teams and evaluating results.

All 16 states are participating in this programme.

#### Future action:

The programme will continue in this form until 2010 with initial annual funding of €5 million. Based on the results of the scientific study and evaluation being carried out in parallel and on the recommendations of the programme board, comprised of representatives of relevant state and civil society organizations, the Federal Government will then have to decide on any modifications.

### 2.1.3 “XENOS – Integration and Diversity”

The Federal Ministry of Labour and Social Affairs has launched a new federal programme, “XENOS – Integration and Diversity” for the EU funding period 2007–2013. Financed by the European Social Fund, this new XENOS programme aims at strengthening democratic awareness and tolerance and reducing xenophobia and racism by concentrating on measures to prevent exclusion and discrimination in the labour market and society as a whole. Funding is to be provided for activities to oppose xenophobia, racism, right-wing extremism, anti-Semitism and discrimination at work, at school, in public administration and occupational training in Germany and in the European context. Within the XENOS framework, practical approaches to solving local and regional problems are to be developed using tried and tested strategies and methods and are to help implement best practices.

To complement previous XENOS activities, the programme also aims to facilitate greater transnational cooperation. An international, European context of mutual information-sharing, learning with and from others and taking joint action is intended to promote intercultural understanding and tolerance while preventing racism and xenophobia.

The programme’s main target group is youth and young adults at the transition between school and/or occupational training and the world of work who have difficulty entering the labour market and are vulnerable to xenophobic, right-wing extremist or discriminatory influences. The programme also focuses on young people of immigrant background who have trouble becoming integrated in the labour market and society. For this reason, the programme covers all locations where learning takes place, such as companies, schools and public administrations, cities and municipalities, as well as urban and rural areas. Preventive efforts now concentrate more on adults than before. And (ex-) convicts are also being targeted with the aim of helping young offenders with low levels of education become integrated in the labour market.

Further, the “ESF Federal Programme of labour market support for foreigners with the right to remain and refugees with work permits” is being implemented within the XENOS framework to improve the labour market opportunities for refugees and foreigners with the right to remain.



With roughly €150 million from the European Social Fund, the two programmes build on the previous XENOS programme “Living and Working in Diversity” and the Community initiative EQUAL as well as the special programme “Occupation, Education and Local Participation” which ended in September 2008. The individual projects of the new programme started during 2008.

*2.1.4 Nation-wide initiative “Places of Diversity” – a nation-wide communications strategy to strengthen diversity, tolerance and democracy*

When attempting to strengthen tolerance and democracy, the local level is especially important: Everyday social and political life takes place at the local level, and this is where the effects of right-wing extremism, xenophobia and anti-Semitism are especially palpable. To list only a few examples: right-wing extremist gathering places, the display of extremist attitudes in everyday life, the popularity of leisure activities offered by right-wing extremist parties and the dissemination of right-wing extremist and xenophobic ideas on school grounds. The willingness of communities and civil society to take action and their sense of identity are decisive in determining the effectiveness of opposition to right-wing extremist influences.

With the nation-wide initiative “Places of Diversity”, the Federal Ministry of the Interior, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and the Federal Government Commissioner for Migration, Refugees and Integration support and promote democratic engagement in cities, towns and rural areas as well as community alliances to strengthen diversity, tolerance and democracy. Communities making special efforts to foster diversity, tolerance and democracy will be given a plaque to put up in a central location designating them as model places of diversity.

To compete for the title of “place of diversity,” communities must meet the following conditions:

- Cities, municipalities, counties and groups of communities are eligible to compete.
- Candidates must submit a declaration of their support for diversity, tolerance and democracy.
- Candidates must be seriously committed to confronting right-wing extremism, xenophobia and anti-Semitism and to long-term efforts to promote diversity, tolerance and democracy.
- Representatives from the political sphere, public administration and civil society – in particular youth and welfare associations as well as sport and aid

organizations – must work locally as part of an active network or alliance to strengthen diversity, tolerance and democracy.

- Candidate cities, towns, counties and alliances must offer opportunities for active public participation.
- Candidates must conduct a public discussion of diversity, tolerance and democracy.

Competing communities must ensure that these conditions are met for the entire length of the initiative.

The initiative started in 2007 and is initially scheduled to end in 2010.

## 2.2 Federal Agency for Civic Education

The task of the Federal Agency for Civic Education (BpB) is to promote understanding of political matters, to reinforce democratic consciousness, and to encourage greater willingness to participate in the political process. The agency's educational offerings therefore are always aimed at strengthening civil society against political extremism, racism, xenophobia and anti-Semitism.

Two important components of this effort are conveying knowledge to prevent extremism, and providing concrete arguments against extremist, racist and xenophobic attitudes and slogans. The agency's core offerings thus include books and classroom materials, conferences and seminars as well as online publications on the historical roots of racism and anti-Semitism, National Socialism and the Holocaust.

In 2001, the agency created a concentration on political extremism and set up an organizational unit (initially a project group and since 2007 a separate department) which adds its own contributions to the nation-wide programmes and advises, supports and promotes civil society actors.

For example, the agency assists the "Jugendschutz.net" project with finding and fighting extremist content on the Internet, and provides funding for the advisory network [www.online-beratung-gegen-rechtsextremismus.de](http://www.online-beratung-gegen-rechtsextremismus.de). The same is true of federal-level coordination for the "Schools Without Racism" project and a pilot project involving culture-oriented local action planning in the state of Mecklenburg-Western Pomerania. All projects focus on supporting civil society actors in confronting extremism and on bringing together the various resources to form productive, professional networks. Lastly, the agency runs very successful intervention projects around the country for young people who have come under the influence of extremism and in some cases have committed crimes. These projects combine legal and social work skills with those of civic education.

Current offerings for a broad audience include online dossiers on right-wing extremism and anti-Semitism at the website [www.bpb.de](http://www.bpb.de) and the series of publications "What is Anti-Semitism?", "The History of Racism" and "Political Extremism". The guide to dealing with bigotry in everyday life has proven very useful in working with youth and adults and has gone into multiple printings. A new product is the teaching guide "Anti-Semitism in Europe: Prejudices Yesterday and Today". "Training Camp" is the name of an educational computer game for young people which the agency produced in time for the 2006 FIFA World Cup. Drawing on everyday situations, the game helps players practise fairness, tolerance and civil courage.

Research has shown that feelings of exclusion and a lack of opportunities to participate can cause bigotry and scepticism towards democracy among those with little education and in precarious social situations, whether they are immigrants or native Germans. The agency is currently addressing this issue with a series of model projects in disadvantaged neighbourhoods of immigrants and non-immigrants which are aimed at better integration and early prevention of radicalizing tendencies.

### 2.3 Alliance for Democracy and Tolerance – Against Extremism and Violence

The Alliance for Democracy and Tolerance was founded by the Federal Ministry of the Interior and the Federal Ministry of Justice on 23 May 2000 to create a network bringing together civil society efforts on behalf of democracy and tolerance and to publicize such efforts. The Alliance is overseen by a board comprising 22 representatives from the founding ministries, all the Bundestag parliamentary groups and from civil society.

The Alliance's traditional core activities are an annual youth congress for Basic Law Day, with 450 participants from all over Germany; the Victor Klemperer Competition for young people; and the best-practice competition "Active for Democracy and Tolerance". In addition, the Alliance works in various fields for the practical promotion of democracy and tolerance. Since 2007, the Alliance has increased its efforts related to practical assistance for integration and to tolerance in sport. All Alliance activities are guided by the idea of best practices: Examples of successful praxis are intended to encourage imitation and application in other regions and to other types of problems. By initiating model projects, the Alliance fulfils its task of providing new impetus. Another task of the Alliance is to provide local support in case of current problems, either on request or on its own initiative, by bringing together all the relevant actors and moderating the initial process of resolving the problem.

For example, in 2007 the Alliance organized a national conference on helping football clubs confront racism and discrimination. A variety of civil society actors who face these problems in amateur football clubs worked together to come up with strategies for solving them. The conference results were published in the form of a handbook, "Eleven Questions after 90 Minutes", containing practical tips for those active in football clubs on how to effectively counter racism and discrimination in their clubs.

Because praxis-oriented efforts to strengthen democracy and tolerance extend across all areas of societal and political action at federal, state and local level, the Alliance is expanding its networking function. Logical points of contact for the Alliance are democratic parties, trade and labour unions, the private sector, churches and religious communities, associations, clubs and schools. The Internet is an important networking tool. The Alliance has redesigned its website, [www.buendnis-toleranz.de](http://www.buendnis-toleranz.de), where interested persons can explore its collection of civil society initiatives and projects all over Germany using a clickable map.

## 2.4 Forum Against Racism

The Forum Against Racism was constituted in 1998 as a follow-up to the National Action Committee for the European Year Against Racism in 1997. After all participants in the National Action Committee, from civil society and from the Federal Government, evaluated their collaboration as positive, they decided to retain the same structure to create the new Forum Against Racism.

The Forum, which meets two or three times a year, sees itself as a platform for sharing experience and for a dialogue among representatives of government and non-governmental organizations (NGOs) concerning all issues related to fighting racism and xenophobia. It does not adopt resolutions or appear in public (except for the UN's International Day for the Elimination of Racism). But if a decision is required, the Forum's structure means that the principle of consensus applies.

The Forum has become a key locus of mutual exchange and information. For example, NGOs can make their views on planned federal measures known and discuss them with representatives of the Federal Government before the measures are adopted, thus having input into the process of discussion and decision-making at ministerial level.

Approximately 90 representatives of national or interregional NGOs, federations and associations and representatives of federal and state governments work together in the Forum. The Forum is run by a management working group made up of four civil society representatives and four government representatives. Following a unanimous decision, the Federal Ministry of the Interior acts as chair.

The Forum also encompasses the Durban Follow-Up Working Group, which organized the civil society input when the present National Action Plan was drafted.

Future plans:

With its special structural features, the Forum has proven its usefulness for government and NGOs as a place for dialogue and discourse. The Federal Government plans to continue this institutionalized form of permanent and regular exchange.

In addition, the evaluation and updating of the National Action Plan is to become a regular item on the Forum's agenda, making the Forum a key monitoring instrument not only with regard to the National Action Plan.



### 2.5 State and local support for democratic civil society

Under Germany's federal system and in accordance with rules of subsidiarity, supporting state and local initiatives is primarily the responsibility of state and local governments. They also provide extensive and high-quality structural and financial support for civil society actors in fighting right-wing extremism, xenophobia and anti-Semitism. Describing the different state and local programmes and action plans is beyond the scope of this National Action Plan, although by leaving them out, the Plan cannot adequately portray the impressive extent of support for civil society actors in the Federal Republic of Germany.

The Federal Government makes every effort to coordinate individual activities at federal level and to ensure a useful exchange in view of interaction with state and local efforts.

### 3. Promoting the integration of immigrants

Immigrants do not cause racism or xenophobia, but they become targets of prejudices and stereotypes motivated by racism, xenophobia and/or right-wing extremism. In addition to educating the public about the facts, in particular the causes and rules of migration, promoting integration is an important tool to combat such prejudices and resulting discrimination. This is why measures to promote integration are part of this National Action Plan.

### 3.1 Background

Migration is a world-wide phenomenon which especially affects modern and prosperous industrial societies. In the Federal Republic of Germany, since the 1950s immigration has been closely associated with the recruitment of foreign workers which started with the “economic miracle” and initially involved young men, later followed by their families. The recruitment of foreign workers at first assumed that these workers would eventually return to their countries of origin. Most of them did in fact return, but some workers and their families remained in Germany permanently. This was not acknowledged as permanent immigration until the 1990s, when law on foreigners and nationality was finally revised accordingly.

There was also labour migration to the German Democratic Republic, though on a much smaller scale, from its communist “brother countries” Mozambique, Cuba, Angola, China and especially Vietnam, based on bilateral government agreements. In October 1989, there were about 192,000 of these contract workers in the GDR, making up slightly more than 1% of the population.

As of 31 December 2007, approximately 6.75 million residents of Germany were not German citizens as defined in Article 116 of the Basic Law (source: Central Register of Foreigners).

The largest numbers of foreigners come from the following countries:

1.	Turkey	1,713,551
2.	Italy	528,318
3.	Serbia*	468,218
4.	Poland	384,808
5.	Greece	294,891
6.	Croatia	225,309
7.	Russian Federation	187,835
8.	Austria	175,875
9.	Bosnia and Herzegovina	158,158
10.	Netherlands	128,192

\*including the former Serbia and Montenegro, Yugoslavia

From this list, it is obvious that most foreign residents of Germany come from those countries which had recruitment agreements with the Federal Republic in the 1950s and 1960s: Turkey, Italy, the former Yugoslavia, Greece, Spain, Portugal, Tunisia and Morocco. At the same time, the number of nationals from Eastern European countries is rising.

But these statistics alone do not allow any final conclusions to be drawn concerning the situation of immigrants in Germany:

- Most of the countries which had recruitment agreements are now members of the European Union, whose citizens have the right to freedom of movement; Turkish nationals enjoy certain residence privileges based on the EU's association agreement with Turkey.
- The number of resident foreigners is counted only on the basis of citizenship status and thus includes persons born in Germany to foreign parents.
- The number often does not include German citizens with an immigrant background (e.g. naturalized citizens, children of naturalized citizens, children with one German and one foreign parent, ethnic Germans from Eastern Europe and the former Soviet Union and their family members).<sup>5</sup>

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<sup>5</sup> By contrast, the 2005 Microcensus included the category "immigrant background". Both foreigners and German citizens could be described as having an immigrant background, including foreigners born in Germany and those who moved here, their children, naturalized citizens, ethnic Germans from Eastern Europe and the former Soviet Union and their children. Overall, approximately 15 million people in Germany have an immigrant background; of these, 7 million do not have German citizenship.

### 3.2 The reform of nationality law

Part of successful integration policy is enabling immigrants and their children born in Germany to acquire German citizenship under appropriate conditions, because only German citizenship allows unlimited participation in all spheres of German society. The Act to Amend the Nationality Law of 15 July 1999, which entered into force on 1 January 2000, replacing legislation dating back to 1913, represents an important step in this direction.

Targeted measures have made it easier for immigrants to acquire German citizenship. In particular, alongside the traditional principle of citizenship based on descent (*jus sanguinis*), the new law includes the principle of citizenship based on place of birth (*jus solis*). According to this principle, since 1 January 2000, children born in Germany to foreign parents acquire German nationality automatically when certain requirements are met. If they also have another nationality, they will have to choose between the German and foreign nationality when they reach the age of majority. For a child to qualify for German citizenship based on place of birth, one parent has to have been a legal, regular resident of Germany for at least eight years and the holder of a permanent residence permit.

Another key element of the reform concerns naturalization for immigrants who are legal, long-term residents of Germany. These persons now have the right to become naturalized citizens after eight years instead of fifteen as previously. To become a naturalized citizen, the foreigner must also have a sufficient command of the German language and declare his or her allegiance to the Basic Law. A special clause prevents extremist foreigners from becoming naturalized German citizens. Although persons who wish to become naturalized citizens still have to give up their previous citizenship, exceptions for special hardship cases have been specified and expanded. In particular, refugees and persons subject to political persecution no longer have to contact their previous country of citizenship in order to be released from that citizenship. Since 28 August 2007, nationals of EU Member States and Switzerland who wish to become naturalized German citizens no longer need to renounce their previous citizenship if their countries do not require Germans to renounce their citizenship when becoming naturalized citizens of these countries.

### 3.3 The right of establishment

In a globalized world, Germany needs an up-to-date, consistent and rational strategy that makes it possible to manage immigration in line with our economic, societal and political interests and humanitarian obligations and to limit it as needed. The Immigration Act, which largely entered into force on 1 January 2005, and its amendment in August 2007 completed further legislative projects in this area.

The new requirements for immigration laid down in the Residence Act (AufenthG) are oriented on the following key principles:

- managing and controlling immigration in a more differentiated way that takes Germany's economic and societal needs into account;
- integrating legal immigrants living permanently in Germany;
- fulfilling humanitarian obligations derived from the Basic Law and a number of internationally binding conventions and agreements;
- ensuring the protection of Germany and the people who live here;
- actively advocating Germany's views within the European Union.

It is extremely important that promoting integration, in particular ensuring acquisition of German language skills through incentives and, if necessary, penalties, should be understood as a joint task of the federal, state and local governments.

### 3.4. The National Integration Plan

Federal Chancellor Angela Merkel hosted the first integration summit at the Chancellery on 14 July 2006. One resolution of the summit was to draft a National Integration Plan. For the first time, all levels of government – federal, state and local – were to engage in a dialogue with the most important civil society actors, including representatives of various immigrant organizations, from the churches, business and industry, culture, academia and the media to agree on a joint plan for a long-term integration policy.

Under the overall coordination of the Federal Government Commissioner for Migration, Refugees and Integration, a total of 376 participants in ten working groups drew up the National Integration Plan, which Federal Chancellor Merkel presented at the second integration summit on 12 July 2007.

The National Integration Plan was developed in line with two principles:

1. in dialogue with immigrants: speak with them, not about them;
2. concretely: require a commitment from every participant, because everyone can help integration succeed.

The most important aspects of the National Integration Plan are as follows:

- improving integration courses,
- promoting the German language from the very beginning,
- ensuring quality education and training and improving job prospects,
- improving the situation of women and girls; achieving equal opportunities,
- providing local support for integration,
- combining culture and integration,
- promoting integration through sport,
- representing diversity positively in the media,
- strengthening integration through civic engagement and equal participation, and
- promoting a cosmopolitan scientific community.

The National Integration Plan includes roughly 400 voluntary commitments on the part of government agencies and non-governmental organizations, for example:

The Federal Government will expand the provision of integration courses for German language acquisition and will work with state and local governments to increase the number of all-day schools and day-care places. With its model programme “Second Chance” and local project partners, the Federal Government intends to reduce the number of school drop-outs; it will support children and young people via a network of “education sponsors”; and it will use targeted measures to improve the chances of getting a good education and successfully completing university studies. The state and local governments will strengthen measures to promote the German language from kindergarten through school and on into occupational training, will hire more immigrants to teach at schools and kindergartens, and will improve immigrants’ access to health care, long-term care services and services for the elderly. The Local Authorities’ National Associations recommend supplying “integration guides” to help immigrants, involving immigrants more in local decision-making processes, and using urban planning and networks to promote interaction between population groups in poorly integrated neighbourhoods.

The immigrant organizations will launch a campaign promoting women’s rights and will work with the states’ school administrations to improve young immigrants’ educational participation using special efforts targeted at parents and with the help of “integration guides” and “education sponsors”.

Business and industry committed itself to creating an additional 10,000 training slots in immigrant-managed businesses and to improve integration during training and in the labour market with a “Diversity Charter”. The Olympic Sports Confederation and the German Football Association will convey to their member associations the central importance of integration for sport; in addition, they will offer training for instructors and recruit members from immigrant families. Foundations will make integration a central priority of their civic engagement and scholarship programmes. The German and foreign media will include more editors, journalists and actors with an immigrant background in their programming and editorial offices, step up their media research and promote media literacy.

(Further details and the latest information are available at [www.Nationaler-Integrationsplan.de](http://www.Nationaler-Integrationsplan.de) and [www.integrationsbeauftragte.de](http://www.integrationsbeauftragte.de))



## 4. Measures aimed at perpetrators and their environment

### 4.1 Law enforcement

Germany's law enforcement and security agencies take a wide variety of preventive and punitive measures against every form of right-wing politically motivated crime with an extremist, xenophobic or anti-Semitic background. These measures include maintaining a strong police presence in places where right-wing extremists gather, issuing warnings to known troublemakers, setting up special investigative teams as needed, initiating immediate searches in case of violent terrorist crimes, and intensifying interstate and international cooperation on law enforcement.

As a rule, the 16 German states have jurisdiction to prosecute right-wing politically motivated crime with an extremist, xenophobic or anti-Semitic background. If the crime is aimed at harming Germany's overall state structure or constitutional principles, however, the Federal Public Prosecutor may take over responsibility for prosecuting the offences listed in Section 120 (2) first sentence no. 3 of the Judicature Act (GVG), if the case has special significance due to the seriousness of the crime and its impact. Two Federal Court of Justice decisions clarify that a "special significance of the case" should always be assumed if the perpetrators acted conspiratorially, the crime involved interregional activities and organized structures may have been used.

If the case does have special significance, the Federal Public Prosecutor also assumes responsibility for prosecuting those crimes listed in Section 74a of the Judicature Act (Section 120 (2) no. 1 GVG). This applies in particular to criminal organizations as defined in Section 129 of the Criminal Code (StGB) formed to commit right-wing extremist crimes, such as the punishable use of Nazi insignia (Section 86a of the Criminal Code) or incitement (Section 130 of the Criminal Code). Under Section 120 (1) no. 6 of the Judicature Act, the Federal Public Prosecutor has ordinary jurisdiction in cases involving right-wing extremist terrorist organizations as defined in Section 129a of the Criminal Code.

### 4.2 Prosecution and punishment

In addition to threat prevention and investigations by the police, crimes and violent acts motivated by right-wing extremism, xenophobia and anti-Semitism must be prosecuted and punished rigorously, carefully and without delay. The general penal provisions to protect life and health (Sections 211 ff., 223 ff. of the Criminal Code) along with Sections 86, 86a and 130 of the Criminal Code allow an appropriate response by the judicial authorities, in the Federal Government's view. On the basis of practical experience, the Federal Government reviews the scope of application of relevant legislation with an eye to what may need further expansion or development. For example, a legislative gap was closed by adding a new fourth paragraph to Section 130 of the Criminal Code in March 2005, making it a crime to publicly endorse, justify or glorify the National Socialist dictatorship.<sup>6</sup>

Rapid reaction to (violent) crime by young people is especially important, all the more so in view of the principle of reform anchored in criminal law relating to young offenders. Offering simplified procedures for young people under eighteen, the Juvenile Courts Act makes it possible to speed up court proceedings in appropriate cases. Regular criminal law allows accelerated proceedings for those over eighteen and under 21. The Federal Government welcomes and supports additional measures and projects aimed at ensuring a rapid and appropriate response by improving communication and cooperation among all institutions involved, especially the police, the judicial system and child and youth welfare services.

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<sup>6</sup> See also Chapter III.

### 4.3 Association bans

Under Article 9 (2) of the Basic Law, associations whose aim or activities violate criminal laws or oppose the constitutional order or the idea of international understanding are prohibited. Section 3 of the Act Governing Private Associations states that, in the case of associations active in more than one state, the Federal Minister of the Interior has the authority to order a ban. The Federal Minister of the Interior has exercised this authority and banned the following: the internationally active, neo-Nazi skinhead organization Blood & Honour Division Deutschland and its youth organization White Youth; the right-wing extremist organization Collegium Humanum and its sub-organization Bauernhilfe e.V.; and the Verein zur Rehabilitierung der wegen Bestreitens des Holocaust Verfolgter (society for the rehabilitation of those persecuted for disputing the Holocaust). The states have the authority to ban associations which are not active in more than one state, and they have also made regular use of this authority in the past and will continue to do so in the future.

#### 4.4 The definition of politically motivated crime

In order to target and fight right-wing politically motivated crime with a racist, extremist and/or anti-Semitic background effectively, such crime must be defined as precisely as possible. Until 31 December 2000, the Police Reporting Service for National Security Affairs (KPMD-S) recorded and assessed crimes based on the concept of extremism, that is, it only included crimes aimed at overthrowing the liberal democratic system, including violent crimes. In practice, this led to inconsistent assessments and incomplete records. For this reason, the federal and state governments agreed to reorganize and improve the KPMD-S.

The new system for defining politically motivated crime went into effect on 1 January 2001. Political motivation is the central criterion for identifying such offences. Crimes motivated by racism, xenophobia or anti-Semitism are now counted as politically motivated crimes within the category of hate crime. An offence is defined as a hate crime if the circumstances of the offence or the attitude of the offender lead to the conclusion that it is directed against individuals due to their political opinions, nationality, ethnic origin, 'race', skin colour, religion or beliefs, origin, sexual orientation, disability, appearance or social status. The same is true of offences targeting an institution or property. This information is evaluated from various perspectives, paying particular attention to the nature and seriousness of the crime, the motive, and whether it has any international or extremist elements. With this differentiated presentation, the information can be analysed according to specific needs, providing a better foundation for targeted use of appropriate measures for prevention and punishment. However, this change in the reporting system means that data collected before and after 2001 are not really comparable.

#### 4.5 Monitoring by the authorities to protect the Constitution

As part of their legally mandated tasks, the Federal Office for the Protection of the Constitution (BfV) and its counterparts at state level carefully monitor the activities of right-wing extremist organizations and attempts by some currents within right-wing extremism at a more intellectual orientation. The annual reports on the protection of the Constitution provide the public with extensive information about the activities of groups opposed to the liberal democratic order.

#### 4.7 Programmes to help people escape the right-wing extremist milieu

The government is morally obligated not to turn its back on anyone, especially children or youth, who wish to end their association with right-wing extremism. The Federal Government has therefore designed a programme, run by the Federal Office for the Protection of the Constitution (BfV), for right-wing extremists who wish to reform. The programme, launched in April 2001, is intended on the one hand to encourage right-wing extremists at lower levels of the hierarchy to think seriously about leaving the milieu; on the other hand, by helping leading right-wing extremists get out, it also hopes to weaken the milieu and increase a sense of uncertainty among its members.

The BfV actively approaches leaders and activists if it has reason to believe they can be persuaded to end their association with right-wing extremism. The BfV also operates a telephone hotline where interested persons can get help from BfV staff who are trained to help them help themselves (e.g. by helping them find new jobs and/or flats, in collaboration with government employment agencies, social benefits offices and youth welfare services).

And almost every state has its own programmes in operation or planning which differ from each other and the BfV's in terms of priorities, design and supervision (e.g. based at the state criminal police offices, justice ministries, youth and social services offices or state offices for the protection of the Constitution). The BfV's programme thus complements those of the states.

Another programme that should be mentioned here is Exit, initiated and run by private individuals to help people end their association with right-wing extremism. The programme staff works closely with the federal and state authorities for the protection of the Constitution as required by the individual situation.

#### 4.8 Parents' initiatives

Parents who discover that their children belong to right-wing extremist groups or disseminate their ideology often feel shocked and helpless. To deal with such feelings of helplessness, affected parents have launched a number of initiatives to help and inform each other as they try to rescue their children from this situation. The federal and state governments provide moral and structural support to these self-help initiatives.

### **III. THE LAW**

In a democratic state under the rule of law, fighting racism, xenophobia and anti-Semitism and implementing all the measures and activities mentioned so far does not take place in a vacuum. In a mature democracy like the Federal Republic of Germany, the law plays a decisive role in the fight against racism, xenophobia and anti-Semitism. The acknowledged rules of a society, i.e. its definition of the limits at which it is no longer willing to accept the violation of such rules, are expressed first in the national law passed by the society itself and in international law, which the society agrees to abide by. In Germany, racism, racial discrimination, xenophobia, anti-Semitism and other forms of intolerance are subject to punishment or other penalties.

The aim is to continue to develop the legal system so that it can deal effectively with new and different, including transnational, forms of racism, xenophobia and anti-Semitism.



## 1. National law

Individuals feel the impact and effectiveness of national law much more directly than that of international law. Because national law is experienced and applied more directly also in its function of protecting individuals against discrimination motivated by racism, xenophobia and anti-Semitism, it will be discussed here first.

### 1.1 National constitutional law: Key provisions of the Basic Law

#### *Article 1 (1)*

Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.

#### *Article 3 (1)*

All persons shall be equal before the law.

#### *Article 3 (3)*

No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. No person shall be disfavoured because of disability.

Based on the principle of the inviolable dignity of every individual, the Basic Law for the Federal Republic of Germany formulates a general (Article 3 (1)) and a specific (Article 3 (3)) constitutional prohibition against discrimination.

According to Article 1 (3) of the Basic Law, this prohibition against discrimination is binding on the legislative, executive and judicial branches as directly applicable law. According to

Article 79 (3) of the Basic Law, the basic elements of the principle of equality cannot be amended even with a two-thirds majority required for constitutional amendments.

Although fundamental rights apply only to the relationship between the individual and the state, not to the relationship between the individual and other private individuals, part of the state's responsibility to provide protection is protecting and promoting the fundamental rights of its citizens as far as possible. This means that, when in doubt, the entire legal system (including private law) must be designed to ensure as far as possible that private persons cannot violate fundamental rights. Within the framework of private law designed with this in mind, fundamental rights can have an indirect effect by influencing the interpretation of civil law norms via the general clauses of civil law.

With the consent of the legislative bodies as defined in Article 59 (2) of the Basic Law, all relevant international treaties to protect against discrimination assume the status of law in Germany. According to Article 25 of the Basic Law, general rules of international law even take precedence over national law.

Everyone is guaranteed free access to the courts and to effective legal protection. With regard to violations by public authority, this follows from Article 19 (4) of the Basic Law; in case of civil law disputes, this is ensured by the general right, based on the rule of law, to have recourse to the courts. This applies regardless of parentage, origin or nationality. This principle is specified for the different areas of law in the different codes of legal proceedings.

## 1.2 Norms set by federal and state law

### *1.2.1 Criminal law and law on criminal proceedings*

German criminal law covers a wide range of hate crime as individual offences and can also take hate into account as a motive in sentencing for other offences. Criminal law is therefore very important for punishing crime motivated by racism, xenophobia and anti-Semitism. By including and punishing such offences, it also has a preventive, awareness-raising effect.

German criminal law and the Code of Criminal Procedure (StPO) are an effective means to combat racial discrimination in all its forms and give victims appropriate rights of participation and the possibility of financial compensation. The current Code of Criminal Procedure also protects the accused against discrimination in court proceedings.

According to Section 86 of the Criminal Code (StGB), disseminating propaganda of anti-constitutional organizations is a punishable offence. This is intended to ensure that organizations which in Germany draw above all on the Nazi past cannot disseminate ideas harmful to the rule of law. In addition to actual distribution, certain acts preparatory to distribution at home or abroad are also punishable offences. Further, under Section 86a (1) of the Criminal Code, the distribution and public use of identifying characteristics of anti-constitutional organizations are punishable, as are acts preparatory to doing so. As defined in Section 86a (2), identifying characteristics include flags, insignia, parts of uniforms, slogans and salutes. These may also be “non-physical symbols” such as songs or texts.

Section 130 (1) of the Criminal Code contains broad provisions on the punishability of incitement. For example, anyone who incites hate against sections of the population or calls for violence or arbitrary measures against them in a manner conducive to disturbing the peace, or who attacks the human dignity of others by insulting, maliciously disparaging or slandering sections of the population will be punished. It is also punishable to distribute written materials inciting hate or to broadcast content of a similar nature via radio, television, media or telecommunications services or to prepare such distribution or broadcasting (Section 130 (2) of the Criminal Code). According to Section 130 (3) of the Criminal Code, it is a punishable offence to endorse, deny or trivialize in public or at an assembly acts committed under the

National Socialist regime which qualify as genocide as defined in Section 6 of the Code of Crimes Against International Law (VStGB) in a manner conducive to disturbing the public peace. Denying that the Holocaust occurred, for example, is punishable under this provision. The new paragraph 4 (in force since 1 April 2005) makes it punishable to disturb the public peace by endorsing, glorifying or justifying the Nazi regime in public or at an assembly in a way that offends the dignity of the regime's victims.

Criminal prosecution of acts motivated by racism, xenophobia or anti-Semitism is based not only on these provisions, but also on the remaining provisions of the Criminal Code covering such offences as defamation, assault, bodily injury and homicide. Courts may take into account racist, xenophobic or anti-Semitic motivation as an aggravating factor when sentencing.

Article 9 (2) of the Basic Law in conjunction with the Act Governing Private Associations allows the Federal Minister of the Interior to ban any association which opposes the constitutional order or the idea of international understanding, or whose aims or activities violate criminal law. The federal and state governments have repeatedly used this authority with regard to right-wing extremist organizations and will continue to do so in the future. The relevant provisions of law on association and assembly are also applied to combat right-wing extremist groups and their aims.

Criminal law is also applied in cases of right-wing terrorist organizations. In recent years, members of such organizations have been convicted of forming a terrorist organization (Section 129a of the Criminal Code).

During criminal proceedings, measures must be taken to ensure that defendants who do not speak German can understand what is happening throughout the proceedings. The Judicature Act (GVG) stipulates that an interpreter must be called when proceedings involve persons who do not speak German; this may include witness questioning. The first time a foreigner is questioned, it should be noted in the file whether the suspect knows enough German that an interpreter is not necessary. In addition, if a foreigner does not have sufficient German language skills, summonses, arrest warrants, orders imposing punishment, indictments and other court decisions are to be translated into a language he or she can understand. Defendants and convicted offenders who do not speak German also have the right to have an interpreter

present where necessary to exercise their rights under law on criminal procedures, such as when meeting with their solicitor (Section 187 (1) GVG).

During criminal proceedings, Section 395 of the Code of Criminal Procedure (StPO) gives victims of crimes motivated by racism, xenophobia and/or anti-Semitism the option of becoming a joint plaintiff to the proceedings with all related rights (Sections 397, 400 and 401 StPO). Victims who are joint plaintiffs have the right to the services of an interpreter free of charge (Section 187 (2) GVG). Independent of that right, their solicitor has the right to inspect the files (Section 406e (1) StPO); if they do not have a solicitor, they have the right to information and copies from the files (Section 406e (5) StPO). Victims may also request to be informed of the outcome of the legal proceedings or their discontinuation and of custodial measures concerning the defendant and their completion, where these concern the victim (Section 406d StPO).

Victims of racist or xenophobic attacks may claim damages in civil proceedings against the perpetrator. However, under Sections 403 ff. of the Code of Criminal Procedure, it is also possible to make pecuniary claims as part of the criminal proceedings. In such cases, the costs of proceedings may be granted (Section 404 (5) StPO). In case of criminal conviction, the court may grant the claim for damages in its decision. This decision is the equivalent of a judgement in civil proceedings.

Victim–offender mediation also covers a range of measures by which offenders are to compensate damages to their victims. Section 46a of the Criminal Code, Section 153a (1) no. 5 of the Code of Criminal Procedure and other regulations provide for such compensation and reparation. According to Section 153a (1) no. 5 of the Code of Criminal Procedure, the public prosecutor’s office may dispense with a public trial in favour of victim–offender mediation and reparation efforts. Criminal law relating to young offenders goes a step further: Under Section 45 (2) of the Juvenile Courts Act (JGG), the public prosecutor’s office may do so where court participation and charges do not appear to be necessary. Under Section 46a of the Criminal Code, the court may reduce the sentence or, in case of certain less serious offences, dispense with punishment entirely, if the offender undertakes relevant efforts at compensation or reparation. In criminal law relating to young offenders, the court’s decision may order victim–offender mediation or reparation as separate sanctions. (Because criminal law relating to young offenders is oriented on the principle of reform and for other reasons, victims cannot

claim damages in criminal proceedings against young people, as described above. Since the 2nd Act to Modernize the Judicial System entered into force on 31 December 2006, however, the option for victims to become joint plaintiffs is also possible in proceedings against young people in accordance with Section 80 (3) of the Juvenile Courts Act.)

In addition to formulating and expanding the rights of victims in criminal proceedings, it is also important to inform those affected of their rights. For this reason, the Federal Ministry of Justice has published a guide to inform crime victims of their rights. This guide is available on the Internet at [www.bmj.bund.de](http://www.bmj.bund.de).

The addition of Section 130 (4) to the Criminal Code to remedy an acknowledged legal gap in the fight against right-wing extremism clearly illustrates that updating the law in Germany is regarded and carried out as an ongoing task, not only in accordance with this National Action Plan.

### *1.2.2 Civil law*

In Germany, private individuals are largely free to negotiate relations under private law, in particular contracts. Germany's liberal society and economic system is based on this principle of private autonomy, which is ultimately rooted in the basic right of personal freedom according to Article 2 (1) of the Basic law.

With this in mind, however, private law also provides protection against discriminatory practices (see also Section 1.2.2.2 below). Further, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which the Federal Republic of Germany ratified in 1969, requires comprehensive legislation prohibiting racial discrimination in the private sector. For example, a discriminatory contract which violates public policy may be void under Section 138 (1) of the German Civil Code (BGB). Discrimination may also violate the principle of good faith.

If a contract is denied, a claim to concluding a contract, conceivable in exceptional cases, may exist under the law on damages (concluding a contract as natural restitution). The decision of the highest court derived an obligation to contract in the case of a monopoly position from Section 826 of the German Civil Code partly in conjunction with the relevant provisions of anti-trust law. A claim to concluding a contract exists only if the contract would have been concluded in the absence of discriminatory behaviour. If the contracting authority prefers a different candidate for reasons of substance, then there are no grounds for such a claim.

#### *1.2.2.1 State and private aid for victims of racist, xenophobic or anti-Semitic acts*

Like all other victims of violent crime, victims of racially motivated violent crime may receive compensation in accordance with the Act on Compensation for Victims of Violent Crime (OEG), if they have suffered physical harm resulting from an intentional, unlawful attack, or if they are survivors of persons who have died as a result of such physical harm. The law does not distinguish according to the perpetrator's motivation, so the perpetrator's motive is not a deciding factor. The aim of the Act on Compensation for Victims of Violent Crime is to provide compensation for health and the resulting economic consequences of

violent crimes. Foreigners residing legally in Germany who are victims of a premeditated violent crime may also claim compensation under the Act.<sup>7</sup>

In addition to compensation payments under the Act, the government provides extra hardship payments to victims of right-wing extremist attacks, most of which are motivated by racial hatred and xenophobia.<sup>8</sup> In view of the significant increase in the number of right-wing extremist attacks, which also attracted a great deal of international attention, in financial year 2001 the German Bundestag for the first time allocated funds for hardship payments to the victims of right-wing extremist violence. These voluntary payments, to which no *legal claim* exists and which are made as one-time capital payments, are in addition to preventive and punitive measures to fight racism and xenophobia and are to be understood as an act of solidarity by the state and citizens with the victims. These payments are also intended as a clear condemnation of such attacks. This aim is reinforced by the fact that perpetrators are required to reimburse the government for the entire payment amount. Reimbursement from perpetrators is consistently and rigorously pursued, if necessary in civil court, and enforced, in order to ensure that right-wing extremist perpetrators also suffer the consequences of their actions and do not enjoy a financial advantage because the state pays compensation to their victims.

Under the federal system of the Federal Republic of Germany, aid to victims is a responsibility of the states. Because the situation of victims differs, there are a number of government agencies (e.g. court assistance and victim protection officers at police stations) and private organizations, some of which are linked, to help victims in their difficulties. Their services range from advising and accompanying victims to court, providing therapy and even financial assistance. The variety of victims' aid organizations is better suited to dealing with the victims' specific situations and meeting their individual needs. For example, some states have organizations specialized in working with victims of human trafficking and of right-wing extremist violence.

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<sup>7</sup> A brochure on aid for victims of violent crimes can be requested from the Federal Ministry of Labour and Social Affairs or downloaded from its website at [www.bmas.bund.de](http://www.bmas.bund.de).

<sup>8</sup> More information and directions for claiming compensation may be downloaded from the Federal Office of Justice website ([www.bundesjustizamt.de](http://www.bundesjustizamt.de)) under the heading *Strafrecht/Opferhilfe* (in German only).



### *1.2.2.2 Act on Equal Treatment (AGG)*

The Act on Equal Treatment has been in force since 18 August 2006, transposing among others Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin into national law. This Directive requires Member States to implement measures protecting all persons against discrimination based on ‘race’ or ethnic origin in employment and occupation and in general civil law transactions.

The Directive requires, among other things, effective, proportionate and dissuasive sanctions in case of breaches of the prohibition against discrimination. The Directive also provides for reducing the burden of proof for plaintiffs. Protection against discrimination is not to be limited to provisions of legal protection for plaintiffs; in order to improve the effectiveness of protection, the Directive also provides for granting organizations the right to engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations. The Directive is intended to change societal reality in the EU Member States, which are supposed not only to prohibit discrimination but also effectively eliminate it. For this reason, the Directive contains provisions on social dialogue in addition to those on material rights and procedural matters to improve court relief.

The Act on Equal Treatment transposed this European law into national law. With its broad scope (labour law, civil law and public law), the Act creates for the first time comprehensive anti-discrimination law in Germany. Section 1 of the Act states that no one may be discriminated against based on ‘race’, ethnic origin, sex, religion or belief, disability, age or sexuality. The term “discrimination” also covers harassment and sexual harassment. The Act specifies the relevant prohibition of discrimination and sanctions in case of violations. In the area of employment and occupation, the Act provides the basis for a right of complaint and for employer sanctions against employees who engage in discriminatory behaviour. The Act also improves court relief for those affected by discrimination. It reduces the burden of proof for plaintiffs and allows them to receive support from anti-discrimination organizations in court proceedings. Further, it creates the Federal Anti-Discrimination Office (ADS),<sup>9</sup> a

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<sup>9</sup> See also the next section and the website [www.Antidiskriminierungsstelle.de](http://www.Antidiskriminierungsstelle.de).

national agency to protect against discrimination, in line with the EU Directive mentioned above.

### *1.2.2.3 The Federal Anti-Discrimination Office (ADS)*

As called for in the Act on Equal Treatment, the Federal Anti-Discrimination Office was founded on 18 August 2006, when the Act entered into force. The Office carries out its duties independently.

The Office advises persons who feel they have been discriminated against based on 'race', ethnic origin, sex, religion or belief, disability, age or sexuality (Section 1 of the Act on Equal Treatment (AGG)). Every four years, the Office and the relevant commissioners of the Federal Government and the German Bundestag are to present reports on discrimination on the grounds listed in Section 1 and make recommendations to resolve and prevent such discrimination; the first report is due in 2009.

The Office works with non-governmental agencies and agencies at European, national, state and regional level; the Office has been assigned a council. The Office's divisions of advising, research and public information correspond to its catalogue of tasks.

Since its founding, the Office has responded to roughly 4,700 enquiries, including those made by victims, organizations, employers and the research community. Most enquiries concerned discrimination on the grounds of age, disability, sex and ethnic origin. Employers in particular are unsure how to avoid discrimination when formulating job announcements and recruiting new employees, and how to designate units to receive complaints of discrimination.

The Federal Anti-Discrimination Office offers independent and easily accessible support also for persons who have experienced racial or anti-Semitic discrimination. This support complements existing initiatives and institutions at federal, state and local level. The Office will play an important role in helping uphold victims' rights. Through prevention and by networking key actors, it will also help eliminate racism and anti-Semitism over the long term.

## 2. International law

Racism, racial discrimination, xenophobia, anti-Semitism and related intolerance are world-wide phenomena and thus cannot be fought at national level alone. The German policy of equal treatment belongs to an inter- and supranational context of measures to fight, contain and eliminate these phenomena. Germany has therefore ratified the following international treaties prohibiting discrimination:

- the Convention for the Protection of Human Rights and Fundamental Freedoms of 3 September 1953,
- the Convention concerning Discrimination in Respect of Employment and Occupation of 25 June 1958 as a key norm of the International Labour Organization,
- the International Convention of the UN on the Elimination of All Forms of Racial Discrimination of 7 March 1966,
- the International Covenant on Civil and Political Rights of 19 December 1966,
- the International Covenant on Economic, Social and Cultural Rights of 19 December 1966,
- the Convention on the Elimination of All Forms of Discrimination of Women of 18 December 1979,
- the Convention on the Rights of the Child of 20 November 1989, and
- the Framework Convention for the Protection of National Minorities of 1 February 1995.

## 2.1 United Nations law

The Federal Republic of Germany ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) already on 16 May 1969. In August 2001, the Federal Government completed Germany's submission to the procedure for individual petitions in accordance with Article 14 of the Convention by depositing a declaration to that effect with the UN Secretary-General in New York, underscoring the legal and societal significance of the petition procedure before the Committee on the Elimination of Racial Discrimination.<sup>10</sup>

Further, the Federal Republic of Germany ratified the Convention relating to the Status of Refugees of 28 July 1951 (Geneva Convention on Refugees) and the Protocol to that Convention on 31 January 1967. The Federal Republic of Germany is a contracting party to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. It has also declared its accession to the facultative protocols to the International Protocol on Civil and Political Rights and is a contracting party to the Convention on the Elimination of all Forms of Discrimination of Women.

As a member of the International Labour Organization (ILO), the Federal Republic of Germany has joined two conventions on equal treatment of foreigners and German nationals with regard to employment. The Convention concerning Discrimination in Respect of Employment and Occupation of 1958 is one of four key employment norms of the ILO and was ratified by the Federal Republic on 15 June 1961.

The Federal Republic has not signed and does not intend to sign the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, recommended for acceptance by the Durban Programme of Action, because this Convention aims at an old-fashioned, blanket criminalization of prostitution. The additional protocol to the United Nations Convention against Transnational Organized Crime (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention; Protocol against the Smuggling of Migrants by Land, Air and

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<sup>10</sup> This fulfils the Federal Republic of Germany's obligations deriving from the Convention. The closing remarks of the UN Committee on the Elimination of Racial Discrimination are available on the Internet at [www.auswaertiges-amt.de/www/de/aussepolitik/menschenrechte/berichte.html](http://www.auswaertiges-amt.de/www/de/aussepolitik/menschenrechte/berichte.html).

Sea, supplementing the Convention of 2000) is more in line with contemporary standards and serves the same purpose. The Federal Republic of Germany therefore signed it in December 2000.

In its Act of 1 September 2005, the Federal Republic of Germany implemented in national law the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Air and Sea (Federal Law Gazette 2005 II p. 954, 956, 995, 1007).

## 2.2 European Union law

Article 13 of the Treaty establishing the European Community (EC Treaty) allows the Council, within the limits of its powers conferred by the Treaty on the Community, to take appropriate action to combat discrimination based on racial origin, among others. In the past, measures to protect against racism were left mainly to the Member States; here, however, measures to combat discrimination based on 'racial' and ethnic origin are expressly provided for. By contrast, Article 12 of the EC Treaty explicitly prohibits discrimination only on grounds of nationality.

Article 6 (2) of the Treaty on European Union (TEU) refers not only to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, whose Article 14 explicitly prohibits discrimination based on 'race'; it also refers to the fundamental rights resulting from the constitutional traditions common to the Member States as general principles of Community law. According to Article 220 (1) and Article 225 of the EC Treaty, the Court of Justice of the European Communities is to ensure that fundamental rights are observed in the application and interpretation of Community law. In its decisions, the Court of Justice has further specified individual Community fundamental rights.

Apart from individual protection, Article 7 of the TEU provides for a special procedure to ensure that Member States comply with their obligation to respect human rights and fundamental freedoms at every level of society: "On a reasoned proposal by one-third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four-fifths of its members after obtaining the assent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of [the obligation to respect human rights and fundamental freedoms], and address appropriate recommendations to that State" (Article 7 (1) first sentence TEU)).

In accordance with Article 29 of the Treaty on European Union, the Union pursues the aim of preventing and combating racism and xenophobia. With a reference in Article 6 (1) TEU, the Treaty of Lisbon, the planned treaty on the European Union, explicitly declares the Charter of Fundamental Rights of the European Union to be legally binding,<sup>11</sup> thus giving it the same legal status as a treaty. For its part, the Charter of Fundamental Rights provides for a

comprehensive prohibition of discrimination, including all forms of racism and xenophobia (Article 21 (1)). Article 6 (3) TEU makes clear that the fundamental rights resulting from the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the constitutional traditions common to the Member States are general principles of Community law. Article 6 (2) TEU also calls on the Union to accede to the ECHR and creates the necessary legal basis to do so in Community law.

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<sup>11</sup> Special conditions apply to the United Kingdom and Poland (additional protocol).



### *2.2.1 Council Framework Decision on combating racism and xenophobia*

The draft Council Framework Decision on Combating Racism and Xenophobia is based on Joint Action 96/443/JHA adopted by the Council on 15 July 1996 to combat racism and xenophobia and on the legal basis of Articles 29, 31 and 34 (2) (b) TEU.

Due to the fundamental importance of this issue for combating racism, xenophobia and anti-Semitism in an increasingly networked world and in light of its special historical responsibility, the Federal Government again placed agreement on the framework decision on the agenda for its EU Presidency in the first half of 2007 and was able to achieve political consensus among the Member States regarding this dossier. In spring 2008, the Council arrived at a general orientation concerning the text of the decision. Before it can enter into force, reservations on the part of some Member States will have to be resolved.

This draft intends to add a legislative measure to supplement the Joint Measure which takes into account the need for further approximation of the Member States' laws and regulations. The aim is to ensure that racism and xenophobia are punished effectively, proportionately and dissuasively. The core of the Framework Decision is making public incitement to violence and hatred against people of other 'races', skin colour, religion, or national or ethnic origin punishable as a criminal offence. The Decision also prohibits the public dissemination or distribution of materials containing expressions of racism or xenophobia. Criminal punishment will also apply to public endorsement, denial or gross trivialization of genocide, crimes against humanity and war crimes, where the crime is aimed at a group of persons due to their 'race', skin colour, religion, parentage, or national or ethnic origin and where it is capable of inciting violence and hate against the group. The provisions of the Framework Decision are not directly applicable, however, but must be transposed by the Member States into national law.

Current law in Germany already matches much if not all of the provisions in the Framework Decision, but the examination of the need for implementation has not yet been completed.

The Framework Decision focuses on the following:

- a standard definition of racist and xenophobic crimes (minimum harmonization);

- prohibiting public incitement to violence and hatred against people of other 'races', skin colour, religion, or national or ethnic origin; prohibiting the public dissemination or distribution of materials containing expressions of racism or xenophobia;
- establishing criminal penalties for public endorsement, denial or gross trivialization of genocide, crimes against humanity and war crimes, where it is used to incite racial or xenophobic hatred;
- determining minimum sentences.
- In case of other crimes, racist or xenophobic motivation will be considered as an aggravating circumstance in determining the penalty to be applied.
- In case of suspected crimes violating the Framework Decision, law enforcement authorities must, as standard procedure, initiate investigations into at least the most serious cases.

Because racist, xenophobic and anti-Semitic propaganda crimes in particular are of a transnational nature, the proposed Framework Decision adds appropriate harmonization efforts at G8 level and implementation of EC anti-discrimination directives.

### *2.2.2 The European Union Agency for Fundamental Rights*

After the EU Council of Justice and Home Affairs Ministers formally adopted its founding regulation, the European Union Agency for Fundamental Rights (FRA) in Vienna began its work on 1 March 2007. Morten Kjaerum of Denmark was appointed to be the first director of the Agency on 7 March 2008. The Agency is the EU's first central point of contact for human and fundamental rights.

As the successor to the European Monitoring Centre on Racism and Xenophobia (EUMC), the EU Agency for Fundamental Rights is an EU centre of competence on fundamental rights; it continues the work of the EUMC, but its mandate is broader, including the fundamental rights defined in Article 6 (2) of the EC Treaty and anchored in the Charter of Fundamental Rights. The EU Agency for Fundamental Rights is intended to assist the Community and Member States respect and uphold the fundamental rights when implementing Community law. The Agency's main task is to advise and assist the EU institutions (Commission, Council, European Parliament) and the Member States with upholding the fundamental rights when formulating and implementing Community law. It gathers and analyses information. It is also responsible for developing methods and standards to ensure greater comparability, objectivity and reliability of data at European level. The Agency also conducts independent research as part of its annual work programme and at the request of the European Parliament, the Council or the Commission and produces reports on specific topics for the institutions and Member States. The tasks of its predecessor, monitoring racism and xenophobia, remain at the heart of the new agency's range of tasks. The decision to establish a European agency for fundamental rights underscores the priority the Union gives to upholding European fundamental rights. The founding of the Agency is the logical outgrowth of the Charter of Fundamental Rights.

The EU Agency for Fundamental Rights thus closes a gap in the European system of human rights protection. Unlike the European Court of Human Rights, the Agency is not authorized to examine individual complaints; instead, as explained above, its task is to gather and analyse information relevant for fundamental rights and to raise public awareness of rights issues. The Council of Europe has no authority over Community (or Union) law, and the European Court of Human Rights has no jurisdiction over measures of the EU institutions. In order to ensure complementarity of efforts, the Agency closely coordinates its activities with those of the

Council of Europe, to be based on a cooperation agreement between the EU and the Council of Europe. The Agency's multi-annual work programme was adopted in early 2008.

### 2.3 Council of Europe law

Of the more than 200 conventions, treaties and protocols adopted by the Council of Europe, some of the most fundamental are the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Framework Convention for the Protection of National Minorities, and the European Charter for Regional or Minority Languages.

The Council of Europe's key instrument is the European Commission against Racism and Intolerance (ECRI). ECRI was established at the Summit of Heads of State and Government of the Council of Europe Member States in Vienna in October 1993 as an expert commission. The task of the Commission is to work towards strengthening guarantees against all forms of discrimination and in particular to examine and evaluate the effectiveness of legislative, political and other measures of its Member States to fight racism, xenophobia, anti-Semitism and intolerance. To this end, it publishes general policy recommendations. Since 1997, ECRI has also published country reports on the Council of Europe Member States which contain analyses and ECRI recommendations for further action to take against racism, xenophobia and anti-Semitism.

The Council of Europe also focuses on fighting crime in this area. The Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, is especially important in this regard. It was opened for signature on 28 January 2003 and has been signed by most Council of Europe Member States, including Germany. It entered into force on 1 March 2006. Numerous programme activities accompany the implementation of this newly drafted legal instrument.

## 2.4 International criminal justice

One recent development is the prosecution at international level of especially serious crimes; racially motivated crimes also play a role in this regard.

The United Nations Security Council established international criminal tribunals for the former Yugoslavia and for Rwanda in 1993 and 1994 respectively.

The tribunals prosecute persons who committed serious violations of international humanitarian law on the territory of the former Yugoslavia starting in 1991 and in Rwanda starting in 1994. The Federal Government provides various forms of support for the work of both tribunals: German law enforcement authorities share information with the tribunals and coordinate their own actions with them. Germany provides extensive legal assistance at the tribunals' request.

The Rome Statute of the International Criminal Court was adopted on 17 July 1998 at an international conference in Rome. The statute entered into force on 1 July 2002, and the International Criminal Court opened on 11 March 2003 in The Hague. Since then, 108 countries have joined the Rome Statute (as at July 2008). From the very beginning, Germany has been one of the most active supporters of the International Criminal Court, and one of the Court's judges is from Germany. Some of the crimes over which the Court has jurisdiction are related to racism (as crimes against humanity). Germany ratified the Rome Statute on 11 December 2000. Shortly before the Statute entered into force, the German law implementing it also entered into force, allowing Germany to carry out the extensive obligations for cooperating with the Court.

With its Code of Crimes against International Law (VStGB), which entered into force on 30 June 2002, Germany transposed the catalogue of crimes in the Rome Statute into its national criminal law, thereby ensuring that these serious crimes, which affect the international community as a whole, can also be prosecuted in German courts under German law. Section 6 (1) of the Code of Crimes against International Law makes genocide a crime. Section 7 (1) no. 10 and (5) of the Code make apartheid and persecution on racial grounds punishable as crimes against humanity, as does the Rome Statute. Section 7 (1) no. 6 and Article 8 (1) no. 4 of the Code punish certain racially motivated crimes as crimes against humanity and war crimes.



#### **IV. SELECTED PHENOMENA OF SIGNIFICANCE**

The following section describes Federal Government activities to fight racism, xenophobia and anti-Semitism with regard to selected phenomena. The selection does not represent a hierarchy; in addition to the phenomena described here, there are of course other forms of racism which may overlap with these, for example those directed against visible minorities. Because the minority status of such persons is evident from their outward appearance, on which racial discrimination is largely based, they are therefore especially likely to experience discrimination. Measures to combat racism directed in particular at visible minorities (e.g. those of African, Asian or Arab origin) are included in the Federal Government activities already mentioned and will therefore not be included again here.



## 1. Anti-Semitism

The phenomenon of anti-Semitism is not limited to Germany, nor does it represent an acute, general threat to the security of Germany's Jewish population. But as Ignaz Bubis, the now-deceased chair of the Central Council of Jews in Germany, noted, although Germany did not invent anti-Semitism, it was responsible for Auschwitz. For this reason, anti-Semitism in Germany will always have a different significance than anti-Semitism in any other country. The Federal Republic of Germany is very aware of its special responsibility for combating anti-Semitism in all its forms.

Anti-Semitism is the common denominator on which right-wing extremists can agree. It has long been one of the ideological instruments of the extreme political right. The conventional idea that Holocaust education, i.e. teaching young people about anti-Semitism and persecution of Jews under the National Socialist regime, is the primary way to fight anti-Semitism is not enough.

The federal and state governments therefore pursue a dynamic strategy which focuses on both traditional definitions and the latest permutations of anti-Semitism.

The ideological basis for the Nazi genocide of European Jewry was provided by **racist anti-Semitism** which came into vogue in the late 19th and early 20th century. This form of anti-Jewish paranoia – defaming Jews as an inferior race – continues to be propagated in parts of the right-wing extremist camp, especially by neo-Nazis and skinheads, and attracts a following among unenlightened young people in particular.

**Revisionist anti-Semitism** centres on denying the Holocaust. In the broader sense it covers all right-wing extremist arguments aimed at downplaying, relativizing or completely denying the basically criminal nature of the Nazi regime and its responsibility for starting World War II (and blaming “the Jews” instead). One of the main aims of revisionist anti-Semitism is to gain control over the interpretation of National Socialist history. This is not simply about reinterpreting the past; revisionists are well aware that the negative image that the overwhelming majority has of historical National Socialism has an equally negative impact on the acceptance of contemporary right-wing extremism and is a major factor in its continuing marginalization.

**Secondary anti-Semitism** can be summed up as follows: anti-Semitism not *despite* the Holocaust, but *because* of it. These anti-Semites accuse Jews and Jewish organizations of misusing their “role” as victims in the past (which the anti-Semites often do not dispute, but at most relativize, drawing on aspects of revisionist anti-Semitism) to “blackmail” their way today to ever greater power, influence and money. Due to its supposedly greater acceptability, such secondary anti-Semitism increasingly takes the place of racist or revisionist arguments with the additional element that it is keeping Germany from finding its “true” political identity and forcing it to accept an alien political system. Here, conspiracy theories characteristic of anti-Semitism (“The Protocols of the Learned Elders of Zion” are especially notorious) play an additional, key role.

**Anti-Zionist anti-Semitism** does not build primarily on racist or revisionist arguments, but on current policy of the State of Israel in connection with the Palestinian conflict. The Israeli government’s policy of occupation serves as the reason for supposedly “legitimate” criticism of Israel. In fact, however, it is very difficult to tell the difference between such criticism and thinly veiled anti-Semitism. One indication is whether Israel’s right to exist is questioned or even denied. The right-wing extremist camp sees anti-Zionist anti-Semitism as an opportunity to draw comparisons between the crimes of the Nazis and Israeli policy on Gaza and the West Bank and rhetorically reverse the roles of victim and perpetrator, once again relativizing the National Socialists’ persecution of the Jews. But the role of anti-Zionist anti-Semitism even beyond the right-wing extremist context deserves serious attention; these arguments appear to have a special appeal to young people with a Muslim background in the broadest sense, who disseminate them further. In the process, aspects of anti-Zionist anti-Semitism are mixed together with those of racist and revisionist anti-Semitism, partly because these young people have grown up in Germany and have been exposed to such ideas here.

As far as anti-Semitism is expressed in criminal form, such crimes usually come under the category of right-wing politically motivated crime. For this reason, all measures to fight right-wing politically motivated crime also ultimately serve the fight against anti-Semitism, even though the 10.3% of crimes with an anti-Semitic background represent a minority of right-wing politically motivated crime.

More than two-thirds of all crimes with an anti-Semitic background qualify as incitement; propaganda offences, property damage and desecration of graves also account for a large proportion of such crimes. Violent offences account for approximately 2.9%. The proportion of offences involving cemetery vandalism has steadily fallen in recent years. This is likely due to preventive measures taken by the police, above all intensive local patrols. By contrast, music as an expression of group identity appears to be steadily growing in importance in the right-wing extremist skinhead scene.

The Federal Criminal Police Office (BKA) collects and updates information for its database on right-wing extremism, DAREX, which it makes available to authorized users. The database keeps track of punishable and restricted media and media classified as harmful to young people along with relevant legal decisions in order to take measures with the necessary certainty. The right-wing extremist scene has responded to increased investigative pressure by subjecting its recordings to legal examination before publishing them in order to avoid having them seized by the authorities. As a result, the police have seized fewer recordings.

Based on a strategy drawn up in 2000, the state police forces now take rigorous action against right-wing extremist concerts. As a result, such concerts are increasingly held in neighbouring countries. The BKA has responded by intensifying international cooperation.

An important and long-term component of security authorities' efforts is the ongoing monitoring of right-wing extremist activities on the Internet in order to have as complete a picture as possible, to detect new developments at an early stage and to take counter-measures without delay.

The aim is to keep right-wing extremists from being able to use the Internet as a platform for their propaganda. To this end, providers of punishable content are subject to investigation in collaboration with the responsible authorities at state level, according to a strategy jointly developed with the state police forces. The authorities for the protection of the Constitution, in particular the Federal Office for the Protection of the Constitution (BfV), play a key role in the investigation of Internet activities.

Prevention plays a central role in confronting right-wing politically motivated crime. The state police forces are responsible for carrying out preventive measures taken by the police,

while the BKA provides support through its participation in the relevant bodies and in particular in the federal/state programme on police prevention of crime (Pro PK). One example is the media campaign against right-wing extremism, “Wolves in Sheep’s Clothing”, which creatively denounces the surreptitious activity of right-wing extremists and offers help for schoolchildren, parents and teachers in dealing with this phenomenon.

But successfully countering right-wing politically motivated crime and anti-Semitism also requires broader strategic and conceptual cooperation with foreign security authorities.

The BKA has also participated in the OSCE anti-Semitism process for many years and is thus active in the field of international affairs/human rights policy as called for in the “Strategies against right-wing extremism: Measures of the Federal Government”.

In the Federal Government’s view, preventive education has a special role and function in combating anti-Semitism. Not least for this reason, Germany is an active participant in the International Task Force on Holocaust Education, Remembrance and Research (ITF). The ITF opened its Permanent Office in Berlin in March 2008. At the same time, the aim is to perceive and represent the phenomenon of anti-Semitism in schools and adult education with the same degree of complexity with which it is expressed in every kind of anti-Semitic discourse.

The Federal Government also relies on international cooperation. One example is the “Berlin Process” initiated by the OSCE with its 2004 Berlin Declaration to fight anti-Semitism. The Federal Government remains committed to further developing this cooperation, along with its cooperation with other relevant inter- and supranational organizations.

One contribution at national level to the fight against anti-Semitism which should not be underestimated is the consistent promotion of Jewish life in Germany. The Federal Government therefore provides long-term support for the Central Council of Jews in Germany on a contractual basis with federal funds to maintain and preserve German-Jewish cultural heritage, to build up and expand the Jewish community and to assist with integration policy and social tasks. This contract serves not only to acknowledge the Central Council’s great contributions to rebuilding democracy and the rule of law in Germany; it is above all, as stated in the preamble, an expression of our special historical responsibility for Jewish life in Germany, today and in the future.

A democracy under the rule of law cannot remain neutral towards anti-Semitism. Like racism, right-wing extremism and xenophobia, anti-Semitism is not simply one opinion among many in a democracy, which is distinguished by pluralism of opinions. Anti-Semitism is always an attack on the foundations of co-existence in an open society. A democratic state under the rule of law must therefore fight anti-Semitism for its own self-preservation.

## 2. Discrimination against Roma (Gypsies)

Sinti and Roma (also known as Gypsies or Travellers) face persistent prejudices and negative stereotypes as well as discrimination not only in Germany. The number of German Sinti and Roma in Germany is estimated at roughly 120,000, with about 70,000 holding German citizenship. No precise figures are available, because no official data have been collected in Germany since World War II on national minorities mainly as a result of German history and the persecution of minorities during the Third Reich. This also reflects the wishes of the national minorities themselves.

As a national minority, along with the Danish minority, the Frisians and the Sorbs, German Sinti and Roma are explicitly protected under the Council of Europe Framework Convention for the Protection of National Minorities. Under the European Charter for Regional or Minority Languages, the Romany language of German Sinti and Roma is also protected and promoted in Germany as a threatened aspect of European cultural heritage.

The Council of Europe's Committee of Experts on Roma and Travellers has been active since 1995 with participation from Federal Government representatives and has drafted significant recommendations to improve the situation and protection of Sinti and Roma, in particular with regard to education issues, but also to improve their economic situation, living conditions and access to health care.

With the aim of creating a group to represent the interests of the Roma community in Europe, the European Roma and Travellers Forum was formed in late 2004 as a non-governmental organization with close and privileged relations to the Council of Europe after a working group made up of members of the relevant groups as well as representatives of the Federal Government, among others, had presented guidelines and draft statutes for such a forum and after the Council of Europe had signed a partnership agreement with the Forum in Strasbourg on 15 December 2004 governing the Forum's financing.

With the active participation of Germany, the OSCE – in addition to its Contact Point for Roma and Sinti Issues (CPRSI) founded in 1994 at the Office for Democratic Institutions and Human Rights – drafted a plan of action to improve the situation of Roma and Sinti, which was adopted by the Permanent Council of the OSCE in November 2003. This plan contains among other things recommendations for combating racism and discrimination and for comprehensively improving the living conditions of Sinti and Roma.

The situation of Sinti and Roma in Germany is also a regular topic of the German Forum Against Racism, of which the Central Council of German Sinti and Roma is a member. For

example, the Forum called on the German Press Council to ensure that media reports did not discriminate against this group and to punish violations using all sanctions available to the German Press Council.

### 3. Ethnic German repatriates from Eastern Europe and the former Soviet Union

A special group of immigrants to Germany is that of “late repatriates”, or ethnic Germans from the former Soviet Union and Eastern bloc countries. As a result of World War II, ethnic Germans in these areas faced persecution and serious discrimination for decades after the end of the war. Where the impact of such discrimination is still felt or assumed by law, as in the case of Russian Germans, those affected and their spouses, children and grandchildren, even if these are not ethnic Germans, may be granted German citizenship and allowed to immigrate to Germany under a special procedure based on Article 116 (1) of the Basic Law.

According to this article, a German is a person who possesses German citizenship or who was admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such a person. Since 1 January 1993, the Federal Expellees Act (BVFG) has the final say on who qualifies as a person admitted to the territory designated in Article 116 as an expellee of German ethnic origin.

Thus it is clear that such “late repatriates” and their eligible spouses and descendants who gain German citizenship have an immigrant background which is much more recent than that of many second- or third-generation “guest workers”. Although “late repatriates” and their spouses and descendants belong to the majority population by virtue of their German citizenship, they are often not accepted as “real Germans”. They often fail to fulfil the expectations of native Germans that they will be able to speak German and will be familiar with German culture and the way of life in Germany. Their experience from home does not necessarily apply in Germany, and they often have different values and norms.

An additional problem is the concentration of “late repatriates” in certain residential areas. The Act on the Assignment of a Place of Residence, which ensures that “late repatriates” are evenly distributed among communities, has helped counteract this trend and has been extended to 31 December 2009. Where there is a high concentration of “late repatriates”, they often do not feel a need to become integrated in German society. They often become established in their neighbourhood, speak only Russian, retreat inside their community and are thus able to maintain the way of life they brought with them, which makes it more difficult for them to interact with the native population. In addition to a lack of language skills, problems of identity also interfere with social integration: They often feel that they do not really “belong” in Germany.

Due to these problems with integration, “late repatriates” and above all their family members face different forms of xenophobia. Their image in the media is largely determined by a small



group of young male “late repatriates” who are violent or have trouble with drugs or alcohol, even though “late repatriates” over 30 are no more likely to be convicted of a crime than native-born Germans. They therefore need to win the media as an ally, especially at local level, in order to change their public image. Publishing or broadcasting more stories of successful ethnic German repatriates would be helpful. It would have a dual impact, by giving young ethnic German repatriates role models and conveying a different public image of ethnic German repatriates to reduce xenophobia.

In addition to the Federal Government’s integration courses and advising for new immigrants, measures to promote social integration of immigrants, which are run by the Federal Office for Migration and Refugees (BAMF), also have a preventive effect. These projects concentrate on strengthening ties to the local community, preventing violence and drug/alcohol dependency, managing conflict, promoting civic engagement, and improving mutual acceptance and co-existence between immigrants and non-immigrants.

In 2006, a programme especially designed for ethnic German repatriates on the basis of Section 9 (4) of the Federal Expellees Act was introduced as an additional focus. Called “Identity and Integration PLUS”, the programme offers courses which build on those of the integration courses and are targeted at specific groups. By dealing with the specific needs and living situations of ethnic German repatriates, their problems and opportunities in managing their daily lives and by helping them get started in a career, these courses, consisting of 100 hours of instruction, also have a preventive effect.

The project “Integration Through Sport”, launched in 1989 in cooperation with the German Olympic Sports Confederation, should be pointed out for its impact on preventing xenophobia. Originally called “Sport with Ethnic German Repatriates”, in 2001 the project was opened to other target groups (young foreigners and disadvantaged German youths). Taking part in sports together promotes fairness and team spirit, gives participants a sense of success and works off aggression.

#### 4. Preventing violence

Criminal law must be used to rigorously fight crime motivated by hate and prejudice. But this is not enough; broad-based prevention is also needed which covers discriminatory behaviour which is not yet criminal. In this respect, federal funding for prevention projects and the research project on primary prevention of violence against members of certain groups, especially young people, conducted by the German Forum for Crime Prevention (DFK) foundation were of special importance.

From 2001 to 2004, a bibliography and a socio-psychological report were produced and a workshop and symposium carried out, commissioned by the Federal Ministry of Justice. Further, an interdisciplinary working group devoted to the issue presented a comprehensive report, which came to the following conclusions:

- Primary prevention of hate crime rests above all on two components: teaching how to be tolerant and how to control aggression.
- Preventing hate crime must start as early as possible. Kindergarten and school education is therefore especially important. Germany has a number of recommended projects in this area (e.g. the Olweus Bullying Prevention Programme, “Conflict Culture”, “Children’s Worlds”), some of which have been evaluated in Germany and some of which are based on projects evaluated abroad.
- But these promising German projects were or are being carried only in limited areas (individual communities or regions). Future efforts should therefore not concentrate first and foremost on developing new methods, but rather on the large-scale implementation of recommended projects.
- But existing approaches need further development. For this reason, all projects need to be evaluated, documented and made public to a greater degree than before.
- For prevention efforts in kindergartens and schools to be successful, teachers must learn the basics of teaching how to be tolerant and control aggression already during their training.
- Preventing hate crime will be successful only if it is accompanied by rigorous prosecution and punishment of such crimes. The severity of the punishment is less important than rapid action by the state, sending a signal to those concerned

Because of the practical consequences resulting from these insights, the relevant federal ministries, the states, the local authorities' national associations and other organizations must coordinate their efforts more closely with each other.<sup>12</sup>

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<sup>12</sup> The project results are available on the Internet at [www.kriminalpraevention.de](http://www.kriminalpraevention.de). They were also published by the Federal Ministry of Justice in 2006 in a four-volume edition which is available from the Federal Ministry of Justice.

## 5. International cooperation (selected examples)

A number of aspects of this National Action Plan have already made it clear that without international cooperation, it is impossible to fight racism, xenophobia and anti-Semitism. This will be demonstrated using two further examples:

### 5.1. The fight against trafficking in humans (especially women and children)

In recent years, a major focus of German activities in the UN human rights bodies has been directing the attention of the international community to the world-wide evil of trafficking in women and children, with the aim of better protecting the human rights of victims of trafficking in women and children. For example, with support from the Federal Government, the National Panel on Trafficking in and Violence Against Women Migrants (registered society) presented its work and collaboration between law enforcement agencies and NGOs in Germany at the margins of the eighth meeting of the UN Human Rights Council in 2008 as an example of best practices.

Fighting violations of women's human rights, including trafficking in women, has been an important focus of the United Nations since its founding. A number of conventions, declarations and other instruments, in particular to combat human trafficking, have been adopted over the past decades. The most significant instrument is the Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000, which by 2008 had been ratified by 118 countries. The UN Human Rights Council, the UN Commission on the Status of Women and the UN Commission on Crime Prevention and Criminal Justice devote almost all their time to this set of issues, and special rapporteurs on violence against women and on combating human trafficking, especially of women and children, were appointed in 2003 and 2004. In 2007, the UN Commission on the Status of Women made the issue of violence against girls and women a special priority and adopted various resolutions focusing on various forms of violence, in particular forced marriage, domestic violence, sexual violence and trafficking of children and women. The priorities of the UN Commission on Crime Prevention in 2008 were violence against women and combating human trafficking.

The Council of Europe opened the Convention on action against trafficking in human beings for signature on 16 May 2005. This Convention builds on the UN Additional Protocol of 2000 mentioned above and contains comprehensive binding provisions on protecting victims and

on cooperation between the contracting states, whose compliance is checked by an independent monitoring group. Germany signed the Convention in November 2005 and is currently preparing for accession. The Convention entered into force on 1 February 2007.

In November 2006, the Council of Baltic Sea States founded the Task Force on Trafficking in Human Beings to promote cooperation in the Baltic region on combating human trafficking.

In addition, in order to address the problem of trafficking in children more thoroughly, the working group “Children Moving Across Borders” was established at German initiative during the conference on children’s rights, “Making Europe and Central Asia Fit for Children”, held in Sarajevo on 13–15 May 2004. This conference continued the “Berlin Process” initiated at the preparatory conference for the world children’s summit and took place under the shared aegis of Bosnia and Herzegovina, Germany, and the UN’s children’s fund UNICEF. The 44 participating European and Central Asian countries, numerous international organizations and non-governmental organizations and 27 young delegates all supported the conference’s call to all the nations of the region to take effective measures to end trafficking in children. This engagement was rewarded when, at German initiative, the 60th session of the UN Commission on Human Rights unanimously adopted a resolution to appoint for the first time a special rapporteur on the trafficking of humans, especially women and children, to report to the Commission on current developments in human trafficking and to provide recommendations for more effective action against this crime and more effective protection for its victims. At the joint suggestion of Germany and the Philippines, this mandate was renewed at the eighth session of the Human Rights Council in June 2008. The Federal Government continues to view active support for this mandate and for the work of the special rapporteur as an important contribution to raising the awareness of the international community for the importance and urgency of the fight against trafficking in humans, especially women and children, and of protecting the dignity and human rights of its victims.

At national level, the Federal Republic of Germany has also introduced new and expanded means to fight the trafficking of women and children.

To ensure that the main focus is protecting the women affected and that the various aspects of trafficking in women can be considered and coordinated strategies for combating it can be developed, in spring 1997 the Federal Government, under the supervision of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, set up a nation-wide

working group on trafficking in women which meets about three times a year. Members of the working group are the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (responsible for supervision and management); the Federal Foreign Office; the Federal Ministry of the Interior; the Federal Ministry of Justice; the Federal Ministry of Labour and Social Affairs; the Federal Ministry for Economic Cooperation and Development; the GTZ federally owned enterprise for development cooperation; the Federal Criminal Police; representatives from the states' conferences of interior, justice, social, women's and equal opportunities ministers; the Federal Association against Trafficking in Women and Violence against Women in the Migration Process as a network of special consultation services in Germany; the special consultation service SOLWODI (reg'd society); and the federal association of voluntary welfare organizations. The tasks of this working group include ongoing information-sharing about the variety of activities in the states and in national and international bodies; analysis of specific problems in fighting the trafficking of women; and drafting recommendations and joint action as appropriate to fight trafficking in women.

The group's concrete achievements include drafting a model of cooperation to provide special witness protection for women who cannot or do not want to take part in the witness protection programme defined by law. This cooperation strategy, which was revised in December 2007, has become an outline for similar models in different German states and is considered a best practice at European and international level.

Sections 232 to 233a of the Criminal Code (StGB) set criminal penalties for human trafficking for the purpose of sexual exploitation and for the purpose of labour exploitation, providing for prison sentences of up to ten years. And other charges may be filed in connection with human trafficking (e.g. coercion, bodily harm, unlawful deprivation of liberty, extortion).

Under Section 395 of the Code of Criminal Procedure (StPO), victims of sexual crimes (such as rape, sexual abuse, human trafficking for the purpose of prostitution) have the right to become joint plaintiffs to any criminal proceedings. Since the Act to Reform Victims' Rights entered into force, victims of procuring and women exploited as prostitutes also have the right to become joint plaintiffs in criminal proceedings.

Under the supervision of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, in September 2007 the Federal Government published its second Plan of Action to Combat Violence Against Women containing an overall strategy for concrete federal

measures to prevent and eliminate all forms of violence against women, including the trafficking of women.

And the Federal Government supports the work of local non-governmental organizations working in the known countries of origin and transit to educate people about the various forms human trafficking takes and to offer help.

### 5.2 Cooperation with the Organization for Security and Cooperation in Europe (OSCE)

The OSCE offers an especially appropriate forum for discussing issues related to combating racism and anti-Semitism in Europe (it is also very active in combating human trafficking): With its 56 member states, the OSCE allows an overall European perspective on an issue.

Within the OSCE, Germany is working to strengthen what is known as the human dimension, including tolerance and non-discrimination. Germany therefore provided policy and practical support (funding and seconding of personnel) for opening a Tolerance and Non-Discrimination Unit within the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw. The OSCE conference in Berlin on combating anti-Semitism, as well as the conferences in Paris and Brussels (on the Internet as a platform for extremist propaganda, and on combating racism and xenophobia) in 2004 set in motion an irreversible process aimed at tolerance and non-discrimination as well as state guarantees of protection for minorities. The conferences in 2004 were the first of a number of conferences examining these issues in greater detail which continue to the present day. Germany supported the appointment of three Personal Representatives of the Chairman-in-Office to combat the various forms of intolerance.

At the request of the Ministerial Council in 2003, ODIHR set up the Tolerance and Non-Discrimination Information System (TANDIS), which also makes this information available on the Internet (<http://tandis.osce.org/>).

With its extensive acquis of political obligations by the participating states, the OSCE performs valuable awareness-raising efforts which the Federal Government will continue to promote and support.





## 6. The Internet

The Internet has become one of the most important media, also for right-wing extremist propaganda: It is fast, cheap and seemingly anonymous. Combating racism, xenophobia and anti-Semitism on the Internet cannot be left to individual countries alone; the global nature of the Internet urgently demands international cooperation. Nor can this task be left to governments alone; civil society is especially called on to help. It is also a shared goal to ensure that the Internet remains a democratic and freely accessible medium of communication and information exchange for civil society.

The Internet gives right-wing extremists a significant forum for exchange and agitation and is also intensively used for coordinating activities and mobilizing participation. The Federal Office for the Protection of the Constitution (BfV) is aware of more than a thousand websites run by German right-wing extremists.<sup>13</sup> Discussion forums which include a protected area requiring registration for entry are growing in popularity. Punishable content is published on the Internet anonymously and usually via servers located abroad (above all in the US).

### 6.1 Rigorous investigation and punishment of criminal right-wing extremist, racist, xenophobic and anti-Semitic Internet content

Criminal law is the main instrument for fighting right-wing extremism on the Internet. If content constitutes incitement or disseminates identifying marks of anti-constitutional organizations, the law enforcement authorities will initiate an investigation based on Sections 86, 86a and 130 of the Criminal Code. Under Section 11 (3) of the Criminal Code, data storage media are the equivalent of writings referred to in these provisions. The content of data storage media (magnetic tapes, hard drives, CD-ROMs, etc.) and content stored only temporarily on random access memory are therefore punishable under criminal law.<sup>14</sup> Here, whatever is prohibited offline will also be prosecuted when it is found online. The Federal Criminal Police (BKA) and Federal Office for the Protection of the Constitution constantly

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<sup>13</sup> Due to the extremely high fluctuation rate, it is very difficult to ascertain the actual number of active right-wing extremist Internet sites.

<sup>14</sup> See Adolf Schönke and Horst Schröder-Eser, Criminal Code, 27th ed., Section 11, marginal note 78 (BGHSt 47, p. 55, 58 f.; Bundestag printed document 13/7385, p. 36).

monitor the Internet for punishable right-wing extremist, xenophobic and anti-Semitic content.

6.2 Initiating and supporting international strategies to combat criminal right-wing extremist Internet content

In view of the global character of the Internet and given the fact that Internet content which violates German law is often protected in other countries – in particular the US – as free speech, the Federal Government regards it essential to launch or support intergovernmental initiatives as part of a comprehensive strategy for dealing with right-wing extremist Internet content. Crimes committed outside German territory can be prosecuted successfully only through international cooperation. The Federal Government is therefore working in international forums, especially the Council of Europe, the G8 and the United Nations, on behalf of more effective international prosecution of right-wing extremist Internet crimes.

The Council of Europe drafted the Convention on Cybercrime, which was signed by 26 countries as of 23 November 2001. Because the Council's member states were unable to reach consensus on including the fight against incitement to racial hatred, Germany and France agreed in the Declaration of the 77th Franco-German Summit to take the initiative on an additional protocol to the Convention in which signatories agree to take effective measures against the dissemination of racist and xenophobic ideas via the Internet. The Federal Government played an active role in the consultations which started in December 2001. The resulting Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems was signed on 28 January 2003 by eight European Union Member States, including Germany, as well as Armenia, Estonia and Malta. Since then, additional countries have signed the protocol, especially EU Member States, but also Canada and South Africa.

Germany signed the Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems on 28 January 2003; ratification efforts are under way.

In this context, the Federal Government welcomes the activities of the OSCE, whose members have committed themselves, starting with the Paris OSCE conference in June 2004 on strategies to combat racism, xenophobia and anti-Semitism on the Internet, to investigating, analysing and punishing crimes committed on and through the Internet and to report them, like other crimes, to the ODIHR.

### 6.3 Promoting voluntary self-regulation by Internet service providers and users

Voluntary self-regulation by Internet service providers and users is an important supplement to government measures. The Federal Criminal Police Office has therefore repeatedly approached Internet service providers and online services in the context of information seminars with the aim of stepping up the exchange of information about right-wing extremist websites and initiating joint action against right-wing extremist Internet content. Cooperation with various organizations, including NGOs, and youth protection agencies has a similar function: For example, the Federal Criminal Police Office assists the efforts of Jugendschutz.net, a joint agency of the youth protection authorities at state level. Jugendschutz.net warns operators of unlawful websites and informs providers if such content is not removed.

## 7. Media other than the Internet

Today more so than in the past, attitudes and opinions, as well as the willingness to become involved (whether by volunteering one's time or money), are largely influenced by images and sounds transmitted via the modern mass media. For this reason, the form, content and extent of media presence play a very important role also in combating prejudice, racism, xenophobia and anti-Semitism.

Germany's broadcasting laws and state treaties on media services contain basic principles of programming which obligate broadcasters to respect the constitutional order and human dignity and to contribute to respect for life, liberty and physical well-being as well as the beliefs and opinions of others, and to promote international understanding. Discrimination on the basis of nationality, "race", origin, or political, religious or philosophical beliefs is prohibited. For the public broadcasters, internal supervisory bodies monitor compliance with these principles; in the case of commercial broadcasters, this monitoring is carried out by the voluntary television self-regulation body FSF and the responsible supervisory authorities of the states.

In addition to prohibiting racist and discriminatory programming, the government provides a regulatory framework which gives radio and television the necessary tools to actively fight racism, right-wing extremism, xenophobia, anti-Semitism and violence. As a result, German broadcasters, especially the public broadcasters, address racist and discriminatory incidents and trends in order to analyse them in the media with the proper journalistic due diligence. By critically examining such incidents and related anti-humanist and anti-democratic ideologies and their societal roots, broadcasters actively work to counter possible racist prejudices in society.

The principle of self-regulation for broadcasting is already highly developed in the Federal Republic of Germany. For example, the model of regulated self-regulation is a defining element of the supervision of commercial broadcasting. According to this model, which is anchored in the Inter-State Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and Telemedia Services, the role of the state is limited to checking whether self-regulatory agencies have exceeded their margin of discretion. Preventing racist

or xenophobic content is an especially appropriate area for self-regulatory measures of every kind.

Since the early 1990s, Germany has been engaged in an intensive media policy discussion of whether members of the various minorities are “properly” or “sufficiently” represented in the media. Numerous national and Europe-wide initiatives have addressed this issue, such as the project “More Colour in the Media” in which Germany's Adolf Grimme Institut is also a participant. The radio and television award CIVIS, initiated by the Federal Government Commissioner for Migration, Refugees and Integration together with Germany's Channel I and the Freudenberg Foundation, honours programmes and formats which try to provide a realistic – and not uncritical – image of minorities intended to dismantle prejudices. In 2006 and 2007, German television broadcasters ARD and ZDF organized a comprehensive symposium on immigrants and the media, which also addressed issues of intentional and unintentional discrimination. All these initiatives are continuing at various levels.

In Germany, state influence on the hiring policy of media providers is prohibited for a number of reasons, not least constitutional law. However, in recent years commercial media providers in particular have made great strides with regard to representing minorities, not least because they hope to win and retain members of these minorities, especially young people, as consumers of their programmes. This trend is also increasingly apparent among those providing programming for public broadcasting.

### 7.1. Voluntary self-regulation of the German press

The principle of government non-intervention also applies to print media. That is, the state is to refrain from exerting any influence on the press. However, the general freedom of the press is not unlimited: Under Article 5 (2) of the Basic Law, this freedom is bounded by the provisions of general laws, legal provisions on the protection of young persons, and in the right to inviolability of personal honour.

Also, as a key factor of “opinion-forming power”, the press has developed self-regulatory mechanisms which come into play at the level of professional ethics and thus beyond the formal legal system, especially when journalistic fairness or due diligence is violated. The

German Press Council is responsible for the task of voluntary self-regulation. Among other things, the German Press Council deals with complaints concerning material published in newspapers and magazines and evaluates these on the basis of its journalistic principles (the press code of conduct). The Federal Government believes that this voluntary self-regulation is appropriate for monitoring compliance with the basic rules of free and responsible journalism. According to Section 12 of the German Press Code of Conduct: “No one shall be discriminated against because of his/her sex or his/her membership of a racial, ethnic, religious, social or national group.” According to this provision, reports on criminal offences may mention the fact that a suspect or offender belongs to a religious, ethnic or other minority only if there is a reasonable need for such information in order to understand the reported incident. Anyone may report violations of this or other journalistic principles in the Press Code of Conduct to the German Press Council. If it finds such complaints to be justified, the German Press Council may take action against the responsible press organ, for example by requiring it to publish a public reprimand.

## 8. National minorities

The Federal Republic of Germany has played a decisive role in the development of binding rules of law for the protection of national minorities and traditional ethnic groups and/or their language and culture. For this reason, Germany joined the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.<sup>15</sup> The Framework Convention contains principles on behalf of national minorities which are binding under international law and obligates the states party to the Convention to protect and promote national minorities and in particular to promote tolerance and intercultural dialogue between the various population groups. In Germany, the Framework Convention refers to the following national minorities: the Danish minority, the Sorbian people, the Frisians, and the German Sinti and Roma.

By joining these two agreements, Germany also agreed to submit to the Council of Europe's monitoring mechanism which is intended to ensure compliance with the obligations in the agreements. As part of this mechanism, the Federal Government regularly reports at length to the Council of Europe. Based on its site visits, the Council of Europe's Committee of Experts has assessed the implementation of both agreements as largely positive and has particularly emphasized Germany's efforts to promote tolerance. With the Federal Government Commissioner for Matters Related to Repatriates and National Minorities, national minorities have a central point of contact at the federal level, making it easier for their associations to put their concerns and views to government agencies, despite the difficulties entailed by the vertical (federal, state and local) and horizontal (between different ministries) division of responsibilities in the Federal Republic of Germany.

The main tasks of the Federal Government Commissioner for Matters Relating to Repatriates and National Minorities are the following:

- serving as the point of contact at the federal level for the national minorities in Germany;
- representing the Federal Government in the relevant contact bodies;
- conducting public information and coordination activities regarding national minorities in the Federal Republic of Germany.

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<sup>15</sup> Germany signed the Framework Convention on 11 May 1995 and ratified it on 10 September 1997. It entered into force for the Federal Republic on 1 February 1998.

## 9. Religion

Due to its history of immigration, Germany is a country where people of different religions live permanently. Muslims make up the largest non-Christian population group at approximately 3.5 million residents. Germany's Constitution guarantees freedom to choose and practice one's religion.

Following attacks on New York, Madrid and London motivated by Islamist extremism, there is a risk that all Muslims will be suspected of such extremism, which may lead to discrimination or aggression against them. In order to emphatically counter such developments, to emphasize the difference between the religion of Islam and extremist political ideologies claiming to be based on Islam, and to underscore the fact that the great majority of Muslims in Germany are peaceful and law-abiding members of German society and that Muslims actively support the principles of Germany's constitution and society, in 2006 the Federal Government initiated the German Islam Conference, chaired by the Federal Minister of the Interior.

Another aim of the Conference is to improve the integration of Muslims living in Germany and to prevent extremism. A more intensive dialogue with Muslims offers opportunities to refute the message of antagonism and violence disseminated by Islamist extremists and instead spread the message of mutual respect and peaceful interaction. The Federal Government also promotes many projects of intercultural and interreligious dialogue, including seminars, a coordinating council of Christian-Muslim dialogue initiatives in Germany, a network of local encounters and an education centre for Muslim women.

The German Islam Conference is intended to be a long-term process of negotiation and communication between the German state and representatives of Muslims living in Germany, to continue for two to three years. The Conference convenes at two levels: in a plenary made up of 15 representatives of the German state and 15 representatives of Muslims living in Germany, and in several working groups. In addition, issues of internal security, Islamist activities opposed to the liberal democratic order and the prevention and detection of Islamist violence are addressed in the round table on security and Islamism. The hoped-for result of the dialogue process is an agreement between the German host society and Germany's Muslim population in which both sides agree to uphold social and religious policy principles, with a special emphasis on upholding the principles of liberal democracy as enshrined in the Constitution. The process is based on an understanding of integration which recognizes cultural and religious differences but requires allegiance to Germany's law and values, the



German language and social conventions accepted in Germany. The motto of the German Islam Conference is therefore “Muslims in Germany – German Muslims”.<sup>16</sup>

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<sup>16</sup> For a detailed explanation of the idea behind the dialogue, see: Federal Ministry of the Interior (ed.), *Muslims in Deutschland – Perspektiven für eine gemeinsame Zukunft* [Muslims in Germany: Perspectives for a Shared Future], policy statement, 54th Session of the 16th German Bundestag, 28 September 2006, Berlin 2006.

## 10. School and Preschool

In Germany's federal system, schools are the exclusive responsibility of the states (*Länder*). But a national plan of action to fight racism, xenophobia, anti-Semitism and related discrimination would be remiss if it failed to identify the central role schools and preschools play in this effort.

The states are also fully aware of this significance. The Standing Conference of the Ministers of Education and Cultural Affairs of the states has already adopted numerous decisions emphasizing the importance of Holocaust education, in-depth knowledge of the history of anti-Semitism and totalitarianism, awareness in interactions with members of other ethnic groups, and practical experience of democratic values in combination with human rights education. All the states have integrated these issues into their curricula, for example in the subjects history, civic education, religion/ethics and German. Regularly assigned projects on specific topics also help pupils learn about these issues. These efforts must build on preschool care and education, where promoting children's verbal skills is paramount in order to create the necessary conditions for non-violent, communicative conflict resolution. An essential part of such education is also learning how to deal with the media, media content and formats. Children and young people must be able to recognize propaganda on the Internet and in other media for what it is in order to react to it appropriately.

Ongoing training in these areas for school and nursery school teachers is equally important, as is working with parents, who have a decisive influence on the success of such efforts.

### 10.1 Schools Without Racism – Schools With Courage

In this context, the project "Schools Without Racism – Schools With Courage" deserves special attention. This project is a Europe-wide youth initiative with national coordination centres in Belgium (since 1988), where the project originated, as well as the Netherlands (since 1992), Germany (since 1995), Austria (since 1999) and Spain (since 2002). In all participating countries, the project is based on the same idea: schools committing themselves to take action against racism. Beyond this basic idea, the project is implemented differently in the various countries in order to take the individual features of schooling in each country into account.

In Germany, "Schools Without Racism" was initiated by Aktion Courage (reg'd society) in 1995. In 2001, the project organization and focus was overhauled under new management. Since then, the project covers not only racism in the traditional sense, but also all forms of

discrimination (due to religion, social origin, gender, physical appearance, political beliefs and sexual orientation).

In 2007, about 350 schools with a combined total of 300,000 pupils had joined the “Schools Without Racism – Schools With Courage” network, making it the largest school network in Germany. The federal coordinating office is located in Berlin and is responsible for overall coordination, content development and screening schools that wish to participate; many states also have state-level coordinating offices. In order to participate and receive the title of “School Without Racism – School With Courage”, applicants must fulfil three criteria: At least 70% of all those working and learning at the school must sign a voluntary commitment to oppose all forms of discrimination and to take action against any discrimination they witness. And participating schools must agree to hold at least one project day per school year dedicated to this topic.

## 11. Raising awareness among law enforcement and criminal justice personnel

In Germany, law enforcement agencies are also the responsibility of the states. It is the responsibility and in the own interests of these agencies to make sure their staff have the proper training and awareness when dealing with immigrants and members of various minorities.

### 11.1 Police

The First International Congress on the Teaching of Human Rights in Vienna in 1979 formulated the following goals for human rights education: promoting tolerance and solidarity, transmitting knowledge about human rights, and increasing awareness of ways to implement them in real life. All basic and advanced training for state and federal police forces is based on these goals, so that human rights-based education is inherent in career officer training and advanced training at educational institutions and the offices of the individual police forces.

Courses on public and constitutional law explain the significance of the liberal, democratic and socially conscious constitutional order for individual liberty and for society as a whole. In particular, young officers should respect and protect the fundamental rights as the prerequisite for justice and freedom. They should be committed to carrying out their official duties in the service of the free and democratic state under the rule of law.

In courses on political science, police recruits learn about the substance and institutional conditions and context of political thought and action, also in comparison with other systems and philosophies. The main focus is on recognizing the interaction of political, economic, social and cultural factors in their historical development and their contemporary significance. Areas of emphasis are democracy, xenophobia and racism, migration, religion and sects. Officers are to learn how to independently analyse and assess political conflicts, extremist ideology, and political and religious ideas.

New officers are taught an ethical perspective on this topic in courses on professional ethics. These courses focus on interaction with specific social and ethnic groups. Acceptance of other cultures and tolerance towards minorities and marginal groups are intended to help officers

develop critical self-awareness based on morals and ethics. They learn how to argue and make judgements from an ethical perspective. The value system is based on the individual; interaction with “the other” and with “otherness” is discussed.

Training for the federal higher intermediate police service repeatedly deals with human rights and opposition to racism. In the basic course at the Federal College for Public Administration in Brühl, opposing racism is discussed as an interdisciplinary topic within the subjects of public law, administrative law, political science and ethics. At the Federal Criminal Police Department of the Federal College for Public Administration in Wiesbaden, this topic is the subject of the advanced course in criminology. Because the Federal Criminal Police are responsible for state security, topics such as “the police and xenophobia” and “the police and hostility towards foreigners” are naturally part of the daily curriculum. The syllabus includes a number of scientific studies of this phenomenon and the problem of xenophobia among police officers themselves.<sup>17</sup>

In addition, a wide variety of behaviour-oriented training courses are offered. Training in personnel and social competence is based on humanist concepts aimed at ensuring mutual respect and communication based on partnership. Police conduct is assessed in terms of its affective, cognitive and social dimension and measured against the standard of human rights, among other things, and an operational philosophy is drawn up. Seminars such as “Social Competence”, “Rhetoric”, “Communication” and “Stress and Conflict Management” encourage and shape students’ social attitudes also in terms of absolute respect for human rights and the fundamental rights anchored in our Basic Law.

### 11.2 Prison service

Because a large proportion of the prison population is foreign or of foreign background, it is especially crucial for the prison services of the states to prevent and weed out all forms of racism and xenophobia before they spread. On average, the proportion of foreigners in state prisons is 26.7%; in one state it is slightly over 40%. On average, the proportion of foreigners held in pre-trial detention is 43.2%, and in one state it is more than 60%. Prisoners have a wide variety of nationalities and come from very different cultural backgrounds; according to

the latest figures, the population of state prisons included inmates of 146 different nationalities.

Since the federalism reform went into effect on 1 September 2006, the Prisons Act lies within the jurisdiction of the states. This Act together with the state ordinances on pre-trial detention, which will soon be replaced by state laws on pre-trial detention, provide the legal framework for a prison service which is as bias-free as possible with regard to nationality and background. According to the Prisons Act, all prison inmates are to benefit from resocialization efforts. Foreign inmates are therefore to have equal access to measures promoting resocialization. This legal requirement places great demands on staff in the state prisons. For this reason, prison staff regularly take part in courses and in-service training preparing them to deal with inmates from other countries or other cultural backgrounds. For example, in-service training offered by the states includes special courses on how to avoid racism and xenophobia. Other special courses teach prison staff how to interact with inmates from other cultural backgrounds.

The states' prison service authorities are especially careful when dealing with problems involving certain ethnic groups, and the states have developed special strategies for handling existing integration problems. One of these strategies is aimed at promoting the integration of incarcerated ethnic German repatriates from the former Soviet Union ("Russian Germans"), among other things by learning more about their culture of origin in order to know how better to approach this group. Prison service authorities offer a variety of courses for prison staff on these subjects.

The state prisons make every effort to explain to inmates their rights and duties in their native language; to do so, among other things the prisons use information brochures in a variety of languages.

Lastly, the states' prison service authorities carefully monitor any racist or right-wing extremist activity among inmates and develop ways to deal with such activity. For example, under the supervision of the Federal Ministry of the Interior, a questionnaire was sent to all state prisons to identify any right-wing extremist tendencies among inmates and to develop appropriate responses. Another survey of state prisons, this one conducted by the Centre for

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<sup>17</sup> The Trier Study, the PFA Study and the Silbermann Study.

Criminology in Wiesbaden at the request of the Federal Ministry of Justice, is intended to determine the extent of right-wing extremist tendencies among the inmate population and develop strategies for action.

### 11.3 Advanced training for judges and public prosecutors

Advanced training for judges and public prosecutors is another important measure to counter racism and xenophobia.

The German Judicial Academy, which is managed and financed jointly by the federal and state governments, provides nation-wide advanced training of judges from all jurisdictional branches and of public prosecutors. The Academy regularly offers conferences concentrating on racism, racial discrimination and xenophobia as well as conferences intended to improve integration and mutual understanding, for example: “Political Extremism: A Challenge for Society and the Judiciary”; “Law, Violence, Aggression”; “The Judicial System and Jewry”; “The Judicial System under National Socialism”; “Intercultural Communication in the Courtroom”; and “The Judicial System and Islam”.

## 12. Immigration on humanitarian grounds

Based on the EU's Council Directive 2004/83/EC, refugee status under the Geneva Convention on Refugees may be granted also in cases of non-state persecution (Section 60 (1) of the Residence Act (AufenthG)). Such cases may include attacks motivated by racism or xenophobia. When a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group. In future, refugee status under the Geneva Convention on Refugees will also be granted in such cases (Section 60 (1) of the Residence Act).

In order to reduce the incidence of successive suspensions of deportation, foreigners who are required to leave the country are to be issued a residence permit if their deportation has been suspended for 18 months (Section 25 (5) second sentence of the Residence Act) and the foreigner is not responsible for the obstacle to deportation.

In addition, a residence permit may be issued in certain hardship cases (Section 23a of the Residence Act): At the request of a Hardship Commission established by a state government, the supreme state authority may order a residence permit to be issued to a person who is obliged to leave the country without possibility of appeal, by way of derogation from the usual conditions pertaining to the issuance and extension of permits. Every state has now established a Hardship Commission.

The Act to Implement Residence- and Asylum-Related Directives of the European Union, which entered into force in August 2007, also introduced a provision covering old cases (Sections 104a and 104b of the Residence Act). This provision is intended to resolve, in a politically responsible and humanitarian way, the problem of the large number of foreigners who are legally subject to deportation but who cannot be deported for other legal reasons and who have therefore lived for many years in Germany and have become well integrated here. Such persons are to be granted the right of residence until the end of 2009. At the same time, incentives to find paid employment will be created, in order to prevent such persons becoming dependent on the social welfare systems.



## **V. OUTLOOK**

The National Action Plan is intended to be a comprehensive aid to preventing and protecting against violence and discrimination by clearly demonstrating that neither policy-makers, the judicial system nor society at large are willing to accept or tolerate such phenomena. In view of demographic trends and the growth of multi-ethnic population centres, the National Action Plan also calls for a consistent policy of promoting involvement and participation at all levels of society and the political and economic systems. As a result, the National Action Plan incorporates the many different measures and initiatives undertaken by the Federal Government in this field. The National Action Plan is also aimed at promoting a policy of recognizing and valuing difference.

But producing this National Action Plan is not the final result; instead, additional activities will have to be oriented on and measured against the defined aims. And such a plan of action can never be static, as the individual measures require evaluation and follow-up.