

**ForumPflegeaktuell**

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Forum-care-actuel

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To the Members of the Committee on Economic, Social and Cultural Rights

**Statement on the 6th State Report of the Federal Republic of Germany pursuant to Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, 2016, reporting period 2008 to the end of 2015 (partly 2016) on maladministration in German nursing homes**

Dear members of the Committee on Economic, Social and Cultural Rights,

first of all, the members of Forum-care-actuel would like to thank you on behalf of the nursing home residents concerned, their relatives and the nursing staff for your active support in asserting the rights of those affected.

In August 2001 the committee expressed its great concern about the inhumane conditions in nursing homes in the Federal Republic of Germany (FRG), (input FIAN, Christiane Lüst and others). It urged the State party to take immediate measures to improve the situation of the inhabitants. Christiane Lüst, member of FIAN (NGO) and Forum-care-actuel an association of persons working for the rights of socially disadvantaged persons, asked the Committee in a written statement of 26 November 2011 and at the hearing in Geneva before the members of the committee to call on the FRG for further improvements. In its concluding remarks of 20.05.2011, the Committee observed with d e e p c o n c e r n that the FRG had not taken sufficient measures to improve the situation of elderly people in nursing homes. Due to the lack of qualified personnel and inadequate application of care standards, residents receive inappropriate care. The committee therefore urges the FRG ( now for the second time!) to take i m m e d i a t e m e a s u r e s to improve the situation of the elderly in nursing homes.

The committee's criticism has attracted worldwide attention; in the FRG, detailed reports were made on television, in radio stations and in the print media (Süddeutsche Zeitung and others); a discussion has been initiated nationwide.

In its Concluding Remarks 2004 and 2012, the UN Human Rights Committee also called on the FRG to improve the situation in the nursing homes. The first civil society report on the implementation of the Convention on the Disabled in Germany, part of the BRK( Invalid Right Convention Alliance) founded in 2012 (of the 78 organisations working in the field of the disabled, including the Vereinigung Integrationsförderung und the Forum-care-actuel) demands the implementation of the rights under Article 16 of the Convention on the Rights of Persons with Disabilities (freedom from exploitation, violence or abuse) and criticises the "serious lack of care".

Despite the Committee's clear indications, the 6th State Report of the FRG delivers (2016) no evidence that the care conditions in the 13,600 homes with 877,100 inhabitants have actually improved (see Barmer Report 2017). Also the content of the letter of the Federal Ministry of Health of 7 December 2015 to Roswitha Springer-Hiefinger (G15-96/Hiefinger/15), a member of the Forum-care-actuel and co-founder of a group of regulars, who has worked for years to improve nursing care, shows no significant changes in the homes (letter of 22 November 2015 to the ministry, see also Springer-Hiefinger letter to the editor in Münchner Merkur of 14 November 2017).

Overview of the disastrous conditions:

The catastrophic overall situation is described by Eva Ohlert, member of Forum-care-aktuel, who worked for 26 years as a geriatric nurse, Münchner Merkur and TZ from 21.03.18, "A nurse unpacks". The grievances are also confirmed by the member of the Forum-care-actuel Elisabeth Findeisen, who among other things in a series of printed letters to the editor (most recently in MM,23.5.18) describes the bad experiences she has made in practice over many years (see also Franz Wagner, President of the German Nursing Council, "Bachelor on The bads", SZ, 28.2.2018, Claus Fussek, BR24,15.04.2018, "Nursing emergency in Bavaria", who calls the conditions in the facilities "horrible" and has been publicly attacking them for over 40 years; Alexander Jorge, who met the Chancellor Angela Merkel in the ARD election arena on 12.09.2017, as a trainee in nursing care for the elderly, clearly addressed the problems and received a great deal of public approval in return; see also Jorge at Maybritt Illner Spezial, ZDF, 24.05.2018).

54% of the nursing staff want to leave care because of permanent overload (see Care Konkret, 13.04.18; 91% see themselves abandoned by politics", see RP Report, 17.02.2018; Spiegel, 28.04.2018, "No care insurance in the world can replace a family", Health Minister Jens Spahn admits here the overload of the personnel himself), VdK complains about lacks, Care Konkret, 2.6.2018, [www.hessenrundschau.de](http://www.hessenrundschau.de)).

Premeditated deaths:

The nurse Niels H. has admitted that he has carried out 30 killings and 6 attempted killings on people in need of care in institutions. He is accused of further killings ( Abendzeitung, 29.8.2017, "Nurse killed 86 People" Spiegel, 14.04.2018, "The Killer of the Century"). This case has been reported worldwide.

The Bavarian Nursing Council (Bayerische Landespflegerat), an association of 18 organisations, including the Catholic and Protestant Church, is shaken by the attempted murders under the guise of care (see „Punches under the shower“SZ, 14.12.2017).

The number of killings results from the structure of the facilities ( Karl H. Beine, Jeanne Turczynski, Place of crime hospital ",Droemer, 2017, p.130 ff).

A survey of 5,055 people working in the medical and nursing professions showed that more than 21, 000 victims must be expected whose lives were ended by active actions (in only one year!), although active euthanasia is prohibited in Germany (Beine, Turczynski, p.12,13, see also "The deathnurse“, AZ 7.03.2018; "Where worked the deathnurse?“TZ, 7.4.2018; SZ, 14.12.2017; 6.3.2018, "Old people nurse admits murder").

**How long will the government of the Federal Republic of Germany continue to watch how thousands of offences of bodily injury, deprivation of liberty, intentional and negligent homicide and murder are committed every day?**

Shortage of personnel:

For the MDS nursing quality report published every 3 years, the audits of the medical services of the health insurance funds (MDK) in the federal states and the examination service of the private health insurance companies (PKV-Prüfungsdienst) are the basis. In the 5th quality report of December 2017 the unbearable understaffing in the homes especially in the night services

is confirmed (see Berliner Morgenpost, 1.02.18, Peter Pick, the managing director of the MDS).

The chronic shortage of personnel leads to limited basic and functional care and a high level of sick leave (Susanne Moritz, State duty of protection against patients, Nomos Verlag, 2013, p.57). In her doctoral thesis, she points out that a complaint to the Federal Constitutional Court must be possible due to violations of fundamental rights in institutions (see Münchner Merkur and SZ, 5.7.2016). According to the trade union Verdi, which represents part of the nursing staff, at least 70,000 qualified nursing employees and 92,000 other nursing staff are currently lacking (Care Konkret 1.02.2017).

The Joint Association requires (Paritätischer Gesamtverband) requires 100,000 additional nursing staff (Care Konkret 9.3.2018).

At the request of the Green faction, the Federal Ministry of Health admits that, according to the Federal Employment Agency's labour market statistics, an average of 36,000 nursing jobs were not filled in 2017 (Tagesschau, 1.Deutsches Fernsehen, 25.4.2018; Tagesschau 12.05.2018; Zeit Online, 4.5.2018, ). Where the new nursing staff demanded by Federal Health Minister Jens Spahn are to come from is currently still completely unclear (see WZ.de, 23.04.2018; Stefan Arend, Chairman of the Board for Living in Old Age and the Institute for Applied Nursing Research, Care Konkret, 25.5.2018; Verena Bentele President of the VdK, 26.5.2018, Def24); Care Konkret, 1.6.2018, „Care is on the limit“ study by the German Institute for Applied Nursing Research).

The lack of personnel must inevitably lead to dangerous nursing errors (Armin Rieger, "Rebellion of the nurse, a head of a home uncovers the nursing-system."; Ludwig Verlag, 2017, p.150; Rieger, Federal Constitution Complaint 18.7.2014, TZ; see also Daniel Drepper, Correctiv, 016, p.46/46). In the current system good care brings little, bad care but much profit if as few staff as possible are employed ( Rieger p.53; Rieger in Talkshow Maischberger, 3Sat, 21.04.2018); Zeit Online, 28.11.2017, SVZ.de, 24.3.2018, " Business with care: Why hedge funds invest in homes"; SZ 19.08.2014, "It is systematically looked away"). In many cases, the care key in the facilities has even worsened in recent years (see „Care abuse“, Sächsische Zeitung of 23.11.2017), although two out of three residents are now cognitively restricted, the age of the residents continues to increase and the number of failure due the illness is constantly increasing (Care Konkret, 1.6.2018, "Care comes to the limit).

#### Nutrition and fluid intake:

In the 4th nursing quality report of the MDS it is stated that 7.6% of the inhabitants had a relevant weight loss within 6 months, with 10.7% the aids for the nutrition were not sufficient e.g. personnel support with the nourishing admission did not take place, with swallowing disturbances the consistency of the food was not adapted or an increased energy need was not fulfilled.

According to the 5th nursing quality report of the MDS, the proportion of malnourished persons has even increased, see also RP Online "The need of the care", 28.02.2018. 8.7% of the residents did not receive sufficient help to cover their fluid requirements in accordance with the recommendations of the German Society for Nutrition (see p.78 of the report, Zeit Online 1.2.2018; see also Claudia Mahler, Federal Constitution Complaint against the crisis of care, Protection of the human rights in the care; Christian Heinrich, Nomos, 2017, p.232/23, the Federal Constitutional Complaint of the VdK, which was reported in detail in the media, is printed there. Well-known jurists are giving the Federal Government and the Federal Constitutional Court a devastating testimony here. The life-threatening malnutrition is confirmed by a series of reports (Claus Füsseck/Gottlob Schobert, "It is enough, also old people have rights", 2013, Knauer, p.31ff). If the last drink is served at 6 p.m. due to a lack of staff and only around 9 a.m. or later the next, an adequate supply of liquid is not possible. A sufficient diet is also not possible if the staff has to help 3 residents eat at the same time (see Rieger p.82).

Poor nutrition in homes and hospitals is not only inhuman but also expensive. Christian Löser (malnutrition, Thieme, 2011,S.239ff) deals with the financial losses in the billions and estimates the actual malnutrition of the inhabitants at 50-80%.

On the situation of those in need of care in homes, especially on the nutritional situation, see the statements of Brigitte Bührlen, chairwoman of WIR! Organisation of caring family members e.o. (Vereinigung pflegender Angehöriger in Deutschland e.V.) as an enclosure, which supported by the WIR Foundation, has for many years tried to strengthen the rights of patients and their relatives in outpatient and inpatient sector through contributions in the media, at various events and hearings on a national and international level.

#### Prevention and treatment of pressure ulcers:

In the 4th MDS nursing quality report it is stated that 6.1% of the nursing home residents was assessed whether the measures for the treatment

of a chronic wound or a decubitus are in line with the current state of knowledge. This was not the case for 21%, for example hygienic standards were not observed in wound care (p.8/9).

According to the 5th quality report even every fourth resident is not properly cared for (see Berliner Morgenpost of 1.2.2018 "Good care works differently, inspectors find many lacks"). Peter Pick, Managing Director of the MDS, also acknowledges the danger of pressure sores for the residents (see Bavarian radio, BR24, 01.02.2018; Zeit online, 1.2.2018).

For a considerable proportion of the residents, no or inadequate storage measures were taken, although the expert standards have been available for many years. This suggests systemic shortcomings (see Constitutional Complaint against the nursing crisis, Claudia Mahler, p.210/211).

The current situation causes endless suffering and unnecessary costs. Several studies for example a study conducted by the Institute for Nursing and Health Economics at Bremen University of Applied Sciences (Care Konkret dated 16.07.2010) and the Medical Data Institute GmbH study confirm that many millions of euros could be saved every year if case-related treatment took place and new treatment methods were used.

#### Drug treatment:

According to the 4th nursing quality report of the MDS, 13.8% of residents did not handle medication properly. The MDS admits that the handling of drugs is not satisfactory (p.24/25).

In 9.8% of the residents, the documentation did not correspond to the medical instructions, for example, medicines or dosages were incorrectly documented or, if medication was required, it was unclear for which symptoms these should be used (p.24/25). In the 5th quality report, 9.2% of the residents, so approximately 65,000 people, were affected. The chairman of BIVA (Protection alliance for patients), Manfred Stegger therefore considers 65,000 cases of negligent bodily injury to be fulfilled. (Care Konkret, 09.03.2018, "We need a zero-error culture"). 37.8% had chronic pain, an increase of 5.5% over the 4th Quality Report, Zeit Online, 2.2.2018.

Again and again substances are found in the blood of residents that were not prescribed by a doctor. 70% of the residents receive psychotropic drugs that are hazardous to health (Bernd Meißnest, head physician at the Klinikum Westfalen-Lippe, Care Konkret 25.10.2013).

Eugen Brysch, Chairman of the German Patient Protection Foundation on 1.02.2013 and 2.1.2018 and Werner Schell, Chairman of the Pro Alliance for Self-protection (Pro-Pflege-Selbsthilfeverbandes) on 7.11.2011 refer in their press releases to the health consequences of the irresponsible psychopharmaca input (tendency to fall, malnutrition, inadequate fluid intake, hospital admissions and the exceptional costs). For years they are present in the media, they do not get tired more qualified care personnel in the mechanisms and the necessary improvements to demand, just like Reinhard Leopold, Home Co-operation independent Self-help Initiative for member and care patient (self-help group and advisory board, Bremen, Selbsthilfegruppe und Beratungsstelle).

Deprivation of liberty measures:

According to the 5th nursing quality report of the MDS, approximately 5,200 people were missing in homes the consent of the court for measures taken to deprive deprivation of liberty (see Manfred Steeger, BIVA, Care Konkret of 9.03.2018). 8,9% of residents were exposed to measures that deprived their freedom (mechanical fixations through bed belts, fixation belts, structural measures such as closed doors, the giving of psychotropic drugs can also be a measure that deprives freedom, Thüringer Allgemeine, 23.04.2018, "Violence in care often a taboo"). Again and again the Federal Constitutional Court must intervene to prevent unconstitutional deprivation of liberty measures (see the successful constitutional complaint by lawyer Sonja Schlüchter, member of Forum-Pflege-aktuell, BverfG1 B B BvR 2538/10 of 28.0.2010 and 12.01.2011) and Rolf Maschner, hearing before the Federal Constitutional Court, SZ of 31.1.2018, "The rest of freedom").

Although according to the decision of the Social Court of Freiburg (A.: S 9 SO 5771/II ER), confirmed by the Social Court of Country Baden-Württemberg, Ref.: 2 SO 72/12 EB-B, in the night may not be fixed if a night watch can be ordered, is further fixed, since the necessary forces are not available (see Care Konkret of 13.01.2012, "Nocturnal fixation is taboo"; for the illegal measures restricting freedom in children and young people, see Abendzeitung of 5.08.2016, "Every violation is one too many").

House and visit prohibitions:

Although an expert opinion commissioned by the Federal Ministry for Family Affairs, Women and Youth in 2004 by Prof. Dr. Wolfram Höfling states that home and visiting bans in homes violate Art.13 Basic Law (Protection of the Family), relatives and friends are still excluded if they complain about grievances in an institution (see Münchner Merkur 22.10.2009, "Legal guardians are under

pressure“). Here often the right of legal guardianship, which is regulated in the civil code, fails. Legal caregivers, who often provide more than 80 legal guardians, in cooperation with the heads of the institutions, ensure that critics, even if they have justified complaints, are excluded (see Care Konkret 8.12.2017, Statement of the Federal Working Group of the Crisis Telephones (BAG), Rudolf D. Hirsch, Alexander Frey, where a new regulation of the care right is demanded to strengthen the rights of the cared-for; Bavarian television, Kontrovers, 28.6.2017, Bildzeitung, 27.04.18, SZ of 18/19.2.2017, "No admittance, lawyer speaks of isolation torture"; TZ, 8.12. 2016, "Please let me go to my sister!"

Various organisations and individuals have been pointing out the conditions in nursing homes that violate human rights for years and are urgently calling for improvements:

Transparency International Germany e.V., the organisation against torture (Antifoltertelle), established on the basis of the Additional Protocol to the United Nations Conventions against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the Union of the Policefederal Association, the Social association VdK, the German Federal Association of the nursing profession (Deutscher Berufsverband der Pflegeberufe, the German Nursing council ( Deutsche Pflegerat), the Federal Association of Senior Citizens' Organisations, the Federal Association of Crisis Telephones with spokesman Rolf Hirsch of "To treat instead to ill-treat", Gabriele Tammen-Parr, Berlin, Anke Buhl, Schleswig Holstein, Vereinigung Integrationsförderung, the Forum-care-actuell and others.

All members of the forum-care-aktuel, including Rolf Jorga as spokesman, Dr. Klaus Blumberg (internist and radiologist, advisor to the self-help association for people with medical disabilities), who worked as an expert for the medical service of the statutory health insurance funds and for many years as an advisor in the nursing field, and Alexander Frey have repeatedly made-also in a constitutional complaint (see Münchner Merkur and SZ of 5.6.2016) advices of improvements and pointed out the close links between responsible politicians and home owners (see also Spiegel Online, 2.4.2014, "I don't know a good home"; Care Konkret, 24.1.2014). Just like many other critics e.g. the chairman of the Committee for Work and social Affairs in the Bavarian Parliament Joachim Unterländer, one of the few politicians, which uses itself for years for the improvements in the care, Adelheid von Stösser, 1.chairman and foundress of the Care Self-help-association, which emphasizes the human care and Axel Enke e.g. in the newspaper Quality of Life, 3/2014, newspaper of the Kinaestetiks, which collected several thousand signatures because of the bad

states and passed on to responsible persons. In a letter dated 26 January 2016, the Office of the Federal President (0713-45103-58-1-12) confirmed to him that the responsible persons had to improve the quality in the nursing homes.

After determining the concrete need for care of a resident, sufficient appropriately paid personnel (specialist personnel 70%, 30% auxiliary personnel, care keys of 1:1.8) must actually be present.

The staff must be obliged to enter the services with a barcode in order to see who has actually performed which services.

It must be completely checked whether the money paid by the payers was actually spent on the personnel specified by the homes (see Care Konkret, 18.5.2018, Gernot Kiefer, Chairman of the Central Association of Statutory Health Insurance Companies, demands lower returns for nursing homes, as does Sylvia Bühler of the Verdi Federal Association of United Services Unions; Manfred Sack, Weser Kurier, 13.1.2018).

Quality standards, e.g. for decubitus and fall prophylaxis, must be specified in such a way that they offer effective protection in court (TZ of 24.2.2017). The facility must have an independent doctor; the controls, which are helpless in cases of abuses, and almost always give top marks (see SZ 26.08.2013; Bertelsmann Stiftung proposes new criteria for evaluation, 28.7.2017, medscape.de) must be made significantly more effective, e.g. forensic examinations for every resident after his death. Home and family councils must be strengthened, public prosecutors specially trained for nursing problems, nursing chambers (see letter to the editor Sonja Schlüchter of 31.1.2011 in SZ; Care Konkret 25.8.2017), ombudsmen and ombudswomen and independent complaints offices must be set up. The home contracts must be disclosed to everyone (see test 6/2018, "Insight undesirable, most homes prefer to keep the small print under lock and key").

In the event of serious abuses, staff must be allowed to go to supervisory authorities and the press (so-called "whistleblowing") if the situation is not improved. The European Court of Human Rights makes clear-after going through the proper channel-that the residents can no longer represent themselves and that, under certain conditions, personnel must therefore be entitled to make the grievances public (the Federal Constitutional Court had rejected the complaint without giving reasons!), Heinisch./BRD, 21.07.2011, 28274/08.

In a letter dated 11 November 2010 to the Bavarian State Ministry of Labour and Social Affairs, Rolf Jorga summarised the necessary improvements (see also Münchner Merkur, 17 May 2010, "More nursing staff are needed"). He repeatedly refers to the lack of controls on the funds paid to the homes by the funding agencies.

Safety in nursing homes must be improved, e.g. falls from stairs for dementia patients must be prevented, concrete guidelines for staff in the case of fire must be created and regularly checked, see TZ, 5.5.2008); Münchner Merkur, 6/7.10.2012, "Homes for the elderly, security under control").

Jorga, who was responsible for of security issues in a big concern, often pointed out that staircase safety devices must be installed in his mother`s home to prevent dementia sufferers from falling. Nothing happened, his mother threw herself to her death.

The ill-treatment of the residents is no longer acceptable, especially since the Scientific Institute of a Medical Insurance Company (AOK) on the basis of data from 230,000 insured persons in 5,600 nursing homes, the devastating conditions (too many decubitus ulcers, too many givings of antipsychotics, too many hospital admissions) were confirmed (Thüringer Allgemeine, 4.6.2018, "AOK Report shows major differences in nursing care"; SZ, 4.6.2018, "Criticism of nursing home quality").

We therefore ask the Committee for Economic, Social and Cultural Rights in the Concluding Considerations again emphatically to work toward that the Federal Republic of Germany fulfils its obligations under the ratified International Covenant and fulfils the human rights for residents of nursing homes laid down.

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