



Federal Ministry  
of the Interior

Federal Ministry  
of Justice

# **Second Periodical Report on Crime and Crime Control in Germany**

**Abridged Version**

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**Periodical Report**  
**on Crime and Crime Control**  
**in Germany**  
Abridged Version

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## Introduction

Germany is one of the safest countries in the world, as this, the Federal Government's latest Report on Crime and Crime Control, demonstrates.

Nonetheless, continuously enhancing the safety of its citizens remains one of the state's central tasks.

In order to develop effective strategies with which to combat crime, political bodies need a reliable review of the crime situation, updated at regular intervals, that does more than merely analyse crime and prosecution statistics. In 2001, the Federal Government responded to that need by presenting the First Periodical Report on Crime and Crime Control in Germany (1<sup>st</sup> PRC). Its aim was to provide a foundation for a systematic, comprehensive analysis of the available data on the basis of criminological, sociological, jurisprudential and statistical aspects. From the outset, it was intended to be the first in a series of regular reports that examine the crime situation at appropriate intervals to ensure that the government's crime-control activities reflect any changes.

Now, five years after the first report was published, the Federal Government is pleased to present an updated analysis in the form of the Second Periodical Report on Crime and Crime Control in Germany (2<sup>nd</sup> PRC).

Exactly two months after the 1<sup>st</sup> PRC was published, a dramatic event changed the global security situation fundamentally. The attack on the twin towers of the World Trade Center

in New York on 11 September 2001 took the threat from international terrorism to an unprecedented level. The bombings on commuter trains in Madrid in 2004 and on the London underground in 2005 are testimony to the fact that the threat has now reached Europe too. Although Germany has so far been spared from terrorist attacks – not least thanks to the vigilance of our security authorities – it is still part of a risk region, as the two suitcase bombs found on trains in Dortmund and Koblenz showed. The present report illustrates clearly that the political sphere has acted swiftly and responsibly to create the necessary legal instruments to be able to take effective preventive and repressive action against this new form of crime using means that comply with the principle of the rule of law.

In spite of the “wake-up call” to terrorism, the sense of security among the people who live in our country is predominantly influenced by the level of “general crime”. As in the past, considerably more than half of the offences registered in the Police Crime Statistics are property offences (mainly theft, embezzlement and fraud). Above all, Germany's citizens are concerned by violent crime, particularly sexual violence and particularly when committed against children. The Report thus covers these areas in detail.

In terms of methodology, the 2<sup>nd</sup> PRC uses the same approach as its predecessor. It draws together the latest findings taken from official data pools, especially the Police Crime Statistics and the criminal justice statistics, and combines them with the results of scientific research

into the manifestation and causes of crime plus knowledge gained from the victims' perspective. All of the data used has been checked with Germany's federal states and the analysis refers to Germany as a whole. The report concentrates on how the crime situation has developed since 1999.

Divided into seven chapters, the report examines various areas of crime, groups of offenders and victims and crime-control activities by the police, public prosecutors and courts. The final chapter is dedicated to crime prevention. Unlike the 1<sup>st</sup> PRC, the 2<sup>nd</sup> PRC does not have one particular priority subject. Instead, safety and security on public roads and in public places is afforded special attention where appropriate. With this in mind, a new chapter has been added on road traffic offences. There is also a section that compares international crime levels. In addition, the German public's sense of security and fear of crime have been examined and assessed for the first time in this report.

At this juncture, we should like to thank the researchers involved: Prof. Dr Roland Eckert, Prof. Dr Wolfgang Heinz, Prof. Dr Hans-Jürgen Kerner, Prof. Dr Karl F. Schumann and Prof. Dr Peter Wetzels. As with the 1<sup>st</sup> PRC, they took a dedicated and constructive approach to their work on this report. Always open to critical

dialogue, they played a pivotal part in the success of this project. We would also like to thank those employees of the Federal Criminal Police Office, the Federal Statistical Office and the Central Institute of Criminology who were involved in the work.

The final version of each chapter is based on a fundamental consensus among the entire committee of experts established for the purposes of the report. It goes without saying, however, that researchers and political representatives sometimes see the trends regarding certain offences and the causes of those trends in different ways. This is occasionally reflected in the individual contributions.

Each description of a specific area of crime is followed by a section entitled "Actions by and Views of the Federal Government". These sections assess the findings that the Federal Government considers particularly significant, taking into account political aspects, as well as presenting measures that have already been introduced and possible solutions for the future.

The Federal Government's objective in publishing the 2<sup>nd</sup> PRC is to promote a well-informed dialogue between the political sphere, researchers and society concerning the best proposals for successful law enforcement policy.



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# 1 General Section

## 1.1 Objective and Approach of the Federal Government's Report on Crime and Crime Control in Germany

The First Periodical Report on Crime and Crime Control in Germany (1<sup>st</sup> PRC) was adopted by the Federal Government and presented to the public on 11 July 2001. Since then, the topic of internal security has taken on a new significance. In particular, the terrorist attacks that were carried out in the US on the morning of 11 September 2001 and other attacks around the world demonstrated to everyone the risk of international terrorism with unprecedented clarity. The responses to that risk have included new security legislation and strategy reviews.

However, there have also been several shocking offences in Germany since the publication of the 1<sup>st</sup> PRC. Just one such incident was the school shooting in Erfurt on 26 April 2002, in which a 19-year-old pupil killed 13 teachers, two pupils and one police officer. The people of Germany are thus asking themselves how safe it is to live in Germany. They're asking themselves and political representatives whether more should be done to ensure internal security, whether the legislation covers all the possibilities it should, whether there are enough (properly equipped) police, whether the legal deterrents are too weak and/or the courts too lenient, whether prison sentences are too lax, whether the danger posed by offenders is underestimated with the result that they are released too quickly and prematurely. But their main question is whether it wasn't and shouldn't have been possible to prevent the offences from happening in the first place.

This report does not aim to discuss individual cases, nor is that its task. The objective is to provide a picture of the overall crime situation, as a basis for understanding individual cases, and of crime-prevention and crime-combating measures. Only by looking at the overall situation, not individual cases, can one determine what is "normal" and what is extreme. Moreover, an impression of the overall situation enables incorrect generalisations based on individual cases to be rectified. For instance, surveys reveal a general opinion that the number of sexually motivated murders of children has increased substantially in the past ten years. The available data, however, points to a decrease.

So, in order to assess the crime situation properly and develop proposals for effective ways of dealing with crime, it is essential to draw up a review of the crime situation and the associated problems, making it as comprehensive as possible. After all, criminal law and law enforcement policy are not ends in themselves. They are intended to safeguard legally protected rights and thus the individual's right to free development. But it is not possible to formulate a rational, result-oriented policy on law enforcement and criminal law without a solid empirical basis.

One might well ask what additional value this report provides compared to the data available in the official statistics (particularly the Police Crime Statistics and the prosecution statistics) but there are several reasons why that data is not sufficient for an assessment of the actual crime situation and trends.

The official statistics on crime and criminal justice only measure reported crime; they cannot reflect the incidents that go unreported, i. e. the undetected crime that can be determined by conducting surveys among the population. Nor do they supply any information about people's reporting behaviour, which is known to be inconstant (again illustrated by research) – in fact it can fluctuate considerably depending on the type of offence. However, this has a major impact not only on the amount of regis-

tered crime but also on the trends that show up in registered crime. For example, the official statistics indicate a significant rise in registered violent crime. This often leads people to conclude that the level of violent crime has increased and that stricter legislation is required to counter the problem. However, there is empirically substantiated evidence that, firstly, a not inconsiderable portion of the increase in registered violent crime stems from a change in reporting behaviour and that, secondly, the level of violent crime among undetected incidents (as revealed by surveys) has been on the decrease for several years. Without the data for the undetected offences, there is no certainty at all as to whether the statistics reflect the real crime situation or whether they are purely the result of a shift in the borderline between registered and unregistered crime.

In addition, the different crime and criminal justice statistics measure different stages of the various proceedings. The Police Crime Statistics supply information on the type and frequency of the offences reported to and handled by the police plus data about the culprits. Those statistics are supplemented by the prosecution statistics, which reflect the results of criminal proceedings (final processing and judgements by the legal authorities). However, criminal proceedings entail a filtering-out and assessment process. The data registered in the Police Crime Statistics shows the situation as it was believed to be at the time when the files were passed to the public prosecutor. Much of what is assumed at that point does not stand up to the subsequent examination by the public prosecutor's office and the court. It is therefore advisable, as always, to obtain information from as many sources as possible. The aim is also to establish what does stand up to the final legal assessment performed by the court in charge. One source of data, especially the statistics relating to the assumptions made at the beginning of the proceedings, does not provide an adequate foundation for a proper appraisal of the crime situation.

The individual statistics generated annually in cooperation with the federal states only offer a "snapshot" of the particular year under review. There are, admittedly, various efforts to present the data in long time series and offer interpretations. But the Periodical Reports on Crime and Crime Control in Germany, by contrast, are intended to facilitate as long-term a view as possible of the crime situation, taking into account and evaluating all of the available data sources. Only by reviewing a sufficiently long period can one-off factors and long-term, consistent crime trends be clearly observed.

Both the present statistics on crime and criminal justice and the reporting methods used to date are primarily offence-oriented and offender-oriented. When it comes to internal security, however, the problems of potential victims also have to be considered. For instance, contrary to what is commonly assumed, most violent offences are committed against persons of the same age as the offender; if an asymmetry can be said to exist then it is that young people are more often the victims rather than the perpetrators of violence. The Reports on Crime and Crime Control thus take the victims into particular consideration.

Finally, the official crime and criminal justice statistics are necessarily limited to a few items of basic descriptive data relating to prosecution and execution of sentences. At present, they do not include any information at all about the success of the punishment or disciplinary actions imposed and enforced. Monitoring success is vital for a modern system of criminal law. The success data and other information required for law enforcement policy as well as for criminal justice practice are provided by researchers. Along with the research into undetected crime, already mentioned, and the research on the effectiveness of sanctions, just two of the key areas of their work are prognosis and crime-combating measures. As it is not considered to be the task of the official statistics to incorporate research findings on criminal phenomena obtained from sources other than the official data, the Report on



Crime and Crime Control in Germany aims, wherever possible, to take those findings into account in an appropriate manner too.

It is for this reason that researchers and political bodies alike have long been calling for a report on crime and crime control to bring together the available statistical information and the research findings on crime, its prevention and the measures used to combat it to create a picture of the overall situation. Rational law enforcement policy – be it aimed at prevention or repression – should always draw on the latest empirically supported knowledge. Without substantiated knowledge, it is basically possible to justify anything and everything. So, as long as there is no reliable, substantiated evidence about what the problem is, which methods can achieve the best results and under which conditions and how harmful “side effects” can best be avoided, it is not possible to make a rational choice between the alternatives.

The 1<sup>st</sup> PRC responded to that justified call by drawing together, for the first time, the information provided by the crime and criminal justice statistics and combining it with the results of scientific research. In addition, the report, produced with the participation of researchers in the field, included findings from research on undetected crime, especially victim surveys, and thus shifted the focus more on to the important, though rarely seen, victim’s perspective. This approach put official crime-situation reporting in Germany on a new path.

The approach proved successful and was used again for this, the 2<sup>nd</sup> PRC. For the purposes of the report, a committee of experts was set up by the Federal Ministry of the Interior and the Federal Ministry of Justice, being the ministries responsible for the area of crime and crime control at the federal government level. The committee consisted of researchers and scholars from the fields of criminology, sociology and psychology as well as representatives from the Federal Criminal Police Office, the Federal Statistical Office and the Central Institute of Criminology.

Whilst the 1<sup>st</sup> PRC focused on crime committed by children and juveniles, the 2<sup>nd</sup> PRC concentrates primarily on the problem of crime in public places. Although a large amount of serious offences are committed against persons within the offenders’ immediate social environment, i.e. their families and homes, the crime that takes place in public and is more visible has a particular significance in a number of respects. With regard to political crime and terrorist attacks, it is quite obvious that the perpetrators behind them purposely seek out public settings since their aim is for as many people as possible to see and notice their acts. Above all, their intention is to spread fear and terror throughout the population (i.e. not only among the victims but also among others who are not directly affected) in order to generate political pressure. To a sizable extent, this is also true of right-wing extremist, xenophobic acts, for example acts intended to keep “strangers” away from certain areas by scaring them off or to exclude them from participation in society. One particularly evident manifestation of such misanthropic intentions, which display a degree of intolerance that is unacceptable in our legal system, is the militant call for “nationally disencumbered zones”.

In contrast with these types of offence, where the culprit seeks out the public sphere in order to achieve the intended effect, there are other offences that, by their nature, inevitably take place in public places – primarily road traffic offences. The 2<sup>nd</sup> PRC therefore includes an examination of road traffic offences not only because they account for a major share of all offences but also because of the high risk they pose to life and limb in the public domain. In addition, a large number of theft- and robbery-type property offences (car-related theft, bicycle theft and pickpocketing) occur in public places.

Finally, there is a third category of offences, which include those of a violent nature (such as rape, sexual coercion or bodily injury right through to homicide). Though they are rather rarely or only occasionally committed in public places, they are precisely the type of offence that heighten citizens' fears when they occur in public. Parents, for instance, worry that their children are most likely to be preyed on by sex offenders when they are "outdoors". So it is important both to demonstrate the relative dimension of such risks in public places and to explore the reasons for those fears.

Internal security therefore comprises not only an objective but also, and above all, a subjective component – a fact that has increasingly been stressed in law enforcement policy in recent years. The guiding principle is that internal security, in the sense of a reduced risk of victimisation, damage or injury, is not sufficient to ensure a good quality of life for citizens if they themselves are not truly convinced that they can move around freely in public spaces and feel safe there. The "perceived" level of crime, which largely stems from the topic not always being properly dealt with in the mass media (an institution which plays an increasingly significant role in people's everyday lives), can also have a lasting impact and a restrictive influence on policy-making in the area of law enforcement. Political representatives must thus take fear of crime seriously even if it is born of subjective, exaggerated ideas about the likelihood of being a victim of crime or misconceptions about the level of crime. Even if it is the product of misconception, fear of crime has real consequences for those it affects. It can considerably impair people's subjective quality of life by, for example, causing them to take excessive precautions, avoid certain situations or areas, curtail their activities, loosen social ties or even to become totally isolated. If, for instance, people avoid certain streets or places that are considered dangerous, those places may actually become unsafe as a result. Finally, there are other (assumed) undesirable effects (loss of faith in the rule of law, encouragement of self-administered justice/vigilante groups and of a mentality of looking the other way) that make it necessary for law enforcement policy to look at the issue of fear of crime. This report therefore includes a chapter devoted to people's sense of security, their fear of crime and the subjective perception of the security situation in Germany.

As in the 1<sup>st</sup> PRC, this report begins with several chapters that outline the crime situation, before moving on to a more detailed description and analysis of certain areas. Some of the areas covered in the 1<sup>st</sup> PRC are also included in this report. The information has been updated, its scope and content adapted where necessary and certain areas expanded on by incorporating special aspects. Those aspects are violent crime and selected offences committed within relationships, politically motivated crime and terrorism, property offences, economic and environmental offences, corruption in the public and private sectors and crime involving alcohol and drugs. New areas have also been added, including, in particular, crime in public places (as already mentioned), with the result that there is now a separate chapter on road traffic offences. Moreover, wherever relevant in terms of the offences committed and the data available, the report discusses the aspect of crime in public places in connection with the other types of offence too. Furthermore, a comparison of the crime situation and trends in Germany with those in other countries has been added.

These offence-oriented chapters are followed by chapters dealing with particular groups of offenders and victims, i. e. child and juvenile offenders and victims, immigrant offenders and victims plus groups of professional criminals and organised crime.

There then follows a section on the measures taken by the public prosecutors and courts to combat crime. It describes how public prosecutors' and courts' processing of criminal proceedings and sanctioning practice in the area of criminal law have developed in recent years and decades. A summary

is provided of the latest sanctioning trends, from victim-offender mediation right through to release from imprisonment. This section on state responses to crime closes with a presentation of the findings based on the latest recidivism statistics which, for the first time, show the recidivism figures for the whole of Germany, for all sanctions and based on one and the same year, broken down by type of offence, sanction, age, previous record, gender and nationality.

Evidence-based law enforcement policy requires empirically verified findings on the effects both of prevention and repression in order to achieve a lasting reduction in the number of offences committed and to ensure that taxpayers' money is not used for ineffective strategies. In particular, criminology and law enforcement policies in the English-speaking world have made more progress in this respect than German research work and have already evaluated crime-prevention methods meticulously. The methods that they have proved to be effective should thus be examined carefully to determine whether they could also help reduce crime in Germany given the legal and social conditions prevalent in our country. The final chapter, "Crime Prevention", presents ways in which the effectiveness of prevention measures can be assessed plus selected findings from the prevention field.

In the interests of user-friendliness, the various chapters have been written in such a way that they can be read and understood independently of one another. It was therefore not always possible to rule out repetition though we have attempted to do so as much as possible. In particular, some points are repeated with regard to sources of information and the evaluation of that information. In the 1<sup>st</sup> PRC, the "Conclusions of the Federal Government for Crime and Legal Policies" came after the part of the report written by the researchers. This time, the "Actions by and Views of the Federal Government" have been placed at the end of each main chapter in order to place stronger emphasis on the political and practical importance of the statistical and research-informed findings.

## **1.2 Actions by and Views of the Federal Government**

The Federal Government believes that rational law-enforcement and criminal law policy requires a solid, empirical foundation. Sufficient information on the extent, structure and development of crime, on the one hand, and on prosecution, law enforcement and execution of sentences, on the other, must be available to develop successful measures in these areas of policy and to examine their effects.

Primarily, the federal states are responsible for performing prosecution and law-enforcement activities as well as compiling the statistics on them. It is therefore important that they are involved and display initiative in order to improve and expand, as is certainly necessary, the range of tools and methods used for compiling statistics and conducting research. The Federal Government's conclusions on legal policies in the 1<sup>st</sup> PRC already recognised that need. Since the publication of that report, the Federal Ministry of the Interior and the Federal Ministry of Justice, in particular, have launched a series of initiatives aimed at improving and expanding the range of methods and tools available for registering crime and criminal justice activities.

As explained in the preceding chapter, periodic studies of undetected crime are necessary in order to be able to judge the crime situation and crime trends and to assess the findings derived from the official crime and criminal justice statistics. One method of establishing the level of undetected crime is to conduct surveys to find out about people's experience of crime ("victim surveys"). In an additional move to implement the results of the 1<sup>st</sup> PRC, a working group of researchers from the field, created by the Federal Ministry of the Interior and the Federal Ministry of Justice, devised a strategy for periodic

victim surveys, referred to as the “BUKS” surveys (BUKS = Bevölkerungsumfrage über Kriminalitätserfahrungen und Sicherheitsempfinden (Population Survey on Experience of Crime and Sense of Safety and Security)). The surveys were intended to collect data on people’s experiences as victims of crime, reporting behaviour, fear of crime and their attitudes towards criminal sanctions, law enforcement institutions and courts. However, in their original form, the plans turned out not to be feasible (as well as requiring considerable financing). At the ministries’ instigation, the working group then presented a strategy that had been adapted to reflect the strain being felt by the public purse. The new strategy is currently being assessed to determine whether it can be implemented; if the necessary funds are available, the surveys will get underway in 2007. The possibility of that happening may well be increased by the fact that some federal states are now considering signing up.

In 2003, as part of a national action plan launched by the Federal Government to tackle violence towards women, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth conducted a representative survey among women, asking them about their exposure to violence.<sup>1</sup> In addition, the Ministry is sponsoring a study in the field of undetected crime, designed to compare delinquent behaviour, incidence of police contact and the social causes of juvenile crime in various countries. Research teams from 24 nations are taking part in the study, which is being coordinated and conducted for Germany by a research team at the University of Hamburg. The study will enable undetected delinquency among children and juveniles to be analysed comprehensively and the situations in the various countries to be compared with one another directly. It will thus be possible to assess the situation in Germany in relation to circumstances in other European and American states.

In 2006, the Police Crime Statistics project, part of the new police information system (Inpol), moved into the development and testing phase. Instead of having the aggregated federal-state data delivered to the Federal Criminal Police Office, as in the past, the aim is to individualise the evaluation principles as well as to speed up the process. The first phase of the migration to the new system (Version 1) will mainly involve the content of the current, nationally standardised Police Crime Statistics, including the six-digit offence code, being implemented. That will enable the types of offence and modi operandi to be recorded in more detail. Additional data fields will be included, particularly to show any experience of violence in close social relationships or disability on the part of the victim, in order to broaden the base of information. The transition to the system using individually delivered data sets is scheduled to be completed – nationwide – by the beginning of 2008. The new database will provide a basis for considerably more differentiated statistical evaluations, which will then supplement and improve the Police Crime Statistics that the Federal Criminal Police Office currently provides (e.g. the Yearbook of Police Crime Statistics).

On the Federal Government’s initiative, the way in which the police record and assess state security offences (including politically motivated offences with an extremist, xenophobic or anti-Semitic background) was altered as of 1 January 2001, when a new system of defining “politically motivated crime” was introduced. In this, the 2<sup>nd</sup> PRC, the development of politically motivated crime is described on the basis of the new system so the differentiation is much more pronounced than in the 1<sup>st</sup> PRC.<sup>2</sup>

<sup>1</sup> Cf. Chapter 3.1.5.2.

<sup>2</sup> Cf. in particular Chapters 3.2.2.4 and 3.2.3.3.

In a continuation of the work already undertaken but also as a result of the information presented in the 1<sup>st</sup> PRC<sup>3</sup>, a bill has been drafted with the aim of improving and expanding the criminal justice statistics in a variety of manners. Further examination is still required, especially in view of the reform of Germany's federal system, but that examination had not been completed by the time that the 2<sup>nd</sup> PRC went to press. In connection with the bill, the question of whether the data held in the Central Register of Public Prosecution Proceedings can be used for research purposes in the future is also being examined.

The federal states passed a resolution, effective as of 1 January 2004, to considerably expand the statistical data collected by the public prosecutors and during criminal proceedings and administrative fine proceedings, particularly by adding information on what are referred to as "subsections". This means that the findings drawn from those statistics can also be presented in a breakdown by category of offence. The Federal Government welcomes this progress in the way in which statistics are recorded.

In its conclusions regarding crime and legal policies in the 1<sup>st</sup> PRC, the Federal Government stressed that making rational use of the instruments of criminal law to respond to crime also meant that their effectiveness in terms of prevention and other consequences had to be periodically reviewed.<sup>4</sup> 2002 saw the completion of the second feasibility study, commissioned by the Federal Ministry of Justice and the Federal Statistical Office and produced by the registry authority of Prof. Dr Wolfgang Heinz (University of Constance) and Prof. Dr Jörg-Martin Jehle (University of Göttingen). Some of the findings of the study were presented in the "recht" series, which is published by the Federal Ministry of Justice, in 2003.<sup>5</sup> The findings presented in Chapter 6.4 of this report, on the question of whether offenders conduct themselves within the confines of the law while on probation following criminal sanctions, are based on that feasibility study. The Federal Ministry of Justice is currently making the necessary preparations to commission further research – based on the results of the feasibility study – to examine that very question. The new study will take in additional aspects, including a more offence-specific and state-specific evaluation of the data. An examination of the success of suspension of (remaining) prison sentences on probation is also planned.

## 2 Crime in Germany – An Overview

### 2.1 Abridged Version of the Chapter on the Longitudinal and Cross-Sectional Analysis of Crime in Germany

The official crime statistics only record a subset of the real crime situation, the size, structure and development of which largely depend on reporting behaviour. Willingness to report crime varies according to the nature and severity of the crime and certain offender and victim characteristics. It can thus be assumed that the available statistics on crime and criminal justice do not give a truly precise indication of the scope, structure or the different degrees to which the different sections of the population are affected (broken down by age, gender, region, ethnic origin, etc.). Consequently, in order to assess the scope, structure and development of crime properly, the various information sources – the results of victim surveys on reported and non-reported offences as well as the police and legal authorities' statistics – must be consulted, rather than only basing assessments on short-term changes

<sup>3</sup> Cf. FEDERAL MINISTRY OF THE INTERIOR and FEDERAL MINISTRY OF JUSTICE (Ed.), 1<sup>st</sup> PRC, p. 600 f.

<sup>4</sup> FEDERAL MINISTRY OF THE INTERIOR and FEDERAL MINISTRY OF JUSTICE (Ed.), 1<sup>st</sup> PRC, p. 601.

<sup>5</sup> JEHL, J.-M. et al., 2003.

in, for example, crimes registered with the police, as is often done in the media or political statements made in response to current events.

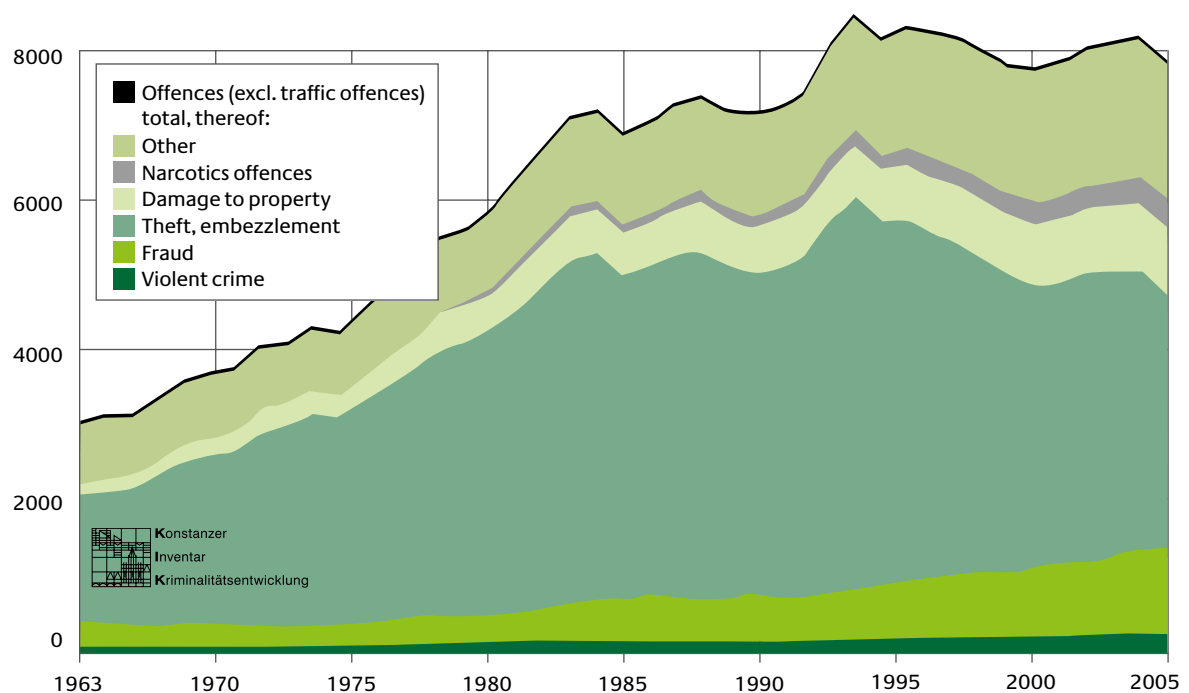
Changes in the level of registered crime can result from changes both in the real crime situation and in reporting behaviour. The assumption that the real crime situation has developed exactly, or at least similarly, to the way in which registered crime has developed is a deduction that rests upon the (tacit but mostly incorrect) assumption that the factors that influence registered crime, besides the way in which crime itself has developed, remained constant in the same period of time. As American research has shown, it is actually even possible for there to be a dramatic rise in the crime statistics although the level of undetected crime has stagnated or even dropped. Unlike many other western states, Germany does not yet conduct periodic victim surveys to supplement the statistics. There is therefore not sufficient empirical evidence to be able to draw conclusions regarding the development of undetected crime in Germany. Having said that, there is a periodic study, limited to a certain region, which supports the assumption arrived at in other countries too that willingness to report crime, particularly violent crime, has increased. It is consequently probable that a part (possibly a substantial part) of the rise in registered violent crime is only due to a change in peoples' willingness to report crime. This correlates with findings from surveys among school pupils, though also not representative for the whole country, which show that, although there was an increase in juvenile delinquency, including violent offences, up until the end of the 1990s, the increase was smaller than that indicated by the Police Crime Statistics. However, according to all of the more recent pupil surveys carried out since the end of the 1990s, the prevalence rates are no longer rising for any of the offences examined, in fact most of them are decreasing – to a significant degree in some cases. This might be a sign that the trend is reversing.

Around 60% of the offences registered with the police are property offences. Serious offences that harm the physical integrity of the individual are seldom. In 2005, robbery/extortionate robbery accounted for 0.9% of all offences registered with the police, rape/sexual coercion for 0.1% and murder/manslaughter for 0.04%. Contrary to widespread opinion, the danger of being a victim of rape/sexual coercion or murder/manslaughter has not increased in the past three years; the same is true of sexually motivated murder of children.

The increase in crime registered with the police observed over the long term is largely due to the development of property offences, mainly theft. Having said that, registered violent crime has also risen, from 2.7% of the total cases registered in 1963 to 3.3% in 2005. This increase is chiefly the result of changes in the registered cases of dangerous/serious bodily injury and robbery/extortionate robbery. The level of violent crime is put into perspective by the disproportionately high amount of attempted offences, particularly with regard to murder/manslaughter. That in turn is put into perspective by findings from analyses of past records, which show that cases of "relatively low seriousness" have been reported and registered more in the past few years. This also correlates with the fact that the rise in the violent crime registered in the Police Crime Statistics predominantly relates to the dangerous/serious bodily injury category which, as defined in the German Criminal Code, includes a large number of cases involving several offending parties (as is usually the case in brawls among juveniles), in which there is not (contrary to what the designation "dangerous/serious bodily injury" suggests) actually any serious injury.

The victims of violent crime are usually from the same age group as the perpetrators. All in all, the victim-offender constellations show that the victims are more often young people than older people. The victims of violence perpetrated by adults are often young people; the victims of violence perpe-

**Chart K2.1-1: Total frequency rate for offences registered with the police, 1963–2005, former West Germany incl. West Berlin; 1991 and 1992 incl. whole of Berlin; 1993 onwards Germany as a whole**



Data source: Police Crime Statistics; former West Germany incl. West Berlin; 1991 and 1992 incl. whole of Berlin; 1993 onwards Germany as a whole; frequency rate per 100,000 inhabitants.

trated by young people are usually persons of the same age. In fact, if violence within the family is taken into account as well, young people are far more often the victims of violence than they are the perpetrators of it.

Rather than measuring a fixed category of reported crime, the crime and criminal justice statistics take into account the results of the activities of the police, public prosecutors or the courts and their assessments of the facts in each case. They are a record of activities performed and, as such, primarily give information about the registration, definition and “filtering” processes in the individual stages of criminal proceedings. Serving as an indication (albeit a very approximate indication) of the real crime situation is only their secondary role. Ultimately, on average, only every second case is solved; only every third person registered as a suspect and counted in the Police Crime Statistics is actually sentenced; only just over 3% of the suspects detected by the police are ultimately sentenced to prison. However, criminal proceedings are not merely a filtering process; assessments can also change while they are ongoing. With serious offences, in particular, the offence is often redefined during the course of the proceedings, and not unusually “defined down” (to an offence of lower gravity) because the offence registered based on the initial assumption (which then has to be verified in the proceedings) and listed in the Police Crime Statistics is usually the most serious form of the offence possible.

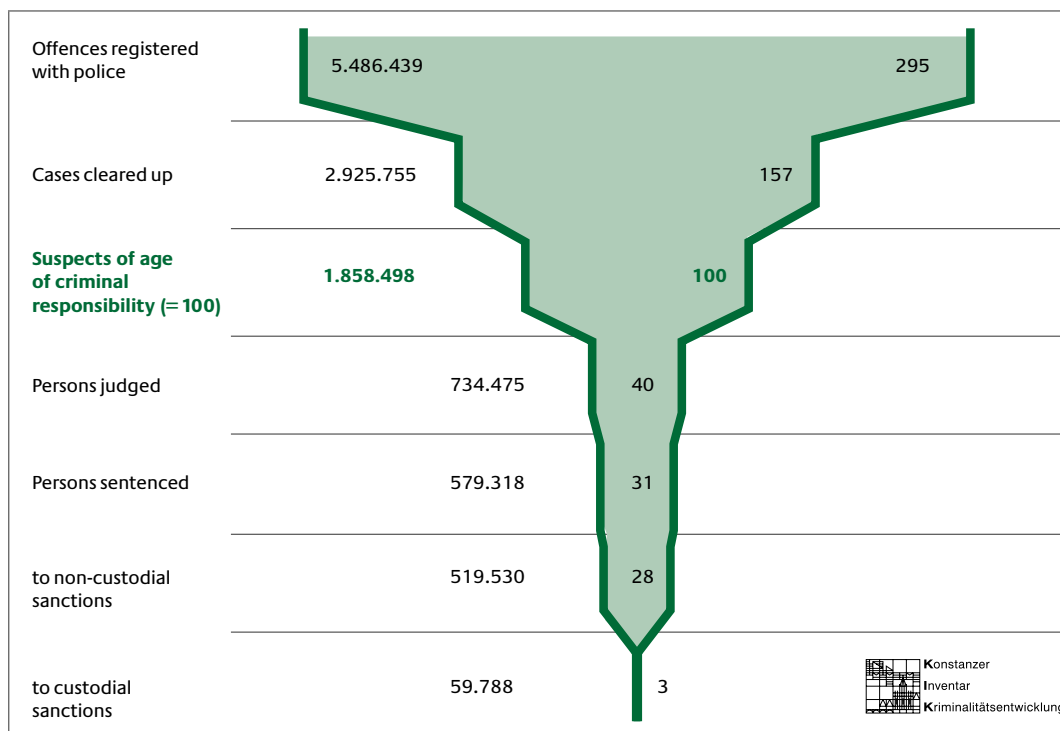
In relation to share of population, young people, especially young men, are over-represented both among suspects and persons sentenced. However, that over-representation is put more into perspective when the nature and severity of the offences are taken into account. The proportion of minor

offences is highest among children and juveniles. The amount of police-registered crime by juvenile German nationals has climbed, particularly since the beginning of the 1990s. However, that trend is only partially borne out by the data in the prosecution statistics, which show that the gap between the suspect rate and conviction rate has been widening constantly in that area too. This rise in registered juvenile crime is put into perspective still more by the finding that “getting into trouble with the law” due to misconduct typical of juveniles is usually not a frequent occurrence in the course of a person’s life or, at most, is concentrated within a limited period of their life, and does not usually lead to a career in crime.

Women appear in the registered crime statistics much less frequently than their male counterparts of the same age. In terms of officially registered and punished crime, no other characteristic differentiates more than gender. Not only are women registered more rarely than their male counterparts – when they are registered, they are primarily registered for offences that, on average, are considerably less serious than those committed by men.

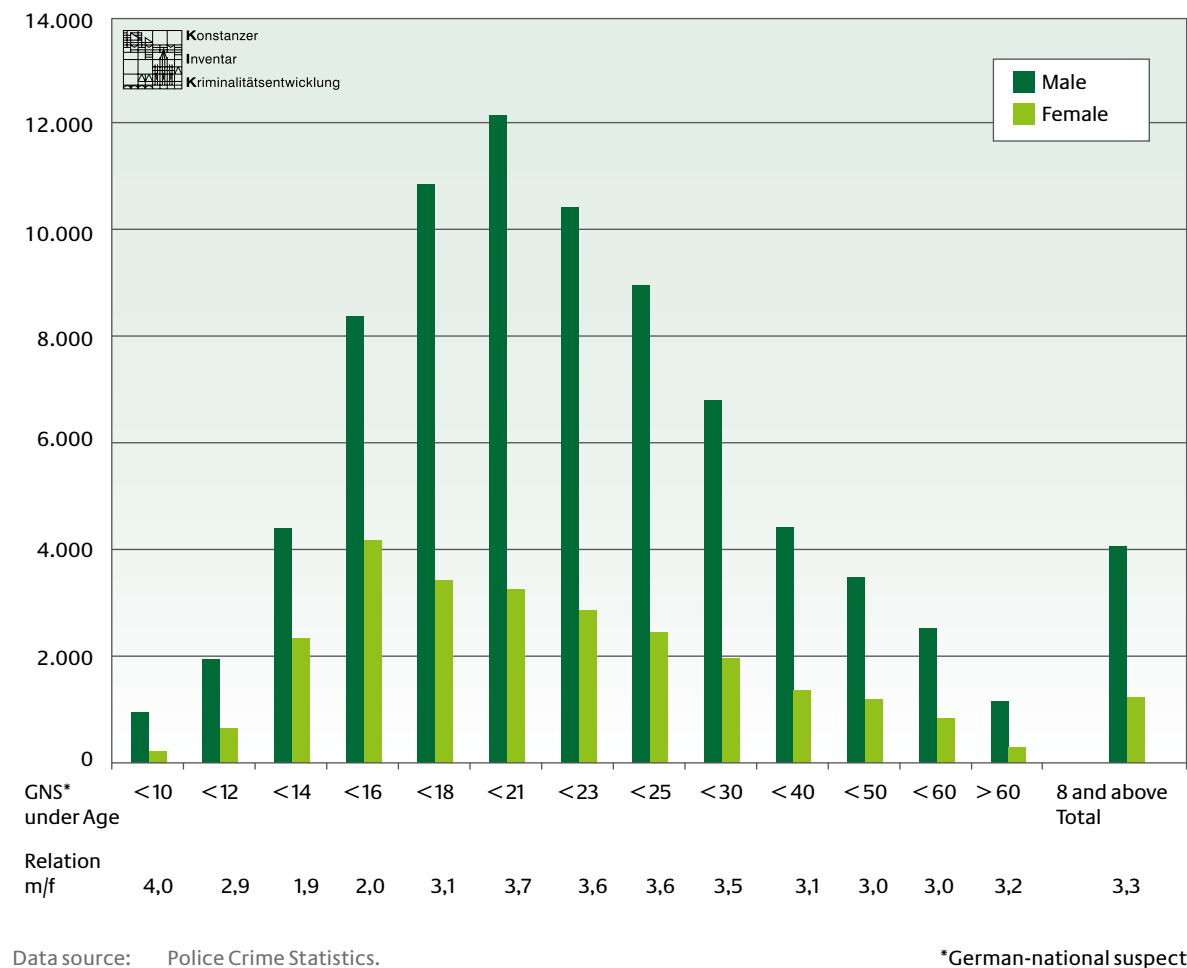
Taken as a whole, registered female crime has not increased more than male crime. There is no reason, judging by the statistics at least, to believe that female crime of a violent nature is on the increase. The proportion of women decreases the further up the ladder of criminal proceedings one goes. However, the phenomenon is not the result of a “women’s bonus” granted by the legal authorities – the differ-

**Chart K2.1-2: Offences registered with police and offenders detected in social control process based on criminal law (funnel model). Former West Germany incl. Berlin, 2004. Crimes and offences in total, excl. road traffic offences. Absolute figures and their relation to number of offenders of age of criminal responsibility registered in 2004.**



Data sources: Police Crime Statistics; prosecution statistics.



**Chart K2.1-3: Suspect rate for German nationals, by age and gender, 2005**

ences between the two genders disappear or become virtually insignificant when it comes to examining the nature and severity of the offence and the suspects' past record.

## 2.2 Abridged Version of the Chapter on Crime in Germany in the European and International Context

A comparison of the "overall crime level" in various states or regions of the world is only possible to a limited extent, not least because the nature and range of what constitutes an offence vary greatly. Furthermore, there are major differences between the various states with regard to which activities carry a criminal penalty and which activities are only treated as regulatory or administrative offences (known by different names in the different countries). There are also differences, again by way of example, between the rules that specify whether the police have to officially accept all of the charges presented to them by the public and whether they have to register them for the Police Crime Statistics too and, if so, according to which counting rules.

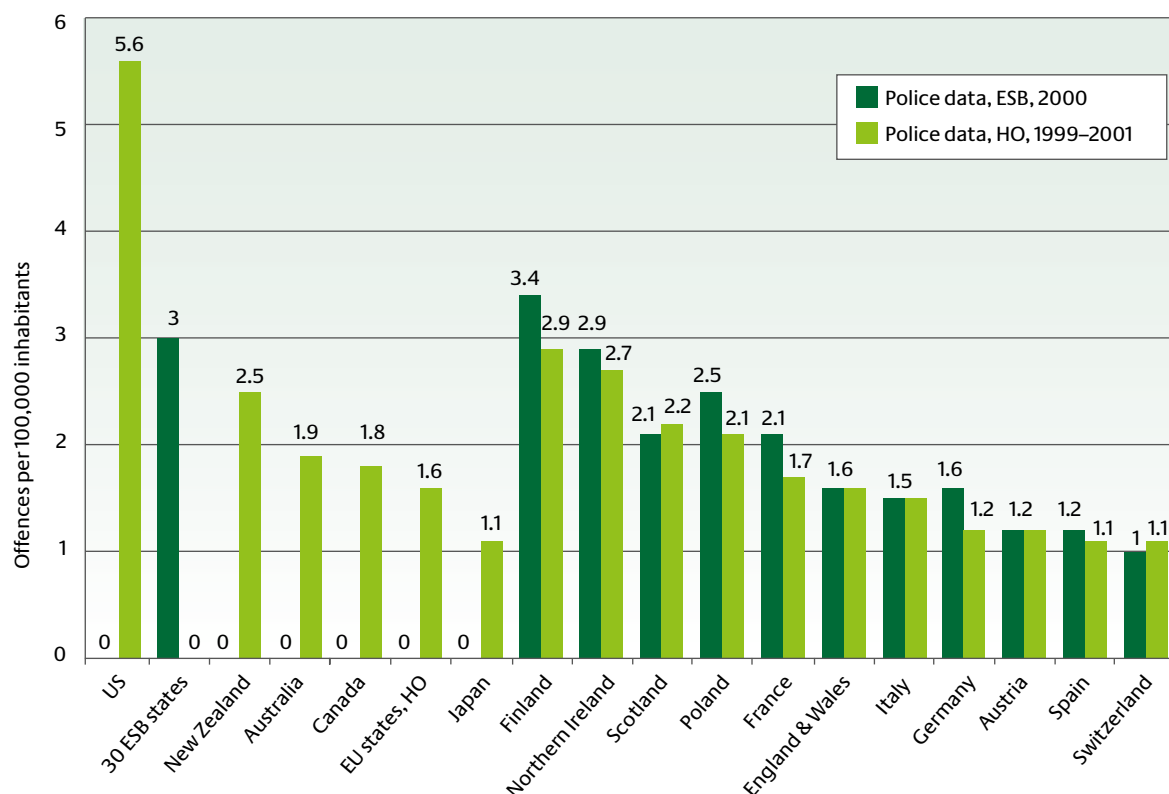
However, under certain provisos, it would appear justifiable to compare long-term trends and show how, if at all, they are related to other factors, e.g. economic dynamics or social problems. Having said that, such an approach only permits cautious interpretations of trends, let alone of any causal relationships.

Figures relating to the core area of crime provide a much better basis for comparative analyses. For some time now, the public's impression of what constitutes a crime has been fairly well in line with the constituent elements as stipulated in the legislation. The crimes in question include murder and manslaughter, robbery, bodily injury, rape and burglary.

Naturally, the legal definitions of these crimes are not all the same, nor are the ways in which the individuals concerned or the authorities handle them. An exact comparison in this respect is thus not possible either. Nonetheless, as shown by various international efforts (including those by the UN and the WHO), it is possible to determine relatively well at least the extent of the differences between states' and regions' crime rates in a cross-sectional comparison or between their different dynamics in a longitudinal comparison. Slightly more precise findings are provided by scientifically guided comparisons that relate to the capital cities or the largest cities in particular states.

Several waves of international victim surveys have now been conducted. To a limited extent and for selected offences, they enable the offences registered with the police to be compared with the offences that citizens cite from their own experience and assessed using, among other methods, a standardised approach for calculating crime rates. Following an initial attempt in 1989, Germany did not participate in such surveys (International Crime Victimization Surveys – ICVS) again until 2005. The results of the surveys evaluated to date show clear similarities in the basic structures in the various countries. It can therefore be concluded that any marked differences between states are not the product of prosecution

**Chart K2.2-1: Homicide offences around the year 2002: comparison of international and European cases registered with the police**



Data sources: KILLIAS, M., 2003; BARCLAY, G. and C. TAVARES, 2002.

measures or crime statistics procedures, but instead reflect part of the real crime situation or pertinent differences in the level of internal security.

According to practically all of the available indicators, Europe – Western Europe to be precise – ranks well on an international scale when it comes to ensuring internal security. This becomes evident when one examines the development of the relevant crime figures over the course of several years but also in a cross-sectional comparison.

It is demonstrated particularly clearly in the area of homicide, as revealed in the left-hand section of Chart K2.2-1. At the same time, the right-hand section shows that Germany has one of the lowest, i.e. one of the best rates among the EU member states included.

A longitudinal comparison for the period ranging from 1994 to 2001, using the mortality and injury statistics of the World Health Organisation (i.e. an alternative data source to the Police Crime Statistics), reveals that Germany, which lay above the average in 1994, has developed in a manner that differs positively from the average for the other European states in recent years. This can be seen in Chart K2.2-2, which gives the figures for murder, manslaughter and bodily injury referred for medical treatment.

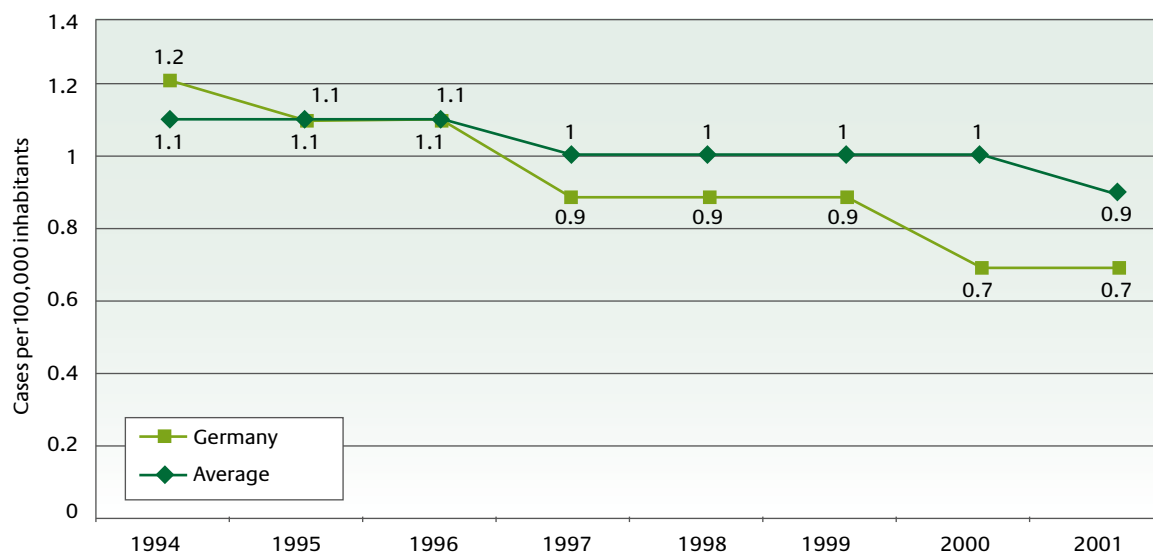
Between 1995 and 2000, the number of rapes and/or sexual coercions registered with the police increased sharply in many European countries, particularly England & Wales; in a few other states, such as Spain, it decreased slightly. In Germany, there was a comparatively moderate rise in the number of registered cases but it did not affect the country's relatively good ranking among the states included. Only Switzerland and Spain had lower values.

In a comparison of the same states with regard to the cases of robbery/extortionate robbery registered with the police, Germany was the only one with declining offence rates. However, it did not rank as high as might have been expected because four states (Denmark, Switzerland, Norway and Austria) had lower rates.

Representative victim surveys among the population show that Germany ranks relatively well in this respect too. This is true of all of the offences included in the surveys but particularly violent offences and burglary. In the 1990s, the period for which the most recent data suitable for comparison is available, the reporting rates were slightly lower in Germany than in other European states. Among the reasons for not reporting offences, the fact that the victim had suffered no or only negligible property damage was cited less often in Germany than in the other countries; the number of victims who stated that they had settled the matter themselves was also relatively small; the reason most cited by members of the German population was that they had felt that there was not sufficient evidence or that the police could not have done anything to clear up the case.

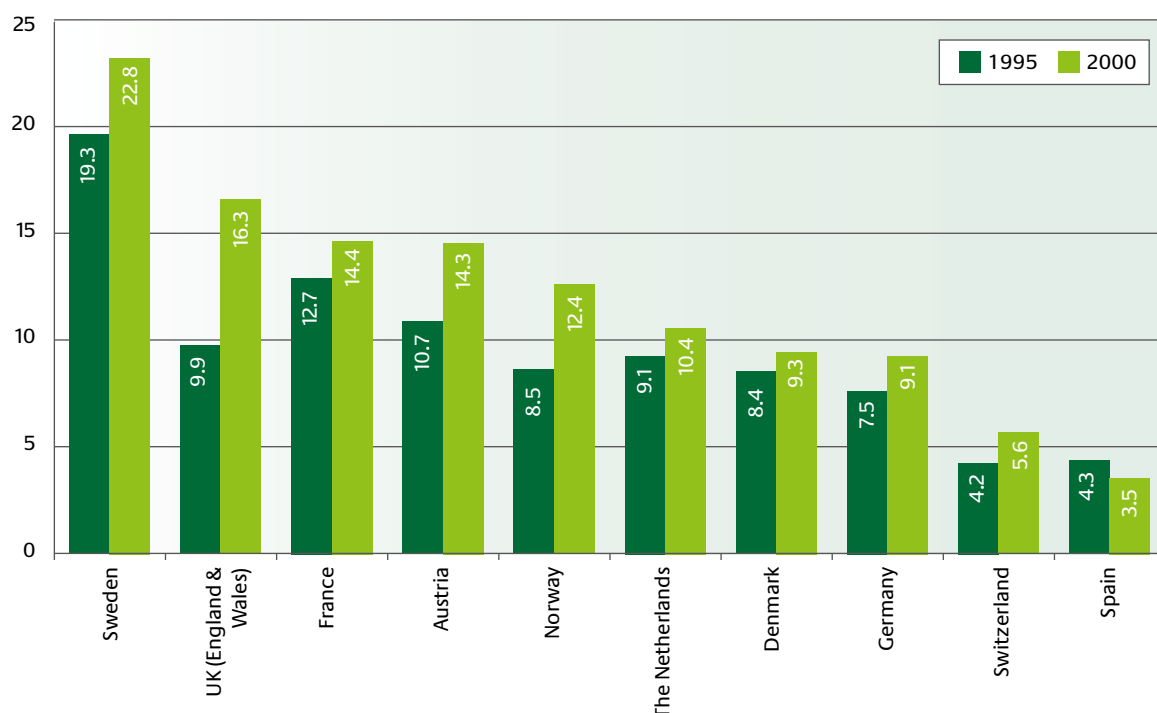
Germany's police density (the number of police officers per 100,000 inhabitants) is slightly lower than the average for all of the European Union member states. Police density is linked to numerous factors relating to states' legal, organisational and cultural structures and their traditions but it is not directly connected to the crime situation or the development thereof. It has virtually no effect at all on inhabitants' assessment of the significance of crime within the overall context of the important social problems in their country, as Chart K2.2-4 illustrates. The left hand of the chart shows states with a relatively low police density, and the right those where density is relatively high. In both scenarios,

**Chart K2.2-2: Fatalities resulting from murder, manslaughter and bodily injury. Trend in Germany compared to the average for eleven European states, 1994–2001**



Data source: WHO REGIONAL OFFICE FOR EUROPE, 2005.

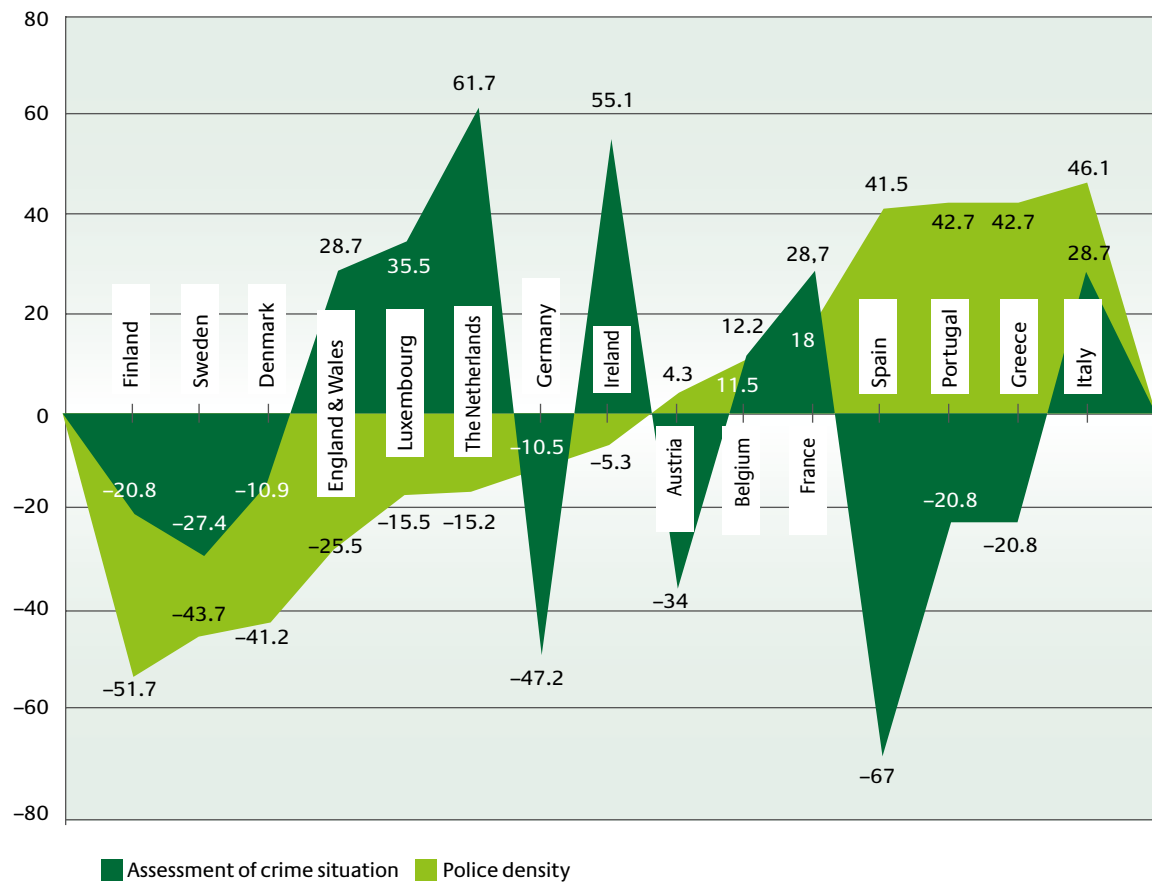
**Chart K2.2-3: Sexual violence (rapes) registered with the police, comparison of European incidence rates**



Data source: KILLIAS, M., 2003.

there are inhabitants whose assessment of the crime situation is above average and some whose assessment is below average.

**Chart K2.2-4: Differences in police density and inhabitants' assessment of the crime situation in European countries, 2001–2003**



Data sources: EUROPEAN OPINION RESEARCH GROUP, 2003; DITTMANN, J., 2005b.

Basis: Proportion of respondents who cited crime as one of the two most important problems in their country.

Note: The figures indicate the deviations from the average of the 15 states included, which is represented by the zero line.

In addition, the public's satisfaction with the police's response following a reported offence is very high throughout Western Europe and is only exceeded by the satisfaction rate in North America and Australia. In Germany, not only is the satisfaction rate high, the general level of respect for the police as compared to other state institutions is particularly high too and has been for quite some time.

## 2.3 Actions by and Views of the Federal Government

The Federal Government observes that the overall level of crime, as measured in the Police Crime Statistics, has been stagnating since the middle of the 1990s and will continue to endeavour to reduce it.

In Germany, the standard of internal security is high, as reflected in the findings of the international comparisons discussed in this Chapter. Germany is one of the safest countries in the world. Our security structure is sophisticated and committed to ensuring our citizens' safety and their freedom in equal measure. It is the constant aim of German security policy to provide freedom in safety – on the basis of the law. Indeed the governing parties committed themselves to that very goal in the coalition agreement that they signed when they came to power. Germany's security architecture is well-equipped to achieve that aim and will be evolved further where necessary. In fact, it was expanded in 2006 with the

decision to grant the Federal Criminal Police Office preventive powers in the field of counter-terrorism as part of the reform of Germany's federal system.

But it is also important, within the existing security structures, to take both legislative and technical steps to improve the way in which the security authorities collaborate, particularly the information-exchange process. For instance, the legal basis is to be created for a standardised anti-terrorism database and ad hoc project databases to help the police forces and intelligence services exchange information related to terrorism. Communication between the authorities and security organisations is also to be improved by introducing digital radio communication.

Besides taking action at national level, the Federal Government works with other countries in order to optimise internal security, with Germany's cooperation within the European Union playing a particularly important role. As well as being a security community, the EU member states share common values. In view of Article 6 of the Charter of Fundamental Rights of the European Union ("Everyone has the right to liberty and security of person") and the objective of creating an "area of freedom, security and justice" set out in the 1997 Amsterdam Treaty, security policy in the EU is also committed to ensuring a balance between freedom and security.

In this context, it is important to implement the "Hague Programme" adopted by the European Council at its meeting on 4/5 November 2004. The programme has a range of aims, including improvements to the way in which information relevant to investigation and prosecution is shared, a further increase in the efficiency of EUROPOL and more joint police operations, mainly to be achieved by evolving the Convention implementing the Schengen Agreement. In addition, the Federal Government is calling for the new version of the Schengen Information System (SIS II) to be put into operation as soon as possible. It will also encourage other member states to join Germany, Belgium, France, Luxembourg, Austria and Spain in their efforts (agreed in the Treaty of Prüm on 27 May 2005) to step up police cooperation between their countries, particularly with regard to the fight against terrorism, cross-border crime and illegal migration.

As well as broadening cooperation within the EU, the Federal Government will continue to place great emphasis on bilateral cooperation between police forces and legal authorities. There are bilateral agreements concerning the work of the police and the legal authorities with all nine of Germany's neighbours. In fact, the agreements with the Netherlands, Austria and Switzerland have been significantly expanded in the past few years. Negotiations to expand the agreements with Belgium, France and Luxembourg are underway.

Finally, Germany will continue to counteract the risks to its internal security by taking steps to stabilise the rule-of-law and democratic structures in other countries. This aim is largely achieved by providing assistance to the local police in the form of training and equipment as well as participating in international police missions.

Further national and international action being taken by the Federal Government in the area of crime-control improvement, and its views on the subject, are described in the relevant context in the following chapters.

## 3 Selected Areas of Crime

### 3.1 Violent Crime and Selected Offences Committed within Relationships

#### 3.1.1 Abridged Version of the Chapter on Violent Crime and Selected Offences Committed within Relationships

The depiction of crime in the mass media largely consists of reports of very serious violent offences against persons, in the form of murder, manslaughter, rape or robbery and serious bodily injury. In view of the potential damage caused by offences of that nature, such reporting might well be understandable and reflect pressing questions, subliminal concerns and the curiosity of the public and the media audience. As a result, however, the public's impression of the structure and development of the crime situation is drastically distorted.

These types of serious violent offence, which the police also categorise under one code, account for approximately 3% and thus a very small portion of crime. Homicides, which arouse a particular amount of interest, make up around 1.2% of violent offences (as defined by the police) and 0.04% of all suspected offences registered with the police.

When examining how the extent of violent crime has developed in recent years, a differentiated approach must be taken. Contrary to the oft-voiced concern, it is by no means the case that our society is generally becoming more brutal, i. e. that these forms of serious violent crime are steadily increasing or becoming more severe. In fact, the opposite is more the case. More and more, people are rejecting the idea of violence and a decline in violence can be observed in numerous areas of life. Where there have been increases, they are limited to the incidents that have been officially reported to the prosecution authorities, and even then they only relate to subsets of crime. Moreover, the official data on reported crime alone does not permit any conclusions about how these offences or people's exposure to crime have developed.

Where data on undetected crime is available, it shows unequivocally that the trends reflected in reported crime in recent years are not due to blanket increases in violence in our society – in contrast with widespread subjective impressions and statements. The exception is the area of terrorist and extremist incidents, which occur very rarely in terms of absolute figures but draw a lot of public attention and which this report will deal with later. Instead, in the majority of cases, the reason is that incidents are being reported and registered much more often than in the past.

In order to understand and properly assess the development of violent crime and to explain the major divergences between findings derived from the figures on reported crime and undetected crime, it is essential to take into account the changes to the legal framework in the past few years as well. In addition to reforms of criminal law concerning sexual offences, especially increases in the range of punishment available and gender-neutral wording of the constituent elements of an offence, another key step with far-reaching consequences was the coming into force of the Act on Protection against Violence. The chief aim of the Act is to counter violence in the home and in relationships and to improve the situation of and protection for victims. The Act has also led to amendments in police regulations and to the establishment of proactive strategies for handling and prosecuting violence in the home and in relationships. All of this has brought the subject of violence within the immediate social environment much more to the fore and such offences are increasingly being reported to and registered with the prosecution bodies.

In addition, the considerable effort being made at the local-authority level, and particularly in schools, to prevent violence is important. In response to serious violent incidents in schools, several federal states have installed an unprecedented system of compulsory registration. Finally, and not least due to the mass killings that occurred in the Gutenberg-Gymnasium grammar school in Erfurt in 2002, the firearms legislation has been reformed, making it much more difficult to obtain legal access to weapons. However, it is not yet clear whether this has had an impact on violent crime and if so, in what way.

The police data shows that the incidence of the most serious form of violence against a person, homicide, has fallen significantly in recent years. This trend has been apparent for quite some time. The rate of fatalities caused by manslaughter, murder or bodily injury is lower in Germany than anywhere else in Europe. Sexually motivated killings of children, an emotionally highly charged topic, have also decreased considerably over time. They are, fortunately, extremely rare and have a very low incidence at present – contrary to the impressions people sometimes have.

The number of robberies registered with the police has also declined though the decrease in the recorded figures is probably actually an underestimate of the real decline. Studies of undetected offences among young people, who account for a disproportionately high share of those who commit robbery (which is not the case for homicide offences), reveal that the figures have fallen significantly in this area too. These decreases cannot be fully reflected in the reported crime figures because the reporting rates have increased at the same time.

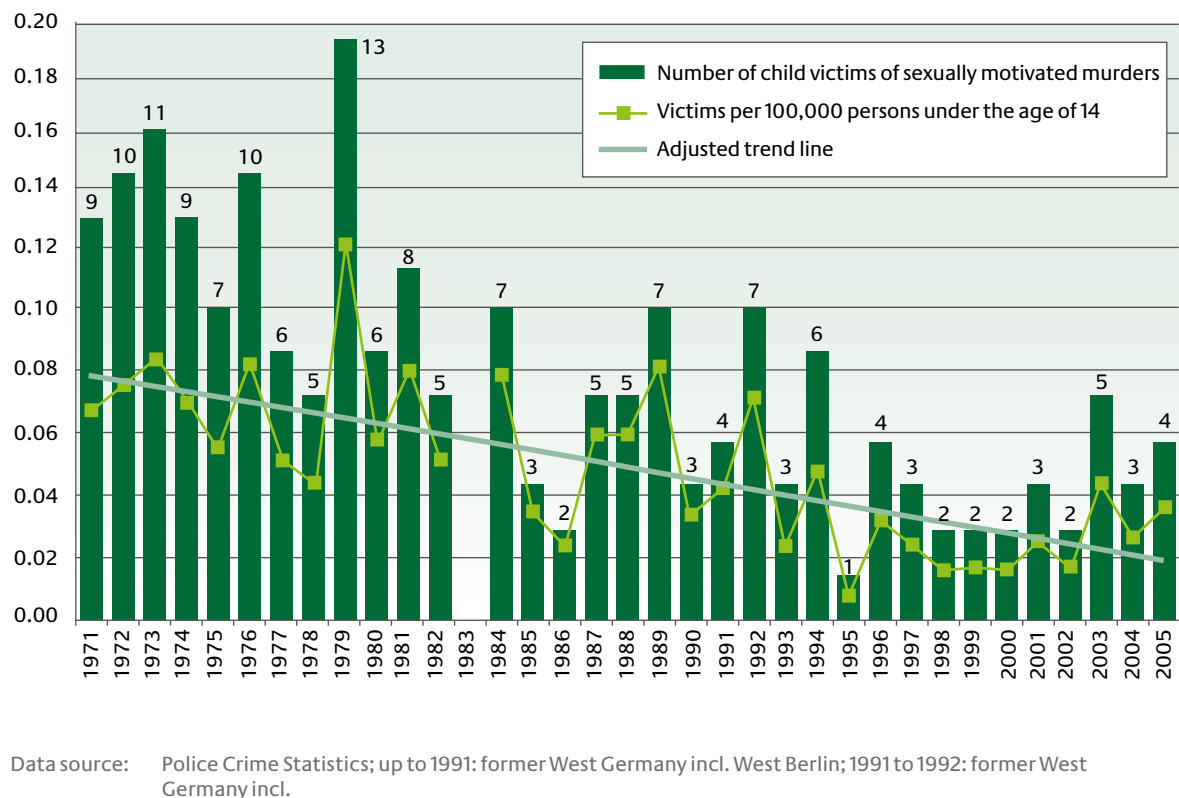
By contrast, the number of bodily injury offences, particularly those of a dangerous or serious nature, registered in the police data has climbed considerably in recent years. As the Act on Protection against Violence has been implemented, important information has come to light that provides at least a partial explanation of the increase. Police measures to counter domestic violence, measures which have been stepped up greatly and flanked by the work of proactive advice centres for victims, special training courses and altered strategies for police operations, have resulted in a much higher number of cases of violence in close relationships being registered.

This is also confirmed by the findings of studies on undetected violence against women and studies on young people, all of which suggest that violence against women and violence against young people in the form of bodily injury have decreased in the past few years. At the same time, victims report offences more often and to disclose their experiences to the authorities. Reports based on the police's everyday work confirm those assessments, showing that the Act on Protection against Violence has led to a considerable rise in the cases of domestic bodily injury that they handle.

The available analyses of undetected crime also show that there is a downward trend with regard to the severity of violence between people. A particularly pleasing aspect is the significant drop in the use of firearms in offences. This is part of a trend that has been evolving for several years and has led to a situation in which we currently have the lowest incidence of violent acts involving firearms since Germany's reunification (in 1990).

However, the number of rapes and cases of sexual coercion registered with the police has increased since the First Periodical Report (1<sup>st</sup> PRC). The majority of these offences are committed within the victim's immediate social environment. Having said that, representative surveys of undetected crime reveal, here too that the number of undetected cases has fallen over time despite still being very high. An increase in the potential number of cases is thus not to be expected. This correlates with the fact



**Chart K3.1-1: Child victims of sexually motivated murder, 1971–2005**

that the increases in the cases of this type registered with the police relate precisely to those offences committed within relationships for which there has been a rise in the reporting rate.

With regard to sexual abuse of children, the number of cases registered with the police has not grown over time. However, there are no findings from recent representative studies of undetected crime that would permit an interpretation and comparison of the trends. The last comprehensive study based on representative data concerning this problem was conducted in 1992. So, without doubt, research is needed in this area. One striking factor is that the figures for reported crime reveal an increasing number of young persons suspected of committing such offences. Researchers and law enforcement bodies are currently examining prevention and intervention issues in connection with young sex offenders, plus ways of identifying sexually deviant behaviour at an early stage and treating it. There has also been a rise in the number of cases of dissemination and possession of paedophile literature registered with the police. The Federal Criminal Police Office assumes that this is the reflection of an improvement in the clear-up rate, rather than an actual upward trend.

All of the available information indicates that the manner in which a person is brought up by his or her parents plays a particularly important role in determining whether they turn to violent and/or criminal behaviour. Legislators have therefore introduced a ban on all forms of physical punishment, establishing the ideal of violence-free parental upbringing. Several studies have dealt with this question in periodic studies. It has become clear that, although there has been a rise in the number of registered cases of abuse of charges in the care of the perpetrator(s), that is to say physical or psychological abuse of children, the number of such cases in the police statistics is very small and the crime statistics are not really suitable for analysing child abuse as it can be subsumed in very different categories of offence.

The periodic, representative studies on this subject reveal that these developments in the police data are not due to parents being more violent towards their children than in the past. On the contrary, both attitudes towards parenting methods and parents' own behaviour have shifted significantly towards the concept of non-violence. However, the fact that this has been accompanied by an upward trend in the use of inappropriate methods of discipline, which themselves may lead to parenting problems and relationship disorders and can be described as psychological violence or humiliation (e.g. shouting down children), gives cause for concern.

In recent years, political representatives, researchers and law enforcement practitioners in Germany have begun to look more closely at the phenomenon of stalking, following on from earlier discussions and research in the English-speaking world at the beginning of the 1990s. A debate is currently underway as to the need for an Anti-Stalking Act or a separate category of offence.

The problem with stalking is not so much the actual act of stalking itself. It takes on a violent nature and becomes particularly stressful for the victim mainly due to an accumulation of a variety of individual encroachments that, taken in isolation, might not be what one would describe as violent or particularly serious. However, they tend to escalate and, in rare, extreme cases, can result in homicide. National and international research demonstrates that, even where stalking does not have fatal outcomes, it can have major health-related, financial and social consequences for a large number of the victims.

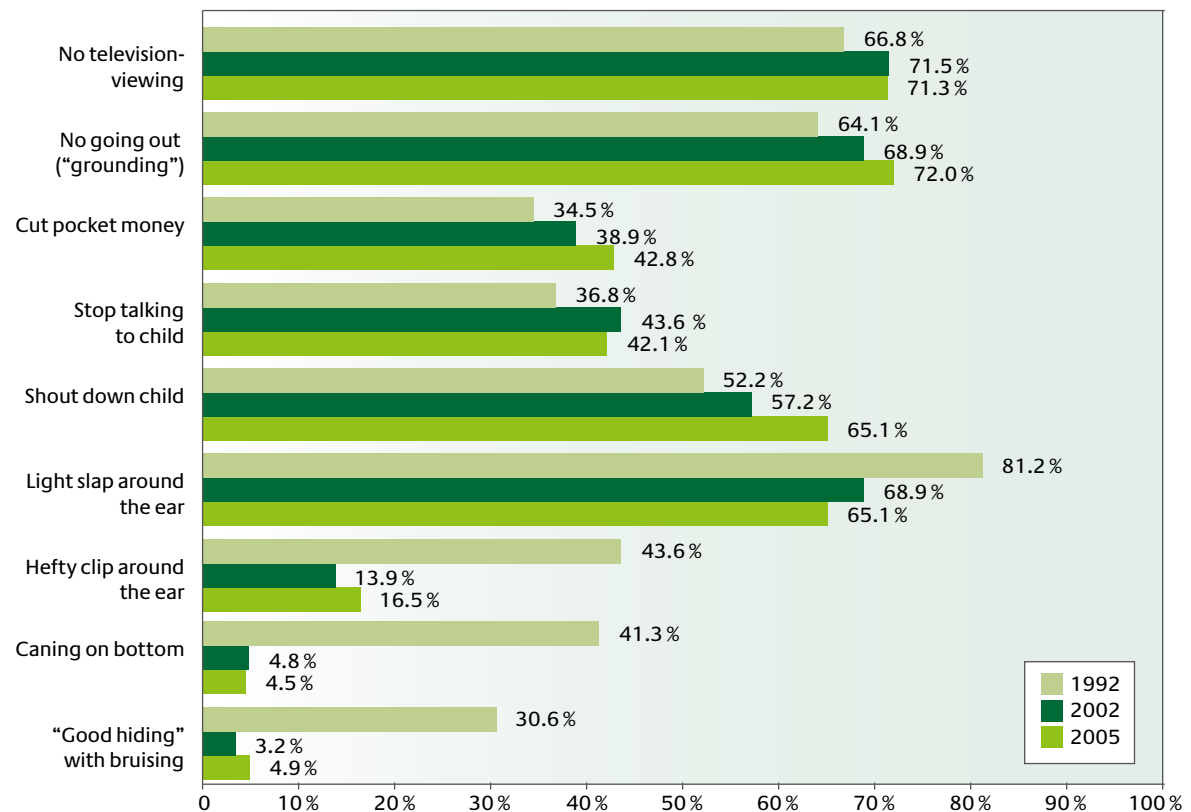
According to the research findings available, stalking is probably as widespread in Germany as in the English-speaking world, where the probability of becoming a victim during one's lifetime is known to range between 12% and 32% for women and 4% and 17% for men. Based on the results of regional studies in Germany, it can be assumed that just over 10% of the adult population will be the victim of a form of stalking lasting at least two weeks at some point during their life. In a quarter of the victims' cases, the stalking lasted over a year.

Roughly 20% to 30% of the victims report the incidents, making the reporting rate for stalking approximately twice as high as for domestic violence. However, it is striking that stalking victims are much less satisfied with the police's work than victims of domestic violence are. Furthermore, evaluations of the Act on Protection against Violence show that its provisions regarding stalking are apparently not yet sufficient.

In the area of physical and sexual domestic violence, the implementation of the Act has evidently been successful to the extent that a considerable amount of previously undetected crime has been brought to light. However, on the basis of the studies undertaken to date, it cannot yet be said whether the means of intervention provided by the Act on Protection against Violence actually will lead to a reduction in domestic violence in the medium and long term. Here too, further research is required.

All in all, the information available indicates that the situation in the area of violent crime has developed very positively. Nonetheless, it cannot be denied that the data available on registered and undetected violent crime still points to a considerable number of victims who might not all be reached by institutions or help programmes – even when they need them. Thus, despite the positive development of the overall situation as outlined above, it is still necessary to continue working intensively on how to optimise prevention and how to help victims overcome harmful and sometimes extremely traumatic experiences.

**Chart K3.1-2: Change in parental disciplinary methods between 1992 and 2002, results of surveys among young people**



Data sources: BUSSMANN, K. et al, 2003; BUSSMANN, K., 2005.

The findings obtained since the introduction of the Act on Protection against Violence and the lessons learned in connection with the rejection of physical punishment by abolishing parents' rights to employ such punishment to discipline their children demonstrate that progress is being made in the right direction.

There are, however, some gaps in the research and some questions that remain unanswered. One such point is the issue of violence against the elderly. In view of the changing age structure, this type of violence is becoming increasingly relevant, particularly when it comes to violence perpetrated by carers. Research is currently being carried out on these topics and should be continued vigorously. There are also some unanswered questions that need to be addressed regarding the permanence of the effects intended to be generated by the provisions of the Act on Protection against Violence, i. e. a substantial reduction in violence between partners. Finally, there is sexual abuse of children, an area in which a large amount of research was done in the 1990s but which has seen a significant decrease in research since then. Urgent action is required to correct this, not least because of the serious consequences that such experiences of victimisation are known to have.

### 3.1.2 Actions by and Views of the Federal Government

Public perception of the crime situation is currently predominantly influenced by spectacular, isolated cases of serious violent crime – that often earn a dramatic response in the media. That response causes the public to forget that the overall crime situation is still dominated by "everyday crimes", mainly petty

or semi-serious property offences. The Federal Government therefore also considers it necessary to counteract exaggerated or one-sided concentration on the development of specific types of offence.

From the Federal Government's point of view, it should first be borne in mind that the trends are different in the various categories of violence. In the most serious category of violence towards persons, i. e. homicide, the constant decline of the past few years is, happily, continuing, as is the improvement in the clear-up rate. However, there have been increases in the areas of dangerous and serious bodily injury, in particular, and sex offences. Thus, the facts present a very mixed picture.

The Federal Government feels that the rise in the number of offences involving bodily injury does not necessarily mean that there has been a real increase. Acts of violence, especially if they are committed in the victim's immediate social environment, very often go undetected. The public debate on the subject of violence in close social relationships, which was also triggered by the 2002 Act on Protection against Violence, helped to make people more aware of the issue. At the same time, police investigation in this field has increased. Combined with a variety of preventive measures, especially in connection with violence against women and children, this has certainly considerably raised peoples' willingness to report such offences. The rise in the numbers in these areas thus shows that – fortunately – more previously undetected crime is coming to light.

Nonetheless, in some areas of violent crime the figures are at an unacceptably high level and the Federal Government believes further action is needed. Prevention of violence is a task for the whole of society, supported by measures implemented by the Federal Government. For instance, the Federal Government will continue to support the German Forum for Crime Prevention, one of the key players in the field of prevention. The Forum, whose board of trustees is chaired by the Federal Minister of the Interior, will focus on the subject of prevention of violence and work with others, on behalf of the German Conference of Minister Presidents, to develop measures aimed at preventing violence. It will coordinate the Federal Government's work on prevention measures in order to ensure that the available resources are used effectively. In addition, the Federal Government will continue to intensively support the "Alliance for Democracy and Tolerance – Working against Extremism and Violence". The Alliance performs crucial groundwork by, for example, supporting local projects and young persons' initiatives against violence.

The evaluation, commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, of the Act on Protection against Violence was discussed at length in Chapter 3.1.6; readers are asked to refer to that chapter for more information.

The 2004 study on "The Life Circumstances, Safety and Health of Women in Germany", commissioned by the Federal Government, was the first ever representative survey to include questions dealing specifically with violence towards women in Germany. The results show that women's exposure to violence is high, particularly in the home. At least one in four women aged between 16 and 85 who have lived in a relationship have been physically – sometimes sexually – abused once or repeatedly by their current or past partners. The figures for all categories of violent offence indicate that additional measures are required, beyond the Act on Protection against Violence, including anti-stalking measures. For this reason, victims of stalking, who suffer from persistent following, harassment and/or threats, are to be given better protection by, for instance, the establishment of stalking as a separate category of offence. In May 2006, two bills designed to make stalking a punishable offence were presented by the Federal Government and the Bundesrat (upper house of the German parliament) for a first reading

to the Bundestag (lower house of the German parliament) where they were then debated. Since there is a broad political consensus with regard to the need for a penal provision, a law can be expected to be introduced soon. In addition, the Federal Government will continue the successful Action Plan to Combat Violence against Women by introducing new measures in the following areas: "Prevention", "Federal legislation", "Cooperation between governmental institutions and non-governmental operators of help programmes", "Nationwide networking of help programmes", "Raising awareness" and "International cooperation".

A further priority for the Federal Government is to strengthen the level of protection against sexual abuse for children, juveniles and persons who are unable to defend themselves. The Act on the Amendment of the Regulations on Crimes against Sexual Self-Determination and the Amendment of other Regulations, which was passed on 27 December 2003, closed the gaps in the protection offered and, where necessary, increased the severity of the punishment for such offences. The Federal Government's Action Plan to Protect Children and Juveniles from Sexual Violence and Exploitation contains a variety of additional measures, particularly preventive measures, covering all of the relevant areas of life in society.

## **3.2 Politically Motivated Crime and Terrorism**

### **3.2.1 Abridged Version of the Chapter on Politically Motivated Crime and Terrorism**

The chief difference between politically motivated crime and other forms of crime is that, rather than being motivated by a benefit to be gained by the individual(s) committing the crime, politically motivated crime is motivated by the perpetrators' belief that they have to take action for the benefit of a particular group and its future, be it for a predefined "ethnic community", a "class" or a "true faith". Since politically motivated criminals thus see themselves as altruistic and ready to sacrifice themselves, sanctions are not as effective a deterrent on them as they are on other criminals. Since the perpetrators believe that the purpose of their actions goes beyond the concept of the individual and of time, any punishment is neutralised or seen as a prize in their eyes.

The number of xenophobic offences, which peaked between 1992 and 1994 in the face of a conflict concerning the immigration of five million ethnic Germans from Eastern Europe, civil war refugees and asylum seekers, has been stable at a lower but unacceptable level for ten years. The necessary public debate on the problems and acts of violence usually results in higher incidence rates after a brief period (as was the case in 2001). A link can be observed, in the east and west of the country, between the offences and acts of violence and regional economic and labour-market problems. A high proportion of the perpetrators and suspects are young men with difficult family lives, whose job prospects are poor and who have already committed non-political crimes. However, there are also better integrated perpetrators, the majority of whom are ideologically motivated.

It is virtually impossible to identify a specific age group or characteristics for the victims. The attacks are triggered by the victims' skin colour, language or clothing that arouse the suspicion that they are "enemies" of the right-wing extremists. Even though the extremists were unable to implement the "nationally disencumbered zones" they were seeking, there are meeting places, districts and areas that potential victims avoid. The statistics kept by the victim advice centres set up in the new federal states (the states in former East Germany) as part of the Federal Government's CIVITAS Programme only partially correlate with the official figures on politically motivated crime. Some cases are not

reported to the authorities and the victim advice centres are sometimes unaware of cases that have been reported to the authorities. In the majority of cases, the harm caused is traumatic.

Unlike actual offences, xenophobic attitudes are less widespread among young people than they are among older people. Persons with a higher level of education tend to be less xenophobic. Here too, a link can be observed between such attitudes and regional factors (particularly the labour market). Whilst the period between 1980 and 2002 saw ever fewer xenophobic calls for endogamy, exclusion of immigrants from political life and sending them back “home”, as jobs became ever scarcer, since 1994 there have increasingly been calls for foreigners to adapt more to the German lifestyle. It appears that cultural conflicts are shifting more into the public spotlight. Since 2002, the number of people who advocate repatriating foreigners due to the lack of jobs has risen, in contrast with the long-term trend, but two thirds of respondents still reject the idea. It can be assumed that the fear of competition from immigrants has now spread further in the face of continued unemployment and the shortening of the period during which unemployment benefits are paid out.

Right-wing extremist groups try to take advantage of the situation and draw attention to their cause by staging more demonstrations and marches. Democratically minded citizens impede those attempts by appearing in much higher numbers than the extremists each time around. In addition, militant “anti-fascist” groups try to attack the right-wing extremists, with the result that offences and acts of violence between right and left and by them towards the law enforcement officers are increasing considerably.

However, this cannot conceal the fact that the mobilisation capability of the left-wing autonomous movement is waning. The movement is also extremely divided when it comes to the conflict in the Middle East. Activities aimed at voicing criticism of globalisation and combating right-wing extremism have led to the creation of a large number of moderate organisations, which are not prepared to adopt the same stances, based on anarchy and alienation theory, as the autonomous movement (stances which arose in the 1970s after all).

In the context of right-wing extremism, anti-Semitic stereotypes are a phenomenon that constantly requires counteraction. The escalation of the Middle East conflict has given rise to or reinforced attitudes that are opposed to Israeli policy, anti-Zionist and, frequently, anti-Jew beyond right-wing circles and, in particular, among Muslims who seek to display solidarity with the Palestinians. The number of anti-Semitic violent offences rose between 2001 and 2005.

The fact that right-wing extremist and neo-Nazi parties and subcultures continue to be successful in mobilising and recruiting young people, especially in economically weaker regions, must be countered by targeted prevention work. One aim is to guide young people who are at risk towards new prospects in life; another is to mobilise forces in civil society to prevent right-wing extremism becoming “normal”. The Federal Government’s CIVITAS, ENTIMON and XENOS programmes and the Alliance for Democracy and Tolerance are attempting to kick-start these processes.

The most dramatic change since the First Periodic Report on Crime and Crime Control in Germany is the threat posed by international Islamist terrorism. This was confirmed once again on 31 July 2006 when two suitcases containing improvised explosive and incendiary devices were found in two regional trains in Germany. The Federal Government has taken legislative and administrative steps to expand the possibilities open to those involved in searching for and investigating terrorists and their networks. The federal states have stepped up their observation and monitoring of Islamist centres.

In Germany, well-known Muslim groups have repeatedly made public statements distancing themselves from Islamist terrorism. They stress that they are strict observers of the law and that it is precisely they who can protect young people from taking the path of terrorism. Some of them are discussing the idea of a “European Islam”. Nonetheless, in some groups there are still attempts to segregate the community in a “parallel society”. It is essential that the rule of law is applied to such groups. Furthermore, the risk of Islamist centres serving as recruitment bases and rest zones for Islamist terrorists has not yet been eliminated.

States based on the rule of law cannot avoid the fight against terrorism even if it means reinforcing the terrorists’ dichotomous view of the world. It is likely to be a long fight. At the same time, it is important to prevent the humiliation and victimisation that repeatedly result in a religiously legitimised readiness to commit violent acts. Observation of communities that are turning towards radicalism is also crucial. Any emerging conflicts must be de-escalated in cooperation with moderate Muslim representatives.

Thus, rather than marking the “end of history”, the end of the East-West conflict has caused new and explosive lines of conflict to become visible. The current tensions are linked to

- economic globalisation, with national labour markets feeling the pressure of the possibility of production being relocated,
- media globalisation, which is upsetting and provoking traditional cultural identities,
- and transnational migration, which is calling into question the symbolic “ownership” of public space and customary ways of life and which can lead to a fear of competition on the labour market.

At international level, the development of open civil societies and structures based on the rule of law must be supported. In the long term, experience of national and supranational application of law and conflict resolution are the most important means of preventing an escalation of politically motivated violence. Human beings often have a need to be living for a grander whole and to be part of a historic process. It is quite possible to use that tendency to fulfil the vision of a cosmopolitan order as advocated by Immanuel Kant. It should not be left to the devices of extremism. Promoting a cosmopolitan orientation based on experiences conducive to such an orientation is the most important task in prevention work.

### **3.2.2 Actions by and Views of the Federal Government**

Combating right-wing extremism remains a particularly important task for domestic policy. Since the approaches and measures described in Chapter 6.2.2 of the First Periodical Report on Crime and Crime Control in Germany and in Chapter 3.2.28 of the present report thus need to be continued into the long term, readers are asked to refer to those chapters.

The Federal Government’s actions aimed at combating right-wing extremism are based on the “Report on the Federal Government’s Current and Planned Actions and Activities to Combat Right-Wing Extremism, Xenophobia, Anti-Semitism and Violence” of 14 May 2002 (BT-Drs. 14/9519). The actions described therein remain relevant today and their implementation continues unabated. The federal programmes mentioned in the report will finish at the end of 2006 and will be relaunched on a new basis in 2007, taking into account the findings of the evaluation carried out as the programmes were still ongoing.

A comprehensive analysis of the causes, based on the information available from the statistics, will play a key role in determining targeted measures with which to combat right-wing extremism. Further-

more, due to the rise in incidence recorded in 2005, there is a need to consider repressive approaches as well as preventive measures. The Federal Government aims to fight right-wing tendencies effectively by implementing these strategic measures. The main points of action are:

1. Analyse and combat the causes of right-wing tendencies.
2. Detect and avert right-wing tendencies before they have a chance to develop properly.
3. Eliminate right-wing structures – major efforts to search for and find the persons involved.
4. Promote the integration and co-existence of different cultures.
5. Call on the public to get actively involved in combating right-wing extremism.
6. Expand international cooperation on measures to combat right-wing extremism.

Left-wing extremists, especially violent, autonomous groups, also still have a detrimental impact on public safety (see Chapter 3.2.3). The number of left-wing politically motivated offences and acts of violence climbed considerably between 2004 and 2005. Consequently, combating and preventing such acts remains one of the primary tasks of the security authorities.

Here too, targeted, effective, preventive and repressive measures need to be specified. The main points of action are:

1. Analyse and combat the causes of left-wing violent tendencies.
2. Detect and avert left-wing violent tendencies before they have a chance to develop properly.
3. Eliminate left-wing violent structures – major efforts to search for and find the persons involved.
4. Promote a non-violent approach in dealings with political opponents.
5. Expand international cooperation on measures to combat left-wing violent tendencies.

The most dramatic change since the First Periodic Report on Crime and Crime Control in Germany is the threat posed by Islamist terrorism. The Federal Government has taken numerous measures in the areas of policy, diplomacy, police operations, intelligence operations, legal authorities, humanitarianism, the economy, finance and the military to fight international terrorism. The following five objectives are key to its strategy:

1. Eliminate terrorist structures – major efforts to search for and find the persons involved.
2. Detect and avert terrorism before it has a chance to develop properly.
3. Expand international cooperation on measures to combat terrorism.
4. Protect the public, take precautions and make the country less vulnerable.
5. Tackle the causes of terrorism.

The Federal Government reported on these matters in detail in its reply to a question put to it officially in a document entitled “Continuation of anti-terrorism measures”<sup>6</sup>.

With regard to the organisational measures, one aspect that should be highlighted is the establishment of the Joint Counter-Terrorism Centre, which brings together the special units and analysis units of the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution. In particular, the Federal Intelligence Service, the state criminal police offices and offices for the protection of the constitution, the Federal Police (former Border Guard), the Central Office of the German

<sup>6</sup> BT-Drs. 15/3142



Customs Investigation Service and the Federal Armed Forces Counterintelligence Office are involved in the Centre's work. The Federal Public Prosecutor, being the body responsible for prosecution in key areas of crime against state security, particularly crimes with a link to terrorist associations, is also represented, as is, in the interests of an all-embracing approach to the fight against terrorism, the Federal Office for Migration and Refugees.

In addition to a joint daily situation briefing, the various bodies work together continuously and intensively in a number of special working groups, dealing in particular with risk assessment, exchange of information on operations, case evaluations, structure analyses, identification of potential Islamist terrorists, resource-pooling and support measures based on asylum and residence law. Furthermore, an internet centre is currently being set up at the Joint Counter-Terrorism Centre, with the aim of detecting risks at an early stage on the basis of thorough, comprehensive internet evaluation.

In order to detect at an early stage the risk of a forced plane crash and to initiate state countermeasures immediately and coordinate them, the "National Command and Control Centre for Airspace Security" has been set up as an inter-agency body. It incorporates air defence (the Control Centre for National Air Defence of the Federal Ministry of Defence), air traffic control (DFS/Federal Ministry of Transport, Building and Urban Affairs) and internal security/aviation security (BMI Command and Control Centre – Branch Office for Aviation Security).

In order to handle serious threats caused by crimes involving radioactive substances, the "Central Federal Support Group in Response to Serious Nuclear Threats" has been created. The Group brings together specialists from the Federal Criminal Police Office, the Federal Police and the Federal Office for Radiation Protection and supports the federal states (which have original responsibility for protection against threats) when so requested by them. The aim of the Group is to combine all of the multi-disciplinary expertise and experience along with personnel and material logistics. Ultimately, it links up police protection with expertise from the radiation protection sector.

The civil protection tasks have been pooled at federal level in the Federal Office for Civil Protection and Disaster Assistance. Under the supervision of the Federal Ministry of the Interior and some of the other highest federal authorities, it covers all areas of civil protection and unites them in one effective system of protection for the public and the resources upon which their lives depend. Apart from the tasks traditionally performed by the Federal Government in the area of civil protection (e.g. supplementary disaster protection), the Federal Office for Civil Protection and Disaster Assistance is especially responsible for planning and preparing joint operations by the Federal Government and the federal states in special risk situations (coordination of crisis management), devising plans and strategies with which to protect critical infrastructure and expanding research on disaster protection, especially with regard to nuclear, biological and chemical attacks.

The legislators have also made a series of improvements to the tools available for combating terrorism, on the basis of a comprehensive strategic approach. In particular,

- the criminal law has been evolved and brought into line with European specifications (particularly by tightening the provisions of Section 129a of the Criminal Code, relating to the formation of terrorist associations, and by introducing Section 129b of the Criminal Code, which deals with what were previously not punishable offences, i.e. the establishment/involvement in/support of a terrorist association abroad if said association does not have a sub-organisation in Germany),

- the ability to combat the financing of terrorism has been improved (particularly through the central account data information service and the fact that the duty to report suspected terrorism has been extended to include all institutes active in the financial sector),
- intelligence tasks (new area of observation: actions intended to harm international understanding) and powers (rights to information, IMSI catchers) have been expanded,
- the possibilities for banning associations on the basis of association law have been expanded (by abolishing the “Privilege of Religion” and simplifying the banning procedure in the case of militant tendencies),
- the law on aliens and asylum has been tightened (with regard to expulsion/deportation provisions, including the associated proceedings and safeguards where there are obstacles to deportation; prevention of persons entering the country illegally in the first place: consultation with the security authorities; biometrics; expansion of the Central Aliens Register),
- protection against sabotage, aviation security, general protection against sabotage by employees (security screening for sensitive areas of institutions crucial to everyday life and to defence) and maritime security (preventive protection of vessels against terrorist attacks) have been improved and
- civil protection has been optimised (by setting up the Federal Office for Civil Protection and Disaster Assistance).

In its coalition agreement, the new Federal Government stated that legislative measures should focus on strengthening, above all, the possibilities for preventive action, particularly by

- following up on the evaluation report on the Counter-Terrorism Act to bring the security authorities’ powers further into line with the practical requirements,
- providing technical support for cooperation between the security authorities in the form of joint databases – a central anti-terrorism database and project-specific databases and
- granting the Federal Criminal Police Office preventive powers, previously exclusively granted to the federal states, to help it provide protection against international terrorism risks that pose a major threat not only to individual federal states but also to Germany as a whole.

As part of the coalition agreement, the constituent parties of the Federal Government also agreed that criminal law should be reviewed to determine the areas requiring amendment.

In the area of primary prevention, which tackles radicalisation processes at the roots, the priorities are:

- to eliminate the factors that are considered to provide legitimisation for Islamist extremist/terrorist acts (invalidation of bogeyman images/justification patterns, e.g. the agreement on a “Strategy for Trust-Building Measures” with Muslim associations),
- to promote the constitutional values within the Muslim community (e.g. imam seminars; imam studies at German institutes of higher education; state-provided religious education by teachers trained at German institutes of higher education; support for the Muslim Academy; the programmes which have already been tried out in the area of right-wing extremism – see Chapter 3.2.2.7 – will be adapted and used for prevention in the area of Islamist radicalism),
- to integrate Muslims and foster their participation in society (e.g. through integration courses, including orientation courses; various target-group-specific schemes by the Federal Office for Migration and Refugees, where an “Integration and Islam” project group has been set up),

- to have mainstream society acknowledge migrants (e. g. through dialogue with representatives of Muslim associations; transfer of intercultural competence within public authorities, e. g. guide on cooperation between the police and mosque associations; and wide-ranging activities by, for example, the Federal Office for Migration and Refugees and the Federal Police),
- to eliminate the violence that is a culturally accepted part of Muslims' everyday lives (e. g. project group on "Prevention of Violence among Immigrants") and
- to activate informal social control (e. g. "Strategy for Trust-Building Measures" with Muslim associations).

The activities in this area will focus on:

- a dialogue with Islam, particularly within the framework of the German Islam Conference,
- integration policy and
- political education and activation of civil society.

The prevention work involved is a task for the whole of society. Society needs to engage in an intellectual, political confrontation with extremism. In particular, the Muslim population, which should not only be monitored but should also monitor itself, needs to play an active part.

Broadening and deepening this prevention-oriented approach throughout society will remain a core part of the Federal Government's policies in the future too. At its meeting on 4/5 May 2006, the Conference of Ministers of the Interior voted, on the initiative of the Federal Ministry of the Interior, to ask the Conference of Minister Presidents to create a project group composed of representatives from a range of federal and federal-state departments to draw up a society-wide action plan concerning key projects aimed at preventing Islamist radicalism.

The German counter-terrorism strategy is now also reflected in the EU strategy<sup>7</sup>, which is based on

- prevention (i. e. tackling causes),
- protection (i. e. reducing vulnerability),
- prosecution and
- response (provisions for dealing with attacks, efforts to minimise consequences)

and emphasises the need for international cooperation.

Germany is fighting international terrorism as part of an international security alliance, particularly within the framework of the EU. The European Union has responded swiftly and comprehensively to Islamist terrorism. A broad-based Action Plan on Combating Terrorism was adopted immediately after the 9/11 attacks and was later updated and expanded following the bombings in Madrid on 11 March 2004. In the wake of the attacks in London on 7 and 21 July 2005, additional measures were incorporated into the Action Plan along with a joint Counter-Terrorism Strategy.

The Action Plan contains over 160 points, among them actions in the areas of police work, visa policy, border control, foreign policy (cooperation with international organisations, e. g. the United Nations or third states such as the US), civil protection, health and aviation/maritime security.

<sup>7</sup> European Council Document 14469/4/05 REV 4 of 30 November 2005.

Many of the measures and actions set out in the plan have since been implemented:

- For example, a “Terrorism Task Force” has been set up at Europol to conduct comprehensive analyses.
- The Schengen Information System (SIS) and the possibilities for its use have been developed further. The legal instruments required for Europol, Eurojust and aliens authorities to be able to access new and expanded areas of SIS have been drafted. The technical transition from SIS to SIS II is underway. In addition, work has started on the development of a European visa database (VIS). A proposal has been submitted concerning the security authorities’ access to VIS.
- Standardised EU lists of suspicious persons and organisations have been drawn up as a legal basis for Europe-wide, coordinated freezing of assets and a means of promoting close cooperation between police and legal authorities.
- The EU has agreed on standards regarding the inclusion of biometric features in passports, visas and residence permits. Germany has just recently begun issuing biometric passports.
- The EU border security agency, FRONTEX, based in Warsaw, commenced operations on 1 May 2005.
- The aviation security standards set out in “DOC 30”, drawn up by the European Civil Aviation Conference (ECAC), which had previously been recommendations only, have been incorporated in an EC Regulation concerning aviation security, which includes a stipulation that all luggage must be X-rayed and that staff must also be searched when entering certain security zones.
- The framework decisions on a common definition of terrorist offences and on joint investigation teams are the fruits of other action taken at EU level. The Framework Decision on the European Arrest Warrant, which was introduced in order to improve cooperation between legal authorities in criminal cases, will also make combating terrorism easier. In addition, cooperation between the intelligence services and police forces in the EU has been strengthened.

The Hague Programme, designed to strengthen freedom, security and justice within the EU and adopted by the European Council on 5 November 2004, again calls for the Action Plan to be implemented in full. The Programme is intended to guide the way forward for European cooperation in all spheres of justice and home affairs. One of the points it stresses is that information-sharing between the security services and joint analysis play an especially important part in combating terrorism. It also proposes measures for combating the financing of terrorism and improving explosives control.

The work already started in the field of counter-terrorism will be continued resolutely and the subject will be one of the priorities during the German Council presidency in the first half of 2007. The objectives include the following:

- improved information-sharing, particularly through the establishment of a European information network based on, for example, access for the security authorities to European databases such as SIS II, VIS and Eurodac;
- hit/no hit access to all of the member states’ national DNA and fingerprint databases and online access to vehicle register data for all of the member states;
- early detection of preparations for attacks. This means that information concerning potential terrorists must be exchanged between the member states in confidence;
- vigorous combating of the now frequent use of the internet by terrorist structures. In support of this objective, Germany has drawn up a project proposal for joint internet evaluation as well as a joint procedure for tackling illegal content;
- increased use of the possibilities offered by biometric features for identifying persons and authenticating documents; and

- examination of how arrivals and departures of citizens of third states can be better controlled so that there is certainty as to who is currently in the Schengen area.

Besides its work at European level, Germany is also tackling international terrorism networks through a range of multilateral activities and initiatives. We are constantly involved in multilateral efforts, especially within the United Nations, G8 and NATO but also in other international organisations, to devise counter-terrorism measures in line with the threat at hand.

A particularly important area of that multilateral collaboration is the work done on the G8 level. The main forum within which the G8's work on combating terrorism and organised crime is done in the "Rome/Lyon Group", which consists of experts from the countries involved who meet several times a year and work together in a pragmatic, goal-oriented manner. There is a particularly intensive exchange of information in the "Practitioners" subgroup, which also supervises joint projects aimed at fighting terrorism.

In 2005, the work of the Rome/Lyon Group concentrated on implementing the Secure and Facilitated International Travel Initiative (SAFTI), which had been adopted a year earlier and specifies measures in various areas, including improving the reliability of travel documents, increasing the exchange of terrorism-related information, containing the risks posed by man-portable air-defence systems (MAN-PADs) and ensuring aviation/port/maritime security.

The G8 activities also involve developing joint positions to be presented to other international forums. For instance, joint positions are put forward at the International Civil Aviation Organisation (ICAO), e. g. in connection with biometric features for machine-readable travel documents or passenger name records, with the aim of achieving higher security standards around the world.

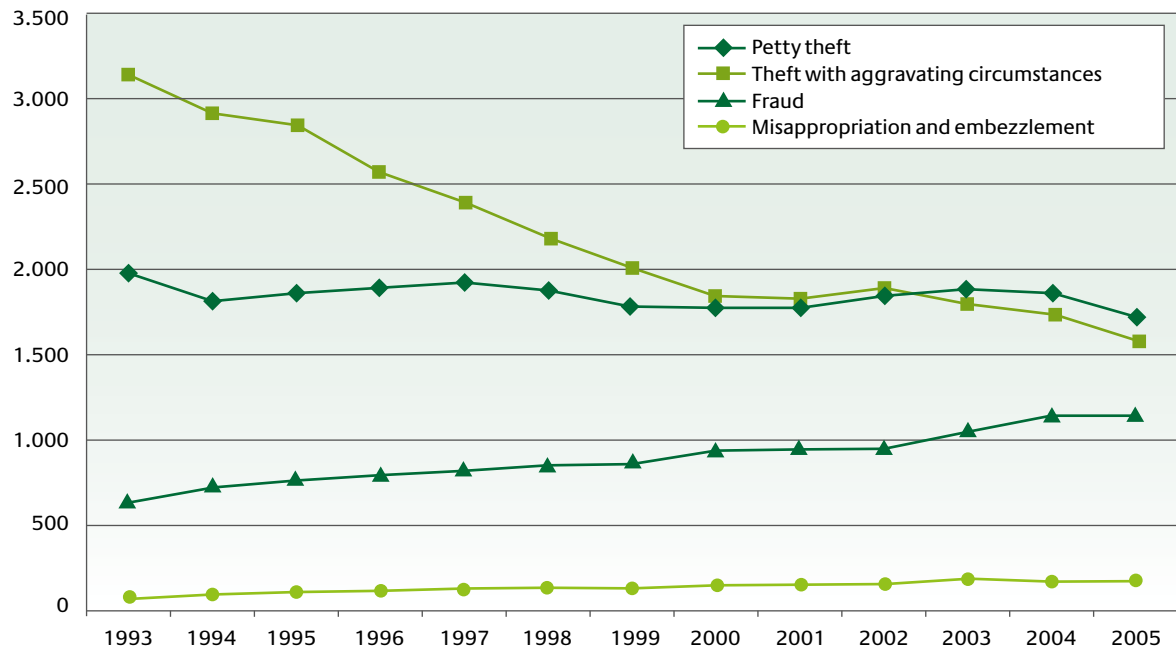
In addition to cooperation within the EU and on a multilateral level, Germany also works intensively within bilateral frameworks to fight international terrorism. This bilateral cooperation with, in particular, our key European partners and the US is primarily conducted through regular intensive contact at all levels of our ministries, diplomatic representations and security authorities. The issues discussed at ministerial level are then explored in more detail at expert level. One of the main reasons for doing this is to share information on the latest risk assessments and to step up cooperation even further on the basis of joint measures and initiatives aimed at combating terrorism.

### **3.3 Theft- and Robbery-Type Property Offences and Fraud-Type Property Offences**

#### **3.3.1 Abridged Version of the Chapter on Theft- and Robbery-Type Property Offences and Fraud-Type Property Offences**

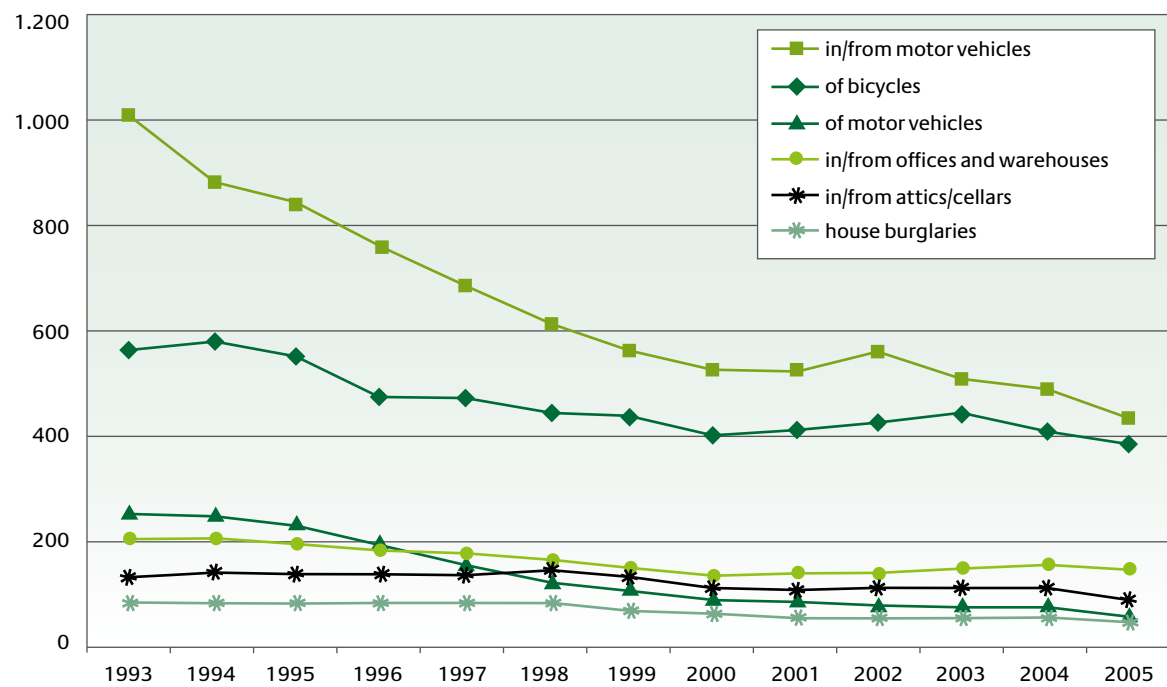
The category of theft- and robbery-type property offences and fraud-type property offences, which comprises theft, fraud, breach of trust, embezzlement and several violations of supplementary penal provisions outside the Criminal Code, accounts for the lion's share of the offences registered in the Police Crime Statistics. In 2005, 42.7% of the crimes recorded by the police were thefts and 18.5% were fraud-type property offences. The Police Crime Statistics related to these offences are based more on the reports filed by the injured parties than is the case for other offences though the extent to which the offences can be recognised as such varies.

**Chart K3.3-1: Development of theft- and robbery-type property offences and fraud-type property offences since 1993 (HZ)**



Data source: Police Crime Statistics.

**Chart K3.3-2: Development of specific forms of serious theft since 1993 (frequency rate)**



Data source: Police Crime Statistics.

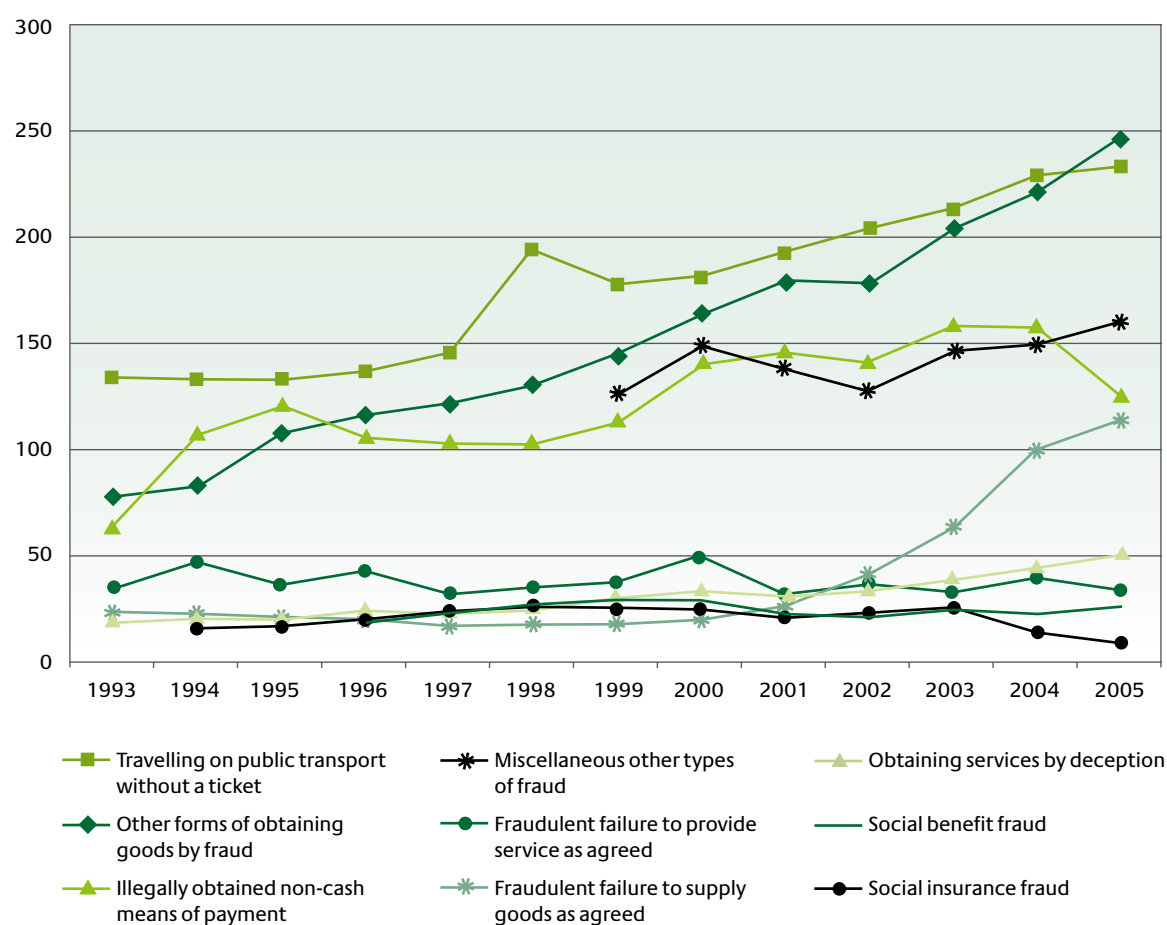
Widespread offences such as travelling on public transport without a ticket (“fare-dodging”) or shoplifting are only detected if special, usually random checks are carried out. Thefts are often only reported because the insurance companies would otherwise refuse to pay compensations. The clear-up rate for cases of theft with aggravated circumstances is low (13.9% in 2005). By contrast, victims of fraud-type property offences such as fraud, embezzlement or breach of trust usually know the offenders; in 2005 the clear-up rate for fraud cases was 81.9%.

Interestingly, the Police Crime Statistics show that the frequency rates for theft- and robbery-type property offences (particularly serious theft) are constantly declining, whilst the rates for fraud-type property offences are increasing equally constantly. A change in the forms crime takes appears to be emerging in the postmodern society. For instance, the automation of monetary transactions and the increase in internet-based trade have promoted a trend whereby such scenarios are abused by offenders for their own benefit rather than their appropriating something by means of physical attack. The rise in the incidence of fraud-type property offences is partly due to the growing role played by e-commerce; fraudsters exploit the numerous forms of cashless payment by manipulating the systems or by means of deception. The removal of checking processes due to rationalised business workflows has also opened up new opportunities for crime. On the basis of these trends, it can be expected that the level of fraud-type property crime will continue to climb in the future too.

Another important difference between theft- and robbery-type property offences and fraud-type property offences registered with the police is that, in the cases that have been cleared up, a disproportionately high percentage of thefts are committed by juveniles and young adults, whereas adults are more often responsible for fraud-type offences, which often involve taking advantage of the victims’ trust; criminologists also refer to the latter type of offence as a “middle-class crime”.

The number of petty thefts recorded in the Police Crime Statistics is stagnating; in 2005, the most striking figure was the 32% registered for shoplifting offences. However, it must be assumed that a substantial amount of such crime goes undetected. At a cautious estimate, it seems likely that only 5 to 10% of such offences are actually detected; in fact, a recent estimate indicates a ratio of detected crime to undetected crime of 1:10. In the majority of shoplifting cases, the offenders and their offences are identified as a result of detectives and staff observing suspicious customers. Shoplifting is becoming rarer; according to a survey by the EHI Retail Institute, inventory shrinkage and the share thereof that stems from shoplifting decreased in 2004. Germany has one of Europe’s lowest shoplifting-induced loss rates. Indeed, the annual “European Retail Theft Barometer”, which is produced by the CENTRE OF RETAIL RESEARCH (based in Nottingham, UK) and measures the share of inventory shrinkage caused by theft, shows that, according to recent figures, Germany has a shrinkage rate of 1.16%, which is the lowest after Switzerland, Austria and the Baltic states. Tagging systems are now so refined and, in some cases, the tags are so difficult to distinguish from a price label, that they are at least a thorn in the side of casual thieves; this is also helping to protect untagged goods.

In recent years, the incidence of theft with aggravating circumstances has dropped constantly – and sometimes even sharply. Taking 1993 as the base year (that being the first year for which there are reliable statistics for the new federal states too), the frequency rate fell from 3,143.7 by almost half to 1,589.7 in 2005. In fact, the frequency rates of some of the offences have actually decreased by more than half compared to 1993; this is true of motor vehicle thefts (down 80%), motor vehicle break-ins (down 57%) and house burglaries (down 52%); cf. Chart K3.3-2).

**Chart K3.3-3: Development of specific forms of fraud since 1993 (frequency rate)**

Data source: Police Crime Statistics.

By contrast, the frequency rate for fraud – in almost all its guises – has risen steadily (cf. Chart K3.3-3). The figures for fraudulent failure to supply goods as agreed and obtaining goods by fraud are particularly striking. Examples of this fraud include cases where goods obtained by mail order are not paid for or where customers have difficulty paying the agreed credit instalments. The ease of use of on-line ordering systems can also lead to private households accumulating excessive debts. Since 2000, the Police Crime Statistics have also listed non-payment of fuel at petrol stations as obtaining goods by fraud. The frequency rate for fraudulent failure to supply goods as agreed fell slightly to start with and did not start to rise again until 1999 when online shopping began to become more popular.

Fraud in connection with non-cash payment methods has risen virtually constantly since 1993. Fraudsters use either credit cards or debit cards (especially those for which a signature is sufficient and no PIN is needed) to purchase goods. According to the Police Crime Statistics for 2005, half of the registered cases of fraud in connection with non-cash payment methods were committed using a direct debit method that did not require a PIN to be entered. The number of fraud cases involving debit cards in combination with PINs is significantly lower. It can be assumed that the move to the (more expensive) “Electronic Cash” system, which has been recommended to retailers, could certainly have a preventive effect. However, the level of fraud using non-cash direct debit without a PIN also fell in 2005, because retailers are checking customers more often (e.g. asking to see ID) and because of the record



of stolen debit cards provided by the KUNO system. In a more recent development, bank customers' PINs and TANs<sup>8</sup> are systematically being gleaned in "phishing attacks".

The category of "Other fraud" groups together a variety of scenarios, including fraudulent billing. In recent years, fraudulent billing, particularly in the healthcare sector, has been intensively debated in the media. AOK NIEDERSACHSEN (the Lower Saxony branch of the AOK health insurance fund) and TRANSPARENCY INTERNATIONAL estimate that the total financial damage caused by fraudulent billing comes to one billion euros per year. Doctors and dentists are by no means the chief culprits. According to estimates, no more than 5% of doctors bill incorrectly though that is sometimes due to their making mistakes because the fee scales are so complicated. Nonetheless, they tend to be the focus of peoples' attention, for example when they bill for laboratory work that they did not do. Other healthcare players are also involved to a considerable extent. Opticians, who are allowed to write prescriptions themselves, bill the health insurance companies for more expensive lenses than the ones they actually used; pharmacists bill for prescriptions for deceased patients. However, only a small portion of these irregularities are reported. The associations of statutory health insurance physicians are more interested in settling these matters internally with the fraudulent doctors.

Fraud-type property offences also include breach of trust and embezzlement, both of which are constantly on the increase and have doubled since 1993. A great number of embezzlement offences are committed by employees –warehouse staff, office workers or managers. Embezzlement of vehicles (frequently hire cars) is a significant offence, though in terms of the damage caused rather than its actual incidence. Having said that, cases of embezzled hire cars are stagnating – which cannot be said of car thefts. Whereas embezzlement tends to be committed by middle-level and lower-level employees, breaches of trust are usually committed by managers and directors. The Police Crime Statistics list cases of misappropriated employee pay separately. This offence has more than tripled since 1993 (jumping from a frequency rate of 10.1 to 32.2 in 2005) and accounts for more than half of misappropriation cases. The remaining cases, though they constitute the smaller share, cause a strikingly high level of damage. The total damage for 2005 is estimated at 776.2 million euros. This increase in the incidence of breaches of trust is not only reflected in the Police Crime Statistics, it can also be seen in surveys of large enterprises; in a survey carried out by ERNST & YOUNG in 2000, 43% of enterprises stated that they had been a victim of breach of trust in the past three years; in 2003, the figure was 78%.

On average, the punishment imposed for theft- and robbery-type property offences is relatively severe. Almost 1 in 5 petty thefts, but over 80% of serious thefts result in a prison sentence, of which between 50 and 60% are suspended and the offender put on probation. In other words, such sentences are used more frequently for these offences than for all other offences put together. Sanctions for fraud-type property offences, on the other hand, are slightly milder. One in six cases of fraud results in a prison sentence, of which 75 to 80% are suspended and the offender put on probation; only extremely serious cases of fraud and breach of trust are punished more severely. Consequently, persons convicted of fraud or breach of trust are more likely than the average convicted person to be sentenced to payment of a fine or to a suspended prison sentence.

Whereas theft- and robbery-type property offences can increasingly be reduced, especially thanks to improved prevention technology, it is extremely difficult to counter the growth in fraud-type offences.

<sup>8</sup> Transaction number – a six-digit number used for identification purposes when transferring data during online banking procedures.

The rise in their incidence is fostered by social developments, such as the tendency to see everyday life in terms of costs and benefits (monetarisation). More and more, people are doing things that are not quite legal in an attempt to save on costs. Where rules are applied in a calculating manner to meet the situation at hand, the values behind those rules become irrelevant. The growing tendency to interpret the rules of society in such a way as to maximise one's own benefits makes it likely that the number of fraud-type property offences will continue to increase.

### **3.3.2 Actions by and Views of the Federal Government**

The main course of government action required to tackle theft- and robbery-type property offences and fraud-type property offences is not so much a reform of the penal provisions, but rather a continuation of the prevention work, particularly in connection with general social trends, e.g. the increase in internet shopping.

The Federal Government believes that prevention activities are vital to combating crime successfully – along with prosecution, which has a repressive effect and is undeniably necessary. Prevention actually starts outside the areas of legislation and prosecution. The Federal Government is supporting the development of new security technologies and methods, which have consistently proved to be an effective means of preventing, for example, shoplifting, house burglaries and thefts of and from motor vehicles in recent years. One case in point is the number of permanently missing vehicles registered as being searched for, which fell to 22,078 in 2005 compared to its highest recorded level of 60,946 in 1992. As well as continuing to step up prevention, the Federal Government will seek a dialogue with industry and conduct public education campaigns.

The penal provisions applicable to these offences were last thoroughly revised, amended and partly rewritten on the basis of the 6<sup>th</sup> Act on the Reform of Criminal Law, of 26 January 1998 (Federal Law Gazette I, p. 164). Overall, they provide a high level of protection in line with society's interests. There is thus no need for specific action to be taken with regard to the legislation relating to theft- and robbery-type property offences and fraud-type property offences; there are currently no loopholes that need to be closed, nor does the Federal Government see any grounds to decriminalise petty offences.

There is, however, a need to monitor the development of technology and the rise in fraud in connection with non-cash payment methods associated with its use. Here too, criminal law already meets the requirements fully. Not only are there provisions in criminal law to deal with the fraudulent acts that directly result in loss of assets, such as computer fraud (Section 263a of the Criminal Code), punishable acts that take place before the actual fraudulent act are also dealt with. Examples are certain acts in preparation of computer fraud as described in Section § 263a, Subsection 3 of the Criminal Code, forgery of payment cards and certain acts in preparation thereof (Sections 152a and b, in conjunction with Section 149 of the Criminal Code where appropriate).

The Federal Government has also consistently expanded its cooperation with the relevant branches of industry to combat, for example, phishing, counterfeiting of money and crime involving payment cards.

German criminal law in this field is also in line with the international standards. For instance, the current legislation already fully meets the requirement set out in Article 8 of the Council of Europe Convention on Cybercrime of 23 November 2001 (ETS 185) concerning computer-related fraud.

## 3.4 Economic, Environmental and Corruption Offences

### 3.4.1 Economic Crime

#### 3.4.1.1 Abridged Version of the Chapter on Economic Crime

There is no unambiguous, generally accepted definition of the term “economic crime”. Essentially, what is meant is criminal enrichment by means of the (actual or merely fictitious) manufacturing, production and distribution of goods or the performance and receipt of business-related services. As well as the actual active business operations, this also includes the set-up phase (e.g. fraudulent information concerning assets) and withdrawal from business operations (e.g. bankruptcy offences).

There is no criminal code specifically for economic crime. The penal provisions of the Criminal Code apply, as do a wide range of supplementary penal provisions, particularly in the form of annexes to business-related legislation. Although there are numerous penal provisions related to economic crime, a few of the offences dealt with in the Criminal Code appear frequently in the area of economic crime, mainly fraud, breach of trust, forgery of documents and the offences described in the Tax Code.

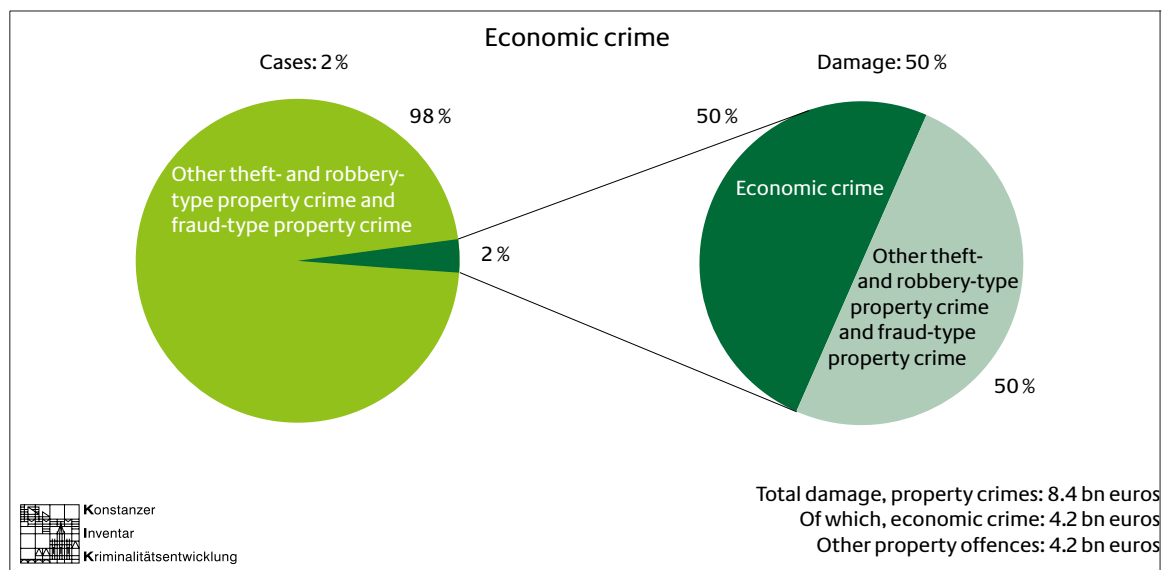
The lack of a clear definition coupled with the fact that the fraud-type property offences described in the Criminal Code include both economic crime and general fraud-type property offences makes it difficult to identify precisely the scope and development of registered economic crime. The police and public prosecutors record economic crimes in a special category but the courts do not. Consequently, the only sources of information on registered economic crime are the Police Crime Statistics and the public prosecutors’ statistics; the prosecution statistics can only be used if the most serious offence upon which the sentence was based was a violation of a penal provision that exclusively concerns economic crime, e.g. fraudulent acquisition of subsidies or credit fraud.

What sets economic crime apart from other crimes is that a small number of offenders cause a relatively high level of damage – compared to “conventional” fraud-type property crime – to a large number of victims. In 2005, 1.4% of the offences registered with the police in Germany (2.1% of all of the offences for which the damage was registered) were economic crimes though it must be assumed that the amount of undetected crime is large. Despite the fact that economic crimes only account for a relatively small share of the overall crime level, they were responsible for half of the damage registered. Thus, it is not the amount of economic crime that poses a problem, rather its nature. The non-pecuniary damage (primarily in the form of copycat crimes, crimes committed in the wake of other crimes and chain reactions) can, however, be even worse than the pecuniary damage. Last but not least, there is a fear that people will lose faith in the functioning of the prevailing economic and social order.

Unlike “conventional” fraud-type property crime, economic crime largely involves offences committed behind the cloak of a one-man firm or a trading partnership/company – predominantly a limited liability company (GmbH), general partnership (OHG) or limited partnership (KG). The lion’s share of registered economic crimes comes to light not because a victim (be they a private individual or a government institution) initiates preliminary proceedings, but because the prosecution bodies detect and clear up the offence themselves.

Economic crimes are usually committed by well-educated members of the upper or middle classes. They have high-ranking positions in their professional lives, opening up opportunities for economic offences. Frequently, these offenders fail to accept that they have done wrong. In their eyes, their actions are not criminal. In the majority of cases, those who commit economic crimes consider themselves

**Chart K3.4.1-1: Economic crime compared with other theft- and robbery-type property offences and fraud-type property offences.  
Share of cases and share of damage 2005**



Data source: Police Crime Statistics.

important, responsible members of society, who would never do anything worthy of punishment. They usually claim that their actions were in the company's interests. In their mind, they were bound to act as they did by the government's excessive regulation, their responsibility in terms of safeguarding jobs or the customary, not quite legal practices in their sector that are necessary in order to survive.

Investigation and prosecution of economic crimes are mainly dependent on the human and material resources used. Economic crimes tend to be complex in structure and the various factors pose a particular challenge for the investigation and prosecution process. However, the preventive aims of the law relating to economic crime – in general and in particular – cannot be achieved without effective, rigorous application of criminal law. Consequently, practical work requires improved and expanded training, more knowledge-sharing between authorities, better material and human resources, defined priorities for prosecution activities, more international collaboration and less complex procedures for mutual legal assistance between countries.

In the second half of the 1990s, the number of charges brought by public prosecutors in "special economic crime proceedings" was much lower than in the (remaining) "general proceedings". However, to the extent that the available statistical data permits an assessment, the numbers of charges, applications for penal orders and cases of conditional termination of proceedings have moved closer to the general level for the most part in recent years. In the majority of cases, sanctioning practices for those convicted of economic crimes cannot be assessed because of the lack of sufficiently differentiated statistical information.

### 3.4.1.2 Actions by and Views of the Federal Government

The report illustrates that the term "economic crime" is interpreted in many ways and that this type of crime takes a wide variety of forms. Perpetrators of economic crimes have a very different profile to

the average criminal. Measures to prevent and combat economic crime are essential for the functioning of a free enterprise system. A democratic state that puts the rule of law before the interests of the individual cannot allow those who engage in business to make a financial gain using unfair methods. There is therefore, justifiably, a large amount of public interest in seeing serious economic crimes prosecuted effectively. However, in view of the complexity of many of these crimes, they can only be cleared up and sanctions imposed if the police and legal authorities have sufficient resources. This point was also made by the Federal Court of Justice (in respect of legal authorities' resources) in ruling 5 StR 119/05, BGHSt 50, 299 (308 f.) of 2 December 2005.

The steps taken by the Federal Government to expand and pool specialist expertise include the creation of an Information and Communication Technology (ICT) unit within the Federal Criminal Police Office and the involvement of auditors in cases involving confiscation of profits. In addition, the Federal Government has consistently expanded its cooperation with the relevant branches of industry to combat, for example, phishing, counterfeiting of money and crime involving payment cards.

Economic wrongdoing is not, nor should it be, only tackled using criminal law. Regulations on corporate transparency play an especially important role in preventing economic crime. In the case of companies listed on the stock exchange, in particular, provision of information to the capital markets has proved to be an effective tool in preventing cases of people "helping themselves" and other criminal acts or acts against the shareholders' interests. The work being done to improve corporate governance, with the aim of achieving a balanced system of distribution of power and control in enterprises, is also important. In particular, providing the supervisory board with comprehensive information and ensuring that its members are unbiased, setting up early warning systems and an internal system of financial control and having them assessed by the auditors also help to prevent economic crime. Numerous laws enacted in recent years have optimised the tools available for improving corporate governance.

Furthermore, efforts to tackle economic crime need to give special consideration to international networks and market globalisation. The Convention on the Protection of the European Communities' Financial Interests, of 26 July 1995, and its protocols of 27 September 1996, 29 November 1996 and 19 June 1997 were important steps towards introducing EU-wide minimum standards for measures to combat fraud that impacts on the EC budget. These legal instruments were transposed into German law by the EC Financial Protection Act of 10 September 1998 (Federal Law Gazette 1998 II, p. 2322) and the EU Bribery Act of 10 September 1998 (Federal Law Gazette 1998 II, p. 2340). The EU Framework Decisions on combating fraud and counterfeiting of non-cash means of payment (of 28 May 2001), transposed into German law by the 35<sup>th</sup> Criminal Code Amendment Act of 22 December 2003 (Federal Law Gazette I, p. 2838), and on combating corruption in the private sector (of 22 July 2003) also play an especially important role in the effective combating of economic crime.

The Council of Europe has also dealt intensively with the international fight against economic crime. At a conference in September 2005, the delegates stressed that economic crime was a threat to fair competition and social and economic progress; that a market economy could only be successful if everyone respected the rules; and that measures to prevent and combat all forms of economic crime increasingly needed to be taken at international level.

The Federal Government has therefore stepped up its collaboration with other countries on the bilateral level, within the EU and within the G8. One example of the success this cooperation has is our work with Spain to combat criminal acts in connection with timesharing.

### **3.4.2 Corruption in the Public and Private Sectors**

#### **3.4.2.1 Abridged Version of the Chapter on Corruption in the Public and Private Sectors**

For decades, corruption was not afforded a great deal of attention in public debate in Germany. People thought of Germany as a corruption-free country. The Federal Government's and the federal states' laws on civil servants are based on the concept of a public servant who acts in an unbiased, selfless manner. Accordingly, office holders' attitude to work, rooted in the tradition of the Prussian civil servant ethos, was considered to be a guarantee that they would not be prone to corruption. This assumption turned out to be just as wrong as the theory of "one or two black sheep". Following corruption cases in a number of German cities, corruption has become a much-discussed topic since the beginning of the 1990s. Since then, the list of shocking corruption cases in the economic and administrative sectors, sport, politics, etc. has grown considerably. Hardly a day goes by without new stories being reported. The elite also get involved in corruption scandals and sometimes there are cases where the corruption is suspected to be on an international scale.

There is now a wealth of empirical material concerning a whole series of spectacular corruption investigations. However, there is no sufficiently differentiated data on the scope and structure of "everyday corruption" and the damage it causes. Drawing general conclusions from isolated cases without knowing for certain whether they are "normal" or "extreme" exceptions is problematic. The uncertainty starts with the very definition of what corruption is. There is no sign of an unambiguous, generally accepted definition. Corruption is often discussed from the point of view of the ethical problems involved but the debate in the field of criminal law concentrates on bribery offences.

Information is also available on the bribery cases registered with the police and tried in court. If the level of corruption were to be measured on that basis, it would seem an extremely rare offence. In 2005, there were 2,160 cases registered in the Police Crime Statistics, i. e. 0.03% of the total number of cases worked on by the police (excluding offences against state security and road traffic offences). In the past decade, considerably fewer than 500 people per year were convicted of bribery (i. e. in each case, it was the most serious of the offences of which the person was convicted). Since 2001, the number of cases registered with the police has been decreasing substantially. However, since corruption offences typically go undetected unless specific investigations are conducted – that is to say whether anything is detected at all and how much is detected largely depends on the human and material resources used for surveillance – it cannot necessarily be concluded that corruption has become less frequent based on this trend in the figures for reported crime.

The amount of undetected corruption is estimated to be many times larger than that of recorded cases. On both sides, all of the parties involved in corruption offences are guilty of a criminal act, be it that they have granted advantages or accepted them. There is usually no injured party to notice and report the offence as there is no direct victim in such offences. There are no empirical studies of the undetected area of corruption that could back up these assumptions concerning the (true) extent of corruption. In view of the nature of this offence, conventional research into undetected cases will hardly deliver reliable results. After all, the fact that investigations of corruption cases regularly bring to light additional cases with additional suspects means there is reason to assume that the level of undetected corruption is not insignificant.

Corruption is felt to be harmful to society because of the high volume of pecuniary and non-pecuniary damage it causes. Pecuniary damage primarily arises in public-sector contract-awarding processes,

particularly for construction work. Non-pecuniary damage is seen to occur in the distortion of the tendering procedure. The loss of confidence that decisions will not be influenced by extraneous considerations is seen as an even more serious result.

It is especially because of such pecuniary and non-pecuniary damage that measures to prevent corruption are necessary. Prevention outside of the criminal law will play a key role in this context, mainly in the following forms:

- increase in the transparency of decision-making processes; disclosure of any personal interest, additional posts and income of office holders and political representatives at the Federal Government, federal-state and local levels;
- strengthening of: ethics in the public and private sectors; the secondary virtues of being moral, loyal and dutiful; and disapproval of corruption based on the principle of social ethics. This can be supported by training, role models and codes of ethics. However, those who hold positions of leadership in government, business and society must also set an example;
- ensuring that organisations and decision-making processes in the public and private sectors are designed in such a way as to make them as less prone to corruption as possible. This can be achieved by, for example, having a second person check contract awards, ensuring that different employees prepare the call for tenders than those who award the contracts, applying the “rotation principle” to those responsible for awarding contracts, temporarily excluding companies convicted of corruption from tender procedures and public contracts and by keeping a central corruption register.

Even though criminal law is limited in its ability to fight corruption, it must still be applied. Development and implementation of international legal instruments are two key areas that can help bring about enhancements.

### **3.4.2.2 Actions by and Views of the Federal Government**

The information presented above shows that corruption is a widespread phenomenon. It is mainly to be found in the area of public contract-awarding but can also be seen in the other areas of the public and private sectors. Although the Police Crime Statistics indicate that bribery only accounts for a small share of overall registered crime, it is assumed that there is a high volume of undetected bribery due to the nature of the offence.

Fighting corruption in all its guises is important to the Federal Government. The Anti-Corruption Act of 13 August 1997 significantly tightened and expanded German criminal law on corruption, with the result that it already provided a high level of protection. However, since corruption knows no national boundaries, Germany took important steps towards combating international and cross-border corruption by introducing the EU Bribery Act and the Act on Combating International Bribery of 10 September 1998, thereby implementing international agreements. Germany is also still actively involved at international level in the drafting of additional legal instruments in this area. Key examples are the Council of Europe Criminal Law Convention on Corruption of 27 January 1999 (ETS 173) and the Additional Protocol to the Criminal Law Convention of 15 May 2003 (ETS 191), Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector and the United Nations Convention against Corruption of 31 October 2003. The transposition of these legal instruments into German law is currently being prepared. German criminal law already reflects their requirements for the most part, which means amendments will only be necessary in certain areas. The Federal Government will work to ensure that transposition happens as quickly as possible within this legislative period.

Furthermore, the Federal Government endeavours to constantly review and improve the measures it uses to fight corruption. When doing so, it gives particular consideration to the GRECO recommendations and the recommendations of the OECD Working Group on Bribery in International Business.

As part of its efforts to prevent corruption, the Federal Government revised the Directive concerning the Prevention of Corruption in the Federal Administration with effect from 30 July 2004 (the previous version had been in effect since 1998). It contains key elements of the Federal Government's prevention strategy and gives employees at all levels of the federal administration an easy-to-understand guideline for working methods based on transparency and integrity. The most important amendments include:

- stricter rules on the rotation of staff,
- a stipulation that the Corruption Prevention Officer shall make decisions at his or her own discretion and be entitled to report directly to the organisation's management,
- more precise provisions concerning measures to raise staff awareness and caution staff,
- a requirement that more training be provided and
- stronger emphasis on management accountability.

The amendments already take into account the requirements and recommendations concerning preventive measures set out in the United Nations Convention against Corruption of 31 October 2003, which Germany vigorously supports.

In accordance with the Administrative Regulation on Sponsoring within the Federal Administration of 7 June 2003, the Federal Ministry of the Interior must present a report on sponsoring within the federal administration every two years. The first report was submitted to the Bundestag Audit Committee (audit committee of the lower house of the German parliament) and published on 28 December 2005. Finally, the Rules on the Acceptance of Rewards and Gifts by Federal Employees were defined in more precise detail in a circular issued by the Federal Ministry of the Interior on 8 November 2004. Its clear instructions help to prevent any impression that employees might be willing to accept personal advantages long before any inadmissible influence can be exerted upon them.

### **3.4.3 Environmental Offences**

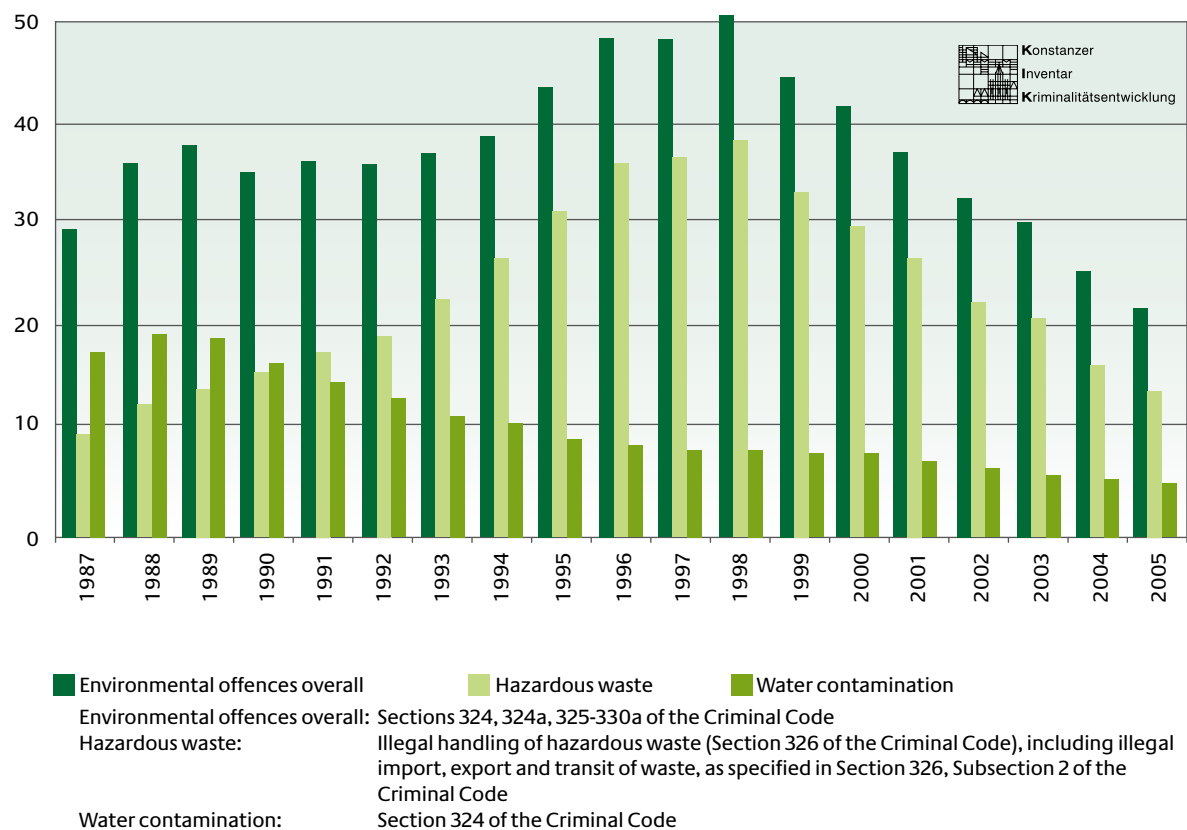
#### **3.4.3.1 Abridged Version of the Chapter on Environmental Offences**

The aim of conservation measures is to protect human life and health and to preserve and safeguard the fundamental natural resources, such as water, air and soil, which make up the human habitat and other natural and environmental phenomena. Environmental protection is primarily guaranteed by administrative law concerning the environment. Criminal law relating to the environment serves to reinforce the effect of the administrative law and thus has a supporting and complementary function. The criminal law is thus very much aligned with the administrative law since it cannot be possible for something that is permitted by administrative law to be punishable.

When an environmental offence is committed, there is usually nobody who suffers individual, direct harm. Consequently, the number of cases registered with the police depends to a great extent on monitoring work and reporting behaviour. These types of offence tend to go undetected unless specific investigations are conducted. It is assumed that the amount of undetected environmental crime is relatively large but there is no empirically supported information regarding the actual numbers and structure. The latest research findings indicate that the environmental crime registered with the police is based on one-sided assumptions concerning rather simple and negligible case constellations.



**Chart K3.4.3-1: Development of environmental offences registered with the police.**  
**Frequency rate (per 100,000 inhabitants) 1987–2005.**  
**Old federal states incl. West Berlin; for 1991 and 1992 incl. whole of Berlin;**  
**1993 onwards, Germany as a whole**



Data source: Police Crime Statistics.

Less than 1% of the overall crime registered with the police (excluding offences against state security and road traffic offences) is environmental crime. Environmentally hazardous disposal of waste and water contamination are the most common registered environmental offences. The number of environmental offences registered with the police climbed sharply from the point when statistical records began to the highest level so far, in 1998; since 1999, both the absolute and the relative numbers have been falling and we are now at the same level as in the mid-1980s. This decrease is not necessarily due to a change in behaviour. As environmental crime tends to go undetected unless it is specifically investigated, the main reason might be a change in the number of cases reported and prosecuted. Compared to crime as a whole, the clear-up rate for environmental offences is very high. The fact that male adults over the age of 30 are significantly overrepresented among the offenders is possibly due to environmental offences often being associated with certain professional positions. Whereas charges are relatively rare in environmental crime proceedings, penal orders tend to be more common than elsewhere.

### 3.4.3.2 Actions by and Views of the Federal Government

The Federal Government continues to attach great importance to combating environmental offences through criminal law and particularly welcomes the development of international criminal law instruments aimed at protecting the environment. Current German criminal law relating to the environment already provides a high level of protection. Since environmental damage knows no borders, it

is important to establish a good standard of protection at international level too. It was for that reason that Germany took an active part in the work on Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law at European level. The implementation of the Framework Decision began in the previous legislative period; it was put on hold when the European Court of Justice declared the Framework Decision invalid. It is expected that the European Commission will soon put forward a proposal for a draft directive to replace the Framework Decision. The Federal Government will vigorously advocate a solution that maintains the level of protection through criminal law provided by the Framework Decision and the swift adoption of the expected draft directive as well as working to ensure that the requirements of the directive are implemented in Germany as quickly as possible.

## 3.5 Offences involving Alcohol and Drugs

### 3.5.1 Abridged Version of the Chapter on Offences involving Alcohol and Drugs

Drugs have become a permanent part of human society. In long-established societies, drug-taking is usually incorporated into fixed rituals, which generally makes it possible to limit the associated physical, psychological and group-specific hazards. In modern societies, with their open nature, the risks are higher, especially as unfamiliar drugs become increasingly available. Nonetheless, any response to this issue must take into account that there is always a complex link between drug consumption in a society and traditions, values and norms.

The most common intoxicating drug in Germany is alcohol. It is generally seen as a natural stimulant and even, in its light forms, as a foodstuff in certain regions. As a consequence, society tends to underestimate the dangers of alcohol consumption.

Cannabis, in the form of marihuana or hashish, is the most commonly consumed illegal drug, particularly among young people. The percentage of other drugs consumed, such as heroin, cocaine and amphetamines, has remained around the low, single-digit mark for several years. Modern designer drugs and ecstasy, on the other hand, are gaining ground.

**Table K3.5-1: Prevalence of substance use in young people from various cities, 2004; results of a survey among school pupils**

Substance consumed in the year prior to the survey	Weekly to daily consumption	Consumption several times per month at least	Total consumption in previous year, at least once
Cigarettes, tobacco	29.7 %	36.4 %	59.9 %
Beer, wine	6.7 %	32.6 %	79.5 %
Hashish, marihuana	5.7 %	11.0 %	27.7 %
Brandy, whisky	2.4 %	15.5 %	59.6 %
Speed	0.2 %	0.6 %	2.8 %
Ecstasy	0.1 %	0.7 %	3.1 %
LSD	0.1 %	0.4 %	2.4 %
Cocaine	0.1 %	0.4 %	2.4 %
Heroin	0.1 %	0.3 %	1.3 %

Data source: BRETTFELD, K. et al., 2005a.

According to a 2004 survey of pupils in the ninth form and “pre-vocational training year” in Delmenhorst, Friesland, Hanover and Osnabrück, the main drug taken on a weekly and monthly basis was nicotine (consumed by smoking cigarettes, etc.). In the monthly figures, nicotine was closely followed by alcohol, in the form of beer and wine, and then high-proof drinks. Cannabis in the form of hashish or marihuana ranked fourth, as it did for lifetime prevalence, but third in the figures for weekly consumption.

The latest findings from the representative surveys conducted by the Munich-based Institute for Therapy Research on behalf of the Federal Ministry of Health, FEDERAL CENTRE FOR HEALTH EDUCATION, among adults between the ages of 18 and 59 suggest that there has been a major increase in the consumption of illegal drugs in the population as a whole. Opiates are the only illegal drugs for which the trend has been stable for some time. In all other cases, prevalence of use has risen and the increase has been among 18 to 39-year-olds.

The clearest increase has been in the level of cannabis consumption, reflecting a trend which can also be observed in other European states. The findings of the latest Epidemiological Addiction Survey (for 2003) included the following:

- around 31% of men and some 19% of women had consumed illegal drugs at least once in their lives;
- 25% of the persons aged between 18 and 39 had experience with cannabis, whereas only between 2 and 3% had experience with cocaine, hallucinogenic mushrooms, LSD, amphetamines/methamphetamines or amphetamine derivatives (such as ecstasy); experience with heroin (0.6%) or crack (0.4%) was even rarer; and
- between 1970 and 1995, the modal age at which cannabis consumption among the adult respondents began remained quite stable at 18 but it has since shifted towards 16.

The random samples of 18 to 24-year-old respondents show that lifetime prevalence for cannabis, in particular, has risen consistently over a long period. According to the 2003 study, the figure in the western federal states is around 44%. In the eastern federal states, it has climbed from the initial 2% to approximately 42%. By 2003, the 12-month prevalence had risen to 22.1% in the west and 19.6% in the east.

The “drug affinity studies” conducted on behalf of the FEDERAL CENTRE FOR HEALTH EDUCATION (as mentioned above with regard to alcohol) provides further details concerning young people aged between 12 and 25. The study shows that the number of young people who have never tried illegal drugs or have only taken them for a short time is considerably higher than the number of those who have consumed other substances such as tobacco and alcohol. The figures for lifetime prevalence of consumption in the old and the new federal states had already moved closer to each other by 1997.

Based on the latest wave of surveys for the drug affinity studies, in 2004, the situation can be summarised as follows: almost half of the 12 to 25-year-olds (49%) have been offered drugs at some point; the figure for 20 to 25-year-olds is 63%. One third (33%) of young people have tried drugs once or taken them on several occasions; among the 20 to 25-year-olds the figure is 44%. The main drug consumed is still cannabis, in the form of hashish or marihuana, at 24%. The figures for the other drugs are much lower at around 8%. 4% of the respondents had taken ecstasy, amphetamines and/or psychoactive plants and mushrooms, 2% had taken cocaine or LSD and less than 1% had used heroin or crack (respondents were allowed to list more than one drug).

The following table, K3.5-2, shows the relatively stable number of cases of drugs being offered and drugs being consumed.

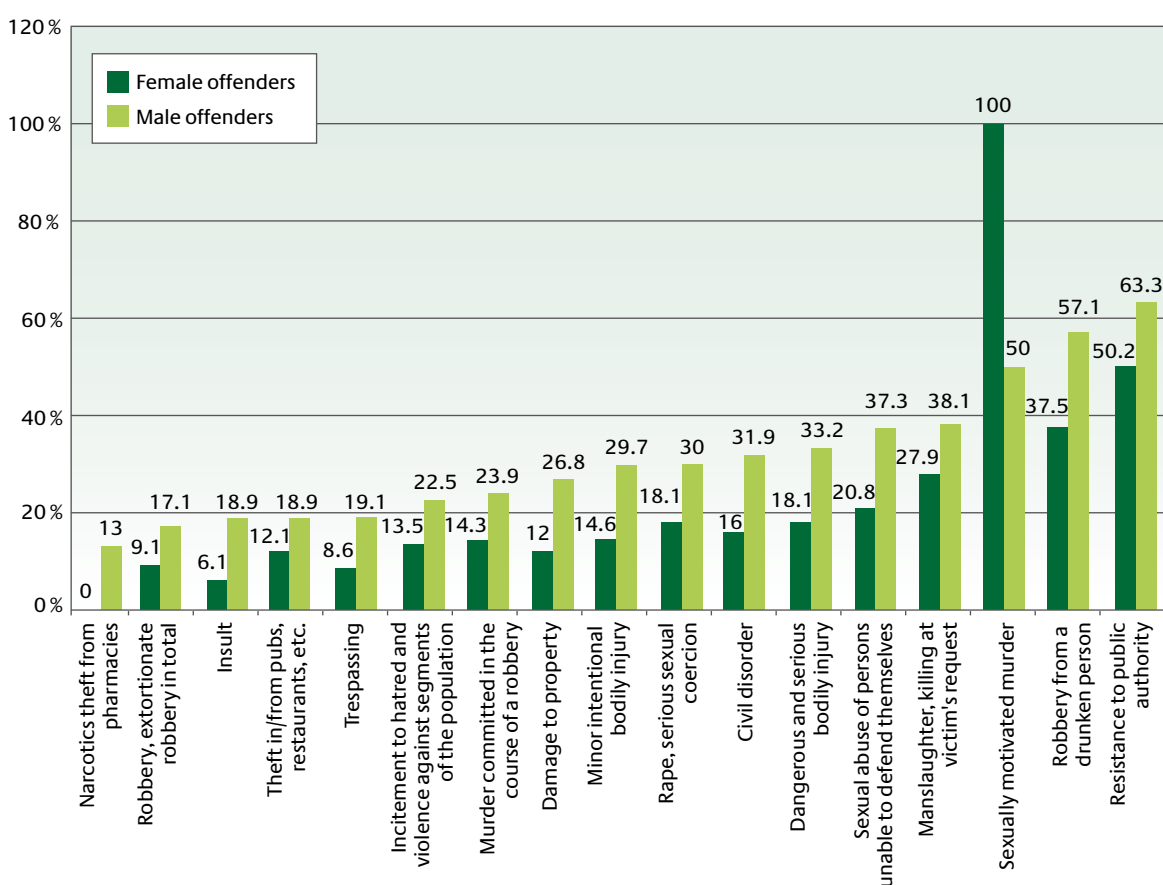
**Table K3.5-2: Young people's "drug affinity" between 2001 and 2004, representative survey of 12 to 25-year-olds**

Type of prevalence	2001 in %	2004 in %
Already been offered drugs at some point	48	49
Already actually taken drugs (lifetime prevalence)	27	32
Taken drugs more than twice	15	18
Taken drugs during the past year (12-month prevalence)	13	13
Taken drugs at least ten times during the past year	3	3
Current consumption (at the time the survey was carried out)	5	5

Data sources: FEDERAL CENTRE FOR HEALTH EDUCATION (Ed.), 2004c; FEDERAL CRIMINAL POLICE OFFICE (Ed.), National Situation Report on Narcotic Drugs, 2004.

There is a close connection between alcohol and crime, especially violent crime. However, the relationship is not usually a simple linear cause and effect relationship. The following chart, K3.5-1, illustrates

**Chart K3.5-1: Alcohol influence at time of offence, male and female offenders, selected offences in 2005**



Data source: Police Crime Statistics.

Note: The 100% recorded for female offenders in the case of sexually motivated murder can essentially be ignored because only one single individual was involved. In 2004, there were no female offenders at all in the category of sexually motivated murder.

the key role played by gender (as might be expected based on general experience). Men commit all types of offence, not only violent offences, much more frequently when under the influence of alcohol than women do.

In accordance with the Narcotics Act, almost all forms of contact with illegal drugs are punishable.

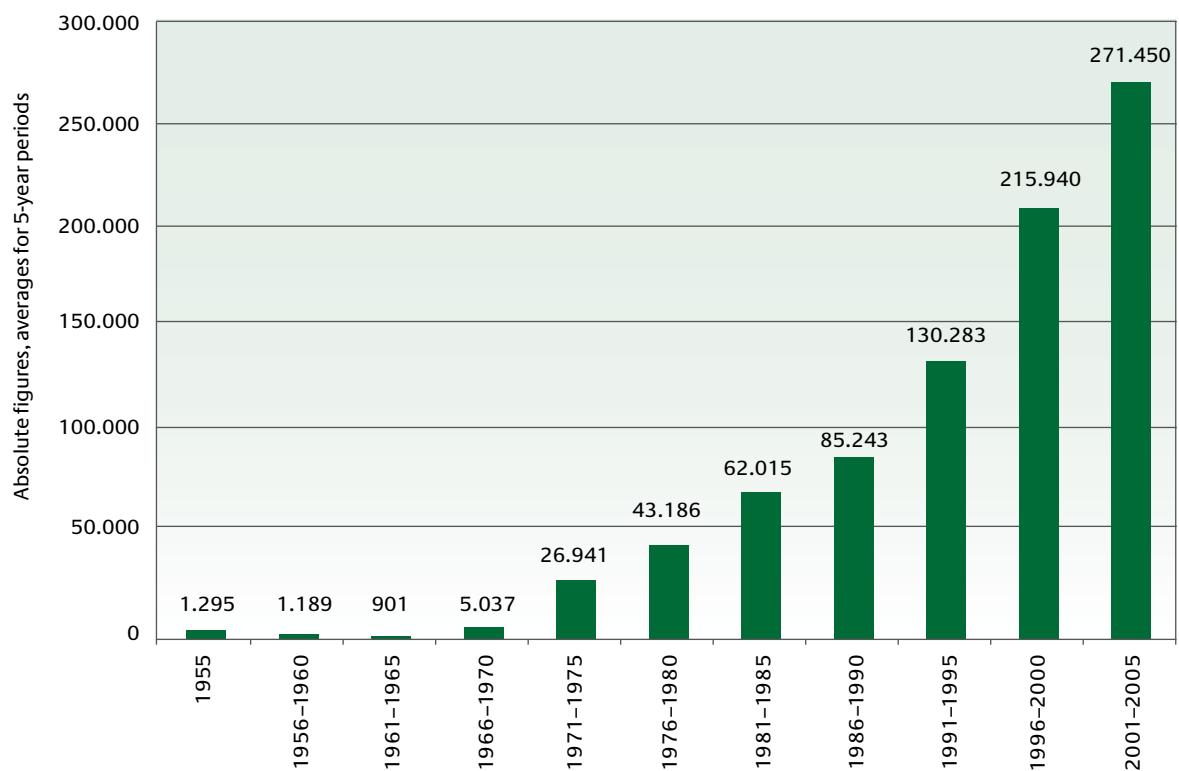
The number of drug offences as described in the Narcotics Act that are registered with the police has continued to increase persistently, as Chart K3.5-2 clearly shows.

That aside, the main problem caused by illegal drugs is the “direct” and “indirect” crime related to the procurement of the drugs, but that is only reflected to a limited extent in the official statistics.

Lasting success in tackling drug-related crime can only be had by applying a bundle of different measures. Punishment plays an important role but to varying degrees depending on whether the crime involves production, smuggling, trading or consumption.

The number of drug-related deaths is falling again and has been for several years. In 1973, the first year in which data was recorded, 106 deaths were registered. The figure then fluctuated up and down until 1987, during which time the highest death rate was 623 (in 1979). The huge swell, which caused great concern to political representatives and the public alike, then started to develop in 1988, when the figure was 670, and, having reached a peak of 2,128 (revised figure) in 1991, remained high though unstable with a slight general tendency to drop, falling to 1,501 deaths in 1997.

**Chart K3.5-2: Drug offences registered with the police, 1955–2005**



Data source: Police Crime Statistics; 1955 to 1992, old federal states; 1991 and 1992, incl. whole of Berlin; 1993 onwards, Germany.

There then followed a further rise to 2,030 in 2000. As a result of a further reversal of the trend, a reversal which has proved stable so far, the figure has been falling ever since and stood at 1,326 in 2005.

There is a group of people among long-term users of hard drugs who can no longer be reached or influenced by the usual means. Here too, special ways of helping users put an end to their drug use and, where appropriate, unusual treatments need to be tried out as part of the attempts to break the cycle of addiction and crime. Once such treatment, occasionally the subject of heated debate, is to prescribe heroin. One pilot project being supported by the Federal Government and others is based on Section 3a, Subsection 2 of the Narcotics Act, which was introduced when the 3<sup>rd</sup> Act Amending the Narcotics Act came into effect. In accordance with Subsection 2, the use of heroin can be approved, as an exception, for treatment purposes as part of research. The Federal Ministry of Health, the federal states of Hesse, Lower Saxony and North Rhine-Westphalia and the cities of Bonn, Frankfurt, Hamburg, Hanover, Karlsruhe, Cologne and Munich are participating in the project. Launched in February 2002, the pilot is intended to provide a precise evaluation of the events and the results before even discussing the possible legal consequences.

In January 2006, Hamburg University's CENTRE FOR INTERDISCIPLINARY ADDICTION RESEARCH presented a clinical study report at the end of the first phase of the study. The study's subjects are 1,032 seriously ill people, 20% of whom are women, who have been using heroin for many years, and often cocaine as well, and did not benefit (any longer) from methadone treatment or could not be treated (any more) using the therapeutic system. The study examines whether structured treatment with pharmacologically pure heroin is more effective than methadone treatment conducted under similar conditions, taking into account the following aspects:

- stabilisation of health,
- reduction of consumption of illegal drugs,
- withdrawal from the drug scene,
- decrease in delinquency,
- improvement of social situation,
- change in quality of life and
- take-up of follow-up therapies.

In the context of the present report, the results of the standardised 12-month observations and surveys of the drug addicts involved in the study are of primary interest. Half of the addicts being treated with heroin had withdrawn from the drug scene but only 40% of those in the methadone group had. The reduction in the consumption of illegal drugs was 69% in the heroin group and 55% in the methadone group. A reduction in consumption coupled with an improvement in health was observed in 57% of the heroin group and 45% of the methadone group. With regard to the decrease in delinquency, defined as "involvement in illegal dealings" in the month before the first phase of the study came to an end, the figures showed that 27% of the heroin group were still involved in such activities but that the figure for the methadone group was 40%. The crime patterns and structure will be examined in more detail in a further evaluation phase.

### **3.5.2 Actions by and Views of the Federal Government**

The statements made in this Report on Crime and Crime Control confirm that the Federal Government is correct in taking a holistic approach in its policies on drugs and drug addiction and that there is a need to make distinctions between legal and illegal addictive substances. The Federal Government

considers dealing with the wide range of addiction problems in our society extremely important. On the one hand, there are the addicts, who need help. And on the other, there is society as a whole, which needs to be protected from harm. The Federal Government feels it is particularly important to combat “everyday addictions”. Dependency on nicotine, alcohol and medical drugs has reached an alarming level and must not be trivialised.

The approach chosen by the Federal Government to tackle these problems has proved to be right and effective. It is based on the four pillars of prevention, treatment, survival aid and repression/reduced availability.

The Federal Government believes that it is essential to prevent harmful consumption of addictive substances – irrespective of whether they are legal or not – occurring in the first place. Young people are thus an especially important target group for prevention activities. All the more so in view of the latest trends, such as binge drinking or poly drug use on the “party scene”. The Federal Government is keeping a close eye on these trends, conducting pilot projects and holding conferences to promote the development of ways of helping. The aim is to activate the forces of society to prevent excessive consumption of addictive substances among young people.

A very diversified range of treatments is already available for addicts in Germany. The important thing is to adapt the treatments quickly to the changing needs of addicts, which arise, for example, from such phenomena as new addictive substances or consumption patterns.

Provision of survival aid is also one of the pillars of the policies on drugs and addiction. It is geared to addicts who have an extremely severe dependency, where the priority is to make sure they actually survive. Often, they are only able to start therapy once they have been stabilised with the help of survival aid.

The amount of addiction also depends on the availability of addictive substances. Measures to reduce availability and repressive measures are thus crucial pillars in a balanced policy on drugs and addiction. This goes for illegal substances, the production, trade and possession of which are prohibited and punishable by law, as well as for legal substances, the availability of which needs to be restricted, for example, for young people.

Although the Federal Government is pleased to see that the number of drug-related deaths has been falling for some time, it is concerned by the fact that the number of drug-related offences, i.e. violations of the Narcotics Act, and the distribution of illegal drugs have continued to increase in Germany in recent years. The rise is mostly attributable to the cannabis products hashish and marihuana as well as ecstasy and similar synthetic drugs in tablet or capsule form, the majority of which contain psychotropic substances from the amphetamine derivatives family.

Combating crime related to illegal drugs is a top priority for the prosecution authorities. Trade in heroin, cocaine, cannabis and, increasingly, synthetic drugs remains a key area of organised crime in Germany. It is important to note that the illegal market in Germany is largely supplied with narcotics produced outside of the country. For years, the main countries from which illegal drugs seized in Germany have come are Afghanistan, Colombia and the Netherlands. This shows the need for a comprehensive, multidisciplinary, coordinated approach both for national and international efforts to combat the problem, including measures to reduce demand and supply.

To this end, the Federal Ministry of the Interior and the Federal Criminal Police Office cooperate specifically with those countries that play an important role in the cultivation of drugs, the production of illegal substances and the distribution of those substances to Europe. One example of this is the work currently being done by Germany in Afghanistan. At the request of the international community and the transitional Afghan government, Germany has assumed the role of lead advisor to the Afghan security authorities in the creation of a police force that complies with the principles of the rule of law and human rights. Part of this entails developing an effective system with which the police can combat drug cultivation, processing and trading. In this area, Germany is supporting the United Kingdom, which is leading measures to combat drugs in Afghanistan.

## 3.6 Road Traffic Offences

### 3.6.1 Abridged Version of the Chapter on Road Traffic Offences

Without exception, road traffic offences are committed in public places. On the one hand, there are offences involving typical violations of road traffic rules, such as driving while unfit to do so (due to alcohol or other intoxicating substances)/committing one of the “seven deadly sins” in road traffic (e.g. driving in the wrong direction on the motorway or improper overtaking) and thus causing a hazard to other road users, drunkenness at the wheel and driving without a licence. On the other, there are the offences which, though they are not restricted to road traffic situations, do occur there frequently, such as threatening or violent coercion (e.g. driving too closely or excessively flashing one’s headlights), negligent bodily injury and negligent homicide.

The data concerning the incidence and temporal development of road traffic offences is not as comprehensive as for other categories of offence. Road traffic offences have not been included in the Police Crime Statistics since as long ago as 1963. This is regrettable for various reasons, one being that many people see offences against life and limb, other violent offences (e.g. coercion) and strict-liability torts as a serious threat. The prosecution statistics, however, do include rulings concerning road traffic offences, showing that they accounted for around 25% of all convictions in 2004. However, a breakdown of the convictions by category of offence only provides approximate information concerning incidence since the public prosecutors dismiss a large number of the charges during the preliminary investigation.

Among the public, the fear of being a victim in a traffic accident is generally on the same level as – sometimes even greater than – the fear of being a victim in another type of offence. The chief cause of concern is the risk of serious injury to oneself or the death of persons close to one.

**Table K3.6-1: Persons involved in road traffic accidents in 2004, by age group**

Age	Fatalities		Casualties	
	Absolute	Per 100,000	Absolute	Per 100,000
Under 15	153	1.3	37,132	305.3
15–18	264	9.1	29,779	1029.4
18–25	1,269	18.9	90,954	1,351.7
25–65	2,950	6.4	242,386	528.2
65 and above	1,201	8.1	39,114	263.2
Total	5,842	7.1	440,126	533.3

Data source: Road traffic accident statistics.



The age structure of the fatalities and casualties officially recorded in the road traffic accident statistics shows that the 15 to 25-year-old road users are particularly at risk. This is the age group in which young people move from bicycles to motorcycles and then cars. They are more likely to behave recklessly than older road users. They do not have much experience when it comes to foreseeing hazardous situations and have yet to learn how to control their vehicle properly. Table K3.6-1 shows the numbers of casualties and fatalities per 100,000 persons of the same age group in 2004.

**Table K3.6-2: Road traffic accidents involving personal injury  
(former West Germany; 1991 onwards, Germany as a whole)**

Year	Absolute number	Per 100,000 inhabitants (rounded up)	per 100,000 motor vehicles (rounded up)	Per 1 billion kilometres driven (rounded up)
1970	377,610	623	2,117	1,504
1980	379,235	616	1,298	1,031
1990	340,043	538	926	696
2000	382,949	466	723	577
2004	339,310	411	609	487

Data source: FEDERAL STATISTICAL OFFICE (ed.), Traffic Accidents, Time Series 2004.

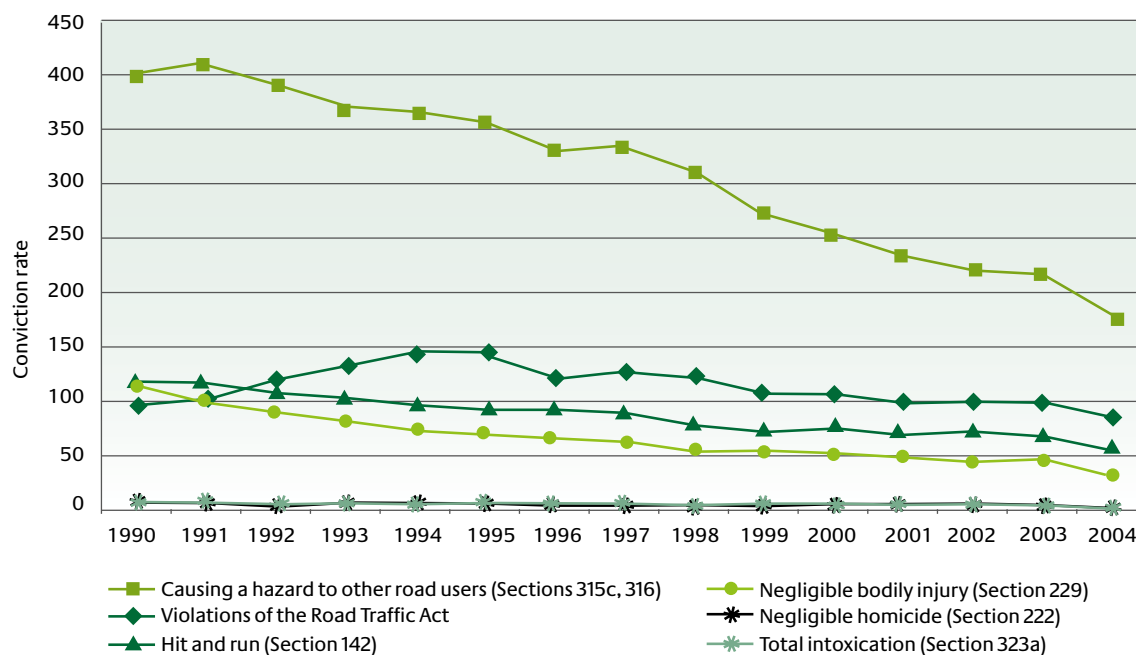
Table K3.6-2, which gives an additional breakdown for selected years between 1970 and 2004, shows that the number of fatalities has fallen steadily in recent years. The number of casualties has also decreased but only slightly. Although there has been hardly any change in the absolute number of accidents involving personal injury, when the number of accidents relative to the development of the population, the number of vehicles and the number of kilometres driven are taken into account it can be seen that the risk has declined bearing in mind the growing traffic density.

Alcohol is also playing less of a role as a cause of accidents. Since 1995, a record has been made for each accident registered with the police as to whether the accident was alcohol-related. An accident is deemed to be alcohol-related if the police officers see and believe that at least one of the parties involved was under the influence of alcohol. Whereas the number was approximately 92,000 in 1995, it had dropped to around 56,000 by 2004. Thus, the share of registered accidents attributable to alcohol fell from 4.1% to 2.5%. By contrast, the share of drug-related accidents is on the rise though still much lower than for alcohol. Overall, however, the German Roadside Survey (of around 20,000 car drivers stopped for traffic checks in the Lower Franconia region and the federal state of Thuringia) illustrates that the level of conformity is fairly high. The drivers were sober in approximately 95% of cases and less than 0.5% of them had a blood alcohol content of 1.1 parts per thousand or more.

Additional information on the incidence of traffic offences can be found in the Statistical Updates of the Federal Motor Transport Authority. However, the underlying statistics in the Central Traffic Register are not based on all of the entries, but on samples of the cases registered during the year. The figures show that people are increasingly driving too quickly and ignoring the need to keep a safe distance from the vehicles around them.

The data in the prosecution statistics suggests that the number of road traffic offences is constantly decreasing. Although they still cause a sizable amount of work for the courts, roughly three quarters

**Chart K3.6-1: Persons convicted of road traffic offences, 1990–2004 in former West Germany, per 100,000 vehicles**



Data sources: Prosecution statistics and Federal Motor Transport Authority (Flensburg), Central Vehicle Register.

of them are dealt with by means of a penal order. The trend is clearly visible in the next chart, K3.6-1, which shows the convictions in relation to the number of vehicles (per 100,000 vehicles) – which is growing every year.

If one were to illustrate the crime structure on the basis of the conviction data for 2004 (cf. Chart K3.6-1), 51% of traffic crime among the total number of people convicted would be reckless driving (48% drunkenness at the wheel/causing an alcohol-related hazard to other road users), 20% would be cases involving driving without a licence, 16% cases of hit and run and 9% negligent bodily injury. Negligent homicide, coercion and other cases of causing a hazard to other road users, etc. would account for a minor share.

The public prosecutors' statistics reveal that, in 2004, the preliminary investigations of road traffic offences resulted in the cases being dealt with as follows: 20.5% of the charges were dismissed in accordance with Section 170, Subsection 2 of the Code of Criminal Procedure; most of them were hit-and-run cases or cases of coercion in which the police identified the vehicle but not the driver. The charges were dismissed without any further consequences (essentially in accordance with Section 153 of the Code of Criminal Procedure) in 12.4% of cases; in 7.5% of cases, the charges were suspended and conditions imposed (fines, advanced training, etc.). One fifth of the cases (20.2%) were reclassified as regulatory offences and handed to the administrative authorities for further processing. In around 32% of cases, the public prosecutor's office applied for a penal order (22.8%) or formally brought a charge, sometimes in summary proceedings (8.8%). Only the accused parties in the latter cases are registered in the prosecution statistics – as "convictions". Consequently, the prosecution statistics clearly show less than a third of the cases registered with the police.

This prosecutorial selectivity is also reflected in the category of negligent bodily injury and homicide. Whilst there were 399,310 accidents involving personal injury in 2004, including 5,842 fatalities,

80,801 severe casualties (persons who had to have in-patient treatment for at least one day) and 359,325 minor casualties, there were 1,019 convictions on grounds of negligent homicide and 17,980 convictions on grounds of negligent bodily injury. It should be pointed out, however, that the accident figures are for Germany as a whole, whilst the prosecution statistics only related to the old federal states. To make them more comparable, the accident figures would have to be reduced by approximately 20%. In addition, the accidents involving one party only need to be subtracted and it should be remembered that it is not always possible to detect any incorrect behaviour on the part of one particular person. Finally, the average number of persons involved in an accident is 1.3. Taking into account these limiting factors, it could be assumed that around half of the accidents recorded for former West Germany involved prosecutable offences, i.e. around 3,000 cases of negligent homicide and approximately 150,000 cases of negligent bodily injury.

Sanctioning practice for road traffic accidents involving alcohol is such that, in addition to the punishment, in almost all cases the driver is disqualified or, if the driver had no permission to drive, the (re-)granting of the permission is barred, as a means of reforming the offender and protecting the public (Section 69 of the Criminal Code). For road traffic offences which do not involve the influence of alcohol, a driving ban can be imposed as a special additional sanction (Section 44 of the Criminal Code).

Attempts to reduce the incidence of traffic offences are also primarily geared at preventing road traffic accidents. Accident risk reduction is a complex field, in which strategies are currently being pursued at five levels to tackle the problem: (1) improvement of the atmosphere on Germany's roads, (2) protection of vulnerable people (children and the elderly) in the areas in which they live and, for example, by expanding the cycle path network, (3) bringing about change in young people's driving behaviour, (4) intensive regulation and monitoring of goods traffic and (5) reduction of the number of accidents on rural roads. Since it is regularly the case that more than 60% of persons killed in traffic accidents are killed on rural roads, this fifth level deserves priority. The possibilities range from making it easier to overtake by building sections of road with an additional lane, to enforcing overtaking bans, right through to decreasing the speed limit and stepping up speed checks. The effectiveness of speed limits on rural roads, determined on the basis of the current accident risk and communicated clearly to drivers, should also continue to be examined empirically. The examination could also evaluate region-wide 90 km/h speed limits.

At present, there is no speed limit on just over 50% of Germany's motorways. The inhomogeneous speeds in the different lanes due to the different speeds of cars and heavy goods vehicles (HGVs) are known to be particularly accident-provoking. Situations in which relatively slow cars change lanes in order to overtake pose considerable accident risks. Adjustable speed limits and hazard warnings conveyed by overhead lane signals can reduce the number of accidents involving personal injury. Precise observations of the accident risk trends in other countries, which all have speed limits on motorways, show how the range of effective counterstrategies can be improved without completely excluding the option of a speed limit.

Influencing drivers' behaviour by imposing speed limits can decrease accident incidence if compliance is monitored to a sufficient degree and if the drivers can see clear reasons for the limits. It should also be pointed out that the idea that influencing drivers in their choice of an appropriate speed is a fundamental component of accident prevention is justified by the fact that recent analyses of accident causes assume that speed is irrelevant in only around 20% of accidents.

### 3.6.2 Actions by and Views of the Federal Government

Chapter 3.6 on road traffic offences completes the picture presented by the 2<sup>nd</sup> PRC of the key topic of “crime in public places”. The report confirms that the Federal Government is right in opting for a multidisciplinary approach in its efforts to prevent traffic crime. As well as eliminating accident risks by technical and road-engineering means, a positive influence is exerted on road users through education and training with the ultimate aim of making sure they adhere to the traffic rules by punishing unlawful behaviour appropriately. For sanctions to have a preventive effect, surveillance measures must be seen to be in place, road users must accept the rules and thus the sanctions must be in proportion with the contraventions. Thus, an assessment of the overall crime situation cannot exclude contraventions that are classified as “regulatory traffic offences”. The line between “criminal offences” and “regulatory offences” is particularly blurred when it comes to traffic violations.

Since, as this report points out, there is no comprehensive set of data concerning the incidence and temporal development of road traffic offences, a number of other sources were used in the writing of the report, particularly statistics on the circumstances of traffic accidents and on persons involved in accidents. It should be borne in mind that it is only possible to draw approximate conclusions concerning crime trends using data of this nature.

On the positive side, the report ascertains that accidents involving personal injury (death and bodily injury) and, in particular, accidents involving persons under the influence of alcohol have constantly decreased in recent years. The Federal Government welcomes this development and will continue to make every effort to improve road safety. It is closely monitoring the incidence of driving under the influence of drugs, where, as the report mentions, there is an upward trend though it is relatively low compared to the cases of driving under the influence of alcohol. It should be pointed out, however, that the observed upward trend may stem not only from the alarming increase in drug consumption but also from the law-enforcement authorities’ investigating more cases and from the implementation of special drug detection programmes, which have taken place as a result of the absolute ban on drugs in road traffic being introduced into law in Section 24a, Subsection 2 of the Road Traffic Act.

The Federal Government is concerned by the high rate of involvement of the “young drivers” risk group (particularly those between the ages of 15 and 24) in overall accident incidence. Drawing on its many years of work to reduce the accident risk for young drivers and beginner drivers through training, the driving-test process, follow-up training during the probationary period for new drivers and sanctions, new, promising measures have recently been implemented to tackle the problems related to beginner drivers’ lack of driving experience and to develop their skills. In particular, these measures include the “second phase of driving training” and the “Accompanied Driving for 17-Year-Olds” pilot programme.

With regard to the areas in which the report proposes legislative amendments (e.g. to Section 142 of the Criminal Code), it should be pointed out that the Federal Government is involved in an ongoing process, always taking into account new developments, to explore whether the administrative law and criminal law concerning traffic matters need to be improved. In particular, this review process looks at the recommendations of the institutions and conferences active in the field, such as the German Traffic Court Conference, which approved recommendations concerning Section 142 of the Criminal Code (“unlawfully leaving the scene of the accident”) in 2003. However, the experiences of the courts and public prosecutor’s offices are also given special consideration.

As stated at the outset, the Federal Government believes that, ultimately, only a multidisciplinary approach with a variety of measures to improve traffic safety and reduce traffic crime can be successful.

## **4 Selected Sections of the Population and Groups of Offenders**

### **4.1 Child and Juvenile Offenders and Victims**

#### **4.1.1 Abridged Version of the Chapter on Child and Juvenile Offenders and Victims**

Offending behaviour – particularly occasional and petty property offences but also minor bodily injury – is a common occurrence among young people. This phenomenon has been evident in all western countries since criminal statistics began, more than one hundred years ago. At the age of around ten to twelve, the rate of offending behaviour, most of it involving petty offences, starts to rise, reaching its peak at the age of around 17 to 18 and then gradually falling again after the age of 20. This behaviour begins slightly earlier in girls and is not as widespread as it is among boys. The data on undetected crime shows that the peak delinquency level occurs slightly earlier than the data on reported crime suggests but, overall, the pattern with regard to the ages involved is the same as for reported crime.

Substantiated results of national and international research illustrate that delinquent behaviour in young people is short-lived in the overwhelming majority of cases. It is restricted to a certain phase of development, is apparent in all social classes and can be considered a “normal” phenomenon in the statistical sense of the word. It is usually not caused by any serious disorders or lack of proper upbringing. In fact, temporary violations of norms, including punishable behaviour, can be expected to occur regularly as adolescents learn the norms and rules of society. It is therefore not possible to say that delinquent children and juveniles will remain that way in the long term. In the overwhelming majority of cases, that does not happen – even without any intervention by the state.

However, there are also long phases of criminal behaviour, admittedly much rarer, during which the juveniles frequently commit offences, including serious offences. Numerous criminological longitudinal studies prove the existence of this very small group of young people who commit criminal offences over the course of many years – sometimes up to the middle or late stages of their adult lives. There are also certain development patterns that lead to serious, long-term criminal behaviour.

It can be taken as proved that the causes are not individual factors that, in isolation, would only have a moderate impact. An accumulation of risk factors and a lack of elements that provide timely protection and “cushioning” play a decisive role. Apart from personality traits and temperament, the main relevant aspects are the influences of family socialisation, especially parent-child ties and exposure to violence within the immediate family environment. It is precisely here that the close connection between victimisation and offending behaviour can be seen. The risk of developing long-term criminal tendencies is particularly high among those young people who, as children, were not sufficiently nurtured, were exposed to very stressful situations and were themselves victims of violence. It is for these reasons that children and juveniles need our attention and care as victims, rather than as offenders.

In this respect, the social environment in which these young people grow up is also important since it determines the extent to which individual and/or family-related risk factors that could result in delinquent behaviour do result in delinquent behaviour. The question of which factors cause a young

person to end or “retire” from a long-running “criminal career” has not yet been adequately answered. However, the studies available do at least show clearly that “retirement” is still possible even at a relatively late stage.

Besides family-related factors, whether or not a child and his/her family are socially disadvantaged is a fundamental aspect in determining whether the child turns to crime. Social disadvantages are bound up with a number of other factors; for example, they have an influence on a family’s ability to provide a proper upbringing, an ability which can suffer considerably under the weight of socioeconomic problems.

A special factor in this context is migration and the associated integration difficulties, which can have a detrimental impact on children’s and juveniles’ development. For instance, it is still the case that young people from migrant families are considerably disadvantaged when it comes to their education choices. These problems and social hardships linked to migration processes are also closely connected to manifestations of violence within the family, which occur much more frequently among migrant families. These sorts of difficulties are one of the main reasons why there is still a high proportion of, in particular, male juveniles and young male adults involved in crime, especially violent crime.

In recent years, the activities aimed at preventing crime and violence among young people have been increasingly expanded. They are currently playing an effective role in influencing the level of registered crime committed by young people, i. e. the crime which is ultimately visible, as well as having an impact on whether the norm-learning processes are promoted and the risk of negative development is cushioned.

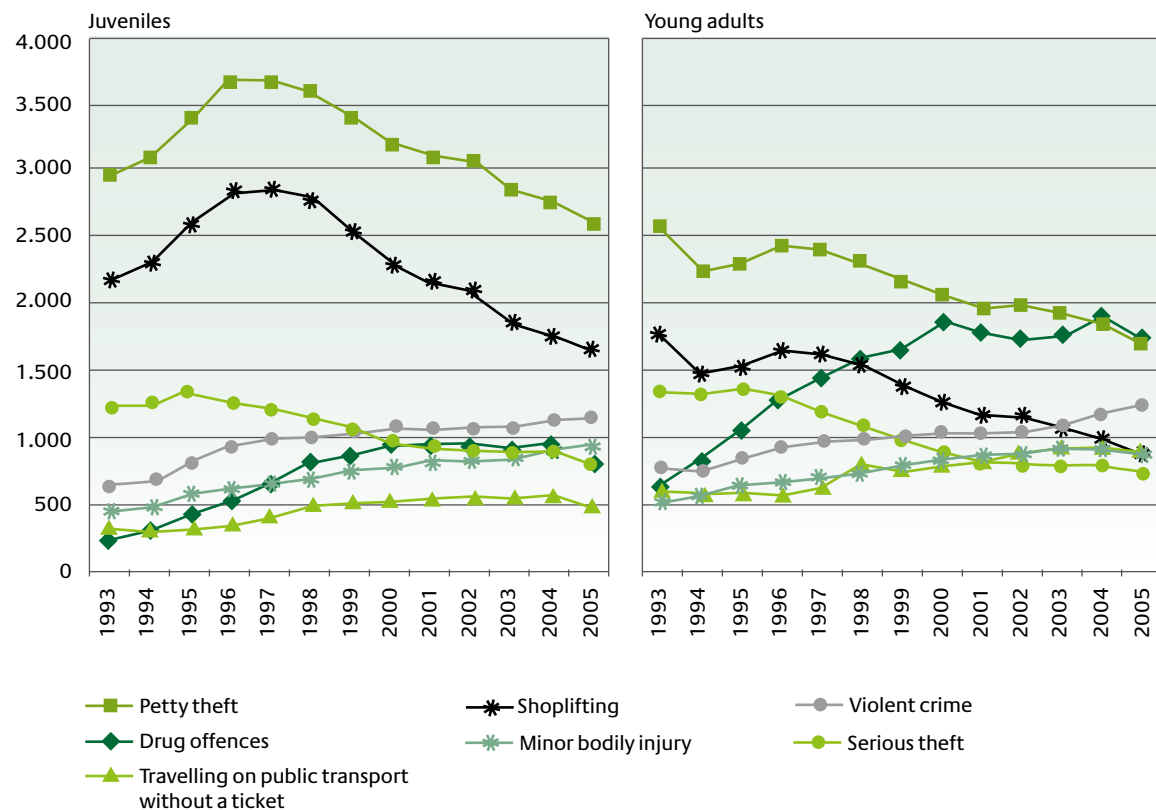
Compared to the 1<sup>st</sup> PRC, the number of property offences committed by children and juveniles recorded in German police databases has dropped considerably. This contrasts with the rise in the police-registered cases of violent crime committed by young people.

Having said that, the category of violent crime is composed of a wide variety of offences, for which divergent trends can be identified. For instance, the number of reported serious violent offences, e. g. homicides and robberies, has fallen. On the other hand, there have been increases in the area of minor, dangerous and serious bodily injury, which account for the lion’s share of the “violent crime” category as the police define it. There have also been increases in the number of registered violations of the Narcotics Act, predominantly due to possession of cannabis.

Overall, comparisons of the police and legal authorities’ statistics with the findings from research into undetected crime lead to the conclusion that more of the crime committed by young people was detected in the second half of the 1990s. The higher number of cases registered with the police does not stem from real increases. There is also no empirical evidence of an increase in the severity of the offences. Thus, all of the available studies on undetected crime show that violence perpetrated by young people has decreased. This is true both of offences committed in the school environment and outside of it. Data from the insurance sector backs up the findings of the studies on undetected crime in this area.

As a result of this trend, offences of minor severity are increasingly coming to the attention of the prosecution authorities and legal authorities and the average age of the child and juvenile offenders has gradually decreased. This in turn means that more and more charges are dismissed, with the outcome that the gap between the police data on the number of offenders and the courts’ data on the number of persons convicted has increasingly widened.

**Chart K4.1-1: Juveniles and young adults registered with the police for various offences, 1987–2005**



Data source: Police Crime Statistics.

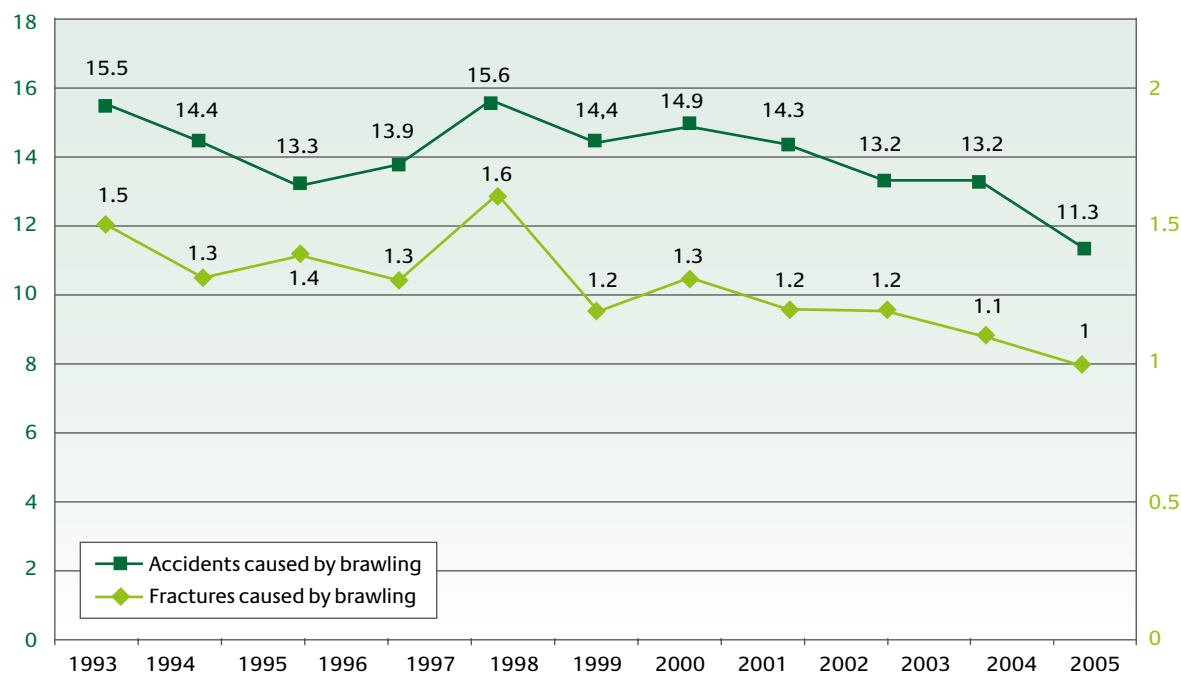
One exception to the downward trend in delinquent behaviour among young people is drug-related crime. Both the data on reported crime and studies on undetected crime indicate an increase in young people's contact with, above all, cannabis. However, in the majority of cases, the drug-taking is temporary; there is no evidence of an increase in long-term "drug careers".

It seems probable that the change in attitudes towards violence has been an important part of the trends described above. Violence is increasingly being rejected as a means of discipline. Equally, there has been a decline in acceptance and approval of violence as a means of settling conflicts among young people – both in the minds of the young people themselves and in the minds of those who serve as their role models. In a climate of this nature, it can also be expected that more attention will be paid to these phenomena. In addition, administrative regulations issued by ministries' and authorities' have led to violent incidents in schools being reported more frequently than in the past.

Another important aspect is the positive development in the prevention of crime among young people. In recent years, numerous new prevention measures for the target group of children and juveniles have been devised and tested and existing ones implemented on a wider scale. Predominantly, they aim to prevent violent offences but also right-wing extremism, xenophobia and drug abuse.

Often, stepping up prevention measures leads to increased awareness of the offences involved. They raise the general awareness of the problem, thus bringing it out into the public domain and making it more visible. Where data exists in relation to this aspect, it confirms this trend.

**Chart K4.1-2: Accidents and fractures caused by brawling per 1,000 insured school pupils, 1993–2003**



Data source: CENTRAL FEDERATION OF PUBLIC SECTOR ACCIDENT INSURERS (Ed.), 2005.

Findings from international and national longitudinal research point to the fact that key risk factors for “criminal careers” actually appear in early development phases and gradually grow from then on. Researchers are thus increasingly calling for prevention measures that start at pre-school and toddler age. It is also considered important to target families living in risk situations in order to support them and have a positive influence on their children’s development. International findings on the prospects of such measures are very encouraging but research and practice in Germany are at a relatively early stage in this respect and need to be developed further.

There are only a few German studies that explore how the extent and structure of these offences have developed in recent years, taking into account non-registered offences as well. The small amount of information that is available indicates that there has been a positive development here too, i.e. that there have been decreases. There is sufficient substantiated evidence to be able to make this claim as far as property crimes are concerned. With regard to violent offences committed by children, which are much rarer and less serious than those committed by adults, the few studies of undetected crime involving young school pupils also suggest that there have been major decreases. There is no evidence that the “hard core” among the delinquent children below the age of criminal responsibility, i.e. the share of the small group of children who commit serious offences frequently, has increased.

One of the aspects that studies in this field have focused on is institutional methods of dealing with child delinquency. A fundamental finding of these studies is that the cooperation between the police and the children’s and youth welfare services urgently needs to be improved. Projects and pilot schemes have been launched in various municipalities and federal states in response to this need.



Researchers also feel that prevention measures designed to tackle early risk factors, starting right from the pre-school and toddler age, should be advocated. There are programmes in Germany that are based on solid research and would enable evidence-based prevention geared to children, parents, kindergartens and schools. Beyond such universal prevention measures, it is also considered important to target families in particularly severe risk situations. International findings on the prospects of such measures are very encouraging; researchers and the institutions involved in implementation in Germany have already started to address these issues. The projects are still at a relatively early stage, they need to be tried out and their outcomes evaluated.

#### **4.1.2 Actions by and Views of the Federal Government**

The findings presented in the preceding section and in Chapters 6.1 and 6.2 confirm that the Federal Government is right to maintain its policy of ensuring that juvenile criminal law is balanced and is based on sound empirical and criminological findings.

Prevention is an essential part of that policy. The Federal Government shares the researchers' view presented above that crime prevention has developed very positively, precisely among young people – a section of the population in which prevention is particularly important and has good chances of success. The wide range of measures in the federal states, municipalities, schools, clubs, private initiatives and by the Federal Government have been inspiringly successful. This should encourage everyone who is already responsible or would like to assume responsibility for prevention not to relax their efforts. In the Federal Government's eyes, crime prevention remains a central concern. In particular, the Federal Government is working to ensure that the Child and Juvenile Crime Prevention Office at the German Youth Institute, which has become a fundamental part of child and juvenile crime prevention, carries on its work in the light of the current and future requirements as well as the need for an evaluation of the effects of prevention.

Improvements can also be expected in terms of how investigation and prosecution activities and measures/responses in addition to the wide range of general crime prevention activities play a role in combating juvenile crime, mainly by using the existing possibilities provided by the law, that is to say not primarily through legislative activities. This is especially true of the cooperation between the police, youth welfare service, public prosecutors and courts, but also applies, for example, to the need to identify emerging, serious negative developments as early as possible. These possibilities for improvement also predominantly lie within the remits of the federal states and local authorities and they are already beginning to implement them. The findings presented here do not necessitate any fundamental legislative amendments. Juvenile criminal law in its current form has proved its worth. It offers sufficient and appropriate means for flexible proceedings and differentiated reactions and sanctioning in response to offences committed by young people. As in the past, those offences are mainly still of a minor to semi-serious nature. The criminological and empirical findings that were pivotal in the decision to base juvenile criminal law on the principle of education and discipline remain valid. The statistical rise in juvenile crime in the 1990s (the significance of which is relativised by the differentiated assessment given in this section) was managed and certain serious forms of juvenile crime, especially violent crime, can be managed using the existing legal instruments.

Nonetheless, it cannot be denied that there are alarming trends in specific problem areas, especially in particular regions or urban districts. Their causes, however, are not to be found in inadequate juvenile criminal law. What is required here, above all, is prevention work and targeted youth work. In addition, the wide range of possibilities offered by juvenile criminal law should be put to full use.

It is therefore essential that there is a sufficient assortment of suitable non-custodial measures, as provided for by the Act on Juvenile Courts.

Thus, the Federal Government's main action will be to open up the possibility, as planned in the Coalition Agreement, of post-imprisonment preventive detention for juvenile offenders too, as a last resort for extreme, highly dangerous cases. Other amendments being considered by the Federal Government concern individual rules regarding the presence of the offender's parents in the main hearing and the legal position of the injured party in juvenile criminal proceedings. Furthermore, in another move planned in the Coalition Agreement, an assessment is to be carried out to determine whether the possibilities open to family courts need to be modified to make earlier and more effective intervention possible in cases where a child's welfare is in jeopardy, including cases of extreme offending behaviour. To this end, the Federal Ministry of Justice set up a working group in spring 2006, consisting of experts from the areas involved in applying juvenile criminal law, the research sphere and from authorities, to examine the issues intensively and, where appropriate, draw up proposals for solutions.

## 4.2 Immigrant Offenders and Victims

According to the 2005 microcensus survey, a total of 15.3 million people living in Germany, i. e. almost one fifth of the population, have immigrant backgrounds. Along with the 7.32 million foreign nationals living in Germany, the 2.48 million "Aussiedler" immigrants (ethnic Germans who arrived before 1993) and "Spätaussiedler" immigrants (ethnic Germans who arrived after 1993) – including their families – make up a large share of the immigrant population, which numbers some 10 million and which is discussed in more detail in this report<sup>9</sup>. The migration contexts involved are so heterogeneous that to refer to them as "German" and "non-German" would not do them justice. Besides the autochthons, the "Spätaussiedler" immigrants and the spouses and offspring included in their admission documents, who are given a German passport very soon after arriving (though this does not apply to relatives who have accompanied the immigrant and who are subject to the provisions of the laws on aliens and/or residency status), are considered German, as are the approximately 3.5 million naturalised immigrants. The "non-German" section of the population, however, also includes around 1.6 million foreigners born in Germany, for instance. In any event, an analysis of the connection between immigration and crime must take into account the permanence of the immigrants' right of residence, which has a fundamental impact on their prospects of organising a livelihood in Germany. This differentiation can be achieved, albeit very approximately, by distinguishing between immigrants who do not hold German nationality (Chapter 4.2.1) and those who do (Chapter 4.2.2).

### 4.2.1 Abridged Version of the Chapter on Immigrants who Do Not Hold German Nationality

Of the approximately 7.32 million foreigners living in Germany as at 30 September 2005, one third (31.7%) were EU citizens, 26.1% were from Turkey and 14.3% from former Yugoslavia and its successor states. In criminological terms, nationality is of no relevance. However, it is partly linked to immigration status when, for example, asylum seekers and refugees come from countries in which civil wars have taken place (e. g. the successor states of Yugoslavia), resulting in their being granted exceptional leave to remain for a long period. This, in turn, makes for a precarious residency status, which can make integration difficult and increase the risk of involvement in crime.

<sup>9</sup> Following revisions to the register, there were 6.76 million foreign nationals on the Central Aliens Register at the end of 2005.

The findings concerning the risk of victimisation are conflicting. A special Bavarian evaluation of the Police Crime Statistics, for example, showed that foreigners made up 8.4% of the population and 11% of victims. On the other hand, in surveys among school pupils, more German pupils than non-German ones report that they have been the victim of a violent offence. Only a victimisation study that also included foreigners could determine whether the level of victimisation in Germany is higher among the foreign population.

The study on “The Life Circumstances, Safety and Health of Women in Germany”, commissioned by the FEDERAL MINISTRY FOR FAMILY AFFAIRS, SENIOR CITIZENS, WOMEN AND YOUTH, reveals very informative differences in the levels of exposure to physical and sexual violence. Almost half of the Turkish women (48.6%) had experienced one of these forms of violence, compared to 38% of the total respondents. The violence in these cases is mainly perpetrated by the women’s partners and often results in severe injuries.

According to the 2005 Police Crime Statistics, 22.5% of all offenders were not German nationals (or 19.4% if violations against the Residence Act, the Asylum Procedure Act and the EU Freedom of Movement Act are deducted from the figure). By contrast, various studies of undetected crime and also new surveys among school pupils in the cities of Duisburg and Münster actually indicate that the rate is not different to that for German nationals or even that it is lower for non-Germans. This discrepancy could be due to offenders’ ethnicity influencing whether victims or witnesses report offences; research has shown that, overall (including and especially in the case of petty offences), the reporting rate is up to 18% higher when the offender is not German than when the offender is German.

A breakdown of the offenders by reason for residency shows that the structure of the crimes committed by employees and businesspeople is largely the same as that of their German counterparts. However, compared with the share of non-German offenders that they represent (17.8%), employees’ involvement in cases of minor bodily injury (30.2%) and dangerous and serious bodily injury (25%) is higher.

The persons residing illegally in Germany do not constitute a serious criminal threat: the majority of the offences they committed were violations of the law on aliens, i. e. illegal residence. In addition, they were suspected of document forgery (e. g. of papers related to residence) in a disproportionately high number of cases. Generally speaking, illegal residents endeavour not to cause attention and they thus abide by the law, precisely so as not to risk having to leave the country.

The offences committed by asylum seekers in 2005 were also chiefly of a petty nature, i. e. violations of residence requirements or other rules under the law on aliens, plus offences committed as a result of poverty (e. g. shoplifting and fare-dodging) and attempting to deal with their restricted circumstances.

The offending tourists and persons in transit are an especially heterogeneous group. They include persons who commit petty offences (e. g. shoplifting) and foreigners who work illegally and come to the police’s attention because of document forgery or violations of the law on aliens. A relatively large share of the offending persons in transit are registered due to drug offences. However, there are also groups of criminals who travel to Germany as tourists specifically to commit serious theft.

The category of school pupils and students has a strikingly high level of violent offences, most of which are committed by gangs. However, gangs are also social settings, in which certain (sometimes very traditional) models of manhood or womanhood are asserted by means of norms.

One such model, the “culture of honour”, can be observed in various groups of male immigrants, particularly young Turks, young people from the successor states of Yugoslavia and “Spätaussiedler” immigrants from the CIS. This “culture of honour” is demonstrated in the young men’s defence of family members and gang members and is one of the major reasons for violence.

The research carried out into prosecution practice in 2001 and 2002 provides a summary comparison of the average severity of the punishment given to Germans and non-Germans (measured by the duration of the unsuspended prison sentence), which shows that immigrants were given longer sentences. For instance, foreigners without a residence permit had a 1.4 higher risk of being given an unsuspended prison sentence for the same offence (serious theft). Furthermore, orders for remand custody were issued more often and followed by an unsuspended prison sentence more often in the case of foreigners than for Germans.

**Table K4.2-1: Selected offences committed by non-Germans, breakdown by residency status, 2005**

	Non-German offenders in total	Illegal residents	Members of foreign military forces	Tourists / persons in transit	Students / school pupils	Employees	Business persons	Asylum seekers	Other
All offences	519,573	64,747	3,636	41,971	42,622	92,326	15,839	53,165	205,267
	100 %	12.5 %	0.7 %	8.1 %	8.2 %	17.8 %	3.0 %	10.2 %	39.5 %
Of which:	60,194								
Minor bodily injury	100 %	1.5 %	1 %	1.5 %	10.1 %	<b>30.2 %</b>	2.9 %	8.9 %	43.8 %
Dangerous bodily Injury	40,629								
	100 %	1.9 %	<b>1.2 %</b>	1.7 %	<b>16.2 %</b>	<b>25 %</b>	2.2 %	10.3 %	41.5 %
Shoplifting	81,054								
	100 %	1.8 %	0.4 %	<b>14.8 %</b>	<b>14 %</b>	10.7 %	0.4 %	<b>14.9 %</b>	43.2 %
Theft with aggravating circumstances	27,873								
	100 %	5.5 %	0.3 %	<b>16.2 %</b>	11.2 %	10.4 %	1 %	11 %	44.6 %
Travelling on public transport without a ticket	33,739								
	100 %	3.3 %	0.3 %	6.5 %	9.8 %	9.3 %	0.2 %	<b>14.2 %</b>	<b>56.2 %</b>
Forgery of documents	23,266								
	100 %	<b>25.3 %</b>	0.1 %	11.3 %	3.4 %	9.6 %	2.5 %	<b>14 %</b>	33.7 %
Violations of the Aliens Act, etc.	86,200								
	100 %	<b>64 %</b>	0.04 %	2.6 %	0.5 %	2.3 %	1 %	<b>14 %</b>	15.7 %
Drug offences	46,811								
	100 %	3.2 %	<b>1 %</b>	<b>14.9 %</b>	5 %	17.1 %	1 %	10 %	47.7 %

Data source: Police Crime Statistics.

Note: Percentages that are relatively high compared to the specific group’s share of overall offences are in **bold** type, the relatively low percentages are shown in grey.

To sum up, when assessing the higher figures, particularly for violent offences committed by employees, school pupils and students (but not by asylum seekers), the main point to be borne in mind is that the foreign section of Germany’s population is not as well-positioned as the German section with regard to education, professional position, income and living conditions. Class and circumstances are also connected to higher crime rates, including incidence of violent offences, among the German

section of the population too. There is also evidence that the German population and the police keep a particularly close eye on immigrants, as they do with the lower social classes overall, and are more likely to report them than they would other sections of the population. It is worth noting, however, that the incidence rates are higher among the second and third generations even if they have been naturalised. This group of immigrants, who have been living in Germany for a long time or were born here, is subject to a conflict of identity. Speaking very generally, the second and third generation of immigrant families are poorly educated, which means that their prospects in life are out of line with the success society expects of them. Not only is there stagnation in the process of their integration into the social institutions of school and vocational training, occasionally they even return to their own ethnic community and values. This issue needs to be addressed more in future.

#### **4.2.2 Abridged Version of the Chapter on Immigrants of German Ethnicity ("Spätaussiedler" immigrants who left Eastern Bloc countries after 1945)**

Since the Act on the Adjustment of the Acts Dealing with the Consequences of the War came into force on 1 January 1993, a good 1.6 million ethnic Germans (including their families) have been admitted into Germany as "Spätaussiedler" immigrants. Between January 1998 and the end of April 2006, the number was approximately 663,000.

From a legal perspective, "Spätaussiedler" immigrants have the considerable advantage, compared to other immigrant groups, that they are granted German citizenship as soon as they move to Germany. However, from a socio-psychological point of view, they share the fate of the other immigrants to a large extent (though there is no precise empirical data on the extent). The natives consider them as "strangers" because they come from a distant region and a cultural tradition that they feel is different. They are regarded with a degree of reservation and sometimes even openly rejected. This conflict between the "Spätaussiedler" immigrants' legal status and their socio-psychological status in the host society presents them with particular challenges as they endeavour to settle into their new environment. Most of them cope with the difficulties sooner or later – just as other groups of immigrants have and do. The majority of them manage to become integrated eventually – for some it is quite a smooth process but others have to make compromises compared to the lifestyle that their background or status brought them in their country of origin. Only a small portion runs into considerable integration difficulties or gets stuck in longer-term problematic situations. It can then happen that, rather than resulting in other problems, the difficulties and problematic situations increasingly lead to offences being committed.

There is no reliable data on the offences committed by or registered for "Spätaussiedler" immigrants. It is usually not possible to calculate precise figures to compare the crime levels with those of the natives or non-Germans, and certainly not for Germany as a whole. Taking the other available information as one's basis, such as federal-state-specific statistical evaluations of police data or the findings of research projects, the average result seems clear: the level of crime involving Spätaussiedler is not higher than in any other group.

At first glance, the opposite impression prevalent in the public's mind, which the media has highlighted and promoted on the basis of extraordinary incidents and which is also widespread in the prosecution institutions, would appear to conflict sharply with this finding. It is currently not possible to explain the disparity completely satisfactorily using the sources available for an objective assessment of the situation. However, it is evident that a large number of the discrepancies are connected with a special sub-group of "Spätaussiedler" immigrants: male juveniles and young male adults, sometimes

(but more rarely) male adults in their twenties, who came to Germany in the last major wave of “Spätaussiedler” immigrants from the middle of the 1990s onwards. In contrast to the earlier immigrants, many more of them appear to have been brought along by their parents although they did not wish to go or despite the fact that they expressly stated that they did not want to go. They were (already) more integrated into the culture of their country of birth, predominantly Kazakhstan or the Russian Federation for example, than the previous generations were, and were also closely integrated into their peer groups. It is for these reasons that, here in Germany, conflicts related to their adjustment to the new situation erupt in very evident manifestations, relatively frequently and particularly vehemently.

**Table K4.2-2: Changes in offending behaviour by “Spätaussiedler” immigrants in Bavaria between 1997 and 2004**

Year	Change as a percentage compared to the previous year			
First year = 1997	“Spätaussiedler” offenders	“Spätaussiedler” immigrants as a share of offenders overall	Registered offences com- mitted by “Spätaussiedler” immigrants	Offences committed by “Spätaussiedler” immi- grants as a share of regis- tered offences overall
1998	11.9 %	6.1 %	21.6 %	4.0 %
1999	10.6 %	6.8 %	10.5 %	4.4 %
2000	5.3 %	7.1 %	8.8 %	4.8 %
2001	4.4 %	7.3 %	1.9 %	4.7 %
2002	4.0 %	7.5 %	3.0 %	4.9 %
2003	5.6 %	7.7 %	6.8 %	5.1 %
2004	0.1 %	7.4 %	1.9 %	5.1 %

Data source: Luff, J., 2005.

The fact that it is precisely young men from immigrant groups who “externalise” such conflicts, in other words, conduct them outside of themselves, sometimes using violence, corresponds with the findings of international studies on integration processes and disintegration processes in the “first” immigrant generation compared with the “second” immigrant generation. Alcohol and drug consumption are particularly likely to aggravate the problems and conflicts.

Based on differentiated special surveys conducted by the Bavarian Police Force Research Group, the development of officially registered crime in Germany (going by the example of one federal state) can be said to be not overly dramatic. The figures in Table K4.2-2 show that in 1998 and 1999 the number of “Spätaussiedler” offenders grew considerably compared to the preceding years and that the number of offences registered for those offenders rose even more. Since then, the increase has slowed down significantly overall though not consistently from year to year. A linear extension of this trend past 2005, for which no empirical data has been published as yet, shows that the crime situation can be expected to stabilise. However, the conflicting trends in the statistics for the “Spätaussiedler” share of all offenders registered in Bavaria and the offences committed by “Spätaussiedler” immigrants as a share of all offences cleared up in Bavaria indicate that, compared with other groups, the level of crime has not fallen.

If one calculates the suspect rate for “Spätaussiedler” immigrants in cases cleared up in Bavaria, the following pattern emerges: the under 10s age group is hardly ever involved (as is the case for German nationals too according to the Police Crime Statistics). Among the 10 to 14-year-olds, who are (also) below the age of criminal responsibility, the overall trend with regard to their involvement in crime

is decreasing significantly. Among juveniles (14 to 17-year-olds) there has also been no rise, in fact a downward trend is emerging. In the subsequent age groups, the increase in involvement in crime is substantial in many cases. Put in clear terms (and this is the way some of the experts see the situation too), these figures give the impression that things have stabilised in the current young generation, most of whom were born in Germany, whereas the young “problem generation” that became particularly involved in crime from the middle of the 1990s onwards now appears to be growing into the next age group. Thus, the specific potential (including the preventive potential) of integration measures should concentrate on juveniles and young adults in the next few years. All in all, there are many signs that this immigrant group’s involvement in crime (and especially the involvement of the young men within that group) will already decrease in the medium term and that their influence on internal security is beginning to reach a normal level.

#### **4.2.3 Actions by and Views of the Federal Government**

The overwhelming majority of the foreigners living in Germany are not involved in crime. This is particularly true of those who have been living in Germany for many years or who grew up here and are already well integrated. When considering the higher crime rate of non-German nationals in the Police Crime Statistics and the prosecution statistics, one must take into account factors that make a direct comparison with German nationals impossible. For instance, various groups of foreigners (e.g. persons in transit who are not spending a long time in Germany) are not recorded in the population statistics but their offences are recorded in the Police Crime Statistics and prosecution statistics. Furthermore, in the case of approximately one quarter of non-German offenders the offence is a violation of the laws on foreigners or asylum procedures. In other words, the offence is a breach of a legal provision that can mostly only be violated by foreigners. It must also be borne in mind that some foreigners belong to a specific age structure and have certain social problems, such as a lack of vocational training or being in unemployment, which increase the risk of criminal behaviour among German nationals too. In addition, the majority of the “Spätaussiedler” immigrants and their families living in Germany are not involved in crime more often than Germans. One exception is the young male “Spätaussiedler” immigrants from the last wave of immigration. In many cases, they were brought along by their parents although they did not wish to go or despite the fact that they expressly stated that they did not want to go. Their lack of identification with German society makes them tend to cut themselves off from their surroundings, resulting in social isolation and problems such as unemployment. This age group has a relatively high level of involvement in crime.

The data available illustrates that there is a link between criminal offences and an immigrant background. Migrants’ difficulties in integrating result in social problems, which increase the risk of becoming involved in crime. That is why the Federal Government has set integration goals and granted immigrants a statutory right to integration services, for the first time, through the Immigration Act. However, the Federal Government’s remit is such that it can only offer preliminary integration services, which mainly involves language-learning. In addition, as part of youth social work, young, newly immigrated persons above school age are supported by the youth migration services, which are responsible for their case management before, during and after the integration courses. Adult immigrants are offered counselling and advice by a service specifically set up to provide initial advice to them. The service is intended to initiate and control the integration process in line with the immigrants’ individual abilities and need for assistance, again using case management. The Federal Government also finances a series of supplementary measures designed to promote social integration. These projects aim to foster integration within the environments in which the immigrants live, to defuse social conflicts and increase German nationals’ acceptance of immigrants by improving con-

tacts between the two groups. More far-reaching integration measures aimed at social integration and thus prevention are the responsibility of the federal states and local governments. An evaluation of the integration courses is already underway and is intended to help optimise the Federal Government's integration services. The evaluation will also consider the need for group-specific measures. The Federal Government is already sponsoring an empirical study that is looking at the special situation of Muslims in Germany. The study is focusing on Muslims' relationship with Germany, the relevance of religion with regard to willingness to integrate and the integration options available, obstacles to integration and their importance as concerns compliance with legal provisions plus attitudes towards democracy and the rule of law.

## **4.3 Professional Criminal Groups and Organised Crime**

### **4.3.1 Abridged Version of the Chapter on Professional Criminal Groups and Organised Crime**

As yet, there is no universally recognised definition of the term "organised crime". There are different ideas as to the key characteristics of organised crime, not only among researchers but also among law enforcement practitioners, political bodies and the public. This makes it difficult to agree how such phenomena should be registered and what measures are necessary or suitable in order to control them. The 1991 Joint Guidelines on Cooperation between Public Prosecutors and the Police in the Investigation and Prosecution of Organised Crime offer a basis for coordinated procedures in German investigation practice, especially by listing indicators for identifying circumstances suggestive of organised crime. Despite the legislative amendments in recent years, law enforcement practitioners still do not feel that the possibilities for effective prosecution are satisfactory. Initiatives are currently underway on the EU and UN levels to draw up clear criteria for certain acts punishable under national law, to provide for special investigatory methods (necessary for combating organised crime) in national law and, finally, to strengthen the coordination of investigations.

All groups of criminals, more structured gangs and criminal alliances need a certain amount of organisation if their actions and plans are to be successful and bring financial success in the long term. The ever-present pressure of avoiding being found out by the authorities also means that these groups have to take organisational precautions to protect themselves from being discovered, convicted based on conclusive evidence and punished. "Organisation" is therefore not sufficient as a criterion with which to distinguish between the various groups or areas of crime.

One of the distinctive features of organised crime is the relatively high degree to which the perpetrators close themselves off to outsiders. Consequently, there are major objective difficulties in obtaining reliable information on the real structures, methods and persons involved. Moreover, violence is an integral part of any form of organised crime. However, the violence is mainly latent violence in the criminals' everyday lives, e.g. threats that can (only) be deciphered immediately by those in the know and that indicate that violence will be used before long. Compared with violence in other groups, actual violence is a relatively rare occurrence in the area of organised crime. Where it does occur, it often has a rational purpose in the sense of a "parallel system of justice".

Empirical studies on organised crime in Germany have been conducted since the late 1960s. Their findings indicate that the most common form of organised crime in Germany, still today, is the most highly developed form, referred to as "networks of professionally organised criminals". They are busi-



nesslike, plan all aspects of their crimes rationally in advance – from preparation to how the “loot” is to be used – and they all work across regional and national borders.

There are also signs that criminal groups that are mainly foreign and have strict hierarchical structures are becoming established in Germany. Examples are Italian organised crime groups (Cosa Nostra and 'Ndrangheta) and Turkish or Kosovo-Albanian structures. The long-established communities of immigrants from these countries mean that they have points of contact in Germany. But even these groups are normally not bureaucratic or quasi-military syndicates with a thoroughly organised structure.

The “National Situation Reports on Organised Crime”, which the Federal Criminal Police Office has been producing in cooperation with other federal and federal-state authorities since 1991, reveal that the majority of the criminal groups identified in the complex investigative proceedings committed a whole range of offences. They often comprise members of various nationalities. Their actions are carried out both on a national and an international scale. They cause billions of damage and reinvest the proceeds to good account on the market (including the legal part of the market).

According to a more recent study by KINZIG from the Max Planck Institute for Foreign and International Criminal Law in Freiburg, the fundamental problems of a lack of a proper definition and accurate registration of the crimes have still not been resolved. However, it is possible, on the basis of the proceedings and cases analysed in the study, to draw a distinction between organised crime and “ordinary” cases of criminals acting in concert. The following criteria can be said to apply to the former:

- most of the crimes they commit are without victim,
- a large number of them are foreigners,
- their crimes are committed on an international scale and display the same typical characteristics,
- there is a certain “division of labour”,
- they have a certain permanence and
- they are methodical, professional and conspiratorial.

These findings essentially correlate well with those of the research previously carried out. In addition, the opinion still holds true that one should assume that the groups in Germany are professionally organised criminal groups and networks, rather than federal-state-wide or even nationwide fixed hierarchical structures with a major influence on legal markets and social/political structures. Consequently, the findings would appear to be reassuring in general and in terms of law enforcement policy.

The National Situation Report on Organised Crime, issued by the Federal Criminal Police Office, presents from a wide range of perspectives the cases of organised crime identified and precisely analysed with the help of the federal-state specialist offices on organised crime. Table K4.3-1 shows the cases processed although it should be pointed out that there are a number (sometimes a very large number) of different individual offences or sets of offences involving various parties in various combinations behind each case.

The situation in Europe varies depending on the region examined or analysed in more detailed research. However, the majority of the police situation assessments, empirical, socioscientific, state-specific or comparative studies do not come to the conclusion that “the mafia” or any other endemic criminal structures have got the state, industry or even society so “under the thumb” that one could really speak of a direct risk to the population or to democratic society.

**Table K4.3-1: Number of cases in the National Situation Report on Organised Crime, 1991–2004**

Year	Number of cases reported for first time	Number of cases carried over from previous year	Total number of cases processed
1991	369	0	369
1992	540	101	641
1993	477	299	776
1994	497	292	789
1995	472	315	787
1996	489	356	845
1997	444	397	841
1998	441	391	832
1999	413	403	816
2000	473	381	854
2001	389	398	787
2002	338	352	690
2003	327	310	637
2004	307	313	620

Data source: FEDERAL CRIMINAL POLICE OFFICE (Ed.), National Situation Report on Organised Crime for each year.

The key areas in which the criminal groups identified in 2004 were active were:

- drug trafficking and/or smuggling (199),
- property crime (104),
- business crime (76),
- smuggling of illegal immigrants (68),
- illegal “red-light” activities (53),
- tax and customs offences (52),
- violent crime (24),
- forgery (21),
- arms trading and/or smuggling (9),
- environmental crime (1) and
- all other areas of crime combined (13).

In around 24% of the cases, the criminal groups pursued activities involving more than one area of crime. The combinations were very often linked to the criminal scene and included, in particular, drug trafficking (often in connection with arms crime), illegal red-light activities and violent crime. In 562 of the 620 investigative proceedings conducted in 2004, new information was reported concerning the origin of the suspects. In total, 4,886 offenders from 109 countries were identified for the first time.

In 23% of the cases, criminal groups with a homogenous structure were identified, i.e. the offenders were all of one single nationality. Of those 129 groups, the Germans were the most prevalent, with 48%, followed by the Turks and Italians with approximately 9%, the Vietnamese with 8.5% and finally the Yugoslavs with 4.7%. In the remaining 433 cases, criminal groups sometimes comprising more than 15 nationalities were identified although the average was two to three nationalities. It therefore comes as no surprise that the actual crimes were also largely of an international nature. The findings

concerning the multi-offence structures of the organised crime groups identified showed that the number of offenders per investigation varied greatly, from three to 372 people to be precise, with the average being 18. However, really large groups were quite rare: 26 groups had 51 to 100 members and eight groups had more than 100 members.

### **Organised drug crime**

Numerous gang-type groups right through to actual organisations are involved in the internationally organised wholesale and intermediate drugs trade. Their structures are similar to those of commercial enterprises and they use the methods of organised crime. Drug crime accounts for a major share of internationally organised crime, especially because of the high profit margins.

### **Organised money-laundering crime**

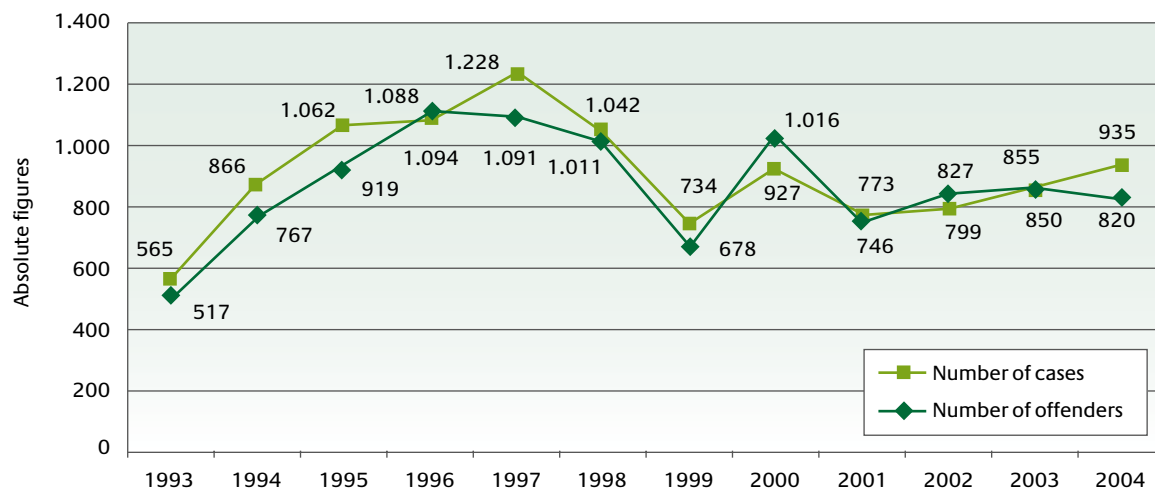
According to the special analyses on money-laundering crime for the Situation Report on Organised Crime, the changes in what is deemed to constitute a money-laundering offence (Section 261 of the Criminal Code), which were introduced in 1999, along with the suspicious transaction reports as described in the Act on Money-Laundering, have not yet had the sweeping impact on the amount of money-laundering crime that had been hoped for. However, the figures reflect a continuous increase. Control of cross-border cash transactions (Section 12 of the Act on Fiscal Administration) also appears to be having an increasing effect in the area of prosecution. Asset confiscation is gradually becoming particularly important in investigative practice. To make it an effective tool, the federal states have set up and are in the process of expanding special offices and institutions to carry out financial investigations. According to the Situation Report on Financial Investigations, compiled by the Federal Criminal Police Office, the first-time reports vary in the different federal states but, overall, they are rising significantly and continuously. The figure has increased from approximately 2,900 in 1994 to around 8,100 in 2004.

### **Organised human-trafficking crime**

The revised definitions of what constitutes human trafficking and serious human trafficking (Section 232 et seq. of the Criminal Code) cover any situation in which the offender exerts an influence on the victim to induce them to commence or continue prostitution or other sexual acts. A particularly inhuman form of crime, human-trafficking has become established as part of a worldwide illegal market in Germany too. Organised crime structures are increasingly becoming apparent in this context. According to the data collected for the Federal Criminal Police Office's Situation Report on Human-Trafficking, up to 30% of the investigations in Germany are carried out by offices responsible for combating organised crime.

As the next chart shows, the number of human-trafficking cases registered in the Police Crime Statistics has been falling slightly since 1996. In 1999, it reached its lowest point. At the moment, somewhere in the region of 700 to 900 offenders are registered every year. The conviction rates are relatively low, which is largely due to the difficulties presented by this type of crime. The fact that it is difficult to present evidence in connection with human-trafficking offences is reflected in the high number of proceedings dismissed. If the offender is convicted, the difficulties with regard to presentation of evidence often result in the offender being convicted on the grounds of other offences they have committed, which cannot be seen in the statistics. At least it can be said that most of the offenders who were convicted with final effect received prison sentences.

Due to the amendment to the law, which came into effect from 2005, the more recent figures (705 cases and 721 offenders) cannot be directly compared with those from the previous years and have thus

**Chart K4.3-1: Human-trafficking offences, cases and offenders, 1993–2004**

Data source: Police Crime Statistics. Due to the amendment to the law, which came into effect from 2005, the more recent figures (705 cases and 721 offenders) cannot be directly compared with those from the previous years and have thus been omitted from this chart.

been omitted from the chart. The victims of human-trafficking are almost exclusively women. Most of them come from economically weak countries, some of which have problematic social structures. Both the recruitment of the women and their illegal entry into Germany are usually planned and carried out by international gangs.

In 2005, a total of 642 victims of human-trafficking were registered, of whom 82% were non-German nationals. The victims are extremely willing to travel to Germany on the basis of vague promises. The culprits take advantage of the women's desperate situations and lack of prospects and lure them to Western Europe, usually by pretending that they can offer them a proper job. Most of the persons who enter the country in this way are engaged in prostitution in bars, brothels or flats.

### **Smuggling of illegal immigrants/Smuggling of illegal immigrants by organised crime groups**

Despite a further drop in the detected cases of illegal entry and smuggling into the country, Germany remains a target and transit country for uncontrolled immigration. In 2005, a total of 103,935 cases of violations against the Residence Act, the Freedom of Movement Act for EU Citizens and the Asylum Procedure Act were registered with the police. Whilst the number of persons who entered or were smuggled into Germany illegally fell in the period up until 2004, the figures rose again in 2005, as shown in Table K4.3-2. When a person who has entered the country illegally is found to be residing here, the illegal entry may only be registered if the exact time and place of entry are known. In 2005, the pattern was similar to previous years, with Polish, Turkish and Yugoslav offenders at the top of the list. Ukrainian nationals dropped down the list.

### **Organised environmental crime**

In the opinion of EUROPOL, tackling environmental crime should be a top political priority in the EU. Environmental crime is considered to be a rewarding area of activity for organised crime groups, with low risks and high profit margins. This impression is in line with knowledge derived from the efforts to combat organised crime groups in American cities and in Sicily and Southern Italy. In those places,

**Table K4.3-2: Offenders identified in investigations into smuggling of illegal immigrants, 2000–2005**

Year	Total number of offenders	Smuggling as described in Section 92 a of the Aliens Act	Professional smuggling and smuggling by gangs, as described in Section 92 b of the Aliens Act
2000	50,635	5,457	652
2001	53,576	6,493	743
2002	44,362	6,187	741
2003	33,509	5,195	784
2004	30,037	4,922	826
2005	34,387	3,820	582

Data source: Police Crime Statistics. The constituent elements of the offences were redefined in 2005: Section 96 of the Residence Act instead of Section 92a of the Aliens Act and Section 97 of the Residence Act instead of Section 92b of the Aliens Act; consequently, the figures cannot be compared directly with those for the preceding years.

waste recycling was and still is deemed a lucrative field for such activities. With regard to Germany, based on observations of the waste recycling market, the Federal Criminal Police Office feels that an empirical assessment of this area of crime is needed. Reports of suspected offences indicate that the number of undetected illegal practices on the disposal market is likely to be large; it is probable that that number will grow further as a result of the EU's eastward expansion.

The fact that there are not many registered figures for environmental crime has to do with it being a crime that goes undetected unless specific investigations are conducted and that tends not to affect victims personally as much as other types of crime. Perpetrators seeking commercial gain mostly avoid any direct effect on victims or easily recognisable damage. The more professional they are, the less easy the offences are to detect. In addition, a general reservedness is normal and necessary in business. Furthermore, complex economic, legal or technical factors are involved, which are not particularly easy for outsiders to understand. It is for these reasons that the reporting rate among the public is low. But the reporting rate among the authorities responsible for monitoring these areas also remains low. The causes are primarily structural in nature, for instance long-established corruption practices. The increasing scope and the complexity of the legislation are likely to paralyse enforcement institutions. And the calls for cooperation between business and politics mean that the interests of the two realms are becoming considerably merged.

The data collected shows that offences in connection with commercial disposal procedures and offences in connection with the construction of waste disposal plants play a significant role. Considerable effort has been invested in pushing ahead the construction of waste incineration plants in Germany since the 1980s. It has recently come to light, however, that economic offences (including violations of contract-awarding regulations), financial offences and corruption played a role in a considerable number of the construction projects. The culprits include managers from waste disposal companies, plant construction companies and planning offices plus political figures and "consultants".

#### **4.3.2 Actions by and Views of the Federal Government**

International organised crime poses a significant risk because the perpetrators attempt to create a legal vacuum, by means of violence, threats and corruption, in which they can flourish unhindered. Germany is still a long way off from the situation in other parts of the world, where, thanks to the involvement of political and business decision-makers, organised crime has already reached such proportions that it can be said to have corroded the state or democracy.

Nonetheless, the Federal Government is aware that, in view of the dimensions of organised crime, a resolute, consistent course of action is needed to combat it.

It must be borne in mind that economic globalisation and the opening up of markets also bring the risk of globalised organised crime. In addition, technical progress – especially the internet – is helping organised crime to become more internationalised. In the Federal Government's opinion, attempts to tackle organised crime at national level only are losing relevance. National strategies can swiftly be avoided by relocating operations to less regulated areas. The Federal Government has taken up this challenge and continued to develop legal instruments with which to fight organised crime, taking into consideration the need for international harmonisation too.

Measures aimed at combating organised crime must concentrate, on the one hand, on identifying the perpetrators and the crimes in such a way that those responsible for managing and controlling the operations can be caught. Imposing fines or prison sentences on individual subordinate members of such crime rings has hardly any impact on and does virtually no harm to the kingpins and the organisations they manage. A subordinate member of the ring can often be quickly replaced without any long-term impairment of the running of the organisation as long as the profit is right. On the other hand, the measures must also seek to confiscate as much as possible of the proceeds of such crimes in order to take organised crime groups' financial bases away from them. Providing the investigation and prosecution authorities with the effective and powerful tools they need to implement those measures is one of the Federal Government's priorities.

A further pressing matter is the need to abolish cross-border obstacles to prosecution. Bilateral agreements are an effective means of achieving that goal. The Federal Government has thus signed agreements with a series of states on joint measures to combat major offences. The agreements create the necessary legal bases for cooperation on measures to combat organised crime and terrorism by various means, including information-sharing and experience-sharing, coordinated operational measures, expert exchanges and sharing of research findings. In addition, the network of police liaison officers, particularly in the countries in which organised crime originates or through which it passes, is being expanded. Furthermore, by providing assistance in the form of equipment and training, the Federal Government is helping to support the prosecution authorities in third countries with their fight against organised crime.

In April 2006, the Council of the European Union also approved the preparation of a Framework Decision on the Fight against Organised Crime. At international level, the cornerstones of the fight against organised crime are the UN Office on Drugs and Crime and the UN Convention against Transnational Organised Crime, including its three protocols against trafficking in persons, smuggling of migrants and illicit manufacturing of and trafficking in firearms, their parts, components and ammunition.

The Money Laundering Act, which came into force in 2002, sets new standards in Germany for ways in which to disrupt the cash flows of international organised crime and international terrorism. The objective and the key feature of the Act is that it brings together measures on the police, prosecution and bank-supervision levels based on the EU and international regulations on the subject. A further step that has been taken is the reform of the legislation on asset confiscation, which is currently being finalised. Improved confiscation of assets gained by criminal means makes the criminal activity less profitable for the culprits, thus eliminating one of the main factors that motivate their crime.

## 5 The Public's Sense of Security and Fear of Crime

### 5.1 Abridged Version of the Chapter on the Public's Sense of Security and Fear of Crime

The structure and quantitative/qualitative development of crime and the application and effectiveness of prevention, crime control and intervention are not the only issues of importance in terms of internal security. In addition to these “objective” factors of internal security, there is a subjective component of relevance to law enforcement policy: perceived security, the “perceived crime situation” or, to put it negatively, fear of crime and victimisation. Security in the sense of lower risks of victimisation and harm are not sufficient to ensure a good quality of life for citizens if they themselves are not truly convinced that their community offers them security or if they do not personally feel subjectively safe.

In addition to tangible and intangible damage caused by offences already committed, the mere belief that one might be the victim of such incidents in the future can have a great number of consequences for individuals and groups. They may stop trusting other people and participating in public life and their faith in governmental institutions may be undermined. These changes not only restrict and impair the quality of the individuals' lives, they are also very detrimental to the functioning of society and social coexistence. There is a risk of a build-up of negative factors and a self-fulfilling prophecy – collective avoidance of certain roads, paths and places due to a fear of crime can result in those public areas slowly becoming deserted. If more and more people are worried about going there and so stop doing so, they can gradually really become places that are particularly convenient for criminal activities due to the absence of social controls.

The perceived crime level or feeling of a lack of security due to an assumed risk of crime can – as well as impairing people's quality of life – influence and restrict the ability to make rational, objective decisions in the area of law enforcement policy. Back in the 1970s, criminologists in Germany were already pointing out that no legal system can be indifferent to the public's thoughts concerning their own security. If people begin to feel too unsafe, there is a risk of undesired phenomena such as self-administered justice, “private justice” or “pillorying”, the state monopoly on force being broken down, a loss of authority on the part of state institutions and a loss of acceptance for those institutions. The political significance of this subjective dimension of internal security has been summarised in a very succinct manner as follows: not only does the state have to make sure that it is objectively possible for citizens to go outside at night, it must also ensure that citizens subjectively believe that they can do just that without any risk. Bearing these aspects in mind, it seems justified for the Periodical Report on Crime and Crime Control to examine the questions of how the public perceives the crime situation, to what extent they feel that crime is a threat to the state and society, to what extent they feel threatened personally and how much these perceptions have changed in Germany in recent years.

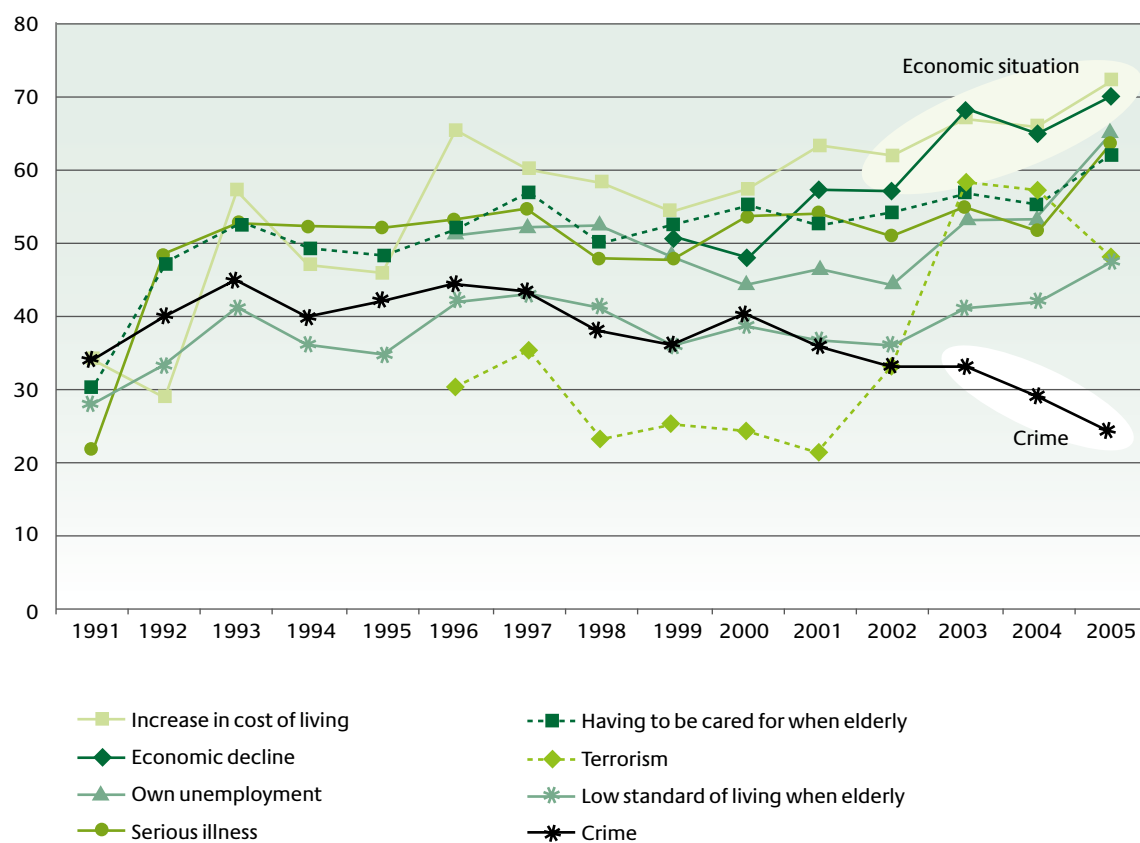
A distinction must be drawn between the social and personal dimensions of fear of crime. “Social fear of crime” reflects the degree to which citizens perceive society as being threatened or impacted on by crime. Those perceptions can be seen, for instance, in the extent to which people worry about the development of internal security in society and in the political importance that they feel the subjects of internal security and crime should have compared to other governmental tasks. Thus, the social dimension focuses on society as a whole and the perceived threat to society, whereas “personal fear of

crime” indicates the extent to which people feel that they themselves, as individuals, are threatened by crime. That perception can be cognitive, in the form of risk assessments, i. e. assumptions concerning the probability of being a victim of certain offences. It can also be observed in behavioural responses, in the form of avoidance and protection measures, or it can be affective, i. e. people feel afraid because they think they could become victims of criminal acts.

This distinction between the personal and social levels is vital because it is completely possible for people to believe that crime is having a huge impact on society and is a pressing social problem without necessarily being afraid that they themselves might be victimised. Though social fear of crime (the perception of crime as a social problem), on the one hand, and personal fear of crime, on the other, are not totally independent of one another, their causes, the forms they take and the consequences they have can be very different. For instance, there is hardly any link between personal fear of crime and attitudes concerning tougher punishment or severe sanctions. However, there certainly is a link between perception of crime as a social problem, especially the perception that crime is on the increase, and attitudes concerning punishment.

The presentation of the crime situation in the national mass media, which is extremely distorted in that it focuses on serious offences and which can give many people the impression – despite the facts – that the situation is constantly getting worse, mainly influences people’s subjective assessment of the threat to the society, not so much their fears about themselves. They do not start to worry for their own

**Chart K5-1: Threat posed by various risks in life: percentage of people who feel threatened, 1991–2005**



Data source: R+V INFOCENTER (Ed.), Die Ängste der Deutschen ("The Fears of Germans"), 1991–2005.



security until the media reports refer to an aspect that is linked to their own individual environment. Otherwise, their perception of their own place of residence and the social cohesion there play a more important role in their assessment of the threat to them as individuals. A crucial aspect is the information communicated to them concerning crime within their own environment. That information can be conveyed in everyday conversations, their perception of the victimisation of people they know from their immediate environment but also through visible, external aspects, such as the condition of roads or buildings in the area in which they live. In this respect, regional media reports directly related to their individual environment can also have an effect.

Different people's fear of crime differs greatly. The intensity and frequency of that fear does not primarily depend on the actual individual risks or past victimisation. What is much more important is their assessment, which varies significantly from person to person, of their own vulnerability and the question of how serious the harm that victimisation would be expected to cause would be for them personally and to what extent they would be able to deal with it. This explains why elderly people are much less often the victims of crime than young people are but express fear more often and, above all, are much more cautious and avoid certain situations and/or areas. The same is true of women, who also have a higher level of personal fear of crime although, compared to men, their victimisation risk is lower. However, a point that also comes into play here is that women are more willing than men to talk about such fears while men tend not to admit them.

Numerous studies have been conducted in Germany on these topics of personal and social fear of crime, some of them from as far back as the 1970s. For the period since Germany's reunification, all of the studies are completely unanimous, irrespective of the different indicators used for the measurements, in their finding that citizens' personal fear of crime did rise in the first few years after reunification but that it has been decreasing constantly since the mid-1990s. This finding applies both to fear of crime as a whole and fear of specific offences. Whilst 45% of citizens expressed major fears of crime in 1993, the figure was down to 33% in 2002 and reached its lowest point since reunification, 24%, in 2005. Citizens' fears are more focused on other threats, such as unemployment, inadequate healthcare or old-age provisions, which reached their highest point in 2005.

Personal fear of crime in Germany is considerably lower than the European average. Taking citizens' subjective assessment of the risk of being a victim of crime in the next twelve months as the yardstick, Germany is considered the second safest country in Europe. The only country to fare better is Austria.

Correspondingly, ever fewer people in Germany feel that crime is a pressing problem that needs to be given political priority. At the same time, satisfaction with internal security and crime control has grown since the middle of the 1990s and is now at its highest since reunification. Compared with other European countries, the figures for this element of social fear of crime are also extremely low: in the representative Eurobarometer in spring 2004, only 14% of German respondents said that crime was one of the two most pressing political problems. The only country with a lower rate was Luxembourg (with 10%). Most of our European neighbours had much higher rates, e.g. 43% in Denmark, 37% in the Netherlands, 31% in Great Britain and 21% in France.

Thus, overall, it cannot be said that people in Germany feel that society or their personal quality of life is especially impaired today or even more impaired than in past years. In this respect, the situation can be considered positive today compared to the past. However, there are problems with subjective assessment of the development of the crime figures, i. e. people's beliefs as to how crime has developed.

For instance, despite the evidence to the contrary based on well-substantiated facts derived from several sources, citizens incorrectly assume that the number of serious violent offences has risen substantially. In addition, and again contrary to the findings derived from crime statistics and studies on the area of undetected crime, they assume that the amount of crime committed by the foreigners living in Germany has increased. Interestingly, this assumption does not refer to the immediate environment in which they live but, mainly, to areas where they do not live and about which they therefore only have very limited information, usually obtained from the national media. The more they watch television, the stronger such misconceptions are. In particular, frequent viewing of private channels strengthens these misconceptions, which is due to the information on those channels being disproportionately distorted compared to actual events.

However, the question as to what other factors have caused the public's crime-related fears and anxieties to decrease so much has not yet been sufficiently answered. One factor could be that crime, in the sense of individual victimisation, really has fallen in recent years in numerous areas of crime. But, judging by all of the information currently available on the development of and influences on fear of crime, that is probably not a sufficient explanation. Another striking point is that, while fear of crime has decreased, people's fears with regard to work, health and old-age provisions – in other words, everything that has to do with their lives and livelihoods, have increased considerably. It is not yet clear whether the lower subjective importance of crime has come about because, in the face of developments in the economy and in their livelihoods that people perceive as threats, the relative importance of crime decreases and provokes fewer fears.

## **5.2 Actions by and Views of the Federal Government**

The security situation cannot and must not only be measured using objective data from the official statistics. Effective security policy must also take into account the crime threat as perceived by citizens. Studies have shown that fear of crime – particularly in Eastern Germany – rose considerably up until the mid-1990s but has decreased significantly since. This report's comparison of criminal statistics and fear of victimisation illustrates that there is a major difference between the objective crime situation and the way it is subjectively perceived. Although violent offences actually only account for around 3% of overall crime and, as this report makes clear, largely occur among male juveniles and young male adults, fear of being a victim of a violent offence is widespread even, for example, in those sections of the population that are less at risk.

The Federal Government takes citizens' fears regarding the crime situation seriously. It feels that one of the main tasks of law enforcement policy is to increase people's sense of security since an impaired sense of security has serious social consequences. People who are too frightened to leave their homes, who avoid certain places or stop going to the theatre, concerts, the cinema or pubs and restaurants in the evenings suffer a significant loss in their quality of life.

It is therefore important that the crime situation and the risks arising from it be described in a realistic manner. This report contributes to such a description, especially since a presentation of the different forms of crime and their development makes it possible to distinguish between real and apparent threats, to assess risks more realistically and thus to counter fear-inspiring over-dramatisation.

As with the various factors that cause crime to develop, fear of crime is often linked to local phenomena. Reducing that fear must, therefore, primarily be the aim of local-level activities as well. As far as it can,

the Federal Government will participate in measures that can result in an improvement of the objective security situation and the public's sense of security in communities large and small. One particular way in which this aim is being promoted is the security cooperation agreements between the Federal Ministry of the Interior and the federal states, which are intended to improve cooperation between their police forces. A key aspect of this intensified cooperation is ensuring the presence of police officers at local crime hotspots, with the aim of increasing citizens' faith in the safety of public places. This cooperation at crime hotspots is to be continued within the framework of the security cooperation arrangements and, where necessary, to be backed up by the Federal Police with the consent of the federal states.

The amendment to the law on the security service industry, which came into effect in January 2003, was also intended to strengthen the public's sense of security. The private security service industry makes an important contribution to internal security by performing security and surveillance tasks that do not require sovereign powers. The amendment defines in more precise detail the legal framework for the work of private security service employees and ensures a better level of qualification and reliability on the part of the employees in the interest of the public.

Since the crime situation and the public's sense of security can also be positively influenced by measures in the environment in which they live, crime prevention should be taken into consideration more in urban development measures. One step in this direction is the project entitled "The Socially Integrative City – Districts with Special Development Needs", launched in 1999, in which the Federal Government is actively involved along with the federal states and municipalities. The Federal Government would also welcome it if more crime-prevention aspects were incorporated into town planners', architects' and civil engineers' training. The Federal Ministry of the Interior has therefore asked the Chairman of the Joint Commission for the Coordination of Higher Education Courses and Examinations to take crime-prevention aspects into account the next time the regulations for the higher education courses in those professions are revised.

The periodic victimisation surveys being considered by the Federal Government have been discussed in Section 1.2.

## **6 Crime Control by the Police, Public Prosecutors and Courts**

### **6.1 Abridged Version of the Chapter on Public Prosecutors' Decisions and Processing of Cases**

The results of the police investigations as shown in the Police Crime Statistics are provisional – in many cases it proves impossible to confirm the police's initial suspicions as the proceedings unfold. From an empirical point of view, the best way to describe criminal proceedings is as a "filtering-out process" or an "increasing consolidation of the evidence".

Among the offences that come to the authorities' attention, most of the "filtering out" occurs on the level of the police because it is often not possible to find a suspect. Once a case has been cleared up, the public prosecutor's office decides what course should be taken. It checks whether the criteria and legal requirements for bringing a charge are met. Rather than simply assessing the evidence available, this checking process also looks at whether the act is punishable and what a suitable reaction would be.

Of all of the preliminary investigations conducted by the public prosecutor offices against known suspects, only one quarter are currently presented to the criminal courts in the form of charges or applications for penal orders. However, a good half of them are terminated for various reasons – sometimes because, following a review of the legal aspects, there are not sufficient grounds to bring a charge (Section 170 II of the Code of Criminal Procedure), sometimes because of the insignificance of the offence or because special conditions are imposed/instructions issued. Most of the remaining quarter are temporarily closed by the case being handed over to another public prosecutor's office, by means of provisional termination, by being terminated due to insignificant additional offences, etc. Thus, measured by the main form in which they process cases, the public prosecutors' offices are primarily involved in terminating proceedings.

The statistics kept by the police, public prosecutors and courts reflect these assessment and decision-making processes. To obtain a complete picture, an overview of all of the available statistical information is necessary so that

- the assessment and decision-making processes,
- the extent of the associated filtering out and
- the use of the possible responses offered by criminal law

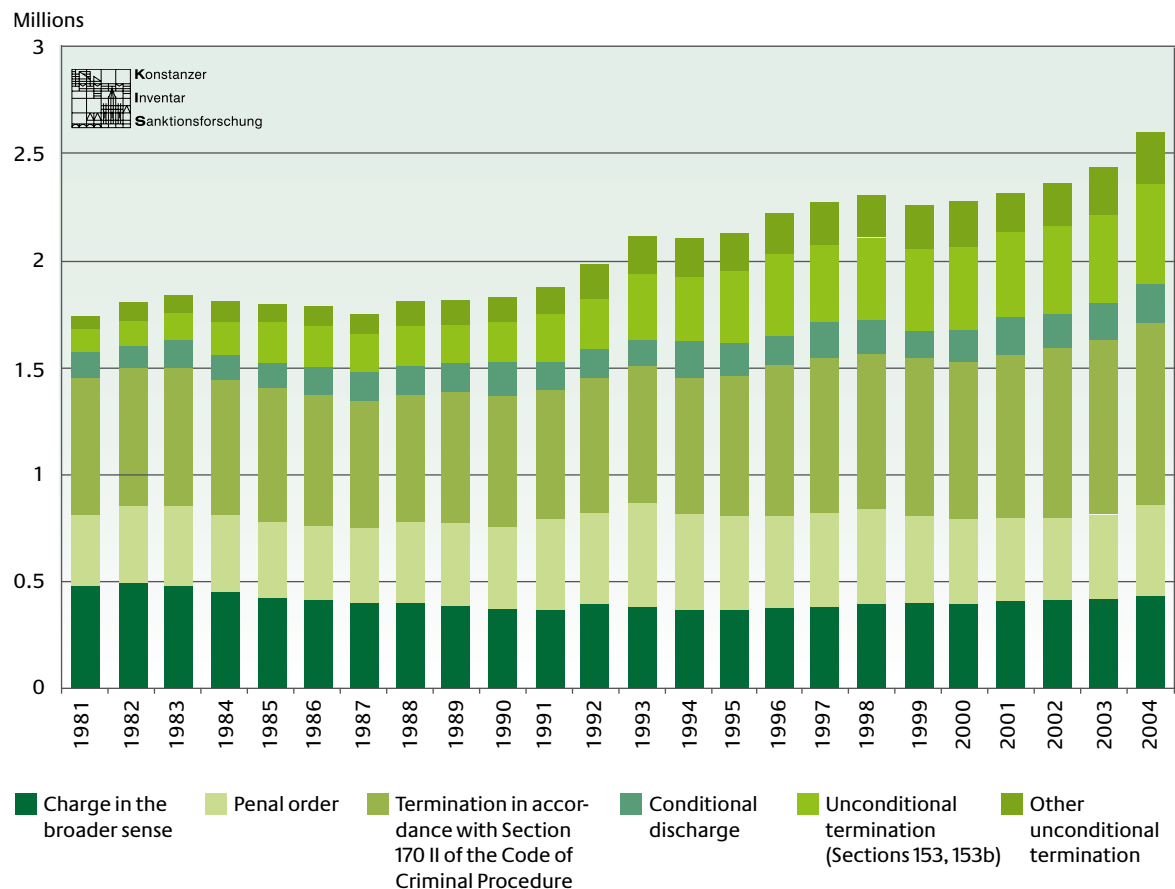
can be shown in transparent and quantitative terms.

Where data concerning a relatively long period exists (this is true of the old federal states, excluding Berlin, Hesse and Schleswig-Holstein), it becomes evident that the processing structures have changed significantly. This becomes particularly apparent if the analysis is limited to the cases that are processed by means of a charge being brought, a penal order being applied for or the case being dropped at the public prosecutor's discretion (Sections 153 I, 153a I, 153b I of the Code of Criminal Procedure, Section 45 of the Act on Juvenile Courts, Sections 31a I, 37 I of the Narcotics Act). Such an analysis shows that the percentage of proceedings terminated at the public prosecutor's discretion almost doubled, from 22% (1981) to 43% (2004), in correlation with a major decrease in the rate of charges brought from approximately 46% (1981) to 28% (2004) and in the rate of penal orders from 33% (1981) to 28% (2004).

Even when the public prosecutor's office feels that a sentence is necessary as punishment, the offender is not always (not even as a rule) tried before a judge. At the request of the public prosecutor's office, the legal consequences of a misdemeanour can be determined in a written penal order without a trial (Section 407 et seq. of the Code of Criminal Procedure). These written proceedings are an exception to the principle that criminal punishment may only be imposed on the basis of a trial, in which the accused is heard by the court of decision and has the opportunity to defend himself or herself. If, however, the accused objects to the penal order, a trial is held. Penal orders may be used to impose, for example, fines and (since 1993) suspended prison sentences of up to one year (though the latter only applies if the accused is represented by a lawyer). Public prosecutors have also increasingly made use of this workload-saving possibility. In 1981, summary proceedings without trial (based on a penal order) accounted for 42% of all proceedings in which the public prosecutor's office either brought a charge in the broader sense or applied for a penal order; by 2004 the figure had risen to 50%.

Based on the data available from the federal states of Baden-Württemberg and North Rhine-Westphalia, a final legal consequence with a sanctioning nature in the broader sense (by means of unconditional termination, conditional termination/termination combined with special instructions, convic-

**Chart K6.1-1: Outcomes of preliminary investigations by public prosecutors, 1981–2004. Former West Germany (excl. Berlin, Hesse and Schleswig-Holstein)**



Data source: Public prosecutors' statistics.

**Key:**

**Other unconditional termination:** Termination in accordance with Sections 154b, Subsections 1–3 of the Code of Criminal Procedure, 154c Code of Criminal Procedure, 153c Code of Criminal Procedure, 154d and 4 Code of Criminal Procedure, 154, Subsection 1 Code of Criminal Procedure

**Unconditional termination (Sections 153, 153b):** Termination in accordance with Sections 153, Subsection 1, 153b, Subsection 1 of the Code of Criminal Procedure/29, Subsection 5 of the Narcotics Act, Section 45, Subsections 1 and 2 of the Act on Juvenile Courts, Section 31a, Subsection 1 of the Narcotics Act.

**Conditional termination:** Termination in accordance with Section 153a of the Code of Criminal Procedure, Section 45, Subsection 3 of the Act on Juvenile Courts, Section 37, Subsection 1 of the Narcotics Act or Section 38, Subsection 2 in conjunction with Section 37, Subsection 1 of the Narcotics Act.

**Termination in accordance with Section 170 II of the Code of Criminal Procedure:** Termination in accordance with Section 170, Subsection 2 of the Code of Criminal Procedure, termination on the grounds of criminal incapacity (until 1997 these grounds included the death) of the accused.

**Penal order:** Applications for penal orders to be issued.

**Charge in the broader sense:** Charges, application for securing proceedings, application for in rem proceedings, application for immediate trial (or summary proceedings - Section 417 of the Code of Criminal Procedure), application for simplified juvenile proceedings.

tion) is currently imposed on the basis of a ruling arrived at in a trial in not more than 20% of cases. As a result of legislative expansion and increased use of the rules concerning proceedings without trial (on the basis of a penal order) and discretionary termination of proceedings, public prosecutors have significantly expanded – and are continuing to expand – not only the “selection powers” granted to them by virtue of their monopoly on bringing charges, but also their sanctioning powers (which can be “negative”, i.e. by waiving sanctions when a case is dismissed without any conditions being imposed, or “positive”, i.e. when a case is dismissed and conditions imposed or where a preliminary decision is largely made by means of a penal order). Thus, public prosecutors have been able to offset almost all of

the increase in cases, particularly by making more use of unconditional termination, thus restricting the (additional) workload of the courts (Chart K6.1-1).

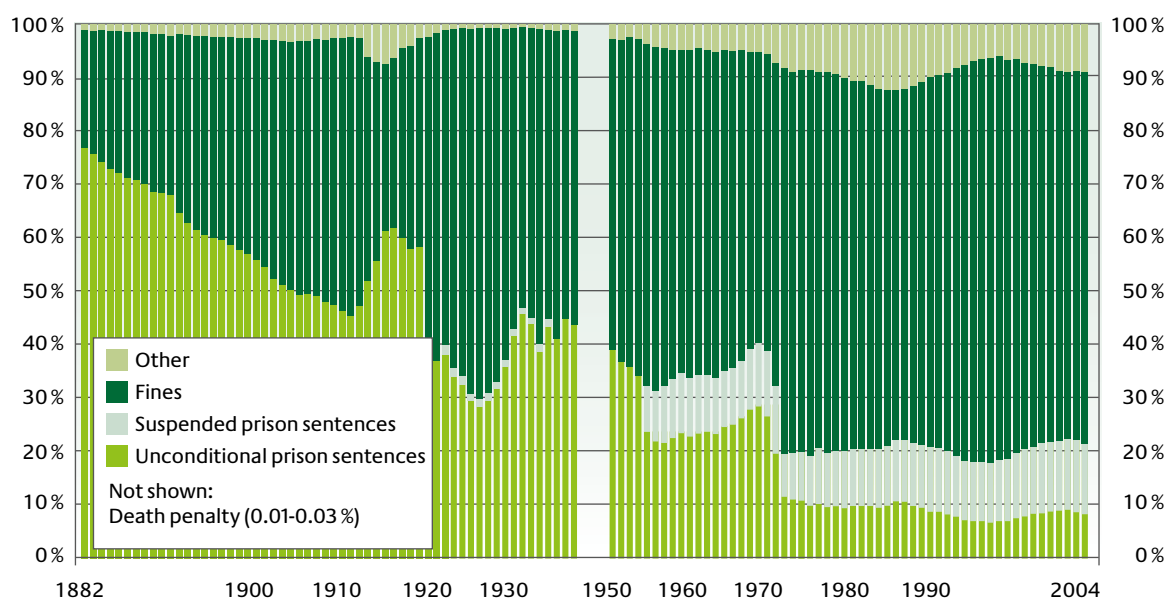
There are still major differences in the ways in which the possibilities for termination (diversion) are applied in the different federal states but also in the different regions within the federal states, particularly in the area of juvenile criminal law. These differences, coupled with the quantitative significance of public prosecutors' decisions for actual prosecution practice demonstrate the need to examine the extent to which it has been possible to achieve the necessary harmonisation of sanctioning and termination practice, a harmonisation that the Federal Constitutional Court has also called for.

Nowadays, the preliminary investigations by the public prosecutors are the decisive stage of criminal proceedings in most cases. This is why there is a consensus in the specialist literature on the subject that, firstly, the system of criminal proceedings needs to be completely reformed and that, secondly, that reform needs to start with the preliminary investigations. However, the proposals point in different directions. The key will be to strike a balance between a functioning system of criminal justice, on the one hand, and the rights of the accused (who is innocent until proved guilty) and the victim, on the other.

## 6.2 Abridged Version of the Chapter on Court Proceedings

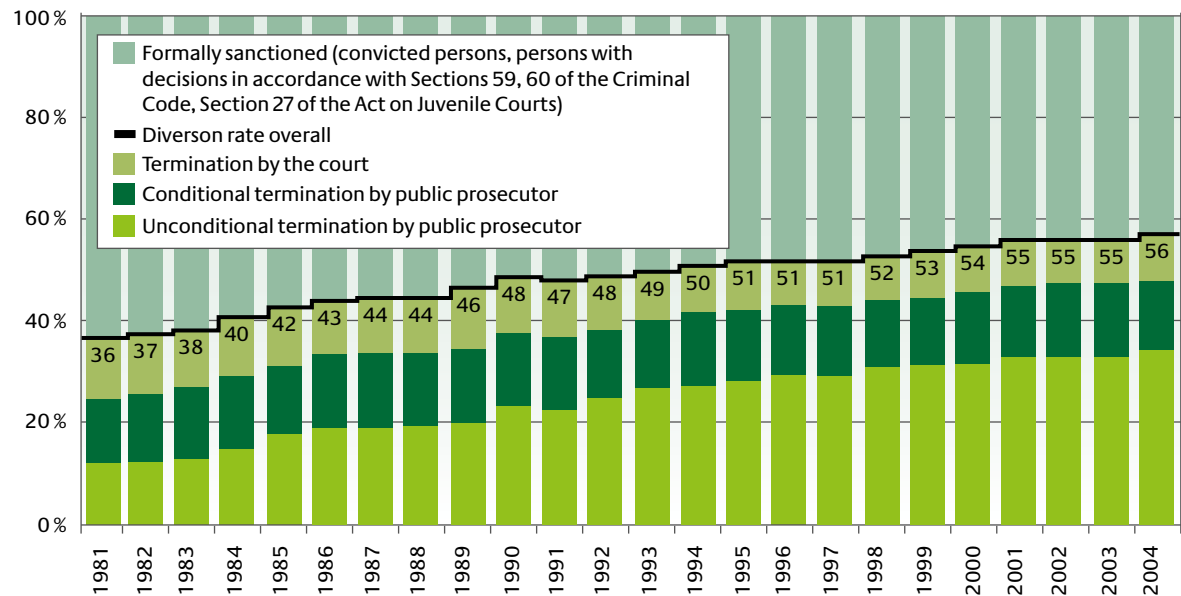
The overwhelming majority of all proceedings of first instance are dealt with by the local courts and in quite a short time: four out of five sets of proceedings are concluded within the space of six months.

**Chart K6.2-1: Development of overall sanctioning practice, excluding informal sanctions; German empire and former West Germany, 1882–2004.**  
Shares based on persons convicted under general law and under juvenile criminal law



Data source: Prosecution statistics.

**Chart K6.2-2: Diversion rates (public prosecutors and courts) overall (general and juvenile criminal law areas), 1981–2004. Share of persons whose cases were terminated in accordance with Sections 153, 153a, 153b of the Code of Criminal Procedure or Sections 45, 47 of the Act on Juvenile Courts (as a percentage of the total number of persons upon whom sanctions were imposed under general criminal law and juvenile criminal law). Former West Germany incl. West Berlin; 1995 onwards, incl. whole of Berlin**



Data sources: Public prosecutors' statistics; Prosecution statistics.

Konstanzer  
Inventar  
Sanktionsforschung

Sentencing practice over the last 100 years and more in Germany has been marked by ongoing efforts to replace custodial sanctions with non-custodial sanctions.

Sanctioning practice in recent decades has seen increasing use of informal sanctions. More than half of the criminal cases for which charges could be brought are now dealt with informally by being terminated in accordance with Sections 153, 153a, 153b of the Code of Criminal Procedure or Sections 45, 47 of the Act on Juvenile Courts. At 69% of all (informal or formal) sanctions, the termination rates in the area of juvenile criminal law are – in line with the subsidiarity principle laid down by the law – considerably higher than in the area of general criminal law.

Juvenile criminal law and general criminal law have different systems of legal consequence. In order to prevent recidivism, the former offers further-reaching and more differentiated possibilities for staggered, correctional responses than general criminal law does. This is evidently also the reason why judicial practice has continued to apply juvenile criminal law to the majority of cases involving young adults since it provides better means to take young people's circumstances and problems into consideration.

In 2004, the sanctions given to 94% of all persons convicted under general criminal law were either fines (80.6%) or suspended prison sentences (13.7%). In the area of juvenile criminal law, the share of non-custodial sanctions was 75%, making it 19% less than the figure for the area of general criminal

law in 2004. The main non-custodial sanction, and the most severe, was the imposition of disciplinary measures (58%); the share of suspended prison sentences was much lower (10%), as was the share of non-custodial correctional measures (7%). However, when comparing the figures for non-custodial formal sanctions, the higher share of informal sanctions in the area of juvenile criminal law must be borne in mind as it results in a much higher portion of petty and semi-serious crime cases not being convicted compared to the area of general criminal law.

In recent years, the – absolute and relative – number of persons (based on the total number of persons convicted) sentenced to imprisonment, particularly medium-term and long-term imprisonment, has been increasing – both in the area of juvenile and general criminal law. This is particularly true in cases of violent offences. It is not possible, using the official statistics, to determine whether this phenomenon is a reflection of a change in sentencing practice or a change in the severity of crime. In particular, the prisoner rate, which stood at 77 per 100,000 inhabitants on 31 March 2005, has developed in such a way in recent years that it is now almost back at the level it was before the criminal law reform in 1969 (79 in 1968). Combined with changes in the make-up of the prison population, this is resulting in an aggravation of the problems faced by prisons.

In addition to sanctions – or, in the case of criminal incapacity, as a measure in its own right – a measure can be imposed to reform the offender and protect the public. These measures are rarely custodial in nature but the trend has been increasing considerably over the past two decades, particularly in the form of offenders who are addicts being placed in rehabilitation centres. The dominant non-custodial measure is confiscation of the offender's driving licence.

### **6.3 Abridged Version of the Chapter on Sanctioning: from Victim-Offender Mediation to Release from Imprisonment**

#### **Victim-offender mediation**

Victim-offender mediation gives the parties involved the opportunity to settle the conflicts associated with offences (i.e. those that lead to the offence or that arise as a result of the offence or its consequences) in a manner that is satisfactory to all parties. Thus, as a conflict-settlement measure, victim-offender mediation is mainly about bringing the victim and offender together to discuss things in person, sometimes repeatedly, usually with the support of a conflict mediator.

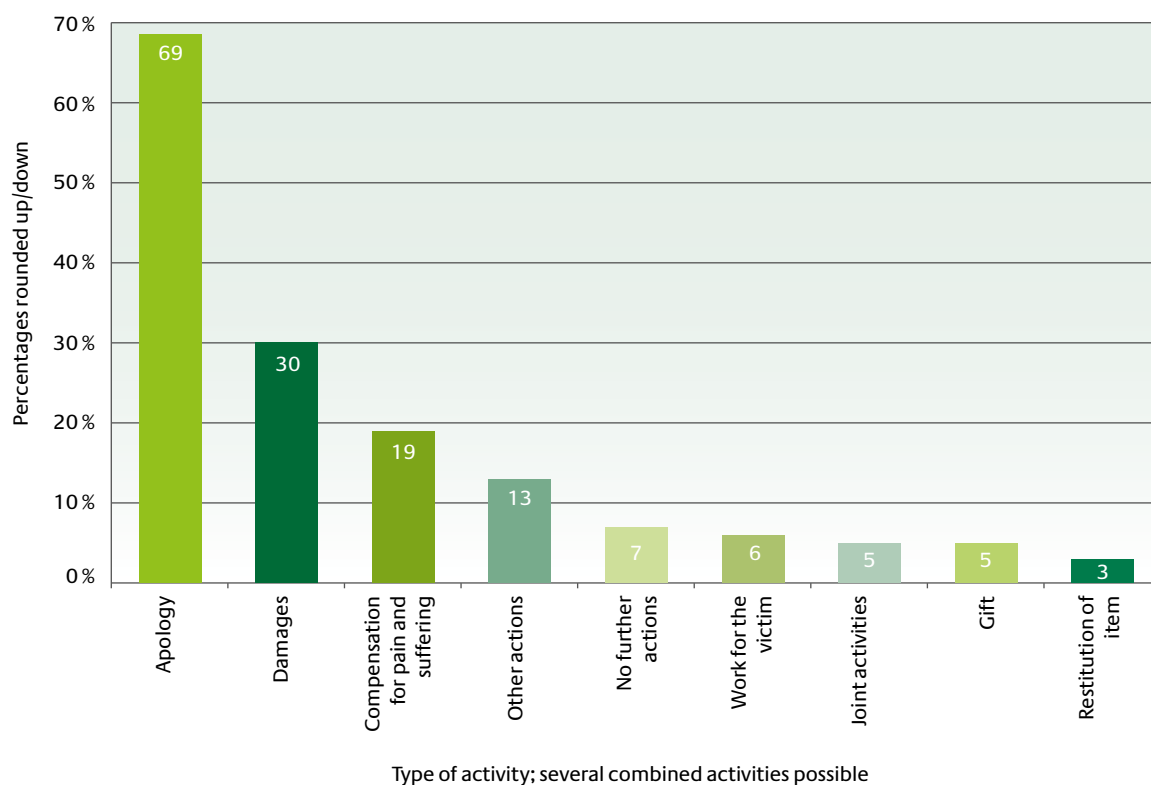
For criminal justice, victim-offender mediation is a new form of dealing with crime. It is part of a broader movement of mediation and restorative justice that is currently developing in the legal sphere. The reforms introduced since the 1990s, especially the reforms of criminal law, the law on criminal procedure and juvenile criminal law, have created a good basis for more widespread use of these measures.

Since 1990, juvenile criminal law has explicitly provided the possibility of reparation of damage or victim-offender mediation rather than pursuing prosecution of a juvenile offender or a young adult to whom juvenile criminal law is being applied. The provision in force in general criminal law since the end of 1994 was stepped up by the Act on the Establishment of Victim-Offender Mediation in the Law on Criminal Proceedings of 20 December 1999. The Act means that public prosecutors and courts now have to assess at each stage of the proceedings the feasibility of mediation between the accused and the injured party. In appropriate cases, they should work towards such mediation. However, victim-offender mediation may not be initiated against the express will of the injured party. In the case of minor offences, the public prosecutor can opt not to pursue the prosecution at all if the accused makes



good to the best of his or her ability the damage caused or if they reach a settlement with the victim or, in ultimate cases, if there is actual complete reconciliation between the two sides. Where the consequences of the offence are not minor and the minimum level of punishment possible is higher, the public prosecutor's office must obtain the court's consent. In the case of more serious offences, the public prosecutor can opt to provisionally refrain from bringing a charge if the conditions or instructions he or she plans to impose on the accused are of a nature that is likely to eliminate any detrimental impact on the public interest and the degree of culpability does not prevent such a course of action. These conditions and instructions include performing a certain activity in order to make amends for the harm caused by the offence or making serious attempts at mediation with the victim (victim-offender mediation) whilst fully or partially compensating for the offence or striving to do so. Following a hearing, the court can choose, depending on the circumstances of the case and its assessment of the offender, to either mitigate the sentence or, if the punishment to be imposed is no more than a prison sentence of up to one year or a fine of up to 360 day rates, to refrain from imposing punishment, i. e. to only formally find the accused guilty. This is always the case when the offender fully or partially compensates for his or her offence, or seriously endeavours to do so, in an attempt at mediation with the injured party (victim-offender mediation), and in cases in which the reparation has demanded considerable personal effort or personal sacrifice of the offender and the victim has been completely or largely compensated. Victim-offender mediation and restorative justice can also be used where a warning is given with the proviso of punishment and where a court determines the legal consequences, including cases of probation under juvenile criminal law or general criminal law.

**Chart K6.3-1: Activities agreed in victim-offender mediation, average figures for all agreements during 10-year period from 1993–2002**



Data source: VICTIM-OFFENDER MEDIATION RESEARCH GROUP on the institutions that contribute to the victim-offender mediation statistics in Germany.

Chart K6.3-1 shows the activities upon which victims and offenders agreed in Germany over the ten-year period from 1993 to 2002, following discussions and talks, sometimes of an intense nature.

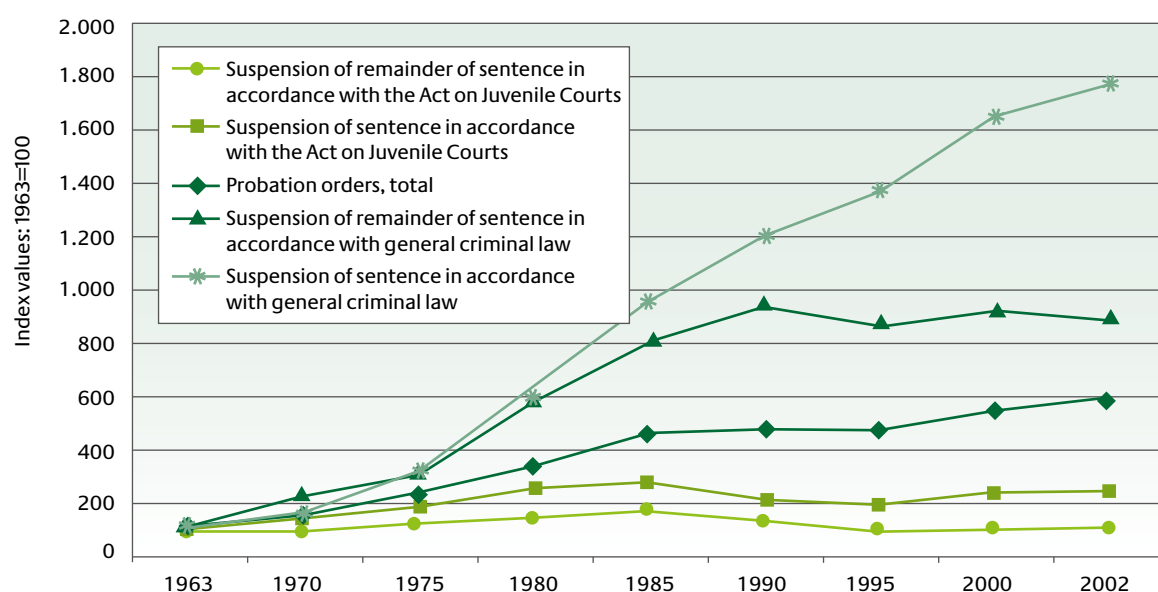
The experiences of mediators, public prosecutors, judges and other professionals involved in the process plus the results of research all demonstrate that, in the majority of cases, the offenders do perform the activities they have agreed to.

### Suspended sentences, probation orders, probation service, social services of criminal justice

Suspension of sentence on probation is the second most common sanction, after fines, in the area of general criminal law. A true case of a suspension of sentence on probation occurs when the court imposes conditions on and issues instructions to the convicted party of a nature that requires constant efforts on the convicted person's part or constitutes considerable restrictions for the convicted person during the period of probation. According to the law, the placement of a convicted person under probationary supervision, i.e. the assignment of said person to a probation officer as a probationer, is nothing more than a special form of instruction. Effectively, however, the supervision and assistance that the term "probation service" is commonly taken to refer to can be seen as the most intensive embodiment of a suspension of a sentence on probation intended to have a special preventive effect. Probation services are usually performed by full-time social workers and social education workers. Voluntary probation service, which has always been possible by law, has traditionally played an insignificant role in most regions of Germany and continues to do so.

There is a constantly increasing trend with regard to probation orders. At the end of 2002, approximately 2,500 full-time probation officers were looking after an estimated 135,000 probationers, some of whom were assigned to more than one officer. The increase in the use of this sanction in recent years has clearly been brought about by persons convicted under general criminal law, including

**Chart K6.3-2: Persons placed with the probation service in former West Germany, 1963–2002**



Data source: Probation service statistics. As of 1992, data includes whole of Berlin and excludes Hamburg.

persons who have been conditionally discharged from imprisonment and probationers who were previously (sometimes repeatedly) placed with the probation service. Where a youth prison sentence is suspended and the offender put on probation, a probation officer must always be appointed. Chart K6.3-2 shows how the trend has developed during the course of time.

Many probationers have personal problems and are subject to complex social shortcomings. Nonetheless, with the support of the probation officers, they manage to get through the probation period either completely successfully or at least without any significant reoccurrence of criminal behaviour. This fact is reflected in the courts' final rulings. In a high percentage of cases, they remit the probationer's sentence, particularly in the case of persons who have previously been convicted or put on probation. On average, the probation success rate among younger offenders is around 70%.

### **Imprisonment and execution of measures of prevention and reform**

The term "imprisonment" ("Strafvollzug") refers to the execution of criminal sanctions that deprive offenders of their liberty by placing them in appropriate institutions. The main basis of the German system of imprisonment, particularly imprisonment under general criminal law, is the 1976 Prison Act. It is built on the principle of imprisonment with the aim of resocialisation, which comprises a wide variety of measures. Imprisonment with the aim of resocialisation employs relaxed conditions that create a closer link between imprisonment and the outside world than traditional detention and that can considerably promote social integration, especially in view of the fact that the offender is to be conditionally discharged from prison or released after completing their sentence. Other measures are reading and writing classes, basic school education, vocational training, continuing education and teaching of practical skills for everyday life in the form of social training. In special cases, psychological or psychiatric therapy in the narrower sense may also be considered.

Table 6.3-1 illustrates how the number of persons in imprisonment and preventive detention has developed over time.

The figures show that, at the end of March 2006, around 64,000 persons – including those on temporary leave – were in imprisonment or preventive detention in general penal institutions or juvenile prisons, of whom 11,000 were in prisons in the new federal states. Overcrowding, of which there was a significant amount in the 1990s and in earlier decades, with penal institutions full to 120% of capacity in some cases has at least been reduced in some federal states.

Open prisons are a possibility for prisoners who are suited to the lesser security requirements and monitoring of conduct prevalent in such institutions. The number of open prisons or open sections of closed prisons varies from federal state to federal state, resulting in a major difference in the extent to which the various federal states avail themselves of this possibility. The additional ways in which imprisonment in such institutions is relaxed are day release, short-term release, work release and prison leave of up to 21 days. They form an integral part of the resocialisation approach and have proved successful, especially in those federal states that grant quite a lot of relaxations quite often. The failure rates are usually less than 1% and are usually due to prisoners returning late or violating instructions. Offences committed during relaxations are the exception.

At the end of March 2006, approximately 14,600 people were in custody pending trial, of whom 682 were young people between the ages of 14 and 18 and 1,435 were aged between 18 and 21. With around 6,700 prisoners, the area of juvenile imprisonment was the third largest. The number of persons in protective

reformatory detention has been low for several decades. However, it is currently starting to grow. At the end of March 2000, it was lower than 250; by the end of March 2006, the figure was already 380. The increase is probably partly due to the discussion surrounding the expansion of the possibilities criminal law offers for preventive detention, i.e. for violent offenders and sex offenders. The new options of “preventive detention subject to reservations” and “post-imprisonment preventive detention” – for persons still serving their prison sentence – have not yet had any significant impact on the statistics.

Where offenders are placed in a psychiatric hospital or a rehabilitation centre as a security or treatment measure, the institutions are operated by the federal-state authorities responsible for social welfare and health administration. All in all, there were around 8,100 persons in such institutions in former West Germany on 31 March 2005 – a considerable increase on the figure of 4,275 recorded at the end of March 1995.

**Table K6.3-1: Persons in imprisonment and preventive detention between 1965 and 2006**

Year (figure as at 31 March)	Number of persons in imprisonment and detention	
	Former West Germany	Germany as a whole
1965	49,573	./.
1970	35,927	./.
1975	34,608	./.
1980	42,235	./.
1985	48,402	./.
1990	39,178	./.
1995	41,431	46,516
2000	51,030	60,798
2001	50,254	60,678
2002	50,331	60,742
2003	51,881	62,594
2004	52,726	63,677
2005	52,502	63,533
2006	53,187	64,158

Data source: Prison statistics; for 2006: Statistics on the current number of persons in imprisonment and detention in penal institutions (number on 31 March, including persons temporarily absent).  
Data for former West Germany since 1995 incl. whole of Berlin.

An especially important form of therapy during imprisonment is social therapy. Since the introduction of the Act on the Treatment of Dangerous Sex Offenders and Violent Offenders, which came into effect in 1998, its importance has increased still further. Around 1,700 prisoners are currently in the social therapy institutions. The development of the numbers in the period 1997 to 2005 is shown in Table K6.3-2. The data indicates that the share of sex offenders is increasing dynamically. This is partly due to new provisions in the Criminal Code since 1998 and to an amendment of the Prison Act in 2003.

Prisoners who are addicted to drugs pose particular challenges for the prison system. They are generally estimated to account for between 30% and 40% of all persons in imprisonment but the figure can exceed that mark considerably in individual institutions or types of imprisonment.

The percentage of non-German nationals in prisons has been increasing for some time. It is currently around 22% in general but the figure is higher for certain age groups.

The highest percentage (over 40%) is among the relatively small group of young people between the ages of 18 and 21 who were convicted in accordance with general criminal law.

**Table K6.3-2: Prisoners in social therapy institutions; breakdown by main offence upon which prison sentence is/was based, 1997–2005**

Year (figure as at 31 March)	Main offence (by category)								Total
	Sex offences		Homicide offences		Property offences		Other offences		
	Number	%	Number	%	Number	%	Number	%	
1997	191	23.2	181	21.9	367	44.5	86	10.4	825
1998	224	26.4	196	23.1	339	39.9	91	10.7	850
1999	315	33.9	187	20.1	326	35.1	101	10.9	929
2000	388	36.8	219	20.8	305	29.0	141	13.4	1,053
2001	437	40.1	214	19.7	286	26.3	152	14.0	1,089
2002	526	45.4	221	19.1	260	22.4	152	13.1	1,159
2003	685	51.3	249	18.7	245	18.4	156	11.7	1,335
2004	870	55.4	298	19.0	244	15.5	159	10.1	1,571
2005	976	58.5	287	17.2	234	14.0	172	10.3	1,669

Data source: KRÖNIGER, S., 2004a, p. 40 and SCHULZ, K., 2005, p. 43.

### Release from imprisonment and aid for released prisoners

The Prison Act includes numerous regulations aimed at preparing prisoners as early as possible for their release and a life without any offences, in other words for successful reintegration into society. The aim of the prison system – resocialisation – is completely in the state’s and society’s interest. After all, among other things, released prisoners who do not re-offend mean effective protection for victims. If resocialisation is not possible for a certain prisoner, the Prison Act caters for the situation in an appropriate manner. In such cases, imprisonment is primarily intended to protect the general public from new offences.

Conditional release for prisoners after serving part of their sentence is important for resocialisation, particularly for those sentenced to long prison terms. This suspension of a remaining term of imprisonment coupled with probation is an important tool in modern crime policy, especially when those granted early release are placed under probationary supervision. The same is true of the suspension of measures imposed in order to reform the offender and/or protect the public. Since 1998, the regulations on conditional release have explicitly stressed the need to consider public security interests. Offenders who are released from imprisonment after having completed a relatively long prison sentence are usually automatically subject to supervision of conduct with the aim of countering the assumed higher risk of recidivism through special forms of monitoring.

Aid for released prisoners is a complex part of the reintegration and rehabilitation of offenders. It is partly provided by the legal authorities’ social services and by the departments for juvenile court aid within the scope of their responsibilities. The authorities responsible for social welfare and labour administration have additional means of support.

Since the early 19<sup>th</sup> century, private associations and federations intended to provide independent assistance to offenders have been playing a pivotal role in the area of aid for released prisoners.

Today, they offer a wide range of professional integration-support measures. Without this complementary help and these services, many former prisoners would not be able to be reintegrated into society. The following list gives an initial idea of the range of assistance provided to prisoners:

- advice while the prisoner is still in prison as a means of early preparation for release,
- job placement service,
- accommodation placement service,
- debt advice,
- management of money,
- debt-clearance agreements in which the creditors release the debtor from debts,
- financial support,
- arrangement of social welfare benefits,
- aid in kind,
- advice for addicts,
- placement in outpatient therapy if other disorders exist,
- family work,
- social training and social therapy,
- assisted living with social therapy support,
- victim-offender mediation,
- assistance to prevent re-imprisonment and
- organisation of leisure activities.

Together, state-provided aid for released prisoners and private aid for offenders form a cornerstone of tertiary crime prevention. However, the discussion of this aspect in terms of theory, social policy and law enforcement policy is still in the initial stages. In addition, there are reservations among those involved in aid for offenders in connection with the opinion that the debate concerning crime prevention may result in a weakening of the resocialisation approach and, ultimately, may end in increased repression of prisoners and released prisoners.

## 6.4      **Abridged Version of the Chapter on Offenders' Conduct following Criminal Sanctions – The Latest Recidivism Statistics**

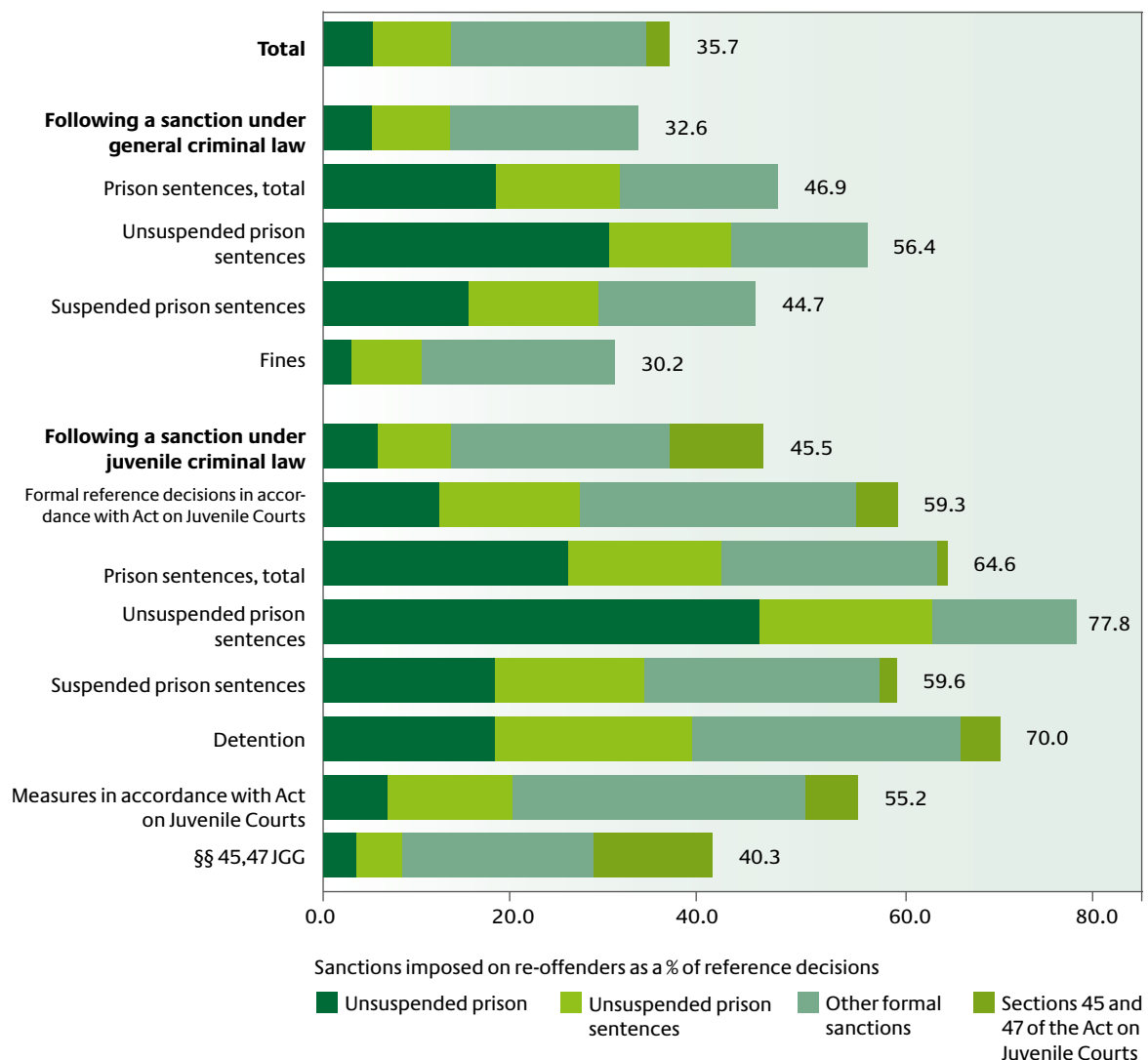
One of the goals of criminal sanctions is prevention. The extent to which this specific aim of preventing the sanctioned person offending again is achieved is currently not registered in any of the official statistics. The criminal justice statistics only provide information on previous convictions, not recidivism.

Following preliminary work by the Federal Registry of Judicial Antecedents in the 1980s, a research group commissioned by the Federal Ministry of Justice and the Federal Statistical Office compiled recidivism statistics, on the basis of the entries in the Federal Register of Judicial Antecedents, for a four-year period taking 1994 as the base year. The data was used to produce recidivism statistics that provide basic information on recidivism rates by offence, sanction, age, previous record, gender and nationality. Thus, for the first time, these recidivism statistics provide information on recidivism for the whole of Germany, for all sanctions and based on one and the same year. The main results are described below.

Recidivism rates are lower than often assumed. Only a third of the persons convicted came to the attention of the criminal justice system again within four years. If the offender is reconvicted, a custodial sanction is only imposed in exceptional cases. No more than 5% were given an unsuspended prison sentence and only 1.2% were sentenced to more than two years' imprisonment.

The more severe the sanction, the higher the recidivism rate. The highest rates are after suspended and unsuspended prison sentences for juveniles, prison sentences for adults and detention for juveniles. As "selection effects" possibly play a role, e.g. persons who have a high number of previous convictions

**Chart K6.4-1: Recidivism following sanctions under general criminal law and juvenile criminal law, 1994**  
 (Chart shows recidivism rates overall and broken down by type of sanction imposed on the re-offender)



Data source: JEHL, J.-M. et al., 2003, Table 1.a, p. 121, 4.3.a, p. 123.

and are thus assumed to be more likely to re-offend are given more severe punishment than first-time offenders who have committed the same crime, this descriptive finding does not prove that severe sanctions have a negative impact. However, it does show that tougher sanctions are not a suitable way to compensate for the higher risk of recidivism assumed in the case of serious offences.

The recidivism rates, just like the crime rates, are age-dependent and gender-dependent. The crime rate is much higher for young people than for adults. So, as would be expected, the recidivism rates among young people are much higher than for adults. The recidivism rates are also gender-dependent, i.e. they are much lower for women than for men.

The recidivism rates are higher in the cases where juveniles are placed in detention than in the cases where a juvenile prison sentence is not executed.

Thus, the recidivism statistics do not support the assumption that the recidivism rate might drop by placing the juvenile in detention in addition to imposing a suspended prison sentence.

The findings derived from the recidivism statistics are no substitute for research on the impact of sanctions. In order to be able to draw conclusions, it must be possible to compare the differently sanctioned groups. Nonetheless, the descriptive data in the recidivism statistics can be used to assess whether the expectations regarding the preventive effect of sanctions are supported or refuted by the empirical data. The latter does not support the assumption that, in comparable areas of petty to semi-serious crime where sanctions have changed due to regional differences or over time, stricter sanctions are more effective than milder ones when it comes to preventing recidivism. This conclusion supports the current approach in law enforcement policy of enabling a lower level of intervention, not least in view of the need for sanctions that are in proportion with the offence. This is particularly true of the possibilities for dismissing cases under juvenile criminal law, the expansion of the system of fines and the widening of the scope and use of suspended sentences coupled with probation. The findings derived from the recidivism statistics thus endorse the practice, where appropriate, of dismissing cases or imposing non-custodial sanctions, particularly suspending more prison sentences and placing the offenders on probation, especially for groups for whom unsuspended prison sentences might previously have been deemed necessary.

## **6.5 Actions by and Views of the Federal Government**

The Federal Government considers the information presented on aspects of how criminal law is used to tackle crime, from the preliminary investigation by the public prosecutor through to imprisonment and execution of measures of prevention and reform, probation service and supervision of conduct, very important and will take it into account when developing further law enforcement measures.

### **6.5.1 Aspects of Criminal Proceedings**

As described in Chapter 6.1, the trend towards an increase in the number of preliminary investigation proceedings dealt with, primarily by dismissing cases or applying for penal orders, as already presented in the 1<sup>st</sup> PRC, has continued. This bears testimony to the fact that the state responds to violations of penal provisions in order to maintain law and order but that it does so, in suitable cases, in a fashion that avoids the negative consequences of sanctions as far as possible. Furthermore, dismissing cases where appropriate contributes to the economical use of the scarce human and financial resources. Public prosecutors are obliged, within the legal constraints, particularly the principle of mandatory prosecution, to take the legal authorities' financial and human resources into consideration and thus to refrain from bringing a charge in appropriate cases.

The trend reflected by the increased use of the legal instruments mentioned above also mirrors the long-running societal trend towards increased utilisation of the legal authorities to resolve issues concerning co-existence in society. In other areas of the justice system, this trend has led to the introduction and strengthening of arbitration proceedings and conciliatory proceedings (including out-of-court proceedings) and the development of mediation models.

Where the dismissal of a case or application for a penal order depends on an assessment by the public prosecutor's office, e. g. an assessment of the offender's degree of culpability (Sections 153 ff. of the Code of Criminal Procedure) or of the need for a hearing (Section 407 of the Code of Criminal Procedure), different appraisals due to the different views and thoughts on law enforcement are unavoidable – a fact



reflected in the differences in the figures reported for the various federal states. This phenomenon can also be seen within the federal states, depending on whether the offence was committed in an urban or a rural region, and it is not limited to the aforementioned public prosecutors' decisions – it can also be observed in the severity of the sentences passed. No legislative action is required in this respect.

The Federal Government does, however, see a need for legislative action concerning the following aspects of criminal proceedings, in particular:

In order to strengthen victims' rights further, the legal instruments of recovery assistance and asset confiscation, which have already played an increasingly important role in public prosecution practice in recent years on the basis of current legislation, are to be improved. A bill presented by the Federal Government to that end (BT-Drs. 16/700) was discussed in its second and third readings in the Bundestag (lower house of the German parliament) on 29 June 2006 and the version recommended by the Legal Affairs Committee (BT-Drs. 16/2021) was adopted. By enabling provisions for asset confiscation to be upheld for a period of three years after the offender's conviction takes legal effect, it gives victims sufficient time to assert their claims and to access the assets confiscated by the state. However, if victims do not assert their claims, the intention is that, in contrast with previous practice, the criminal assets will go to the state and not have to be paid back to the offender. The core of the bill is thus the introduction of the state's right to absorb assets. Presently, the assets cannot be declared forfeited to the state if the victim still has the right to have the assets returned, irrespective of whether the victim actually asserts that claim against the offender. The new provision serves to promote both fiscal interests and people's sense of right and wrong.

In addition, the legal basis for telecommunication surveillance is to be revised as part of the harmonisation of the procedures for undercover investigations in criminal proceedings, as announced in the Coalition Agreement. In this context, the transposition of the EU Directive on the retention of telecommunication data will have to be looked at. The new provision is intended to strengthen the legal protection afforded to the persons affected by such measures and to eliminate any uncertainties and loopholes in the application of the law.

In particular, the reform ideas are based on fact-based legal studies.

The Federal Government therefore shares the opinion that legislative measures in the areas of criminal proceedings and the practical application of regulations should be evaluated where necessary and where the financial resources are available.

In addition, crime trends are such that international collaboration in the field of investigation and prosecution needs to be strengthened. That is also the aim of the project that is linking up the criminal registers of Germany, France, Spain, Belgium and the Czech Republic – with other countries set to join soon. The project enables information from the partner countries' criminal registers to be exchanged electronically, thereby considerably accelerating and simplifying mutual legal assistance.

### **6.5.2 Aspects of Juvenile Criminal Proceedings**

The statistics presented in the report show that the long-running trend towards increasing use of the possibilities of diversion in the area of juvenile criminal law (Sections 45 and 47 of the Act on Juvenile Courts) is continuing. The Federal Government continues to welcome this trend. The diversion regulations enable public prosecutors and courts to avoid formal proceedings if doing so makes sense in

terms of the correctional effect on the offender. In cases where no formal response in the form of a ruling is required, the regulations enable swift, informal measures to be implemented that reduce the risk of the juvenile being stigmatised and that are often a better means of preventing future offences than other methods. This is also in line with the legislators' aim of juvenile criminal law being based on correctional principles. In this context, the Federal Government stresses that, in accordance with Section 37 of the Act on Juvenile Courts, public prosecutors and judges at juvenile courts must have skills and experience that enable them to decide on correctional sanctions for juveniles, and that those skills must be promoted more than in the past by means of appropriate continuing professional development courses.

The Federal Government suggested back in its statement in response to the 1<sup>st</sup> PRC that the range and quality of youth welfare services be improved, regional differences in use be evened out and that acceptance and efficiency of informal and non-custodial sanctions thus be promoted. The uncertainties that arose due to the regulation concerning responsibility for controlling youth welfare in Section 36a of Volume VIII of the Social Code, which came into effect in October 2005 as part of the Act on the Further Development of Child and Youth Welfare, give grounds to appeal again, urgently, to the federal states and municipalities to take the necessary action. Primarily, they need to work together to identify solutions that ensure that the feared decline in the quantity and quality of youth welfare services in this area does not occur. Differences of opinion between the youth welfare services and the legal authorities of the federal states, concerning cost allocation as well as actual welfare-related matters, must not result in a situation in which juvenile criminal law continues to provide a wide range of possible responses that then come to nothing in practice.

### **6.5.3 Aspects of the System of Criminal Sanctions**

The Federal Government shares the positive view of victim-offender mediation, which has now been explicitly acknowledged by the law for 15 years as a means of diversion, i. e. dealing with cases outside of formal criminal proceedings. In spring 2005, the Federal Ministry of Justice presented a report entitled "Trends in Victim-Offender Mediation", providing those involved in the practical application of such schemes with a detailed, systematic overview of the latest trends in victim-offender mediation. The report demonstrates that victim-offender mediation has been a success – for quite some time now – and that today's system of criminal sanctions and responses to crimes would be inconceivable without it. The Federal Government believes that one of the central goals of legal policy should be to repeatedly and vigorously draw attention to the importance that victim-offender mediation plays in ensuring law and order and to encourage mediation attempts. It must also be made clear, though, that victim-offender mediation is not a solution mainly designed to deal with petty offences, and that, as rulings by the Federal Court of Justice have shown, it can be considered for serious offences as well, even if the intention in criminal proceedings is not to provide an alternative to punishment but rather merely to mitigate the punishment. The need to save on costs must not result in a reserved approach to initiating or conducting victim-offender mediation, especially since such mediation can reduce the costs of proceedings significantly; at the same time, however, they must not lead to a decline in quality.

Since the introduction of victim-offender mediation, the Federal Ministry of Justice has had a series of expert studies conducted on its practical implementation. Since 2000, the Federal Ministry of Justice has been supporting the research group that designed the victim-offender statistics and evaluates them, by commissioning the evaluations. The last report, published in 2005 and already mentioned in the previous paragraph, is to be followed by further reports. The statistics available on victim-offender mediation have been improved by making additions to the statistics of public prosecutors, courts deal-

ing with penal matters and monetary fines and law enforcement authorities. In particular, the official statistics do not yet record how often victim-offender mediation is conducted in cases involving juveniles or young adults. The information available on this topic can thus only be improved by consultation with the federal states.

With regard to the other aspects, the Federal Government feels that the information presented in the expert section above, especially in Chapter 6.2, corroborates its view that the current system of sanctions is largely successful. The long-term increase in the percentage of (juvenile) prison sentences suspended, which in turn display an increasing success rate, also brings the Federal Government to this conclusion. These increases are in line with the intentions of the legislators, who, by deciding to replace prison sentences with fines and other non-custodial sanctions, have initiated an irreversible trend in law enforcement policy – a fact that needs to be emphasised to those who repeatedly call for a general tightening of sanctions. Still, some corrections are necessary in peripheral areas, which the Federal Government will make.

At present, the Federal Government sees the main need for action in the area of the law governing measures to reform the offender and protect the public. Such measures are an important way of resocialising dangerous offenders, irrespective of their guilt, and/or protecting the general public. As set out in the Coalition Agreement, the Federal Government will reform the system of committal to psychiatric hospitals or rehabilitation centres in order to create more flexibility with regard to measures to reform the offender and protect the public as well as striving for a higher level of crime control. Better use is to be made of the available resources, successful therapies promoted and protection from dangerous offenders expanded. There are no plans to enable preventive detention to be ordered in cases of criminal incapacity. If mentally ill offenders are deprived of their liberty – perhaps to an extent beyond their degree of culpability – the state has an obligation to provide them with sufficient opportunities for treatment and not to permanently prevent them from using such opportunities later.

The need for a means of ordering preventive detention at a later stage was met by the introduction of “preventive detention subject to reservations” and “post-imprisonment preventive detention”. The Federal Government is monitoring how these newly created legal instruments are used. It will also eliminate the loopholes by legislative means in the future. In accordance with the Coalition Agreement, it will also make post-imprisonment preventive detention possible for extreme cases of highly dangerous young offenders, which cannot be ruled out, even if convicted under juvenile criminal law.

#### **6.5.4 Execution of Sentences, Probation Service and Supervision of Conduct**

Germany follows international criminological findings, which are reflected, for example, in the basic principles of the Council of Europe. They state that imprisonment should be considered as the last resort and therefore only be used in cases in which the severity of the offence makes any other sanction or measure appear clearly unsuitable (cf. Recommendation R (99)22 concerning prison overcrowding and prison population inflation of 30 September 1999). By contrast, suspended sentences coupled with probation are deemed to be one of the most effective and constructive measures; not only do they reduce the length of imprisonment, they make a major contribution to the planned reintegration of the offender into society (cf. Recommendation Rec (2000) 22 of 29 November 2000 on “community sanctions and measures”).

Furthermore, the constant rise in the number of suspensions of sentences and remaining sentences since the introduction of such possibilities in the early 1950s confirms that the Federal Government

is correct in its law enforcement strategy of replacing prison sentences with fines and sanctions that restrict liberty. In particular, suspension of sentences/remaining sentences coupled with probation, with its range of possible instructions, is an effective means of supervision and non-custodial monitoring of offenders who are not expected to offend again – at least if the instructions issued are followed. This method has proved successful, as shown by the statements above concerning the success rate – especially for re-offenders on probation. It therefore makes a substantial contribution to internal security from a prevention point of view. Probationers and their families do not have to cope with the stigmatisation linked to imprisonment, loss of employment and the associated loss of social status. As a result, there is no need for the costly social reintegration measures needed after a prison term. In addition, the constantly growing percentage of probationary sentences has a very direct positive impact on the scarce and costly prison capacities as well as relieving the burden on the federal states' budgets.

In Germany's constitutional system, the administration of justice, which *inter alia* covers penal institutions and probation services, is the task of the individual federal states. Now, with the reform of Germany's federal system, which has deconcentrated the decision-making levels of Federal Government and the federal states, the legislative powers concerning the prison system, which used to be held by the Federal Government, have been transferred to the federal states. It is to be assumed that the Prison Act, which is currently valid throughout Germany, and the practice based upon it, along with the above-mentioned agreements and recommendations at international level will continue to be reflected in the legislation at federal-state level.

In a ruling passed on 31 May 2006<sup>10</sup>, the Federal Constitutional Court found that, on constitutional grounds, juvenile imprisonment required a specific legal basis. It set legislators a deadline of the end of 2007 to enact a law to that end. At the same time, it specified criteria, based on constitutional law, for the content of the new law. A specific need for regulation was seen in connection with the following aspects:

- the importance of family relationships and the possibility to cultivate them while in prison (possibilities for visits must be considerably higher than the norm for adult prisoners);
- possibilities for physical exercise;
- the nature of sanctions imposed due to violation of duties;
- measures aimed at developing and not needlessly restricting contacts within the penal institution that might be conducive to positive social learning;
- precautions to prevent prisoners assaulting each other;
- accommodation in relatively small groups based on age, length of sentence, offences committed; separate accommodation of violent/sex offenders with special possibilities for supervision; and
- concrete criteria concerning the required provision of human and financial resources, especially
  - provision of sufficient possibilities for education/training, which can be used effectively even if the offender is only in prison for a short time,
  - forms of accommodation and supervision that facilitate social learning and protection of prisoners from one another,
  - sufficient educational and therapeutic support and
  - measures to prepare prisoners for release, linked with suitable assistance for the post-release phase.

<sup>10</sup> BVerfG, 2 BvR 1673/04.

Since the federal states are not supervised or instructed by a federal authority with regard to execution of prison sentences and provision of probation services, Germany does not have a central prison or probation service authority. The Federal Government is following with great interest the efforts of the federal-state legal authorities to restructure probation services and even to privatise them in order to cater even more efficiently for the growing clientele.

Efforts aimed at transferring the tasks of the probation and court aid services to independent bodies (so as to pool and streamline the structures and thus ensure that the legal authorities function properly in the face of scarcer financial and human resources) can only be successful if a decline in quality can be ruled out despite the focus on cost aspects. This is the direction being taken in structural reforms of the existing state system of probation and court aid services in order to improve efficiency despite the growing number of cases to be processed. Such an improvement could be brought about by, for instance, establishing central coordination offices with extensive advisory tasks and tasks related to the design of the services, by supporting probation officers by providing service units and networked computers, strengthening the position of the senior probation officers in their capacity as supervisors, developing job specifications for senior probation officers and technical standards or streamlining the organisational structure of the social services and stepping up their cooperation with the penal institutions.

With regard to prison practice, the Federal Government emphasises the extremely low national failure rate (less than 1%) of relaxed prison conditions. The figures show that they have been an unconditional success and that there is no need to decrease the amount of relaxations for reasons of internal security – neither from the legislative, nor from the practical point of view. On the contrary, they make it possible and are intended to make it possible for prisoners to maintain social contacts, to prepare for their release and to be assisted as they re-integrate, in other words, to prevent recidivism.

Even when offenders have been released after completing a prison sentence or a reformatory detention sentence, they often need further assistance, support and monitoring. For different reasons, there is a risk that this group will not become socially re-integrated. In the case of persons released after having completed a full sentence, this is reflected in high recidivism rates. In such cases, supervision of conduct is essential as a means of monitoring and supervising them in a way that ensures the public are protected and helps support the released offenders and promotes their re-integration. The chief aim of the agreed reform of the system of supervision of conduct as set out in the Coalition Agreement is to make it more efficient and to ensure tighter monitoring and more intensive support for released offenders. The objective of the reform planned by the Federal Government is to make the system of supervision of conduct more effective in use so as to create the necessary environment for an improvement in the degree to which offenders – for whom the forecast for their conduct is uncertain or unfavourable – conduct themselves within the confines of the law whilst on probation.

#### **6.5.5 Continuation of the Research on the Degree to which Offenders Conduct themselves within the Confines of the Law following Criminal Sanctions (Recidivism Statistics)**

The second feasibility study concerning periodic research on the degree to which offenders conduct themselves within the confines of the law following criminal sanctions was completed in 2002. Findings from the study were published in 2003 under the title “Offenders’ Conduct following Criminal Sanctions. Annotated Recidivism Statistics” in the “recht” series published by the Federal Ministry of

Justice. In addition to the findings concerning criminal sanctions for repeat offenders, the study came to the general conclusion that “...the recidivism statistics based on the data from the Federal Registry of Judicial Antecedents (...) can be used to provide empirically substantiated answers regarding the recidivism rates actually registered (...)”<sup>11</sup>

In view of these results, the Federal Ministry of Justice assessed the possibilities for periodic research on the subject. The outcome, which also took into account the financial possibilities, was that action was taken to commission additional research to examine the recidivism rate on the basis of another collection of data from the register. The intention is to ensure that, in a later step, a statistical assessment of the degree to which offenders conduct themselves within the confines of the law following criminal sanctions is possible for a longer period than four years. Though the Federal Ministry of Justice cannot anticipate future decisions, its aim is for such research to be conducted at regular intervals.

## 7 Crime Prevention

### 7.1 Abridged Version of the Chapter on Crime Prevention

Criminal law alone can only make a limited contribution to crime prevention. More comprehensive strategies are required, reflecting the different potential risks. “Primary prevention”, for instance, seeks to promote prosocial skills by supporting the process of socialisation during childhood and youth. “Secondary prevention” is intended to reduce the opportunities and incentives to commit offences, i.e. by securing goods and property (since “opportunity makes the thief”), reducing situations that might provoke offences (e.g. banning alcohol at football matches, speed limits, speed and alcohol checks on the roads), advising and strengthening potential victims (e.g. through self-defence courses) and potential problem groups (in order to reduce their risk of offending). “Tertiary prevention” attempts to reduce the probability of recidivism after an offence and to promote resocialisation by means of appropriate responses. Crime prevention work also deals with the factors that create fear of crime even though they are rarely directly linked to the objective crime situation.

These preventive tasks cannot be performed by the police and legal authorities on their own; what they primarily require are communication and cooperation structures and a society and social policy that provide guidance. This society-driven crime prevention takes place against the backdrop of a functioning system of criminal justice that provides prevention strategies intended to influence society as a whole (by explaining the rules of society), persons prone to offending (through “negative general prevention”) and accused and convicted persons (e.g. through diversion and/or resocialisation).

The earlier prevention starts, the more effective it is. Successful crime prevention measures improve the security of the general public, avoid an impairment of quality of life caused by fear of crime and improve the level of protection against the risks posed by offences. In addition, they lighten the load on law enforcement and judicial authorities.

Germany now has a wide assortment of institutions designed to promote crime prevention. By establishing the German Forum for Crime Prevention, the Federal Government and the federal states have created a platform that brings together various fields. It attaches particular importance to crime

<sup>11</sup> JEHL, J.-M. et al., 2003, p. 7.

prevention on the local level since a large amount of everyday crime occurs in the immediate environment in which the offenders and victims live.

The main failing of Germany's present prevention strategies is that the crime prevention measures, projects, initiatives, etc. are usually not systematically evaluated. Such evaluation is, however, vital in order to provide a substantiated indication of the effectiveness of prevention work. The findings can then be used to make sure that taxpayers' money is used for effective strategies. In particular, criminology and law enforcement policies in the English-speaking world have already made more progress in this respect and have evaluated crime-prevention methods meticulously. The methods that they have proved to be effective should thus be examined carefully to determine whether they could also help reduce crime in Germany given the legal and social conditions prevalent in our country.

As well as making good the wrongdoing caused by offences, the aim of criminal law is to stop (further) offences happening (through prevention). Whilst that aim is given priority in the area of juvenile criminal law, general criminal law is also intended to make amends for wrongful behaviour. The prevention objective is pursued by forming and reinforcing norms and rules ("positive general prevention"), on the one hand, and by general deterrents ("negative general prevention"), on the other, backed up by preventive deterrents and measures to reform individual offenders or protect the public from them ("individual-specific prevention").

Contrary to widespread opinion, current criminological findings suggest that the deterrent ("negative general prevention") effects of the threat, imposition or execution of punishment are relatively minor. In the area of minor to semi-serious crime, at least, it can be said that the severity of the punishment administered does not have any measurable significance, i. e. that – under the conditions of a criminal law system – the anticipated severity of the punishment is irrelevant. Only the risk of being discovered as perceived by the offender is slightly relevant, though only for a range of relatively minor offences. Nor has any evidence been found to date to confirm that tightening criminal law would have a positive influence on people's awareness of norms and rules.

Nonetheless, to maintain the public's faith in the state and thus to protect the state monopoly on force, it is important that the state responds appropriately, and is seen to be responding appropriately by the public, to violation of legally protected rights, in other words, to crime.

With regard to special preventive effects of punishment, there is no empirical proof that – where the offenders and offences are comparable – the recidivism rate is lower after conviction than after an informal sanction (diversion). Where differences have been seen, in similar groups, the recidivism rates were lower following diversion. There is no evidence of negative effects of diversion compared to formal sanctions.

In the area of minor to semi-serious crime, different sanctions do not have different effects on whether offenders conduct themselves within the confines of the law whilst on probation; in fact, the sanctions are largely interchangeable without there being any measurable consequence in terms of recidivism rates.

If a trend can be said to exist then it is that the recidivism rate is higher, based on similar offences and offenders, following more severe sanctions. In particular, there is still no group of juvenile offenders for whom detention or (unsuspended) prison sentences have been empirically proved to have a better preventive effect than non-custodial sanctions.

This finding corresponds with the results of, in particular, American secondary analyses. They show that there is no empirical proof to support the assumption that more severe sanctions can result in a measurable improvement in the rate of better conduct during probation. Programmes designed to produce special preventive deterrents, be they in the form of shock probation, long periods in boot camps or “scared straight” visits to prisons, do not have the desired impact; instead, they often displayed extremely counterproductive effects – at least in cases where adequate methods were used to monitor their success.

## **7.2 Actions by and Views of the Federal Government**

### **7.2.1 Crime Prevention Using Non-Repressive Means**

The Federal Government considers crime prevention equally as important as the statements above do. Its express aim is not simply to tackle crime through resolute prosecution, but also to employ non-repressive prevention measures to counter it, not least in the interests of potential victims. Prevention of crime is a core objective of the Federal Government’s law enforcement policy. Where offences cannot be prevented, crime prevention measures must attempt to minimise the harm caused. That also applies to the psychological harm suffered by the victims. Victim protection and victim support are essential components of crime prevention. In addition, crime prevention has to strengthen the public’s sense of security. As this report indicates on several occasions, there is a considerable divergence between people’s sense of security and the actual risks. An objective portrayal of the situation, which, as with the present report, neither glosses over nor exaggerates the details, is a good way of reducing excessive fear of crime.

The Federal Government shares the view that more efforts are required at all levels in Germany to evaluate crime-prevention measures and projects. This is true of all three of the forms of evaluation addressed in more detail in the report, i. e. formative evaluation, process evaluation and evaluation of outcomes. The latter, in particular, can help to indicate, by determining the success of a project, how the funds available for crime prevention can be put to effective use and unnecessary expenditure on ineffective projects can be avoided. Furthermore, evaluation helps to detect error sources in the design or implementation of projects so as to improve the quality of future projects.

The Federal Government believes that open use of CCTV schemes at crime hotspots in public spaces is a good means of effective support for the police’s work to avert risks and investigate offences. With this in mind and in view of the current developments regarding the risk posed by terrorism, the Federal Government explicitly supports the call made in the resolution adopted by the federal states’ Conference of Ministers of the Interior and Senators for Domestic Affairs on 8 September 2006 that video surveillance should be expanded at crime hotspots, which can include, where appropriate, train stations, airports and public places.

As described, crime prevention encompasses a wide range of measures for which different bodies are responsible. Crime prevention is a task for the whole of society. That means that it is not only the Federal Government, the federal states and the municipalities that have to do their part. All forces in society, especially the religious communities, welfare associations, numerous other organisations (e.g. in the field of victim protection or sport) and business, have to get involved as well. In addition, crime prevention is a task for every individual too – the important contribution made by parental upbringing is just one example.



The bodies mentioned would not comply properly with their responsibility to society as a whole if they were merely to work independently of one another. Working in such a way would automatically lead to double effort, other forms of inefficiency and unnecessary expenditure. These points have been known for some time and have resulted in different forms of cooperation at all levels. Information-sharing, opinion-sharing and cooperation in the analysis of problems of a local and wider nature are just as important in that work as collaboration on concrete projects.

The cooperation between all of the bodies involved in crime prevention must not be limited to casual cooperation on individual projects, as useful as it is. To secure long-term success, permanent structures are necessary. The Federal Government therefore welcomes the fact that Germany currently has some 2,000 crime prevention organisations.

One of the most important ones, due to its nationwide mandate and the fact that it brings together experts from various areas of responsibility, is the “German Forum for Crime Prevention” foundation. Through the Federal Ministry of the Interior, the Federal Government has contributed approximately half of the foundation’s capital. It has provided support in the form of employees posted to the Forum’s office. In addition, it has conducted joint events with the Forum and lent it both pecuniary and non-pecuniary support. The Federal Government is represented on the Forum’s Board of Trustees by five federal ministers; so far, the presidency has been held by the Federal Minister of the Interior or the Federal Minister of Justice. The Federal Government also has high-ranking representatives on the Forum’s Executive Committee. It will continue to do its part to ensure that there is nationwide networking and cooperation in the field of crime prevention. The Federal Government would like to thank all of the institutions and people who work in the Forum, not least the representatives of industry who have made a financial contribution. However, it would welcome an increased financial commitment on the part of industry so that the possibilities for the Forum’s work could be improved.

Cooperation in the field of crime prevention involves a wide variety of professions. The legal authorities, police, youth workers, social workers, kindergartens, schools, psychiatrists, psychologists, spiritual carers, town planners, geriatric nurses, sports associations and security service companies are but a few examples. The aim is for these occupational groups to work together, taking into account their areas of responsibility and making targeted use of the knowledge and skills of the individual professions, in order to improve the results of prevention efforts. This means that the members of the individual groups must have adequate knowledge of the measures that the other professions can employ to help solve problems. For example, schools should know in which instances of violence it makes sense to bring in child/youth psychologists, the youth welfare service, the police or even the family court. Basic knowledge on interdisciplinary cooperation should be taught during the training for the individual professions; continuing training in this field, as provided, for example, in conferences held jointly by police officers and youth welfare workers, is extremely important.

Crime prevention has gained ground at international level in recent years. Germany is involved in this field in the organisations of, in particular, the United Nations, the European Union and the Council of Europe.

On 5 November 2004, the European Council endorsed the “Hague Programme on Strengthening Freedom, Security and Justice in the European Union”, thereby assigning crime prevention an important role as a vital part of the efforts to create a common area of freedom, security and justice.

One component is the EU Crime Prevention Network, created in 2001 as an efficient means of support for the member states, the Council and the EU Commission. Every EU member state is represented in the EUCPN; Germany nominated representatives of the Federal Ministry of Justice, the Federal Ministry of the Interior and the German Forum for Crime Prevention as contact points for the EUCPN. The Network is primarily intended as a platform for sharing information on best practice in the field of prevention and strengthening crime prevention at EU level. Its activities focus on the issues of juvenile crime, urban crime and drug-related crime. Information on prevention projects is exchanged systematically and regularly via the EUCPN website and newsletter. At the annual “Good Practice Conference”, the member states present successful and exemplary crime-prevention projects. EUCPN has proved to be an effective knowledge-sharing tool. Based on the call made by the Hague Programme for member states to strengthen and “professionalise” the EUCPN, initiatives are currently underway to reform the Network.

As there are so many crime-prevention projects, the expert section above purposely refrains from listing individual projects. For the same reason, the Federal Government has not provided an overview of its crime-prevention measures and projects. However, since the Federal Government would like to give examples of crime-prevention activities, it will refer to a few legislative measures and individual projects in the field of non-repressive crime prevention in the following.

Legislative measures unrelated to criminal law and law on criminal procedure can also help to prevent crime. They can make people more aware of certain issues, as is the case with the Act on the Rejection of Violence in Children’s Upbringing, or improve the framework for crime-prevention activities. Crime prevention needs to start in the family since that is where children and young people acquire key elements of their future behaviour patterns. Those who have been “the weak one” and seen that others have got their way using violence try to do the same when they find themselves in the position of “the strong one” (in a “cycle of violence”). But those who learnt early on that conflicts can be solved without using violence will have less reason to resort to violence later on in life. As a reflection of this and other aspects a “right of the child to a violence-free upbringing” was created in the Civil Code in November 2000. Section 1631, Subsection 2 of the Code makes it clear that neither physical punishment nor psychological harm are suitable means of disciplining children. To raise awareness of the Act, the Federal Government conducted a nationwide campaign with the slogan “More respect for children”. An examination of the extent to which this right is actually enforced, supervised by Professor Bussmann from Halle-Wittenberg University, indicates a positive trend.<sup>12</sup>

On behalf of the Federal Ministry of Justice, the German Forum for Crime Prevention conducted a project entitled “Primary Prevention of Violence against Members of Specific Groups – Particularly Young People” in the period 2001 to 2004. The project dealt with hate crime, a form of violent crime based on prejudice and directed at foreigners, disabled persons, homeless persons and homosexuals. In Germany, the main forms of hate crime are right-wing radical, xenophobic and anti-Semitic offences. Documentation and a socio-psychological report were produced for the project and a workshop and a symposium were held. In addition, an interdisciplinary working group examined the issues and presented a detailed report. The latter stresses the significance of primary prevention, particularly teaching kindergarten and school children to be tolerant and control their aggression. The project’s findings can be downloaded from the German Forum for Crime Prevention website ([www.kriminalpraevention.de](http://www.kriminalpraevention.de)).

<sup>12</sup> Cf. Chapter 3.1.5.1

With regard to the ever-growing number of crime prevention events, the research section of the report mentions the German Congresses on Crime Prevention as the most important and largest German event (the last one was attended by around 1,900 delegates). The Federal Government has often been involved in organising and staging the Congress, by organising a forum, contributing speeches and opening addresses and sharing opinions with the programme organisers. It also regularly contributes to the event through an information stall run by the Interministerial Working Group on the Federal Government's Crime Prevention Activities.

The Child and Juvenile Crime Prevention Office is a project by the German Youth Institute, sponsored by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Since 1997, the Office has been supplying information on strategies for and forms of child and juvenile crime prevention work to those actively involved in crime prevention, political bodies, researchers and educational institutions. It promotes good practice and innovative approaches in crime prevention work, defines quality standards and supports cooperation projects. The Office structures its work on the basis of priority subjects, carries out research on those subjects in the field and conducts expert hearings and workshops. In its interdisciplinary forums, knowledge is shared, perspectives broadened and disciplinary and institutional "borderlines" crossed. An overview of the Office's work and its publications to date can be found at <http://www.dji.de/jugendkriminalitaet>.

The "We'll Take Care of It Ourselves" pilot project aims to solve problems in cases where children or juveniles are behaving in a disruptive or delinquent manner and to seek solutions early on and at a level that does not feel inhibiting to the parties involved. It is intended to encourage the people directly involved to take action together and seeks to provide them with the necessary support to be able to do that. The project's approach is based on the assumption that child and juvenile delinquency usually has a relatively long history and that there are a variety of possible solutions within the local environment that have so far not been used sufficiently and would stop developments escalating and the problems becoming a case for the police or legal authorities. The solutions include the numerous possibilities for solving problems and conflicts among the parties directly involved. The programme aims to help to develop that local potential and support it in order to promote crime prevention among children and juveniles. "We'll Take Care of It Ourselves" has been implemented at six sites in Germany by the programme agency of the Institute for Development Planning and Structural Research since June 2005. The programme agency supports the six sub-programmes with their publicity work and with the mobilisation of local resources as well as assisting in actual conflict resolution. It provides method-related and content-related assistance, offers training and visits the sites to provide guidance to the persons involved in the specific cases. The pilot project will run until June 2008. It is being supervised by the German Youth Institute. For further information, readers are asked to consult the project website at <http://www.wir-kuemmern-uns-selbst.de>.

Previously, standards for mediation in schools and institutions working with young people were scarcely developed and were not commonly used. In the period from 2003 to 2005, the project therefore conducted an extensive review of the situation, an evaluation of selected school mediation projects and a comparative assessment of the mediation projects, recorded in the data-collection process, in order to set minimum standards. The study also helped to describe forms of cooperation between the youth welfare service and schools dealing with specific issues or target groups. The study was carried out by the following socioscientific institutes: Camino, Werkstatt für Fortbildung, Praxisbegleitung und Forschung gGmbH, Berlin; Institut für Sozialpädagogische Forschung Mainz e. V. (ism) and the Institut des Rauhen Hauses für soziale Praxis gGmbH (isp), Hamburg.

The findings, recommendations and ideas for practical implementation have been published at <http://www.evaluation-schulmediation.de>.

### 7.2.2 Criminal Law as a Means of Prevention

The report rightly underlines the preventive functions of criminal law, which comprise all areas (primary, secondary and tertiary) of prevention. By using criminal law to enforce legally protected rights, the state gives a clear sign that it is not willing to accept any violation of those rights and will punish such violation using the most severe means at its disposal. Thus, by introducing and enforcing rules under criminal law, the hope is to create values in society's and individuals' minds. The obvious risk associated with committing an offence is intended as a deterrent to persons prone to offending. Among the efforts to prevent recidivism, resocialisation measures for offenders play a key role. Measures to protect the public against dangerous offenders are also extremely important. These purposes are fulfilled, in particular, by the measures intended to reform the offender and protect the public.

The Federal Government plans to reform the system of confinement in psychiatric hospitals and drug rehabilitation centres and of supervision of conduct, through which criminal law performs tertiary prevention tasks. It is following events to see what lessons are learned with regard to the practical application of the newly created instruments of "preventive detention subject to reservations" and "post-imprisonment preventive detention", and will make any adjustments necessary (cf. above in Chapter 6.5.3).

The Federal Government shares the view that legislative measures in the fields of law on criminal procedure and criminal law, the practical application of individual provisions in those areas of legislation and the effects of criminal sanctions should be evaluated where necessary and where financial resources permit. Examples of research commissioned in these areas can be found elsewhere in this report.<sup>13</sup>

Even before the 1<sup>st</sup> PRC was published, the Federal Ministry of Justice had commissioned research on, in particular, the application of juvenile criminal law and victim-offender mediation (the latest research on victim-offender mediation has already been mentioned in Chapter 6.5). Other examples of research from before the 1<sup>st</sup> PRC include research commissioned from the Central Institute of Criminology by the Federal Ministry of Justice and the federal-state ministries of justice on the subjects of community work (to avoid imprisonment for failure to pay a fine), social services in the area of criminal justice and custodial measures to reform offenders and protect the public from them (confinement in drug rehabilitation centres or psychiatric hospitals). As part of the preparation of EC directives, a research project has been commissioned on the risks posed to lawyers, notaries, tax consultants and auditors by money-laundering.

Following the publication of the 1<sup>st</sup> PRC, the feasibility studies concerning periodic assessment of the probability of offenders conducting themselves within the confines of the law whilst on probation (recidivism statistics) were completed (cf. Chapter 6.5.4). In addition, the Federal Ministry of Justice has commissioned the Central Institute of Criminology to monitor the federal-state research projects intended to evaluate the treatment of sex offenders using social therapy. Furthermore, a review of the current criminological data on the use of criminal sanctions under juvenile criminal law has been commissioned.

<sup>13</sup>

Cf. Sections 3.1.5.1, 3.1.6, 3.2.7 and 6.2.1.

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