

List of Issues

Seventh periodic report submitted by
the Federal Republic of Germany
under Articles 16 and 17 of the
International Covenant on
Economic, Social and Cultural
Rights | 2023

List of Issues

Article 7 (Background starting on page 21 of the file)

- 1 What measures is the federal government taking to protect vulnerable groups such as Roma from other EU and non-EU countries from labor exploitation?
- 2 How is the federal government ensuring the protection of workers in precarious forms of employment, such as mini-jobs, part-time jobs, temporary employment agencies and seasonal work? What is the federal government doing to increase regular forms of employment and reduce atypical forms of employment (e.g., mini-jobs)?
- 3 What measures is the federal government taking to increase the minimum wage so that a decent standard of living can be achieved through wages and, concurrently, dependence on supplementary social benefits can be reduced?
- 4 What concrete measures is the federal government taking to identify and punish violations of labor law and to help those affected obtain justice? What is the federal government doing to ensure the occupational safety of employees in particularly dangerous work areas, such as the industrial cleaning sector?
- 5 How is the protection of the affected employees ensured by the Financial Control of Undeclared Work Unit (Finanzkontrolle Schwarzarbeit, FKS), when those affected are also checked and investigated by the FKS, thereby attributing joint responsibility for the abusive employment relationship to them? How is the protection of employees ensured when their residence permits or social security benefits are also checked?
- 6 What additional measures is the federal government taking to ensure the protection of migrant workers and to comply with the standards set out in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)?

Article 9 (Background starting on page 23 of the file)

- 1 How does the federal government ensure the minimum subsistence level of migrant EU citizens whose stay is solely for the purpose of seeking employment in accordance with § 2 § 2 No. 1a of the Freedom of Movement Act/EU? These persons are excluded from both SGB II and SGB XII benefits and can only apply for interim assistance under SGB XII, which is limited to one month and can only be extended in cases of hardship. Furthermore, in practice, this is often only granted to those who declare their intention to leave the country, which means that many refuse to apply for it because they do not want to return.
- 2 According to studies,¹ the internal guidelines “Combating Organized Benefit Fraud by EU Citizens” provide the basis for discriminatory exclusion mechanisms and the criminalization of EU citizens living in poverty during the checking process of benefit claims. This is the case despite legal entitlements and especially for migrants who are perceived as Roma.

¹ Neuburger, Tobias; Hinrichs, Christian (2021): Mechanismen des institutionellen Antiziganismus: Kommunale Praktiken und EU-Binnenmigration am Beispiel einer westdeutschen Großstadt. Research report for the Independent Commission on Antigypsyism, January 2021.

Since the internal guidelines are often used in particular for Bulgarian and Romanian citizens living in poverty, how does the federal government guarantee that these groups will not be subject to blanket suspicion of social benefit fraud when applying for benefits to secure their livelihood?

- 3 What measures is Germany taking to ensure legal protection against discrimination by the state, since this is not covered by the General Equal Treatment Act (AGG)?
- 4 Children from immigrant families are particularly affected by poverty. What measures is the federal government taking to protect these children from poverty when both the Federal Child Basic Security Act (BKG) and the Income Tax Act (EStG) exclude foreign families from family benefits if they are in the asylum process or have a tolerated stay permit under the Residence Act or are EU citizens residing in Germany solely to seek employment under §2 para. 2 no. 1a of the Freedom of Movement Act for EU Citizens?
- 5 Digitalization makes it easier for some sections of the population to access family benefits, but for migrant families, these continue to be complicated by a lack of multilingualism (including a lack of on-site interpreting services) and simple language. How does the federal government ensure that migrant families also have easy access to family benefits?
- 6 How does the German government guarantee the implementation of Art. 18 TFEU, Art. 8 ECHR and Art. 6 GG, which place special emphasis on the protection of the family, when in practice unmarried life partners from EU countries with joint children are excluded from the benefit community and thus from benefits under SGB II because, according to the job center, they “are staying in Germany solely for the purpose of seeking work”?

Article 11 (Background starting on page 26 of the file)

- 1 The German government intends to end homelessness by 2030. What measures (independent of the old weather relief facilities) is the German government planning for the accommodation of homeless EU citizens who are not entitled to social benefits?
- 2 Standards in shelters/transition into independent living – how does the German government ensure that quality standards are met in shelters for houseless people? What measures is the German government taking to support municipalities, particularly in monitoring providers in the private sector, in order to control quality assurance in shelters?
- 3 How does the federal government assess the current conditions in the shelters for houseless people: children have to share sanitary facilities with strangers (often drug and alcohol users), have no room to retreat to rest and study, several people share a small room, etc. Especially in view of the tight housing market, many families remain in shelters for several years and in these precarious living situations. How does the federal government plan to improve conditions?

Article 12 (Background starting on page 28 of the file)

- 1 Germany has a restrictive asylum policy, especially towards people from the Western Balkans. Medical care during an ongoing asylum procedure or a tolerated stay status should be provided in accordance with the Asylum Seekers Benefits Act (AsylbLG) and is thus limited to acute illnesses and painful conditions.
How does the federal government ensure comprehensive health coverage without 1. "acute illnesses and painful conditions" being more precisely defined and 2. without further health services that lie outside of this definition being personally decided by the responsible civil servants at the social welfare offices?

Article 13 (Background starting on page 29 of the file)

- 1 How does the federal government ensure that segregated welcome classes are a temporary education model and that the transition to regular classes with additional language learning support can in fact be ensured in all federal states?
- 2 What steps is the federal government taking to streamline the legal system, particularly with regard to protection against discrimination, such as through state anti-discrimination laws?
- 3 How is the federal government monitoring a revision of curricula, teaching materials, and especially schoolbooks, that is critical of racism and sensitive to antigypsyism?
- 4 How is the federal government promoting reforms of education laws of those federal states that do not provide for adequate procedures for the adoption of teaching materials that are critical of racism and sensitive to antigypsyism?
- 5 How is the federal government raising awareness of antigypsyism among school and teaching staff, and enshrining school-specific, all-encompassing prohibitions of discrimination on the grounds of antigypsyism, along with appropriate repercussions for violations? These measures must also be embedded in the education laws of the federal states.
- 6 How will the federal government ensure that the right to education is upheld for all children? The right to education must extend to all children in Berlin, regardless of their residence status. The allocation of a daycare or school enrolment place close to the child's home must be carried out within a timeframe of several weeks.

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Parallel report to the UN-Committee on Economic, Social and Cultural Rights (CESCR)

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Introduction

With this parallel report Amaro Foro e.V. aims to make the issue of structural discrimination of migrants in Germany affected by antigypsyism a political agenda point. Our report is based on findings from our systematic documentation of antigypsyist incidents in Berlin, conducted studies, experiences from our organization's consultation sessions, the findings of the UKA-Report,¹ as well as regular professional exchanges with organizations from all over Germany. Self-organized associations like Amaro Foro e.V. attempt to make the situation of Roma visible and to improve it. We define antigypsyism as the specific racism against Sinti and Roma and those to whom this background is attributed. This definition is particularly important when we look at the situation of migrants from countries in Southeast Europe. Since the EU's eastern expansion in 2007 and the subsequent rights of free movement for Bulgarians and Romanians, public debates about so-called "poverty migration" and "abuse of social benefits" have intensified in Germany. These debates base themselves in antigypsyist stereotypes in which the immigration of Roma is staged as a problem.² Meanwhile, politics and media make do without attributions according to ethnicity; Bulgaria and Romania have become cyphers for Roma and people sometimes become victims of antigypsyist structures regardless of their actual ethnicity. These racist debates have led to the disadvantaging of EU-foreigners in their receipt of state benefits – only those in gainful employment can receive job center benefits. According to the ICESCR's General Comment No. 20, all rights under the UN Covenant should be accessible on a non-discriminatory basis. However, studies,³ job center notices, and court rulings clearly show that certain converging characteristics such as citizenship (Romanian/Bulgarian, or from Southeastern Europe), economic and social situation, language and "race" (the ascribed ethnicity of the Roma) lead to more frequent exclusions from social security.⁴ This profound discrimination is reflected in all areas of life. Roma are severely exploited in various sectors, they face structural discrimination from state authorities, and they are often denied access to education and health care. Moreover, culturalizing, racist, or even eugenic remarks are made time and again by officials and specialist staff, which have a (re-)traumatizing effect on those concerned. In view of the sometimes inhumane living conditions of migrant workers and the discourses revolving around supposed "poverty migration" in Germany, it is important to consider the historical context in Europe: over the past centuries, Roma have been repeatedly affected by various labor and settlement bans throughout Europe. The most extreme form of persecution and exploitation of Roma took place in the national socialist genocide. The consequences of 400 years of slavery and the genocide of Sinti and Roma continue to be felt to this day.

For this reason Germany bears a special responsibility for the situation of the Roma throughout Europe – a responsibility which it does not meet adequately, however, by implementing measures like a right of residence, for example. In some countries in Southeast Europe, Roma experience extreme marginalization in all areas of their lives. While several countries recognize this cumulative discrimination as a legitimate reason for fleeing, the German government passes restrictive laws that explicitly target the community, such as the recent classification of the Republic of Moldova as a "safe country of origin."⁵ Refugees from these countries were thus denied legitimate reasons of fleeing, in order to shorten asylum procedures and to facilitate deportations. The regulation mainly applies to countries in Southeast Europe.⁶ In legislation and in the work of job centres, a historical continuity of the national socialist "re-education" idea is evident, following a line of thought that Roma must be disciplined and educated to work. Accordingly, the moral value that the fascist ideology attributed to work continues to permeate neoliberal discourses on the right to a minimum basic standard of living to this day. When dealing with people who are homeless or at risk of becoming homeless and who are assumed to be Roma, local politicians and authorities repeatedly display antigypsyist resentment and proceed with inhumane evictions and relocations. To improve the situation of migrants affected by antigypsyism in Germany, it is not enough to ensure compliance with existing laws. Structural changes in the practices of public authorities and at the legal level are also indispensable.

¹ Bundesministerium des Innern, für Bau und Heimat (Hg.) (2021): Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation. Bericht der Unabhängigen Kommission Antiziganismus. Hereinafter abbreviated as UKA Report (2021).

² Grunau (11.1.2014); Neuburger/Hinrichs (2021); Wolf (29.12.2021); Ratzmann (2022).

³ Neuburger/Hinrichs (2021); Ratzmann (2022).

⁴ In accordance with E/C.12/GC/20.

⁵ Vgl. PRO ASYL e.V./Flüchtlingsrat Berlin e.V. (Februar 2022); Pro Asyl (August 2023), S. 3, 12f.; Roma Antidiscrimination Network (June 23, 2023).

⁶ In Germany, Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro and Serbia (since 2014/15) and, since 2023, Georgia and Moldova are considered "safe countries of origin" in addition to Ghana and Senegal (since 1996).

Art. 7: Right to Just and Favorable Conditions of Work

The exploitation of Roma in Germany can only be fully understood in the context of the specific history of antigypsyist persecution and exploitation. Bourgeois “work ideals” (Arbeitsideale) played a decisive role in the construction of antigypsyist stereotypes, which led to the effective exclusion of Roma and Sinti.⁷ Over the past centuries, Roma have been affected by various work prohibitions throughout Europe and were pushed into precarious and irregular sectors. The interplay between institutional antigypsyism and economic exploitation runs through the history of discrimination against the community and continues to this day. Roma from third countries are particularly affected by mechanisms of exclusion from the regular labor market because, like many people living in Germany, they do not have regular residence status. If their deportation is not legally possible, they are issued a tolerated stay permit, but sometimes kept in a state of uncertainty for decades with a repeated series of such permits that do not lead to a residence status. To take up employment, people with a tolerated stay permit need the approval of the immigration office, which is often only granted under strict conditions.⁸ People from “safe countries of origin” are generally prohibited from working while they are in Germany. EU migrants from Bulgaria and Romania face extreme exploitation in the labor market. At the same time, they are subject to blanket suspicion of fraudulent behavior and to discrimination from authorities, especially if they are assumed to be Roma. In the low-wage sector in particular, mini-jobs, temporary employment contracts, seasonal work, and undeclared work are conducive to wage fraud or illegal employment contracts. The Committee on Economic, Social and Cultural Rights is also concerned about the extremely high number of workers in precarious employment (approximately 14 million) and the growing number of people who are dependent on social welfare benefits despite being in employment. It is also concerned that, according to reports, many employees do not receive the minimum wage.⁹ In the 7th country report, the German federal government addresses the UN recommendations in the area of labor with the citizen income reform and the increase of the minimum wage. However, the minimum wage is not only out of line with inflation, but many Roma are still employed in precarious or illegal employment relationships due to the structural dimensions of antigypsyism.¹⁰ In fact, Roma are deliberately recruited abroad to work in certain sectors in Germany (including cleaning, construction, agriculture and the meat industry) under poor conditions and are underpaid for physically demanding work.¹¹ The problem of the particular labor exploitation of Roma in the meat industry is well-known.¹² Our case studies show that the minimum wage does not extend to many of these employment relationships. In some cases, the workers do not receive a contract or only three-month contracts, or they do not receive the agreed-upon wage or even no wage at all. Many overtime hours are not paid.¹³ It is also a common practice to house multiple people in small apartments and to deduct the exorbitant rents directly from their wages. In many cases, people cannot officially register their address as their actual place of residence in these apartments. These practices are also a known issue to politicians.¹⁴ In these precarious situations, employees often have to apply for additional social benefits. In doing so, they are regularly accused of fraud. The job center regards the lack of a valid address as an indication that Bulgarian and Romanian workers are faking their employment relationship.¹⁵ Delays, cuts or refusals to provide the benefits they are entitled to drive the workers further into a complex relationship of dependency with those who exploit them. In General Comment 23 on Article 7 of the ICESCR, the State parties are called upon to take the necessary measures to identify and punish violations of labor law and to help those affected to obtain justice. The measures should secure the rights of workers and should not be diverted from their intended purpose, to check the residence status of the employee, for example.¹⁶

⁷ Cf. Messerschmidt (2019), p. 12 f.

⁸ UKA Report (2021), p. 176 f.

⁹ Cf. E/C.12/DEU/CO/6, No. 32 and No. 36.

¹⁰ The minimum wage is 12.41 euros (as of 2024). According to the German Trade Union Confederation, this should be at least 14 euros in order to “guarantee minimum protection in times of inflation”. See: <https://www.dgb.de/service/ratgeber/mindestlohn/> (last accessed on July 29, 2024).

¹¹ See Amaro Foro e.V. (2024): 10 Jahre Dokumentation antiziganistischer Vorfälle, pp. 68–73.

¹² Ayyadi (20.10.2023); Birke (12.1.2021); Dauth (2021). A minor inquiry by the party Die Linke (2019) also shows that in the meat industry, for example, the proportion of foreign employees has tripled since 2008. See printed matter 19/23510. The answer to printed matter 20/9399 from 2023 on working conditions in the meat industry is still pending.

¹³ Amaro Foro e.V. (2018), pp. 40–41; Amaro Foro e.V. (2023), pp. 30–32.

¹⁴ In its 5-point plan against antigypsyism (August 17, 2018), the Berlin Green Party faction admits: “Roma from Southeast Europe in particular are systematically recruited for jobs in construction and especially in Berlin they end up in a system of exploitation by employers, landlords and dubious ‘helpers’. Here, antigypsyism and organized crime are closely intertwined.”

¹⁵ Regarding the systematic discrimination of Romanians and Bulgarians at the job center, see Art. 9 of this report: Right to Social Security.

¹⁶ E/C.12/GC/23, No. 54.

We do not consider these functions to be safeguarded by the inspections of the Financial Control of Undeclared Work Unit (Finanzkontrolle Schwarzarbeit, FKS), which are carried out on the basis of the Act to Combat Undeclared Work and Unlawful Employment (Schwarzarbeitsbekämpfungsgesetz, SchwarzArbG). Migrant workers are held jointly responsible for legal violations committed by their employers, and the FKS is thereby authorized to check the employee's residence status, work permit and information regarding the employee's entitlement to social benefits and tax liability.¹⁷ It is not without reason that the Committee recommends the ratification of the so-called "Wanderarbeiterkonvention"¹⁸ (ICMW). The implementation of the ICMW would lead to improvements in the working conditions of migrant workers in the low-wage sector, especially for seasonal workers. They (and their families) should enjoy all the rights of regular workers and their dependents (see in particular Art. 59 §1 and §2). In contrast to the common practice of German authorities, the ICMW clearly identifies employers as the perpetrators and prioritizes the protection of workers (especially Art. 68 §2). Undocumented migrants are also granted labor rights. Germany does not intend to sign the ICMW.¹⁹ Ensuring occupational safety has been fundamentally regulated in the Occupational Safety and Health Act (Arbeitsschutzgesetz, ArbSchG) since 1996 and represents the most important basis for occupational safety in companies. "The aim (...) is to ensure health and safety at work through measures to prevent work accidents, occupational diseases and work-related health hazards. This includes creating a decent working environment, as well as issues such as working hours and the protection of especially vulnerable groups."²⁰ In Recommendations 40 and 41, the Committee expresses concern about the insufficient number of inspections by the trade supervisory authorities, especially in the agricultural sector and particularly with regard to fatal accidents at work.²¹ Agriculture is by no means the only sector in which serious physical injuries, of which some lead to fatalities, occur time and again due to a lack of occupational safety. A major media debate about massive coronavirus outbreaks at Tönnies, Westfleisch and other major slaughterhouses took place. These incidents were the impetus for the adoption of the occupational safety act (Arbeitsschutzkontrollgesetz, ASchuKG), that came into force on January 1, 2021. The purpose of the ASchuKG is to regulate orderly and safe working conditions in the meat industry, a nationwide uniform control of companies, and the accommodation of employees. Some of the regulations apply across sectors.²² Previously, employment was mostly carried out through subcontracting companies, enabling German companies to avoid the comparatively strict labor laws. As investigative research has uncovered, while the employment relationship has changed on paper, nothing has changed in terms of the realities of the structures and working conditions in place.²³ Many subcontractors were taken on, including their foremen. According to the frontal investigation on the Tönnies case, there is evidence of blocked escape routes, taped-over security switches and talk of "mafia-like structures." The ultimate responsibility lies with the respective regulatory authority, which must shut down a workplace until all such deficiencies have been corrected. However, there is no transparency as to whether all of these deficiencies have actually been rectified. We suspect a high number of unreported deaths in connection with occupational safety. This is because companies usually only expect to undergo such an inspection every 20 years, even though the ASchuKG has increased the annual inspection rate. The fact that not much has changed for workers in the low-wage sector, even with the legislative changes, is evident not least from the tragic death in October 2022 of 26-year-old Refat Süleyman, a Bulgarian contract worker of Turkish descent from Stolipinovo, who worked in the industrial cleaning sector.

¹⁷ In the English version of the 7th country report, the term "illegal employment" is much more clearly defined as "illegal employment and benefit fraud" and "undeclared work and unlawful employment" (E/C.12/DEU/7, No. 22). The website of the customs authorities, to which the FKS is attached, also states: "Illegal employment is when (...) a foreigner exercises a gainful occupation without permission." Online: https://www.zoll.de/DE/Fachthemen/Arbeit/Bekaempfung-der-Schwarzarbeit-und-illegalen-Beschaeftigung/Aufgaben-und-Befugnisse/aufgaben-und-befugnisse_node.html (last accessed on June 11, 2024). See Amaro Foro e.V. (2024), pp. 70–71.

¹⁸ E/C.12/GC/23, No. 62 The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) is abbreviated in German as "Wanderarbeiterkonvention." The translation of "Migrant Workers" as "Wanderarbeiter" is problematic because the term is factually incorrect and has racist and antigypsyist connotations. We therefore use ICMW.

¹⁹ E/C.12/DEU/7, No. 8, p. 3 (printed matter 20/9080, No. 2, p. 7).

²⁰ E/C.12/DEU/7, No. 95, p. 16 (printed matter 20/9080, No. 24, p. 21). "In addition, the Occupational Safety Act, the Workplace Ordinance, the Industrial Safety Ordinance, the Seventh Book of the Social Code (Statutory Accident Insurance, SGB VII) and the Hazardous Substances Ordinance should be mentioned." (Ibid.)

²¹ E/C.12/DEU/CO/6, No. 40 and 41. During the Covid-19 pandemic, there were major corona outbreaks, particularly on large farms, due to violations of infection control regulations, some of which resulted in deaths, e.g. Maurin (16 April 2020); Maurin (May 1, 2021). The Fair Agriculture Initiative (2022) continues to criticize the lack of health protection through private group health insurance (PKG), non-transparent documentation of working hours, wage deductions and a lack of controls.

²² Cf. <https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/arbeitsschutzkontrollgesetz.html> (last accessed on June 11,

²³ 2024). Frontal (February 1, 2022); frontal (February 3, 2022).

“When asked about Refat’s death, employees insist that there are ten to fifteen such cases a year that the company sweeps under the rug,” a detailed investigation found.²⁴ The poor working conditions in the subcontracting companies continue to be a breeding ground for abuse and accidents. Roma are particularly often affected by this. It can be assumed that very similar grievances are equally prevalent in the steel industry, in construction, and in industrial and building-cleaning services.²⁵ Considering that migrants in Germany are structurally forced into precarious and illegal forms of employment in the informal sector, and that Germany profits from the exploitation of their underpaid and invisibilized labor, the following demands should be regarded as a minimum standard for improving the situation of migrant workers.

Recommendations:

- 1 Create cost-free, independent counseling services for migrant workers.
- 2 Strengthen workers' rights and establish legal support funds for migrant workers.
- 3 Ensure full, legal health insurance coverage from the first day of employment.
- 4 Require employers to cover social security contributions for seasonal workers.
- 5 Increase the number of inspections by the trade supervisory authorities. In doing so, it must be ensured that these are not misused to carry out checks on employees.
- 6 Require employers to provide information to employees in their primary language and in a manner that is understandable to them about their rights and counseling services available to them at the time of their hiring.
- 7 Ratify and implement the ICMW.
- 8 In line with the recommendations of the Independent Commission on Antigypsyism: Abolish work bans for migrants with a tolerated stay permit and establish a right of residence for Roma!²⁶

Art. 9: Right to Social Security

Entitlement to Benefits for EU Citizens Limited by Exclusion Criteria and Criminalizing Assumptions

For EU citizens, the entitlement to a citizen's income is dependent on their status as an employee or self-employed person or on a proven five-year stay in the Federal Republic of Germany²⁷, as well as on the right of residence under Art. 10 VO 492/2011/EU.²⁸ If this status is not fulfilled, EU citizens seeking employment cannot benefit from social services in Germany, even if they are unable to cover their needs for a decent minimum subsistence level themselves. The only alternative that is provided is the “interim benefits” according to §23 Abs. 3 Satz 3 und 4, SGB XII. These are usually granted for one month and often only if an intention to leave the country has been declared,²⁹ which is why these benefits are only an option for a small proportion of EU citizens. All other EU citizens seeking work must persevere without financial means, even if they live together with underage children.

²⁴ For a detailed report on the death of Refat Süleyman see: Manolova (November 30, 2022). The case is being monitored by "Stolipinovo in Europe." The organization campaigns for the rights and interests of migrant communities from Eastern Europe and for better working conditions.

²⁵ See e.g. Ulrich (September 6, 2021); information on various sectors can also be found on the website of the "Faire Mobilität" advisory network of the German Trade Union Confederation (DGB): <https://www.faire-mobilitaet.de/faelle> (last accessed on June 19, 2024).

²⁶ UKA Report (2021), p. 502.

²⁷ § 7 (1) no. 1 SGB II.

²⁸ On October 6, 2020, the ECJ ruled that people with a right of residence under Art. 10 Regulation 492/2011 may not be excluded across the board from benefits under SGB II, as this contradicts the right to equal treatment. According to the ECJ, former employees who have lost their employee status may not be excluded from social benefits if their dependent children are attending school or training in the host country.

²⁹ According to the BMAS, interim benefits are not dependent on the willingness to leave the country, cf. Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration Gleichbehandlungsstelle EU-Arbeitnehmer.

Since it is well known that Roma are particularly affected by discrimination, exclusion and poverty in Romania and Bulgaria, they have been publicly associated with “poverty immigration” and “benefit fraud” by politicians and the media, which has led to a renewed antigypsyist vocabulary spreading among the German public.³⁰ With the admission of these countries into the European Union, the effects of this racist discourse became visible in practice through the continuous tightening of social welfare laws.

The publication of the internal guidelines for “Combating Organized Benefit Fraud by EU citizens”³¹ issued by the Federal Employment Agency (Bundesagentur für Arbeit, BA) in 2018 once again highlighted the internal tightening of regulations at the job centers. The first published version of the guidelines names Romanians and Bulgarians living in poverty as “perpetrators” of “benefit fraud.” During counseling work, it becomes apparent that these groups are being deliberately and sometimes indiscriminately excluded from services by being denied employee or self-employed status, even though they provide evidence of this.³² This is coupled with the increasing insinuation that people only take on work in order to supplement their social benefits, thus abusing their freedom of movement.³³ Meeting the eligibility requirements for employee status thus becomes the basis for a criminalizing assumption that is intended to directly prevent access to social benefits.³⁴ The exclusion is particularly directed against people with the combined characteristics of nationality (Romanian/Bulgarian or Southeast Europeans), economic and social situation (living in poverty, homeless and without a formal educational background/illiterate), language (no or only little knowledge of German) and “race” (the ascribed ethnic affiliation of Roma),³⁵ although there is a uniform legal situation for all EU citizens. Studies have concluded that this practice is aimed at migration control, which is otherwise not possible in the European Union.³⁶ People from Romania and Bulgaria who are identified as Roma are deliberately excluded. We therefore consider this practice to be antigypsyist, racist and classist.

Recommendations:

- 1 A humane minimum subsistence level must also be ensured for job-seeking EU citizens.
- 2 The internal guidelines of the Federal Employment Agency for organized benefit fraud and all its associated effects (targeted personnel training on the subject, special teams and departments, etc.) must be completely abolished, as they are generally stigmatizing.
- 3 The claiming of social benefits must no longer be presented by the job centers and the BA as an abuse of freedom of movement, especially if the legal requirements (employee or self-employed status) are met and proven. Criminalizing allegations such as “social benefit fraud” and “misuse of the right to freedom of movement” must be formulated more clearly so that they can no longer be applied sweepingly and based on subjective evaluation.
- 4 The General Act on Equal Treatment, (Allgemeines Gleichbehandlungsgesetz, AGG) and the state anti-discrimination laws must cover the BA and take into account institutional and state discrimination. Institutional antigypsyism must be recognized in this context and the federal government must actively combat it and not continue to promote it.

Exclusion from the “Benefit Community” (Bedarfsgemeinschaft) for Unmarried Couples

A frequently observed exclusion of Romanian and Bulgarian nationals can be found in the case of couples who are not officially married but have children together.³⁷ In the course of research for this report, expert discussions with several counseling centers have shown that EU migrants with other nationalities are hardly affected.

³⁰ Cf. Heuß (2022); Deutscher Städtetag 2013; taz (January 1, 2014); Neuburger/Hinrichs (2021), p. 71f.

³¹ Bundesagentur für Arbeit (2018).

³² Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e.V. (2021), p. 9ff.

³³ Cf. *ibid.*, p. 14f.; Neuburger/Hinrichs (2021), p. 86.

³⁴ For example, LSG Berlin-Brandenburg, decision of December 13, 2022 - L 18 AS 1084/22 BER-, para. 6, *juris*.

³⁵ According to E/C.12/GC/20.

³⁶ Neuburger/Hinrichs (2021), p. 70.f; Riedner (2017).

³⁷ See Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e.V. (2021), p. 18f.

If only one parent has acquired employee status and the other parent has not, that person is excluded from benefits when applying for a residence permit solely for the purpose of seeking employment. In many cases, it is the women who do the care work. The men have employment and are therefore entitled to receive benefits together with their children. The job centers point to the fact that the non-working parent can travel back to their country of origin, which violates §6 GG, Art. 18 TFEU and Art. 8 of the European Convention on Human Rights. This practice is incomprehensible, especially since the Social Code Book (SGB) clearly stipulates a “community of responsibility and support” (Verantwortungs- und Einstehensgemeinschaft),³⁸ which is not called into question in the case of German nationals.

It is often the mothers who are pushed into precarious living conditions by this practice of the job centers, oftentimes threatened with homelessness (see Art. 11) and without a legal minimum income or health insurance.

Recommendation:

- 1 The community of responsibility and support must apply to EU citizens in the same way as it does to German citizens, in accordance with §7 SGB II, para. 3 no. 2 and §7 SGB II, para. 3 no. 3 letter c). Return travel demands are inadmissible and discriminatory because they are aimed exclusively at EU citizens and disadvantage them by excluding one family member.

Sanctions by the Job Centers³⁹

We generally welcome the judgment of the Federal Constitutional Court of November 5, 2019 and with that, the reduction of sanctions as a step in the right direction.⁴⁰ However, even with the remaining sanctions, the minimum subsistence level continues to be undercut, which is why they violate the right to an adequate standard of living under Article 25 of the Universal Declaration of Human Rights (UDHR). A reduction affects the entire family, which is why children also suffer from the sanctions. To combat child poverty, the poorest must not be further deprived of their minimum subsistence level. In counseling migrants, we observe that job offers and support programs are often in no way aligned with the living conditions of the benefit recipients (e.g. computer courses for people who are illiterate). In addition, the complex living conditions of the benefit recipients often do not allow them to attend a program or take up a new job. Here, the job centers need to adequately assess which measures are suitable for the respective life situations. In cases where appointments with the employment service at the job center are not kept, this is often due to a lack of language mediation, especially in the case of non-German-speaking benefit recipients. As a result, EU citizens often resort to irregular services in return for payment, or they have to find friends or relatives to accompany them. Although the job centers and the BA are aware that their clients lack German language skills, they usually do not provide interpreters. However, in the directive of November 2016, the BA stipulates that an interpreter is to be provided by the BA if the customers themselves are unable to bring one.⁴¹

Recommendations:

- 1 We support the Recommendation No. 47 of the Committee on Economic, Social and Cultural Rights that both the subsistence minimum and the sanctions be reviewed again, as well as the complete abolition of the sanctioning system.
- 2 Measures and job offers must take into account the life situations of those receiving benefits in all their complexity and be assigned accordingly.
- 3 The BA must act in accordance with its own directives and provide interpreters if the benefit recipients themselves have no way of arranging them.

³⁸ §7 SGB II, Para. 3 No. 2 and §7 SGB II, Para. 3, No. 3 c).

³⁹ E/C.12/DEU/CO/6, nos. 46 and 47.

⁴⁰ See BVerfG, judgment of the First Senate of 5.11.2019 - 1BvL 7/16, para. 1-225.

⁴¹ Cf. Bundesagentur für Arbeit: Directive 201611028 of November 21, 2016.

Child Poverty⁴²

In its 7th country report, the current federal government of Germany refers to the national plan "New Opportunities for Children in Germany", which was adopted by the federal cabinet in 2023.⁴³ In it, it presents the planned basic child allowance (Kindergrundsicherung) as a measure to eliminate child poverty. The plan aims to combine various family and children's benefits (such as child benefits, basic child allowance, education and participation package/BuT benefits, and citizen's allowance) from January 1, 2025; however, this is a matter subject to dispute among the coalition partners. (As of: April 2024)

The planned basic child allowance is based on existing legal requirements for receiving child benefits, such as in Chapter X of the Income Tax Act (Einkommenssteuergesetz, EStG) and in the Federal Act on Family Benefits (Bundeskindergeldgesetz, BKGG), from which a large group of children and adolescents, particularly those from migrant families, are excluded. Children and adolescents without "secure" residence under the Residence Act are currently, and will continue to be, excluded from family and child benefits/child basic security after the introduction of the Federal Basic Child Allowance Act (Bundeskindergrundsicherungsgesetz, BKG).

Non-German EU citizens are currently excluded from family and child benefits/basic child allowance and will continue to be excluded after the introduction of the BKG. Their entitlement remains based on their employment or depends on their employee status, unless they have a permanent right of residence according to §4a of the EU Freedom of Movement Act. Therefore, there is cause for concern that a large number of children in Germany will continue to be without a secure minimum subsistence level, health insurance coverage, education and participation package benefits (BuT) (despite attending school), etc. Taking into account the UN Convention on the Rights of the Child and General Comment No. 20 of the UN on Art. 2 para. 2 of the Covenant on non-discrimination in relation to economic, social and cultural rights,⁴⁴ the following recommendations for the elimination of child poverty are immediately necessary in the specific context of the right to social security.⁴⁵

Recommendations:

- 1 Unconditional child benefits and education and participation package (BuT) benefits for **all** children and adolescents up to the age of 18 and above, as long as they are still completing their vocational training.
- 2 Unconditional and contribution-free health insurance for all children and young people up to the age of 18 and above, as long as they are still completing their vocational training.
- 3 Securing adequate living space for children and young people with sufficient opportunities to retreat to rest and study.
- 4 Facilitated access for children and young people from low-income families without German citizenship to services to secure their livelihood.

Art. 11: Right to an Adequate Standard of Living

In the 7th country report, the German federal government addresses two of the Committee's key recommendations from the 6th country report: No. 54 and 55.⁴⁶ The first is to raise the limits for the coverage of housing costs in basic social security, and the second is to overcome homelessness.⁴⁷ Increasing housing benefits and transitioning from basic social security to receiving housing benefits as a priority benefit are not sufficient instruments for ensuring an adequate standard of living.

⁴² E/C.12/DEU/CO/6, nos. 50 and 51, p. 8.

⁴³ E/C.12/DEU/7, No. 108, p. 18 (printed matter 20/9080, No. 26, p. 23).

⁴⁴ E/C.12/GC/20.

⁴⁵ For further information, see Amaro Foro e.V. (2024), from p. 78.

⁴⁶ E/C.12/DEU/CO/6, nos. 54 and 55, p. 8.

⁴⁷ E/C.12/DEU/7, No. 145-148, p. 25 (printed matter 20/9080, No. 37, p. 29).

Recipients of social benefits are excluded from receiving housing benefits, since their housing needs are already met by their SGB II or XII benefits. There are several possible constellations in which receiving housing benefits does not adequately secure a family's situation, so that they remain on basic security benefits. However, adjusting the upper limits for reasonable accommodation costs in the SGB sector does not reflect the reality of the housing market.

In April 2024, a national plan of action was presented to combat homelessness. It is not yet possible to say whether and how this plan will improve the housing situation of large numbers of people. However, the current situation reveals blatant injustices as well as structural and discriminatory exclusion mechanisms – both in the way municipalities accommodate homeless people and in terms of access to the regular housing market. If the right to adequate housing for (EU) citizens without German citizenship is not taken seriously as a human right, but continues to be tied to the receipt of SGB-social benefits or to employee status, it is to be feared that people in Germany will continue to have to resort to sleeping rough in public spaces.

It is laudable that the federal government is taking the recommendations for the 6th country report seriously to the extent that a legal basis for data collection was created in 2020. UN recommendation 55 e)⁴⁸ on statistical recording, with a breakdown by ethnic affiliation, among other things, is to be regarded as critical and dangerous in this respect. In this regard, Amaro Foro e.V. welcomes the German government's position on the refraining from collecting data on Sinti and Roma in Germany. Based on practical experience and with regard to Article 11 in conjunction with Art. 2 para. 2 of the International Covenant on Economic, Social and Cultural Rights and Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of the United Nations (including the right to housing), the following points are to be noted: A significant proportion of society, especially new immigrants (including families with children), are still affected by homelessness and housing. The obligations and responsibilities of municipalities in relation to housing practices do not function smoothly and in a needs-oriented manner. Especially EU citizens without entitlement to social benefits are often unable to assert their right to adequate housing. The conditions in accommodation facilities are sometimes catastrophic and quality control measures are insufficiently effective. Access to the regular housing market is extremely difficult for many disadvantaged groups, especially for Roma, and is strongly influenced by racist exclusion mechanisms. This results in segregated residential properties where people are forced to live in degrading conditions, while landlords profit economically from the situation. In neighborhood and societal conflicts rooted in antigypsyist stereotypes, a reversal of the roles of perpetrator and victim invariably occurs. Furthermore, there is a distinct lack of control mechanisms in the private housing market.⁴⁹

In consideration of the Committee's General Comment No. 4 on Article 11 of the Covenant, the following recommendations arise.

Recommendations:

- 1 Homeless people, especially families with children, should be immediately provided with adequate housing, regardless of their receipt of social assistance. Cold weather relief facilities are not an appropriate and sustainable solution.
- 2 Quality standards in accommodation facilities should be adapted to include more than just the minimum requirements. Accommodation facilities should be adapted to different needs, e.g. to make them family- and child-friendly with separate sanitary facilities. The introduction of social work support for residents should be a requirement for accommodation providers, especially in the commercial sector.
- 3 The right under Article 11 of the Covenant should not be reduced to the construction of housing alone, but should focus much more its adequacy: matters such as privacy, security, infrastructure, and affordability, in accordance with § 7 General Comment No. 4 of 1991.
- 4 The immediate adjustment of the rent caps for housing costs when receiving benefits under SGB II and XII in line with the realities of actual costs.

⁴⁸ E/C.12/DEU/CO/6, No. 55 e), p. 8.

⁴⁹ For further information, see Amaro Foro e.V. (2024) from p. 81.

- 5 Create instruments that regulate the private housing market sector in particular and make it more responsible, analogous to the obligations of municipal housing associations. In particular, there is an urgent need to effectively counter discrimination in the housing market. The many years of efforts by civil society in this regard are not enough without effective legal instruments.
- 6 Taking into account the Committee's General Comment No. 7, forced evictions without alternatives, especially of households with children, must be prevented or declared inadmissible.

Art. 12: Right to Health

Germany is still a very long way from providing comprehensive health care and equal access to it. The 7th country report refers to the Asylum Seekers Benefits Act (AsylbLG), which is intended to regularly guarantee persons entitled to benefits health services in accordance with § 4 during the first 18 months of their stay in the German federal territory.⁵⁰ However, the care of asylum seekers is limited to acute illnesses and cases of pain during the first 15 months, with no clear definitions or guiding principles for “other essential health-care services” as well as for the aforementioned acute illnesses and cases of pain.⁵¹ In addition, the responsible officials at the social welfare offices decide on the granting of further health services that lie outside these acute conditions. This creates a relationship of dependency and undermines the law. Furthermore, chronic illnesses are not included.⁵² This can lead to people in acute health situations being excluded or to subtler health conditions being overlooked, such as the ill-effects of receiving a tolerated stay permit on a person’s health. According to a 2020 study on the experiences of racism by Sinti and Roma in Germany, the prospect of imminent deportation causes insecurity, anxiety and psychological problems, especially among young people.⁵³ This means that young people in particular are deprived of any security to plan for the future; the psychological burden is significant. In addition, the concept of so-called “safe countries of origin” means that the asylum applications of refugees from these countries are almost automatically rejected. People who are thus forced to live in Germany without legal documents can receive medical services under the Asylum Seekers Benefits Act (AsylbLG), but they have to apply to the social welfare office for a medical certificate. According to §87 para. 2 of the Residence Act (AufenthG), the claiming of a social benefit such as the medical certificate must be reported immediately to the immigration office. Thus, people who live in forced illegality are excluded from the health care system and dependent on non-governmental offers of basic medical care.

Access to almost all areas of health care is poor for EU citizens, especially for Roma and people who are assumed to be Roma. Adequate social protection remains a pipe dream, even though the 6th country report states that the protection afforded by necessary medical care is guaranteed by the statutory health insurance providers – regardless of economic performance – and the previously adopted Prevention Act, which, among other things, names particularly disadvantaged groups as a target group.⁵⁴ With regard to access to statutory health insurance, bureaucratic hurdles and restrictive measures for job seekers, the self-employed, those in marginally employed positions or unemployed EU citizens are particularly worthy of mention. They often result in a slow admission process or a simple refusal by the health insurance providers. The aim of comprehensive health protection, or the legally established and state-sponsored assistance for people in need does work, but only if one is part of the health care system. If access is impeded or prevented, this means that adequate care is not provided. If people are forced to seek out the system because of an emergency treatment, they face heavy debts.

In addition to the hurdle of being accepted into the health care system at all, Roma and people who are perceived as being Roma who are in the system also encounter rejections, unfriendliness and exclusions. Doctors refuse treatment, usually without giving reasons or even quite openly making racist remarks. Language barriers are another obstacle.

⁵⁰ E/C.12/DEU/7, No. 166, p. 28.

⁵¹ E/C.12/DEU/CO/6, No. 58, p. 9.

⁵² See Zentralrat deutscher Sinti und Roma (May 2019).

⁵³ Randjelović et al. (2020), p. 209.

⁵⁴ E/C.12/DEU/6, No. 197-200, p. 29.

Due to a lack of translation options, whether in the context of surgical explanations in hospitals, in outpatient care or in ambulance services, even insured EU citizens are often unable to access medical services or important information is lost. In Germany, since February 26, 2013, according to § 630 e) of the BGB, every patient has the right to comprehensive and understandable information. This includes providing information to patients in a language they understand. Doctors must ensure that information is communicated appropriately, for example, using professional interpreters, image-based materials, pictograms or visual manuals. However, this is for the most part simply not being implemented.

The improvement of the health care system with regard to vulnerable groups mentioned in the 7th country report is to be commended. However, for Roma and for people who are perceived as being Roma, this improvement is not valid on many levels if, despite access to the health care system, treatment is refused, decisions are made without patients, or patients are subjected to racist remarks/actions, etc.

People who are dependent on the regulations in the Asylum Seekers Benefits Act (AsylbLG) cannot rely on state care either due to the severe restrictions of the health care system.

Recommendations:

- 1 In publicly funded healthcare institutions, employees must be given awareness training on antigypsyism.
- 2 Independent complaints bodies are needed to ensure that those affected do not receive poorer medical treatment or no medical treatment at all due to racist stereotyping.
- 3 Access to statutory health insurance must be significantly simplified by not levying back contributions and by communicating better with insurance companies in other EU countries.
- 4 Large-scale structures are needed to educate the insured about their rights.
- 5 Easier access to translation options and breaking down language barriers, for example by providing multilingual information materials, pictograms and visual educational material.
- 6 As recommended by the UN Committee, everyone in the State party, including asylum seekers – regardless of their status and residence permit – should have equal access to the entire health care system and its services.

Art. 13: Right to Education

Antigypsyist discrimination is particularly evident in the field of education, and has serious consequences due to the fundamental importance of education for a person's life. The German education system (federal states and local authorities) still does not provide enough school enrolment places, so that access to the education system alone is difficult. In the UN recommendations for the 6th country report, the Committee on Economic, Social and Cultural Rights is “concerned at the persisting challenges in the education sector, in particular: (...) (c) The obstacles that refugee and asylum-seeking children face in having access to education, which vary considerably from state to state and from municipality to municipality” (Arts. 13 and 14).⁵⁵ The 7th country report does address the issue of the participation of refugee and asylum-seeking children in education, but states that this is “organized [...] regardless of residence status and length of stay, so that school-age children of asylum seekers and refugees are subject to compulsory schooling in all federal states.”⁵⁶ Although children are required to attend school, in reality they are forced to violate this requirement in many places. Thus, many children labeled as Roma are denied the right to education. For example, children and adolescents who live in refugee shelters and whose residence status has not been resolved often do not receive schooling. Here, our organization's Documentation Center for Antigypsyism (DOSTA) has documented cases in Berlin in which education authorities and school administrators have clearly stated their reasoning for not providing school enrolment places.

⁵⁵ E/C.12/DEU/CO/6, No. 60c. The recommendations also state that further efforts must be made in Germany "to ensure that refugee and asylum-seeking children participate in education as soon as possible after their arrival". Likewise, "equal [...] and good quality [...] educational opportunities for these children must be guaranteed nationwide". Ibid., No. 61 c.

⁵⁶ E/C.12/DEU/7, no. 200.

According to their reasoning, these children and adolescents need not be provided with school enrolment places because, firstly, they would likely not attend school anyway and, secondly, they would more likely soon be deported (e.g. to the Republic of Moldova). These two arguments show that the German education system is not just characterized by a general lack of available school enrolment places and a shortage of resources, but that the non-allocation of school enrolment places is based on age-old antigypsyist stereotyping and disparagement. The right to education must be guaranteed regardless of residence status. Even if children and adolescents are enrolled in school, institutional antigypsyism in the German education system continues in their educational trajectory.

Our DOSTA cases and various studies show that children who are labeled as Roma are more likely to be referred to special needs schools.⁵⁷ In 2018, the state of North Rhine-Westphalia was forced to pay damages to a former student for the first time.⁵⁸ In general, there is a strong focus on deficits in Germany when it comes to immigrant Roma who do not yet have a perfect command of the German language. This segregation and restriction of participation in society is also reflected in the establishment of so-called welcome classes. In its 7th country report, Germany states that it takes a positive view of the concept of welcome classes. The aim of these is to ensure a “quick transition to regular classes.”⁵⁹ In practice, however, children and adolescents in Berlin with no knowledge of the German language sometimes have to wait months just to receive an enrolment place in a welcome class, and then sometimes have to stay there for over a year and a half because it is impossible for them to transition into the school system. In Berlin, the establishment of the welcome classes was based on the Roma plan of action of the Berlin Senate and explicitly refers to the alleged “considerable scepticism of many newly immigrated Roma parents towards German authorities and educational institutions.”⁶⁰ The systematic persecution and murder of Roma during the Nazi era and the ongoing exclusion of Roma in Germany are not mentioned.

Since the beginning of the war of aggression against Ukraine, refugee shelter schools have been established in Berlin, like the one at the Tegel arrival center. There, refugees of school age have been attending the “Welcome School TXL” (Willkommensschule TXL) since the beginning of 2024. In the future, such educational models are planned in other parts of Berlin as well. We welcome the rapid provision of schooling for children who have fled Ukraine within the framework of the Ukraine Task Force, which is discussed in detail in the 7th State Report. However, there are two key points of criticism here: As civil society organizations have been demanding for years, such measures are lacking for children from other countries of origin. The establishment of entire schools within refugee shelters – as is the case in Berlin Tegel – increases the problems that already exist in the system of welcome classes. In these classes, the children are completely excluded from regular school life. They are not allowed to physically leave the refugee shelter and are only educated together with other refugee children. Such conditions are unacceptable.⁶¹ Furthermore, DOSTA has been documenting in the field of education in Berlin since 2014 that children and young people with a self-ascribed or externally-ascribed Roma background often experience racist bullying from fellow students, teachers, school administrators and school social workers. Racist comments and discriminatory language are normalized in everyday school life, and teachers often lack awareness and sensitivity to racial discrimination, for example when the racist external designation is used. The child who has been subjected to antigypsyist abuse is more likely to be held responsible for the conflict than the children who have made racist/antigypsyist comments. Sinti and Roma have been part of German history for almost 600 years, yet they hardly appear in school books, and when they do, it is in a negative, exoticizing and pejorative way, as a homogeneous group characterized by a low degree of civilization.⁶²

⁵⁷ Cf. e.g. Leibnitz et al. (2016); Amaro Foro e.V. (2024).

⁵⁸ Nenad M. had fled Serbia with his parents and only spoke Romani when he started school. As his language skills were not taken into account in the German-based school enrolment test, he was diagnosed with a mental disability and had to attend a special needs school. He remained there for eleven years and the test was not repeated - although Nenad M. repeatedly asked for it to be repeated. With the support of civil society, he successfully sued the state of North Rhine-Westphalia in the Cologne District Court.

⁵⁹ E/C.12/DEU/7, no. 201.

⁶⁰ Berliner Senat (July 19, 2013): Berliner Aktionsplan zur Einbeziehung ausländischer Roma, printed matter 17/1094, p. 7f.

⁶¹ This is also evident from a joint statement by the elected members of the State Advisory Council, the Migration Council Berlin e. V. and the Refugee Council Berlin (June 14, 2024) on the special schooling of refugee children in LAF shelters in Berlin, which was co-signed by civil society organizations such as Amaro Foro e. V.

⁶² Rath/Spielhaus (2021): S. 47, 62.

With regard to the implementation and guarantee of the right to non-discriminatory education, profound problems become visible in Germany with regard to Roma and those to whom a Roma background is attributed. Children and adolescents experience ongoing discrimination in the German education system. The schooling of refugee and asylum-seeking children is aspired to in the 7th country report, but in practice often does not take place for Roma. Supposedly temporary educational concepts such as welcome classes and welcome schools lead to more segregation and ongoing educational disadvantage. The discussion of the Porajmos, the genocide of the Sinti and Roma under national socialism, is at times missing in German textbooks.

Recommendations:

- 1 Switch from the welcome class model to attending a regular school with additional language learning support.
- 2 Standardization of the legal situation, particularly with regard to protection against discrimination, e.g. through state anti-discrimination laws.
- 3 Antiracist and antigypsyist revision of curricula and teaching materials, particularly schoolbooks.
- 4 Reforming the education laws of the federal states that do not provide for adequate procedures for the introduction of teaching materials that are critical of racism and sensitive to antigypsyism.
- 5 Raising awareness among school and teaching staff about antigypsyism.
- 6 School-specific, all-encompassing prohibitions of discrimination in relation to antigypsyism, as well as corresponding consequences for violations. These must also be enshrined in the education laws of the federal states.

Conclusion

Germany's signing of the UN Covenant on Economic, Social and Cultural Rights is in itself a positive development. However, for many years, Amaro Foro e.V. has observed with concern the symbolic politics directed at mainstream society and the restrictive tightening of laws directed at migrants. The societal climate has shifted significantly to the right. In particular, we are concerned about the mechanisms of exclusion and exploitation identified in this report with regard to equal participation and the preservation and enforcement of the rights of people affected by antigypsyism and other forms of racism. Particular attention should be given to the 23rd and 26th reports by Germany on the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which specifically addresses the discrimination of Sinti and Roma in all sectors and in which the State party is recommended in detail to intensify its efforts.⁶³ We would also like to draw attention to the national strategy "Combating Antigypsyism, Securing Participation!" ("Antiziganismus bekämpfen, Teilhabe sichern!")⁶⁴ initiated by the German government to implement the EU Roma Strategy 2030 in Germany. This strategy includes important measures for participation in the areas of work, health, social participation, education and housing, but in terms of content, these fall short and create a legal framework that makes discrimination against Sinti and Roma possible in the first place. Regarding the measures, it should be noted that discrimination-free work – for example in EHAP projects or counseling services – will only be possible through structural and legal changes. The work of combatting discrimination cannot only take place at the level of civil society, but must be able to rely on the rule of law and state action. In order for Germany to comply with the ICESCR, there must also be better, more sustainably financed and more stringent impact assessments, as well as efficient mechanisms for monitoring discriminatory structures. As long as people are legally excluded from social security, education, safe housing, health and work, the implementation of the Covenant cannot be considered to be free of discrimination. Germany has a historical responsibility towards Roma that it must also honor in a legal framework. A minimum standard would be to guarantee a right of residence for Roma.

⁶³ CERD/C/DEU/CO/23-26.

⁶⁴ Bundesministerium des Innern, für Bau und Heimat (2022).

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