

GERMANY 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Germany is a constitutional democracy. Citizens choose their representatives periodically in free and fair multiparty elections. The lower chamber of the Federal Parliament (Bundestag) elects the head of the federal government, the chancellor. The second legislative chamber, the Federal Council (Bundesrat), represents the 16 states at the federal level and is composed of members of the state governments. Observers considered the most recent national elections for the Bundestag, which took place in 2009, to have been free and fair. Security forces reported to civilian authorities.

Right-wing extremism continued to be a serious problem. A number of attacks on ethnic non-Germans and many other expressions of xenophobia occurred during the year. Continuing manifestations of anti-Semitism were another serious source of concern, as there were many reports of anti-Semitic activities. Authorities attributed them primarily to adherents of the extreme right, but Muslims and persons hostile to Israel perpetrated others.

Other human rights problems included the continued incarceration of certain categories of offenders after they served their sentences (because authorities believed the offenders remained a threat to society), which European and national courts have ordered reformed. The government limited the freedoms of speech, press, assembly, and association of neo-Nazi and other groups the government deemed extremist or threats to the constitution. Observers questioned whether the country's "fast procedure" for determining the refugee status of asylum seekers gave applicants a fair hearing. There were reports of societal violence against women, and trafficking of men, women, and children for sexual exploitation and labor. Societal violence and discrimination because of sexual orientation persisted, as did some societal discrimination against persons with HIV/AIDS.

The government took steps to prosecute and punish officials in the security services and elsewhere in government who committed abuses.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution prohibits such practices, and there were no reports that government officials employed them during the year.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards, and the government permitted visits by independent human rights observers.

Physical Conditions: As of March 31, according to the Federal Statistics Office, the prison population was 67,671, including 3,851 women and 11,195 pretrial detainees. Of the latter, 358 were juveniles younger than 18 years old. The prison system had a capacity of 78,161 inmates. Convicts and detainees had access to potable water. Statistics on the prevalence of death in prisons or pretrial detention centers were not available.

The European Commission's Committee for the Prevention of Torture (CPT), in a report released during the year on a 2010 visit to a number of prisons, noted that authorities occasionally held two prisoners in cells designed for single occupancy. At times prisoners held in such circumstances successfully sued the prison authorities. In February the Federal Constitutional Court reviewed such a case, involving a man in Cologne held in an 86-square-foot cell with another prisoner. Only a small adjustable wooden wall with a small privacy screen separated the toilet, which was also only three feet from the table where the prisoners were required to eat. The restriction of prisoners to one shower a week contributed further to problems of odor. The court ruled that humane treatment of prisoners required a minimum of 65 to 75 square feet of cell space per prisoner, and toilets must be in a separate and ventilated area. If the authorities could not meet those standards, then according to the court ruling, they must release the prisoner.

Administration: Record keeping on prisoners was adequate. Authorities used alternatives to sentencing for nonviolent offenders, including fines and social work. Prisoners had reasonable access to visitors and could engage in religious observance. Authorities permitted convicts and detainees to submit complaints to judicial authorities without censorship. Authorities investigated credible allegations of inhumane conditions. The government investigated and monitored prison and detention center conditions. There was no ombudsman for prisons or prisoner affairs.

Monitoring: The government permitted the monitoring of prison and detention centers by independent nongovernmental observers, including the CPT. In the report of its 2010 visit, the CPT noted a new requirement issued by the state authorities prior to its visit that each inmate must give explicit permission before the CPT could access his or her personnel and medical files. According to the CPT's report, this requirement caused its inspection to be "slowed down considerably... to the point where the delegation was not satisfied that it was in a position to provide a full assessment of certain issues routinely examined by the CPT in the course of its visits." State authorities indicated that recent legislation to protect individual privacy demanded such a policy.

During the year the Federal Agency for the Prevention of Torture conducted numerous visits of facilities throughout the country and reported on them.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

Police forces of the 16 states and two federal law enforcement agencies, the Federal Criminal Police Office (Bundeskriminalamt, or BKA) and the Federal Police (Bundespolizei), maintain internal security. The state police report to their respective interior ministries; the federal police forces report to the Ministry of the Interior. Effective mechanisms were in place to investigate and punish abuse and corruption in the police and security forces. There were no reports of impunity involving the security forces during the year.

Arrest Procedures and Treatment While in Detention

Authorities may arrest an individual only on the basis of a warrant issued by a competent judicial authority unless police apprehend a suspect in the act of committing a crime or have strong reason to believe that the individual intends to commit a crime. The constitution provides that authorities must bring a suspect they have apprehended before a judge no later than the day after taking him into custody. At that time the judge must inform the suspect of the reasons for detention and provide opportunity for objections. The court must then either issue an arrest warrant stating the grounds for detention, or order the individual's release. Authorities generally respected these rights in practice. The law entitles a detainee to prompt access to an attorney at any time, including prior to any police questioning; however, according to the CPT, detained persons are not entitled to have a lawyer present during initial police questioning, but only during questioning by a public prosecutor or a judge. According to the law, before interrogations begin, authorities must inform suspects, arrested or not, of their right to consult an attorney.

Bail exists but was infrequently granted. Authorities usually released individuals awaiting trial without requiring bail unless a court decided there was a clear risk that they might flee. In such cases authorities could hold detainees for the duration of the investigation and subsequent trial, subject to judicial review. Time spent in investigative custody applies toward any eventual sentence. If a court acquits a defendant who was incarcerated, the government must compensate the defendant for financial losses as well as for "moral prejudice" due to the incarceration.

While the law does not allow courts to punish persons twice for the same crime, a court may order an offender convicted of rape, homicide, or manslaughter to spend additional time in "subsequent preventive detention" after completion of sentence if the court determines that the offender represents a continuing danger. The law permits the imposition of subsequent preventive detention for an indefinite period.

In April 2011 the European Court of Human Rights (ECHR) ruled against the government's system of subsequent preventive detention and the retroactive application of the law in certain cases involving subsequent preventive detention. In response to this and earlier ECHR rulings, the government introduced reforms, including one forbidding retroactive application of subsequent preventive detention.

In May 2011 the Federal Constitutional Court ruled that regulations on subsequent preventive detention, including recent reforms, were unconstitutional as a violation of the basic right of personal freedom. The court's ruling required the legislative

branch to amend the law by May 31, 2013, and defined tight preconditions for implementation of subsequent preventive detention, such as serious risk of severe, violent, sexual criminal offenses, or mental disorder.

The states initiated legislative procedures to take effect prior to the court's deadline. They have taken measures to rebuild existing facilities or construct new buildings especially for preventive detention, often accompanied with therapy-oriented concepts. Some states (such as Rhineland Palatinate and Saarland, Hesse, and Thuringia) worked out cooperation concepts to accommodate such prisoners and meet the requirements of the court. This was work in progress and its status varied from state to state.

Detention of Rejected Asylum Seekers or Stateless Persons: In a report released in October 2011, the Office of the UN High Commissioner for Refugees (UNHCR) noted reports that "several thousand rejected asylum seekers (awaiting deportation) remained in detention facilities in the various states, sometimes for protracted periods of time." The committee also expressed concern about the lack of adequate accommodation for detained asylum-seekers awaiting deportation (especially women). The nongovernmental organization (NGO) ProAsyl shared this concern. In response the government issued a statement to the UN Human Rights Council in March, which acknowledged the report's recommendations and clarified that "the existing procedures are in conformance with the ECHR rulings or fall in areas of law where the ECHR is mute."

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary, and the government generally respected judicial independence in practice.

Trial Procedures

The constitution provides for the right to a fair, public, trial without undue delay, and an independent judiciary generally enforced this right. Defendants enjoy a presumption of innocence, have the right to be informed promptly and in detail of the charges (with free interpretation as necessary), and have the right to adequate time and facilities to prepare a defense. Juries are not used. A single judge, a panel of professional judges, or a mixed panel of professional and nonprofessional judges may try a case, depending on the severity of the charges. The law requires defendants to be present at their trials. Defendants have the right to consult with an attorney, and the government provides an attorney at public expense if

defendants demonstrate financial need. Defendants have the right to adequate time and facilities to prepare defense in practice. Defendants and their attorneys have access to all court-held evidence relevant to their cases. Defendants may confront and question witnesses against them and present witnesses and evidence on their behalf, and are not compelled to testify or confess guilt. Defendants have a right of appeal.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

An independent and impartial judiciary in civil matters provides access to a court to bring lawsuits seeking damages for, or cessation of, a human rights violation. Persons may appeal adverse decisions of domestic courts in human rights cases to the ECHR. Administrative remedies for alleged wrongs are available as well.

Regional Human Rights Courts Decisions

ECHR documents indicated that the court issued 22 decisions during the year finding violations of the European Covenant for Human Rights. The state generally paid monetary judgments against it within the time period ordered by the court.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution prohibits such actions, and the government generally respected these prohibitions in practice.

State-level offices for the protection of the constitution (OPCs) in Hesse, Baden-Wuerttemberg, Lower Saxony, North Rhine-Westphalia, and Bavaria continued to monitor the Left Party because they considered that the party tolerated left-extremist groups within its ranks. A report by the Hesse OPC released during the year stated that the party still represented extremist tendencies and, in addition to tolerating extremist and anti-Semitic elements within its ranks, sought the overthrow of the democratic state. Other political parties deemed potentially hostile to the constitution, such as the neo-Nazi National Democratic Party (NPD), were also under the observation of the federal and state OPCs.

The federal and state OPCs answer for their activities to their respective ministers of the interior and to the federal minister of the interior. The ministries, in turn, answer to their respective state legislative branches and to the Bundestag. All OPC activities are challengeable in court, including ultimately in the Federal Constitutional Court.

In investigations of certain serious crimes, law enforcement officials may monitor the telecommunications of suspects, but only with court approval. In intelligence-related cases, such as suspected involvement in terrorism, the law permits intelligence services to engage in surveillance activities without court approval. However, an independent commission elected by a parliamentary control body must approve such activities.

On May 25, the Dresden District Court ruled that police were within their rights to engage in large-scale monitoring of cell phones in connection with neo-Nazi and anti-Nazi demonstrations in February 2011 that resulted in injuries to 112 police officers and 200 demonstrators. Police, in coordination with local mobile service providers, tracked the movements of previous offenders suspected of attending the rally by monitoring mobile-phone data. This procedure resulted in the collection of approximately 500,000 to one million calls and text messages of all mobile-phone users in the area. The ensuing controversy led to the dismissal of the Dresden police chief. There were no arrests, however, as authorities subsequently dropped the charges.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of speech and press. The law bans Nazi propaganda, material denying the Holocaust, and child pornography.

Freedom of Speech: While the government generally respected these rights in practice, it imposed limits aimed at groups it deemed extremist. During the year the government arrested, tried, convicted, and imprisoned a number of individuals for speech that incited racial hatred, endorsed Nazism, or denied the Holocaust (see also section 6, Anti-Semitism).

In March the Frankfurt Higher State Court sentenced Afghan citizen Omid Mustafa H. (last name redacted) to three years and three months in prison for posting online propaganda for a terrorist group. Omid H. was the administrator of a Jihadist Web site from 2010 until his arrest in July 2011. The court found him guilty of 19 cases of posting Jihadist propaganda.

On July 11, a Hamburg district court granted the Vatican's request for an injunction against the July issue of the satirical magazine *Titanic*. The Vatican objected to the cover of the magazine, which, alluding to the controversy surrounding the leaking of Vatican documents, contained a scatological depiction of the pope. The injunction forbade the distribution of the July issue and the use of the offending images on the Internet. The Vatican withdrew its application for an injunction on August 30.

On August 16, the Schwerin District Court gave Udo Pastoers, the leader of the NPD caucus in the Mecklenburg-Vorpommern state assembly, an eight-month suspended sentence for slander and defamation. The court found him guilty of indirectly denying the Holocaust and thus defaming the victims of the Nazi regime in a 2010 speech before the state parliament. The defense claimed Pastoers' statement was protected by freedom of speech. However, the prosecution successfully argued that the penal code specifically excludes defamatory insults from the exemption of punishment for parliamentarians. On February 2, the Mecklenburg-Vorpommern parliament lifted the immunity of Pastoers and another NPD member, David Petereit. This was the latest of several convictions Pastoers received for speeches with anti-Semitic and xenophobic content. Authorities charged Petereit with distributing compact disks with right-wing content.

Internet Freedom

There were no government restrictions on access to the Internet; however, government agencies may monitor e-mail or Internet chat rooms in certain circumstances. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. According to the World Bank, 83.44 percent of the country's population were Internet users in 2011.

Federal and state laws permit the Federal Office for the Protection of the Constitution (FOPC) and its state-level counterparts to monitor the private e-mails and chat room postings of individuals and groups under FOPC and OPC surveillance. An independent commission elected by a parliamentary control body is responsible for this monitoring. According to Freedom House, in October 2011

a hacker organization discovered that police in several states were using a form of software, a “Trojan horse,” for investigation purposes. The software permitted eavesdropping on encrypted conversations of suspects, which is legal, but also made possible such illegal activities as searching a user’s digital devices, logging their keystrokes, and providing access to their computers for the purpose of planting foreign material. Five states admitted the use of the software but denied the use of any of its illegal capabilities. Federal Interior Minister Friedrich called upon the states to stop using software that might enable illegal access to computers.

In a nationwide crackdown involving the search of 24 homes and business premises, police arrested four right-wing extremists. They were accused of responsibility for the Skadi Web forum, which police described as the most important German-language, right-wing, extremist Internet site. The site provided for downloading thousands of songs with hate lyrics. Authorities charged the suspects with forming a criminal organization. The investigations led authorities to 26 individuals, between the ages of 22 and 64, throughout the country believed to have offered more than 2,400 lyrics and more than 1,400 recordings, whose targets included foreigners, Jews, and persons of color.

Academic Freedom and Cultural Events

There were some government restrictions on academic freedom or cultural events supporting extreme right-wing neo-Nazism.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law provides for freedom of assembly, and the government usually respected this right in practice. The government occasionally prevented certain prohibited organizations, mainly right-wing extremist groups, from holding public assemblies, but during the year they allowed several right-wing extremist or neo-Nazi groups to hold public rallies or marches when they were held in accordance with the law and did not involve a prohibited organization.

Groups seeking to hold open-air public rallies and marches must obtain permits, and state and local officials have authority to deny permits when public safety concerns arise or the applicant is a prohibited organization. Denials were rare but did occur.

It is illegal to block an officially registered demonstration, including demonstrations organized by neo-Nazi groups. Many anti-Nazi activists refused to accept such restrictions and attempted to block neo-Nazi demonstrations or to hold counterdemonstrations, resulting in clashes between police and anti-Nazi demonstrators.

Police detained known or suspected activists, primarily right- or left-wing extremists, when they believed such individuals intended to participate in illegal or unauthorized demonstrations. The length of detention varied from state to state and ranged from one to 14 days.

The city of Frankfurt-am-Main banned protests planned for May by several left-of-center groups acting under an umbrella group known as “Blockupy,” to protest the financial policies of the euro zone. The group planned to occupy several public squares in the city. The city government banned the protests as an “imminent threat to public security and order,” but local courts ruled that the city had to allow a public demonstration. On May 19, 25,000 demonstrators participated in a peaceful march.

Freedom of Association

The constitution provides for freedom of association, and the government generally respected this right in practice. The law permits the prohibition of organizations whose activities have been judged illegal or opposed to the constitutional democratic order. While only the Federal Constitutional Court may prohibit political parties on these grounds, federal or state governments may prohibit or restrict other organizations, including groups that authorities classify as extremist or criminal in nature. Organizations have the right to appeal such prohibitions or restrictions.

The FOPC and state OPCs monitored several hundred organizations. Monitoring generally consisted of collecting information from written materials and firsthand accounts but also included intrusive methods, such as the use of undercover agents who were subject to legal oversight. The FOPC and OPCs published lists of monitored organizations, including left-wing political parties. Although the law stipulates that OPC surveillance must not interfere with an organization’s activities, representatives of monitored groups complained that the publication of the organizations’ names contributed to prejudice against them.

Authorities banned organizations and raided their premises in a number of cases during the year. For example, on June 13, police raided the mosque of the Salafist group “Dawa FFM [Frankfurt am Main].” Hesse Interior Minister Boris Rhein reported that Dawa FFM had developed into one of the centers of radical Salafism in the country. Authorities were reportedly considering a wider ban of the group.

On September 25, the interior minister of Lower Saxony banned the right wing extremist and xenophobic group Besseres Hannover, including its publications and symbols. The group of approximately 40 members published videos against immigrants and made threats against the state’s social minister Ayguel Oezkan, who has a Turkish background. Besseres Hannover also launched an Internet campaign against a state assembly member of the Social Democratic Party (SPD) who was active against the rightists and was connected with painting graffiti and throwing stones at SPD election campaign offices. The police also searched the rooms of approximately 27 members and found weapons and NPD material.

c. Freedom of Religion

See the Department of State’s *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The government cooperated with the UNHCR and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

Protection of Refugees

Access to Asylum: Laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

However, for many applicants the process was protracted. In March the Federal Administrative Court upheld a lower court ruling that revoked asylum of an imam from Egypt. The imam came to the country and applied for asylum in 1999. In 2006 the Federal Ministry for Migration and Refugees revoked his asylum status

on the grounds that he was preaching sermons against “nonbelievers” and had stated that “God would like to break the backs of the Jews, Christians, and their supporters.” They also learned that he had previous ties to the extremist Islamic organization Al-Jihad Al-Islami, about which he had not informed the authorities in his asylum application.

Safe Country of Origin/Transit: The country adheres to the EU’s “Dublin II regulation,” according to which authorities may turn back or deport individuals who attempt to enter the country through a “safe country of transit,” i.e., a member state of the EU or a country adhering to the 1951 Convention relating to the Status of Refugees. Several NGOs questioned this regulation. In January 2011 authorities suspended until January 2013 its application in the case of asylum seekers who passed through Greece. According to the Interior Ministry, there is no blanket denial of asylum to applicants from safe countries of origin, and all have an opportunity to appeal. If the applicant comes from a safe country of origin, appealing a denial of asylum will not prevent authorities from returning the applicant to his country of origin before a court issues a decision on the appeal. Refugee organizations, including the UNHCR, criticized this provision. However, an applicant may prevent an early return by filing an urgent motion with the competent court.

The Stuttgart Administrative Court ruled in July that authorities could not use the Dublin II regulation to send a family of five asylum seekers fleeing Syria back to Italy because they would be exposed to “humiliating and degrading” treatment in that country. The family had fled Syria via Greece and Italy before applying for asylum in Germany.

Refoulement: The government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

Reports of deportations of Roma and others to Kosovo continued, and human rights organizations questioned whether an agreement with Kosovo provided adequate safeguards for failed asylum seekers who were repatriated there. The federal government considered the security situation for returnees in Kosovo as stable, including for members of the Romani minority.

On October 24, the government unveiled a memorial in Berlin to the Romani victims of the Nazi regime’s genocide against the Roma/Sinti. On November 14,

the Schleswig-Holstein state parliament unanimously voted to designate Roma and Sinti as protected national minorities, the first federal state to take such a step. This action gives Roma and Sinti the same constitutional rights to protection and support that the Danish and Frisian minorities enjoy in that state.

Refugee Abuse: Human rights organizations continued to criticize the “fast procedure” at the Frankfurt airport, under which the Federal Office for Migration reaches a decision on asylum applications within two days and does not permit asylum seekers legal entry to the country. Authorities maintained that they applied this procedure only to persons coming from safe countries of origin. The NGO Caritas requested that officials allow refugees to enter before applying for asylum, emphasizing that at least children and “traumatized” refugees should be granted the right to leave the airport. In 2011 authorities placed approximately 1,121 refugees in temporary housing in the airport; 688 applied for asylum via the fast procedure rather than be returned immediately to their countries of origin without an asylum interview. NGOs have also called for ending the current policy that requires asylum seekers and refugees who are still awaiting recognition/acknowledgement of their applications to remain in locations designated by authorities. (In most states asylum seekers can temporarily travel within that state. In some states movement is limited to one or several districts. Bremen and Niedersachsen have expanded movement to include neighboring states.)

Access to Basic Services: In May the UN Committee on Economic, Social, and Cultural Rights issued a report that described the inadequacies of social benefits available to asylum seekers, noting that they had to live in overcrowded quarters and received only emergency medical care. According to the Ministry of Labor, asylum seekers waiting for recognition are entitled to medical treatment, including medicines and bandage material needed to cure or ease illness. Once recognized as a refugee or eligible for asylum, they are covered under the respective regulations of the German health insurance system.

On July 18, the Constitutional Court ruled that social benefits for asylum seekers must be equal to those of citizens or other permanent residents. The ruling followed the March suicide of an Iranian asylum seeker in an accommodation in Wuerzburg, Bavaria. The suicide triggered several protests in that city by Iranian asylum seekers, joined by refugees and other sympathizers, who expressed concern about the protracted asylum process which prolonged their uncertainty. They demanded that the state recognize them as “political refugees” and improve living conditions for asylum seekers. The protests continued for more than 150 days and included a 50-day hunger strike. In June, dissatisfied with the lack of response,

several protesters stitched up their mouths. Both the Wuerzburg Administrative Court and the Munich Administrative Court rejected efforts by the city to disband the protests. Similar protests followed in other cities, including in the Bavarian cities of Bamberg, Nuremberg, Passau, and Regensburg.

Durable Solutions: The government accepted refugees for resettlement from third countries and facilitated local integration (including naturalization), particularly of refugees in protracted situations. The government assisted the safe, voluntary return of refugees to their homes.

Temporary Protection: During the year authorities granted a number of individuals subsidiary protection status (individuals who do not meet the criteria of the refugee convention but need protection for other reasons, for example, because they faced the death penalty, torture, or risks related to armed conflict in their home countries).

Stateless Persons

Citizenship is derived primarily by birth from a citizen parent, but children may also acquire citizenship based on their birth in the country, provided one parent has been living there for at least eight years or one parent has had a permanent residence permit for at least three years.

According to UNHCR statistics, there were 8,044 stateless persons in the country at the end of 2011. The government generally implemented laws and policies to provide stateless persons the opportunity to gain nationality on a nondiscriminatory basis. Refugees and stateless persons may apply for citizenship after six years' residence, but it could be difficult for an applicant to produce sufficient evidence or documentation to establish his or her statelessness, because the burden of proof is on the applicant. In general, the country protected stateless persons from deportation to their country of origin or usual residence if they faced a threat of political persecution.

After three months of waiting in Vietnam, the deported members of the Nguyen family returned to Lower Saxony and the family was reunited. In November 2011 police detained the family, took them to the airport, and expelled them to Vietnam. The family lived in Germany for 19 years before they were deported. Only after widespread criticism and protests by refugee organizations and churches did the Lower Saxony Ministry of Interior allow the return of the family from Vietnam.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

Elections and Political Participation

Recent Elections: In 2009 the country held parliamentary elections that observers considered free and fair.

Political Parties: Political parties generally operated without restriction or outside interference unless they were deemed a threat to the federal constitution. When the federal authorities perceive such a threat, they can petition the Federal Constitutional Court to ban the party. Authorities denied 31 smaller parties approval to participate in the 2009 federal parliamentary elections. A report on the parliamentary elections released in 2009 by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) criticized certain provisions of the law on the recognition of new parties on the grounds of conflicts of interest in the federal election committee, which decides on such admissions, and the absence of judicial review of the election committee's decisions. The Federal Ministry of the Interior has addressed the findings of this report and, according to the government, has since rectified the provisions of the law highlighted in the OSCE/ODIHR report.

Participation of Women and Minorities: The federal chancellor and five of the 16 cabinet members were women. There were 204 women in the 620-seat Bundestag. Five judges on the 16-member Federal Constitutional Court were women. No official data were available on the participation of minorities in leadership positions.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government was generally effective in implementing these laws. Most state governments and local authorities had contact points for whistle blowers and provisions for rotating personnel in areas prone to corruption. Government officials may not accept gifts linked to their jobs. There are serious penalties for bribing officials and price fixing by companies competing for public contracts.

Parliamentarians are subject to financial disclosure laws that require them to publish earnings from outside employment. State prosecutors generally are responsible for investigating corruption cases. The rules of conduct for members of parliament require that they disclose categories of outside employment and earnings, if greater than 1,000 euros (\$1,320) in a month or 10,000 euros (\$13,200) in a year. No special institution has responsibility for monitoring and verifying disclosures. Disclosures are made available to the public via the Bundestag Web site (next to the parliamentarians' biographies) and in the Official Handbook of the Bundestag. Sanctions for noncompliance can be an administrative fine of up to half of a parliamentarian's annual salary.

Federal law provides for public access to government information, but there are numerous exceptions and fees were high and payable in advance. Eleven federal states also have freedom of information laws that provide an appeals process. The fee for requesting information can be up to 500 euros (\$650).

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views.

Government Human Rights Bodies: The courts were the main resource for individuals seeking protection of individual human rights. In addition to the courts, the country has a wide range of government bodies and NGOs working to protect human rights. Citizens could file complaints with petition committees and commissioners for citizens' affairs. Such points of contact are usually referred to as "ombudsmen."

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The constitution and laws prohibit discrimination based on sex, parentage, race, language, homeland and origin, faith, religious or political opinion, disability, sexual orientation and gender identity, or social status. Authorities compiled a strong enforcement record in most of these areas, but acknowledged that more needed to be done in some areas, for example, to enforce laws prohibiting discrimination against persons with disabilities.

Women

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, and provides penalties of up to 15 years in prison. The government enforced the law effectively. According to national police criminal statistics, there were 7,539 cases of rape or serious sexual coercion in 2011. The federal government supported numerous projects in conjunction with the federal states and NGOs to deal with violence against women, both to prevent violence and give victims greater access to medical care and legal assistance.

The law prohibits violence against women, including spousal abuse; officials may temporarily deny abusers access to the household without a court order; they may put them under a restraining order; or in severe cases prosecute them for assault or rape and require them to pay damages. Penalties depended on the nature of the case. The government enforced the law, but authorities believed that violence against women was widespread.

Organizations that aid victims estimated that between 20 and 25 percent of women have at some time been victims of physical or sexual violence. In 2010 there were approximately 346 shelters and 18 sheltered apartments or emergency centers for women, as well as a widespread system of emergency hotlines. According to the Federal Ministry for Family, Senior Citizens, Women, and Youth, approximately 400,000 women per year sought refuge from abusive situations. Many NGOs on the local level provided hotlines, assistance, advice, and shelter.

Harmful Traditional Practices: Forced marriages are illegal and invalid, and punishment may be up to five years' imprisonment. While there were no reliable statistics on the number of forced marriages, evidence indicated that the problem was more prevalent in the immigrant Muslim community than in the general population. Forced marriages reportedly often led to violence. Victims included women and, in some cases men, whose families brought a spouse from abroad. In addition some families sent women to other countries to marry against their will.

“Honor killings” were also reported. A study published in August by the Federal Criminal Statistics Office placed the number of honor killings at approximately 12 annually, although there were 15 in the first six months of 2012. In August the husband of a 26-year-old woman in Neuss shot and killed her in their family apartment, allegedly over her intention to file for separation after multiple reported cases of abuse. The 35-year-old husband also killed their eight-year-old daughter

and four-year-old son. He then fled to northern Iraq, by way of Turkey, to be with his mother. Law enforcement authorities apprehended him soon afterward as a result of information provided to the Neuss police by his relatives.

Sexual Harassment: Sexual harassment of women was a recognized problem. The law prohibits it and requires employers to protect employees from it. A variety of disciplinary measures against offenders are available, including dismissal. The law considers an employer's failure to take measures to protect employees from sexual harassment to be a breach of contract, and an affected employee has the right to paid leave until the employer rectifies the problem. There were press reports of sexual harassment in the workplace and in public facilities, but no statistics were available. Unions, churches, government agencies, and NGOs operated a variety of support programs for women who experienced sexual harassment and sponsored seminars and training to prevent it.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so free from discrimination, coercion, and violence. There was easy access to contraception, skilled attendance during childbirth, prenatal care, and essential obstetric and postpartum care.

Discrimination: Men and women enjoy equal rights under the constitution. The law provides for equal pay for equal work. Women were underrepresented in highly paid managerial positions and overrepresented in some lower-wage occupations. The Federal Statistics Office reported that the hourly pay gap between women and men for equivalent work was 22 percent, according to a 2010 survey. The survey also found that the gender pay gap increased with age. Some observers attributed the difference in part to the greater tendency of women to work part time, which reduced their prospects of advancement when they returned to the work force full time.

Children

Birth Registration: In most cases persons derive citizenship from their parents. The law also allows citizenship based on birth in the country provided one parent has either been a resident for at least eight years or has had a permanent residence permit for at least three years. Dual nationality is not recognized, and upon reaching age 23, a dual national must choose which citizenship to retain. Parents or guardians have the responsibility to apply for registration for newborn children.

Once officials received registration applications, they generally processed them in an expeditious manner.

Child Abuse: In 2011, 146 children died as a result of abuse, a 20 percent decline over 2010.

Child Marriage: The legal minimum age of marriage is 18 years.

Sexual Exploitation of Children: The penalty for rape--up to 15 years in prison--also applies to the rape of children. Consensual sex is legal from the age of 14 in most cases. There is an exception if the older partner is more than 18 years old and is “exploiting a coercive situation” or offering compensation, and the younger partner is under 16. It is also illegal for someone older than 21 to have sex with someone under the age of 16 if the older person “exploits the victim’s lack of capacity for sexual self-determination.”

According to the Federal Criminal Office, there were 11,965 reported incidents of sexual abuse in 2011, compared with 11,867 in 2010. Of these, 3,828 involved children under the age of 18, including 538 involving children younger than 14. Possession of child pornography is a criminal offense. According to the law, possession of, or attempt to acquire, any material reflecting a true or realistic incident of child pornography is punishable by imprisonment from three months to five years.

According to criminal statistics published by the BKA, the number of cases involving the distribution of child pornography declined from 2,687 in 2010 to 2,376 in 2011. In 2011 the number of reported cases of ownership and procurement of child pornography increased by 23.3 percent, from 3,160 cases in 2010 to 3,896 cases in 2011. According to one estimate, between 3 and 11 percent of prostitutes were 16 years old or younger.

Displaced Children: Some observers indicated that there were several thousand street children, although authorities contended that such estimates were inflated and not a true representation of the often temporary status of homeless children. Authorities believed these children were frequently fleeing violent and abusive homes. Street children often turned to prostitution for income.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See country-

specific information at http://travel.state.gov/abduction/country/country_3781.html.

Anti-Semitism

In 2010 the country's Jewish population was estimated to number more than 200,000. In 2011 a government-appointed expert panel on anti-Semitism found deficiencies in Holocaust education and widespread anti-Semitism in sports, social events, and certain media.

Of the 16,873 right-wing politically motivated crimes recorded countrywide in 2011, authorities described 1,162 as manifestations of anti-Semitism, according to the FOPC annual report for that year. Of these, 22 involved violence. These numbers were approximately the same as those of the previous year, but the report noted that membership in skinhead and neo-Nazi groups increased from 5,600 to 6,000 between 2010 and 2011. Federal authorities generally took action against the perpetrators of anti-Semitic offenses.

The most widespread anti-Semitic acts during the year, apart from anti-Semitic speech, involved the desecration of Jewish cemeteries or other monuments with graffiti, including swastikas and anti-Semitic slogans. In 2011 authorities reported 33 instances of such desecration. For example, the Israeli media reported that in early September unknown persons desecrated six tombstones at a Jewish cemetery in Rostock. The vandals painted anti-Semitic slogans and swastikas on the tombstones. Police announced that they were looking for one particular suspect.

Prior to his February election, the Heidenheim (Baden-Wuerttemberg) Pirate Party Chairman Kevin Barth tweeted an anti-Semitic statement indicating that he found "Israeli politics and the Jew as such dislikable because he wages a pointless war." Barth apologized and resigned after news of the tweet became public.

In February a group of fans reportedly made Nazi gestures toward Israeli soccer player Itay Shechter (playing for a German soccer club) and referred to him as a "Dreckjude" (filthy Jew) in an altercation following a match. Police were immediately called and the fan association later apologized for the incident.

Most anti-Semitic acts were attributed to neo-Nazi or other right-wing extremist groups or persons. The magazine *Der Spiegel* cited government data indicating that 11 of the 13 violent anti-Semitic crimes in the first half of the year were

attributed to right-wing extremists. Nevertheless, an expert panel on anti-Semitism noted an increase of anti-Semitic attitudes among some Muslim youth as well.

On August 28, a group of youths attacked Rabbi Daniel Alter, who was walking on the street in Berlin with his seven-year-old daughter. Alter, who was identifiable as a Jew because he was wearing a yarmulke, said the attackers appeared to be Turkish. The rabbi suffered a broken cheekbone and was hospitalized. As of year's end, a police investigation had not led to any arrests for the offense. On the weekend following the event, two demonstrations in Berlin brought together several hundred to a thousand persons, many of them, including non-Jews, wearing yarmulkes to protest the incident.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

The law prohibits discrimination against persons with physical or mental disabilities in employment, education, access to health care, and the provision of other federal state services, which include access to air travel and other transportation. The relevant law makes no specific mention of persons with sensory or intellectual disabilities, but these are believed to be subsumed under the other headings. The extent to which the government effectively enforced these provisions remained debatable among NGOs, and the government expressed interest in learning about methodologies to enhance enforcement of its antidiscrimination laws. The country's approximately 500,000 children with disabilities attended school. Some persons with disabilities attended special schools, and officials contended that special schools were often better equipped to take care of such students, but critics argued that these institutions prevented the full integration of children with disabilities into the professional world and society as a whole.

The government employed a number of measures to promote the employment of persons with disabilities. Employers with 20 or more employees must hire persons with disabilities to fill at least 5 percent of all positions or face a fine of 100-290 euros (\$130-\$377) per month for noncompliance. According to the NGO Sozialverband VdK Deutschland, this regulation applied to approximately 135,000 companies in 2011; however, 38,000 chose to pay the noncompliance fine. As of

September 2011, pursuant to an agreement between the German Railway and the Federal Ministry for Labor and Social Affairs, persons with disabilities who meet certain requirements can ride all regional trains within the country free of charge.

The federal government continued to provide payments of 518.2 million euros (\$673.7 million) per year to the states to support barrier-free buildings, a project scheduled to continue through 2019. Efforts continued to improve barrier-free access to public transportation.

By law the federal government is required to provide barrier-free access to communications, especially in the field of administrative Internet sites and official forms and notifications.

The Office of the Federal Commissioner for Matters relating to Persons with Disabilities is the principal government contact in all matters related to persons with disabilities and has specific responsibility for protecting their rights. The Ministry of Labor and Social Affairs; the Ministry of Family, Senior Citizens, Women, and Youth; and the Ministry of Transport, Building, and Urban Affairs also have responsibilities for addressing the needs of persons with disabilities. The German Institute for Human Rights has been designated to monitor the country's implementation of the UN Convention on the Rights of Persons with Disabilities.

National/Racial/Ethnic Minorities

Beatings and harassment of foreigners and members of racial minorities remained a problem throughout the country. According to reports issued during the year, in 2011 the FOPC recorded 16,873 (15,905 in 2010) right-wing "politically motivated crimes" (PMCs) with "extremist background," and categorized 828 of them as violent. (The Federal Criminal Investigation Office defines PMCs as offenses related to the victims' ideology, nationality, ethnicity, race, skin color, religion, worldview, ancestry, sexual orientation, disability status, parents, or social status.) The 2011 FOPC report also counted 8,687 left-wing PMCs, 1,809 of them violent. Of the rest foreigners committed 1,010 PMCs (26 violent). The number of politically motivated violent incidents rose from 2,636 in 2010 to 3,108 in 2011-- an increase of 17.9 percent.

On March 12, two neo-Nazi men in their twenties insulted and attacked a Togolese woman and her six-year-old daughter outside a supermarket in Rostock. The attackers appeared motivated by the skin color and ancestry of the victims. A witness who tried to help was also injured. The attackers gave the forbidden Hitler

salute, made references to the Ku-Klux-Klan, and reportedly said, “If Hitler were still alive you would not be here anymore.” When police intervened, they determined that the men were intoxicated and took them into provisional detention. Police released the men on bail, but on March 16, the Dierkow Prosecutor’s Office arrested and charged them with engaging in hate speech, using symbols of unconstitutional organizations, and causing grievous bodily harm. In October the Rostock District Court gave the two attackers two-year and 10-month probationary sentences respectively. They each also had to pay 500 euros (\$655) in compensation for pain and suffering to the woman, and 1,000 euros (\$1,310) to the injured witness.

On June 9, the Turkish newspaper *Hurriyet* reported that, in random surveys by the Hamburg antidiscrimination advisory center Basis and Woge, night club bouncers in Hamburg’s Saint Pauli district denied entrance to 95 percent of persons who looked foreign or had darker skin.

On October 17, 12 drunken neo-Nazis in Hoyerswerda, Saxony, threatened and insulted a young couple in front of their apartment building because the couple had repeatedly removed xenophobic Nazi propaganda from the streets. After the police told the couple that they could not protect them, security authorities helped them to relocate. At year’s end police were investigating 11 suspects in the case.

During the year prosecutors charged three members of the right-wing extremist group National Socialist Underground (NSU) with killing a policewoman and nine persons of Turkish or Greek origins over a period of 13 years. Authorities released the three in May pending the filing of charges. On November 8, police charged the last one alive (the other two killed themselves), 37-year-old Beate Zschaepe, with 27 offences, including murder and arson. Authorities charged four other men with supporting the terrorist cell, including supplying weapons and false identities. Five of the killings were committed in Bavaria. In July the Bavarian parliament constituted an investigative committee to examine the killings as well as mistakes and wrong assessments made by Bavarian police and legal authorities. As a result of the revelations about the NSU, the Federal Cabinet in January approved creation of a central database of violent neo-Nazis and others who call for the use of violence.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

In 2010 the government reported 164 crimes motivated by bias against lesbian, gay, bisexual, and transgender (LGBT) persons, of which 45 were violent. NGO data on mistreatment of LGBT persons varied widely. The NGO Maneo reported that countrywide in 2010, one attempted murder, 60 incidents involving physical assault or attempted assault, 69 cases of theft, and two of damage to property were related to the sexual orientation of the victims. The NGO Koln 19228 reported one case of damage to property, three robberies, one theft, one case of deprivation of liberty, one fraud, six physical assaults (four resulting in serious injury), and six threats. The NGO Transgender Europe reported one physical assault against a transgender person by a group.

Other Societal Violence or Discrimination

There was societal discrimination against persons with HIV/AIDS. The government worked with NGOs, religious groups, and businesses to educate the public about HIV/AIDS and its prevention.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The constitution, federal legislation, and government regulations contain provisions designed to protect the right of employees to form and join independent unions of their choice without excessive requirements or previous authorization. All workers have the right to strike, except for civil servants (including teachers) and staff in sensitive or essential positions, such as members of the armed forces. The constitution and enabling legislation protect the right to collective bargaining, and agreements are governed by law.

Antiunion discrimination and other forms of employer interference in union functions are prohibited by law and were not widespread.

The government generally respected the freedom of association, right to strike and the right to collective bargaining, and worker organizations were independent of the government and political parties. Collective agreements are binding only for trade union members and their respective employer associations; however, many employers of nonunion labor also made use of the agreements to determine part or all employment conditions of their employees. Collective bargaining agreements negotiated with public service employees were usually extended to civil servants

through legislation, although such extensions did not always include all of the provisions of those agreements.

b. Prohibition of Forced or Compulsory Labor

The constitution and federal statutes prohibit all forms of forced or compulsory labor, and the government effectively enforced such laws. There were reports of forced labor involving adults mainly in agriculture, restaurants, hotels, and domestic households, as well as on construction sites where workers (often illegal residents) were exploited. The government fully complied with the minimum standards for the elimination of trafficking. It proactively identified a high proportion of trafficking victims and continued to monitor its antitrafficking activities through interagency mechanisms. The government provided funding for NGOs that produced public awareness campaigns domestically and abroad through Web sites, postcards, telephone hotlines, pamphlets, and speaking engagements.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

The law protects children from exploitation in the workplace, and the government enforced these laws.

The law prohibits the employment of children younger than 15, with a few exceptions: children 13 or 14 years of age may do farm work for up to three hours per day or deliver newspapers for up to two hours per day, and children three to 14 years of age may take part in cultural performances under strict limits on the kinds of activity, number of hours, and times of the day. Exploitative child labor was not a serious problem, although violations did occur mainly in small, often family-owned businesses such as bars, restaurants, and grocery stores. The Federal Ministry of Labor and Social Affairs enforced the law effectively through its Factory Inspection Bureau. In addition to the measures to protect trafficking victims in general, in 2011, the federal government launched an action plan to protect children and teenagers from sexual violence and exploitation.

d. Acceptable Conditions of Work

The country does not have a statutory minimum wage. As of December 2011, binding minimum wages were in place for approximately four groups of

construction occupations, electrical trades, painting, postal service, waste management, large-scale laundries, nursing care, security services, special mining services, and temporary employment agencies, covering approximately 8 percent of the workforce. Minimum wages were generally lower in the eastern than in the western parts of the country. In the east wages ranged from 6.53 euros (\$8.49) per hour in security activities to 10.80 euros (\$14.04) per hour for erection of roof coverings and frames; minimum wages in the west ranged from 7.65 euros (\$9.95) per hour in commercial cleaning to 13.00 euros (\$16.90) per hour for skilled construction work. Official social indicators on poverty and social exclusion (“federal indicators”) revealed that persons who had a disposable income of less than 11,151 euros (\$14,496) per year) after the inclusion of government transfer payments, were at risk of poverty. While 19.5 percent of the population of the states in the east, including Berlin, was at risk of poverty, the rate in the former West Germany (excluding Berlin) was 12.9 percent. The reference period for collecting the income data was 2008.

Most minimum wage rates are set by collective bargaining agreements and enforceable by law. Sector-wide collective bargaining agreements determined wages and working conditions in most industries, but company-level agreements frequently deviated from them. Multicompany, industry-wide contracts covered directly approximately 32 percent of all firms; company-level agreements covered 4 percent; 40 percent were guided by a respective industry agreement; and 24 percent were not covered. Collective bargaining agreements covered approximately 65 percent of the labor force in the western part of the country and approximately 51 percent in the eastern part.

The law provides for equal treatment of foreign workers, who generally worked in conditions equal to those of citizens, although such workers faced some wage discrimination. For example, some schools paid foreign teachers less than their citizen counterparts. Employers also often paid lower wages to seasonal workers from Eastern Europe who came to the country on temporary work permits. At times employers paid workers from other EU countries the same wages they would receive in their home countries, even if it was less than a German worker would receive for the job.

Federal regulations limit the workweek to 48 hours, but collective bargaining agreements may stipulate lower maximums. Contracts directly or indirectly affecting 80 percent of the working population regulated the number of hours of work per week. According to the European Labor Force Survey, in 2011 the average full-time employee’s workweek was 39.9 hours for women and 41.1 hours

for men; rest periods for lunch were accepted practices. Provisions for overtime, holiday, and weekend pay varied depending upon the applicable collective bargaining agreement. Excessive compulsory overtime is prohibited, and collective bargaining agreements or individual contracts protect workers against arbitrary employer requests,

An extensive set of laws and regulations governs occupational safety and health. In practice a comprehensive system of worker insurance carriers enforced safety requirements in the workplace. The Federal Ministry of Labor and Social Affairs and its counterparts in the federal states effectively enforced occupational safety and health standards through a network of government bodies, including the Federal Institute for Occupational Safety and Health. At the local level, professional and trade associations--self-governing public corporations with delegates representing both employers and unions--oversee worker safety. In 2010 approximately 3,000 factory inspectors and 90 physicians were engaged nationwide in enforcing compliance with the country's occupational safety and health laws, according to the Federal Institute for Occupational Safety and Health. The number of work accidents increased by 7.3 percent to 1,045,816 in 2010, and the number of fatalities at the workplace rose to 674 (up 8.4 percent). The country's "codetermination" model of employer-labor work councils reinforces federal and state government oversight of occupational safety and health.