



## **PARALLEL REPORT OF THE GERMAN ANTI POVERTY NETWORK**

### **COMPLEMENTING THE SIXTH STATE REPORT OF THE FEDERAL REPUBLIC OF GERMANY ON THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)**

#### **Imprint**

##### **Group of Coordinators**

Dr. Andreas Aust, Der Paritätische Gesamtverband  
Michael David, Diakonie Deutschland  
Anna-Katharina Dietrich, Diakonie Deutschland  
Frank Meissner, Deutscher Gewerkschaftsbund  
Jari Trabert, Armut und Gesundheit in Deutschland e.V.  
Michael Wolff, Oswald von Nell-Breuning-Institut für Wirtschafts- und Gesellschaftsethik

##### **Contact**

Anna-Katharina Dietrich  
German Anti Poverty Network Director  
c/o Diakonie Deutschland  
Evangelisches Werk für Diakonie und Entwicklung e.V.  
Caroline-Michaelis-Straße 1  
10115 Berlin  
+49 (0)30 65211-1062  
[anna-katharina.dietrich@diakonie.de](mailto:anna-katharina.dietrich@diakonie.de)

##### **Translation**

Textpraxis, Hamburg, [www.textpraxis.de](http://www.textpraxis.de)

## Preface

The German Anti Poverty Network (Nationale Armutskonferenz / nak) is a confederation made of national welfare associations, self-help organizations and the German Trade Union Confederation (DGB). The nak was founded in 1991 as the German section of the European Anti Poverty Network. In 2017 the German Anti Poverty Network submitted a list of issues to the Pre-Sessional working group which was presented by a member of the network in Geneva .

### **Member organizations:**

Arbeiterwohlfahrt Bundesverband  
AG Schuldnerberatung der Verbände  
Armutsnetzwerk  
Armut und Gesundheit in Deutschland  
BAG Schuldnerberatung  
BAG Soziale Stadtentwicklung und Gemeinwesenarbeit  
BAG Wohnungslosenhilfe  
BAG der Landesseniorenvertretungen  
BBI wohnungsloser Menschen  
Deutscher Bundesjugendring  
Deutscher Caritasverband  
Deutscher Gewerkschaftsbund  
Diakonie Deutschland  
Gesundheit Berlin-Brandenburg  
Oswald von Nell-Breuning-Institut für Wirtschafts- und Gesellschaftsethik  
Paritätischer Wohlfahrtsverband  
Tafel Deutschland  
Zentralwohlfahrtsstelle der Juden in Deutschland

## CONTENTS

1. The pending ratification of the Optional Protocol .....	4
2. Right to work and vocational training (article 6) .....	4
2.1 Labour market access for asylum-seekers and persons granted temporary stay of deportation.....	4
3. Right to just and favourable conditions of work (article 7) .....	6
3.1 Acceptable work in unemployment assistance .....	6
3.2 In-work poverty .....	6
3.3 Live-in care-givers: The right to leisure .....	9
4. Right to social security (Article 9).....	12
4.1 Basic benefits ( <i>Grundsicherung</i> ) and the methods used to assess needs.....	12
4.2 Risks of poverty among women .....	13
4.3 Child poverty .....	14
5. Right to an adequate standard of living (article 11).....	17
5.1 Concerns and recommendation of the Committee, and the current situation.....	17
5.2 Sanctions .....	18
5.3 Rights of asylum-seekers and job-seeking EU-citizens to a decent standard of living .	20
5.4 Right to housing: calculating the cost of accommodation .....	23
6. Right to health (article 12).....	25
6.1 Concerns and recommendations of the Committee and the current situation.....	25
6.2 Exclusion of EU citizens from entitlement to social security benefits .....	26
6.3 Healthcare for asylum-seekers, persons granted temporary leave of deportation and undocumented migrants .....	27

## 1. THE PENDING RATIFICATION OF THE OPTIONAL PROTOCOL

On December 10, 2008, the UN General Assembly adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although the Federal Government of Germany supported the development of the Optional Protocol and has repeatedly announced its intention to promptly ratify it, little action has been taken so far. Ratification by the Federal Government is still pending or has been delayed. Although the coalition agreement of 2018 includes the stated intention of the government parties to seek ratification of the Additional Protocol, they have announced neither concrete steps nor a comprehensive roadmap for ratification.<sup>1</sup>

### Call for action:

The German Anti Poverty Network therefore urges the Federal Government to use the reporting process for its State Party Report to announce to the Committee as well as to German civil society a roadmap for the ratification of the Optional Protocol, and to ensure its speedy implementation.

## 2. RIGHT TO WORK AND VOCATIONAL TRAINING (ARTICLE 6)

### 2.1 Labour market access for asylum-seekers and persons granted temporary stay of deportation

In its Concluding Observations from 2011 (No. 13), the Committee expressed concern at the restricted access of asylum-seekers to the labour market. The Federal Government refers in its 6th State Party Report to measures taken to improve access to the labour market. However, the Federal Government only references measures taken to improve access to work, education and the labour market for asylum-seekers who have a high probability of being granted leave to remain, and thus retains institutional barriers to the labour market integration of other refugees. This distinction between asylum-seekers with high and low chances of remaining in the country is inappropriate and discriminatory, because contrary to a general assessment relating to a person's country of origin, in many cases there are individual reasons for protection leading to long-term or permanent residency in Germany. Moreover, even in the event that the protection request is rejected, deportation is often not possible in the long term for factual or legal reasons. For these reasons, and also considering the lengthy duration of the asylum recognition process, all asylum-seekers should have access as early as possible to all labour market integration services. Since the passage in 2017 of the 'Law to Improve the Enforcement of the Obligation to Leave the Country'<sup>2</sup>, which allowed for faster deportation of rejected asylum applicants, the German federal states may extend to two years the mandatory period of stay in refugee reception centres for asylum-seekers, both while their applications are being processed and after they have been rejected. This has resulted in a legal restriction of access to the labour market and

---

<sup>1</sup> Cf. Deutscher Bundestag (2018): Koalitionsvertrag zwischen CDU, CSU und SPD. 19. Legislaturperiode. Ein neuer Aufbruch für Europa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land. [Coalition agreement between CDU, CSU and SPD. 19th legislative session. A New Departure for Europe. Fresh Momentum for Germany. Greater Cohesion for our Country]. Here: p. 155. Download: [https://www.bundestag.de/blob/543200/9f9f2\\_2a618c77aa330f00ed21e308/kw49\\_koalition\\_koalitionsvertrag-data.pdf](https://www.bundestag.de/blob/543200/9f9f2_2a618c77aa330f00ed21e308/kw49_koalition_koalitionsvertrag-data.pdf)

<sup>2</sup> Gesetz zur besseren Durchsetzung der Ausreisepflicht

to labour market supports for these people. This development is to be feared, as such restrictions are likely to lead to permanent exclusion from the labour market, which would be both unconstitutional and potentially in violation of European and international law. Therefore, the Federal Government must closely monitor the application of this new opening clause by the federal states and support the revocation of this statutory regulation.

**Call for action:**

The German Anti Poverty Network calls on the Federal Government to take measures to ensure that, in accordance with international norms, asylum-seekers and persons granted temporary stay of deportation receive equal treatment in terms of access to the labour market in all federal states of Germany. They should, at the earliest opportunity, be given access to the labour market and vocational training system, as well as to all labour market integration measures.

### 3. RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK (ARTICLE 7)

#### 3.1 Acceptable work in unemployment assistance

In its Concluding Observations from 2011, the Committee urges the Federal Government to “ensure that its unemployment benefits schemes take account of an individual’s right to freely accept employment of his or her choosing as well as the right to fair remuneration” (para. 19).

The Federal Government has so far failed to sufficiently comply with this recommendation. Although the Government states in its 6th State Party Report that violations of articles 6 and 7 of the ICESCR are precluded by the statutory guarantee that people will not be forced to accept work for which they are physically, mentally or emotionally unfit, this provision does not provide a suitable instrument to strengthen the right to decent working conditions. On the contrary, adverse working conditions or activities below a person’s own qualification level are considered acceptable. As a result, social welfare recipients may also be required, on penalty of sanction, to accept work that is insufficient to secure a basic livelihood. In combination with sanctions and the dangers these pose of pushing unemployed people below the minimum subsistence level, pressure is thus placed on the unemployed to accept almost any kind of work. Thus, in the case of the basic provision for job-seekers (*Grundsicherung*) in accordance with Book II of the German Social Code (SCB II), almost any kind of work is considered reasonable, provided there is no significant reason for refusing it (e.g., care of another adult or of a child).

This is no way to free people from poverty and reliance on social security benefits. In fact, this has contributed to the steady growth of a low-wage sector in Germany, and significantly aggravated the problem of in-work poverty.<sup>3</sup>

#### Call for action:

The German Anti Poverty Network calls on the Federal Government to ensure that measures taken to reintroduce unemployed people to the labour market lead to decent work.

#### 3.2 In-work poverty

In its Concluding Observations, the Committee expressed concern about the large number of people who are employed yet rely on supplementary benefits because their earnings are insufficient to secure a basic livelihood. This situation has not improved since then. Approximately 1.2 million working people in Germany earn so little that they still depend on benefits guaranteed under SCB II. In other words, 16% of all recipients of basic provision for job-seekers are actually employed.

For many people in employment, poverty is a bitter reality – even though the economy and the labour market are booming. In Germany, in-work poverty<sup>4</sup> has doubled in the last ten years: between 2004 and 2014, the proportion of working poor among all workers increased

---

<sup>3</sup> See also section 3.2.

<sup>4</sup> In-work poverty is defined within the European Union to mean when a working person’s disposable income is below poverty level (less than 60% of median net equivalent income).

from 4.8% to 9.6%.<sup>5</sup> The reasons for the increase are above all a sharp rise in precarious employment and a growing low-wage sector. Germany has the largest low-wage sector in Western Europe: in 2014, one in four workers earned less than ten euros per hour.<sup>6</sup>

### 3.2.1 Background: forms of precarious employment in Germany

A similar pattern can be seen in all forms of precarious work: low incomes, low levels of social protection and less employee co-determination mean that employees' bargaining power vis-à-vis employers is weakened, interest groups and trade unions lose influence, and employees are left to face social risks alone.<sup>7</sup>

The largest single group engaged in atypical employment are the holders of so-called *mini-jobs*, currently 7.5 million people. With an earning cap of 450 euros per month, mini-jobs do not represent a genuine opportunity to enter into *reasonably paid work*, but rather represent dead ends with few prospects, low incomes and often poor working conditions. Certain tax incentives (Income splitting for married couples) also hinder a transition, especially for women, to regular employment with social security contributions.

Various forms of *part-time employment* offer an opportunity for mothers and, less frequently, for fathers, to balance work and family life. For many women, the birth of their first child means entering a period of part-time employment, which, with some interruptions or switching between full- and part-time work, lasts until retirement. This is a major cause of the gender pension gap<sup>8</sup>, and of the high rate of old-age poverty among women.<sup>9</sup>

*Subcontracted employment* allows employers to flexibly respond to fluctuations in production. There are currently approximately one million subcontracted employees in Germany. For many, this form of employment has either become a permanent condition or they alternate between periods of subcontracted work, unemployment and dependent employment, without the prospect of entering regular employment. The average gross earnings of subcontracted workers are 42% lower than those of regular employees. At all qualification levels, they earn significantly less than regular employees.<sup>10</sup>

The number of people working on short-term *service contracts* (*Werkverträge*) rose from 1.4 million in 1991 to 2.3 million in 2016. Half of all freelance workers in Germany earn only the equivalent of a low wage. Moreover, they tend to lack adequate social protection from illness, loss of earnings and old age. There is an additional and growing problem of abuse of service contracts by employers to undermine rights of workplace co-determination through illegal temporary staffing, disregarding the minimum wage law, and hindering the formation of works councils.

---

<sup>5</sup> Cf. Spannagel, Dorothee/Seikel, Daniel/Schulze Buschoff, Karin/Baumann, Helge (2017): Aktivierungspolitik und Erwerbsarmut in Europa und Deutschland. [Activation policies and in-work poverty in Germany and Europe.] In: WSI-Report, No. 36, July 2017. Download: [https://www.boeckler.de/pdf/p\\_wsi\\_report\\_36\\_2017.pdf](https://www.boeckler.de/pdf/p_wsi_report_36_2017.pdf).

<sup>6</sup> Cf. Deutscher Bundestag (2016): Niedriglöhne in der Bundesrepublik Deutschland. Antwort der Bundesregierung auf Kleine Anfrage. [Low wages in the Federal Republic of Germany. Response of the Federal Government to a parliamentary question]. Document 18/10582 of 7 December 2016. Download: <http://dip21.bundestag.de/dip21/btd/18/105/1810582.pdf>

<sup>7</sup> Cf. Bosch, Gerhard (2017): Industrielle Beziehungen und soziale Ungleichheit in Deutschland. [Industrial relations and social inequality in Germany.] In: IAQ-Forschung, No. 6/2017. Download: <http://www.iaq.uni-due.de/iaq-forschung/2017/fo2017-06.pdf>.

<sup>8</sup> The gender pension gap in Germany was 53% in 2015: cf. Wagner, Alexandra/Klenner, Christina/Sopp, Peter (2017): Alterseinkommen von Frauen und Männern. Neue Auswertungen aus dem WSI GenderDatenPortal. [Income of women and men in old age. New analysis of the WSI gender data]. In: WSI-Report, No. 38, December 2017. Download: [https://www.boeckler.de/pdf/p\\_wsi\\_report\\_38\\_2017.pdf](https://www.boeckler.de/pdf/p_wsi_report_38_2017.pdf).

<sup>9</sup> See also Section 4.2.

<sup>10</sup> Cf. Bundesagentur für Arbeit (2018): Aktuelle Entwicklung in der Zeitarbeit. [Current developments in the temporary employment sector.]

The number of *fixed-term employment contracts* has also risen to 3.2 million. Currently, 44% of all new employees in Germany are hired on fixed-term contracts.<sup>11</sup> Almost every second fixed-term contract (48%) is limited without material cause. Successive fixed-term contracts – that is, the permanent extension of the time limit of employment – may result in a person working in the same job for years without receiving any of the benefits of permanent employment. In addition to yielding low earnings, fixed-term contracts are also problematic because people employed on this basis are less likely than permanent employees to defend their interests vis-à-vis the employer.

### 3.2.2 General conditions

Recent developments in German labour market and social policy have also contributed to an increase in in-work poverty. These include cuts to social benefits and failed labour market policies. In-work poverty is closely connected to income disparity, minimum wages, collective bargaining policy, as well as social and tax policy. The sharp rise in in-work poverty despite an increase in employment figure shows that the German Federal Government needs to look more closely at the basic general conditions of paid employment.

A legal minimum wage was introduced in Germany in 2015. This was a milestone in German labour market policy. The minimum wage marks the base limit below which the hourly pay rate may not fall; currently it stands at €8.84. However, a further, gradual increase in the minimum wage is necessary to more effectively prevent pay rates falling below the poverty threshold, which is currently estimated at €10.22.

#### Call for action:

There is an urgent need for political action to address the problem of precarious employment. The German Anti Poverty Network believes that the state should act to ensure that precarious work more often develops into regular work. The introduction of the statutory minimum wage in 2015 aimed to prevent a further reduction in (already low) wages. Thus, a further increase in the statutory minimum wage is needed to combat the growing trend towards in-work poverty. Wherever differing needs of employers and employees for flexibility collide, rights to co-determination and other legal regulations ensure that minimum standards are adhered to and employees are protected by the social security system.

The German Anti Poverty Network calls on the German Federal Government to stem in-work poverty through the following measures:

- Combating in-work poverty and the low-wage sector, ensuring decent working conditions and a living wage for all employees.
- Providing political support for the basic general conditions of employment. Decent work depends on collective agreements and co-determination of employees
- Improving social protection for all people in various living circumstances. In particular, higher standard rates are required for basic benefits (*Grundsicherung*), as well as more safeguards against the risks of unemployment.
- Realigning labour market and social policy. Employment policy should abandon sanctions and pressure, and instead focus on motivating and empowering people.
- Creating a political framework that includes poverty reduction as an important cross-cutting issue. In addition to labour market considerations, the social participation of all people should form part of this policy.
- Examining the negative effects of mini-jobs and part-time employment on women.

---

<sup>11</sup> Hohendanner, Christian (2018): Zur Einschränkung befristeter Arbeitsverträge im Koalitionsvertrag. [On the restriction of fixed-term employment contracts in the coalition agreement.] In: IAB-Forum of 12 February 2018. Download: <https://www.iab-forum.de/zur-einschraenkung-befristeter-arbeitsvertraege-im-koalitionsvertrag/>.



### 3.3 Live-in care-givers: The right to leisure

Article 7 of ICESCR states that everyone has the right to just and favorable working conditions, which is referred to as “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays” in clause (d). In No. 13 of the List of Issues in Relation to the Sixth Periodic Report of Germany, the Committee on Economic, Social and Cultural Rights (CESCR) called on the Federal Republic of Germany to comment on the right to leisure time with regard to migrant caregivers. For Live-In-Caregivers in so-called ‘round-the-clock care’ (“24-Stunden-Pflege”), the right to leisure time is not necessarily guaranteed. The Federal Government does nothing to eliminate or even alleviate this problem.

#### 3.3.1 Migrant caregivers in Germany

According to a recent and rather cautious estimate, 163,000 caregivers in Germany work in private households and live together with the person they care for (“Live-In”).<sup>12</sup> Almost all of these workers are migrant women from Central and Eastern Europe, most of them from Poland. Live-Ins work mostly in a rotation system in which, for example, they work for four, six or eight weeks in the German private household. Afterwards, they live in their country of origin for a similar length of time, while a colleague provides the care work in the respective private German household. Others may also be in continuous service for a year or two. The main problem of care work provided by Live-Ins in private German households is the extreme extension of working hours. A representative survey of private households with a care recipient showed that on average, Live-Ins spend 69 hours a week working on care giving, housekeeping, support and supervision activities.<sup>13</sup> If only the time that is needed for these activities is considered, then Live-Ins carry out more than a quarter of the paid care work in Germany.<sup>14</sup>

In addition to those activities, these migrants are on call for (almost) 24 hours working from within the care recipient’s home. From a human right perspective, it is crucial to recognize that these workers have little to no time during their duty cycle in Germany in which they are not available for the care recipients or their relatives. In most cases, the Live-In-status, in which the caregiver shares a domicile with the care recipient, leads to a constant availability and thus to an almost entire dissolution of boundaries as far as working hours are concerned.<sup>15</sup>

---

<sup>12</sup> Cf. Hielscher, Volker/Kirchen-Peters, Sabine/Nock, Lukas (2017): Pflege in den eigenen vier Wänden: Zeitaufwand und Kosten. Pflegebedürftige und ihre Angehörigen geben Auskunft. STUDY – Hans-Böckler-Stiftung, No. 363, p. 95.

<sup>13</sup> Ibid., p. 60.

<sup>14</sup> The data of Hielscher et al. 2017 yields that there are approximately 290,000 full-time equivalents. According to the Federal Statistics Office 2017, there are 764,000 full-time equivalents for outpatient care services and care homes; cf. *ibid.*, pp. 60, 95; Statistisches Bundesamt (Ed.) (2017): Pflegestatistik 2015. Pflege im Rahmen der Pflegeversicherung – Deutschlandergebnisse. Wiesbaden, pp. 10, 19.

<sup>15</sup> Cf. Pflege zu Hause: Die besten Vermittler für Betreuungskräfte aus Osteuropa. In: *test – Stiftung Warentest* (2017) 5, pp. 86-95, here: p. 91; Karakayali, Juliane (2010): Transnational Haushalten. Biografische Interviews mit care workers aus Osteuropa. Wiesbaden: VS Research, p. 116; Emunds, Bernhard/Schacher, Uwe (2012): Ausländische Pflegekräfte in Privathaushalten. Abschlussbericht zum Forschungsprojekt. Frankfurter Arbeitspapiere zur gesellschaftsethischen und sozialwissenschaftlichen Forschung – Oswald von Nell-Breuning-Institut, No. 61, pp. 61-62; Satola, Agnieszka (2015): Migration und irreguläre Pflegearbeit in Deutschland. Eine biographische Skizze. Stuttgart: *ibidem*, pp. 18, 185; Emunds, Bernhard (2016): Menschenunwürdige Pflegearbeit in deutschen Privathaushalten. Sozialethische Bemerkungen zu den Arbeitsverhältnissen mittel- und osteuropäischer Live-Ins. In: *Jahrbuch für Christliche Sozialwissenschaften* 57, pp. 199-224; Kniejska, Patrycja (2016): Migrant Care Workers aus Polen in der häuslichen Pflege. Zwischen familiärer Nähe und beruflicher Distanz. Wiesbaden: Springer VS., pp. 60, 87.

In many care households, there are no steady free time arrangements for the employed persons, apart from the afternoon rest and the night's sleep. In other households, caregivers are free once a week (on the weekend, for example), or twice per afternoon or for half a day (approximately six hours). Vacation days are not common even if their employment term in Germany lasts several months. If continuous service indeed persists, in many cases no fixated vacation arrangements are established whatsoever. At least in particular cases, there is not any free time regulated to the caregivers. Those Live-In-caregivers who are working within a rotation system have a longer period of rest in their home countries after several weeks or months of work without a gainful employment. During this time, however, they do not earn any income and, hence, are on unpaid leave.

Many caregivers experience the constant stress in the households in which they work as a massive burden.<sup>16</sup> Of course, there are families with members requiring in-home care who strive for a good relationship with the migrant caregiver. They also advocate for relatively fair working conditions and thus week after week for longer periods of leisure time for the caregiver. Overall, however, the (almost) totally unbounded working hours are part of the home-care system through Live-Ins. This is not only illustrated by the widespread term "24-Stunden-Pflege", but also by advertisements of many placement agencies for caregivers that stress this almost complete availability.

### **3.3.2 Political inactivity of German Federal Government**

The German Federal Government does not do anything to combat or suppress this extremely extensive use of labor. Rather, the Government seems to perceive the work of the Live-Ins in German households as an integral – and from a public-expenditure-perspective as a cost-effective – part of the German care system, which relies heavily upon home care. No labor inspectors are sent to private households; noteworthy raids on illicit employments of Live-Ins have been absent for about 15 years. Only rarely are court cases initiated because of unpaid social security contributions. The question of whether the Live-Ins in households with care needs fall under the (for other cases designed) exception of § 18 para. 1 no. 3 ArbZG (Working Hours Act), meaning that the maximum working hours of the German Working Hours Act do not apply to them, is left open by the Federal Government. In response to a minor interpellation from the German Bundestag in 2012, the Government answered that in order to clarify this question one had to "consider all circumstances of the individual case"<sup>17</sup>. One year later at the time of the ratification of the ILO Convention 189 "concerning decent work for domestic workers", the Government precisely excluded the group, who falls under the exception of the ArbZG, from the application of the Convention.<sup>18</sup> In the process of reporting on the application of ILO Convention 189, the German Trade Union Confederation (DGB) has criticized this "case-by-case approach" of the Federal Government with respect to the validity of this law and thus also of the Convention: "such an

---

<sup>16</sup> Cf. Ignatzi, Helene (2014): Häusliche Altenpflege zwischen Legalität und Illegalität dargestellt am Beispiel polnischer Arbeitskräfte in deutschen Privathaushalten. Berlin: Lit, pp. 244-245, 306-307, 309.

<sup>17</sup> Deutscher Bundestag (2012): Arbeitnehmerrechte ausländischer Pflegehilfskräfte im grauen Pflegemarkt. Antwort der Bundesregierung auf die Kleine Anfrage. Drucksache 17/8373 vom 18.01.2002, p. 4; in the original: „alle Umstände des Einzelfalls [...] berücksichtigen“.

<sup>18</sup> Denkschrift (2013). In: Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zu dem Übereinkommen Nr. 189 der Internationalen Arbeitsorganisation vom 16. Juni 2011 über menschenwürdige Arbeit für Hausangestellte. Deutscher Bundestag – Drucksache 17/12951 vom 28.03.2013, pp. 18-23, here: p. 18; cf. also Scheiwe, Kirsten (2013): „Das Arbeitszeitrecht für Hausangestellte nach Ratifizierung der ILO-Konvention 189. In: Neue Zeitschrift für Arbeitsrecht (NZA), No. 20/2013, pp. 1116-1120.

approach would facilitate abuse"<sup>19</sup>. The group of experts in this process of country reporting, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), has taken up this criticism: "The Committee requests the Government to provide further information explaining in detail the reasons for the exclusion of caregivers from the application of the Convention."<sup>20</sup> To date it has not yet become public knowledge whether or not the Federal Government has complied with this request.

### 3.3.3 Regulatory challenges

One labor law-related problem is that, legally, Live-In-Care as dependent employment cannot be properly implemented because standby time also counts as working time (see last C-518/15 / ECJ ruling of 21.02.2018). Therefore, parts of the placement agencies aim to establish models of self-employment (including employee-like self-employment) in home care for the elderly instead of the model of dependent employment. Thus, the achieved labor and social law standards, which regulate wage employments in the Federal Republic, in particular the Working Hours Act, are suspended for in-home care work of the elderly. However, the established contractual relationships are in many cases 'pseudo' self-employment.<sup>21</sup> Amongst others, § 618 para. 2 BGB (Civil Code of Germany) obliges the employer of an earner, who lives in a household community with the care receiver, to provide a health-compatible "work and recreation time". This regulation, which applies not only in the case of employment but also in the case of self-employment, has played no role in public discourses thus far. The Federal Government does not make clients of Live-Ins, who work as self-employed, aware in any way that this duty of care also applies to them.

#### Call for action:

- The Federal Government must guarantee the right to free time for Live-In caregivers. The bare minimum is one mandatory day off per week for all.
- It is necessary to audit the working conditions of Live-In caregivers in private households, e.g. through the obligatory inclusion of outpatient care services.
- The Federal Government must oblige the clients of Live-In caregivers, who work as self-employed, to undertake measures in accordance with their duty of care to create guarantee health-compatible working and recreational hours for the employees.
- The Federal Government must decisively counteract the trend towards precarious self-employment in personal services.

---

<sup>19</sup> Committee of Experts on the Application of Conventions and Recommendations (CEACR) (2017): Domestic Workers Convention, 2011 (No. 189) – Germany (Ratification: 2013). Direct Request (CEACR) – adopted 2016, published 106th ILC session (2017).

<sup>20</sup> Ibid.

<sup>21</sup> Cf. Körner, Anne (2011): Pflegekräfte aus Osteuropa. Licht ins Dunkel der Schwarzarbeit? In: Neue Zeitschrift für Sozialrecht, Jg. 20, H. 10, pp. 370-374; Scheiwe, Kirsten (2014): Arbeitszeitregulierung für Beschäftigte in Privathaushalten – entgrenzte Arbeit, ungenügendes Recht? In: id./Krawietz, Johanna (Eds.): (K)Eine Arbeit wie jede andere? Die Regulierung von Arbeit im Privathaushalt. Berlin: De Gruyter, pp. 60-84; Kocher, Eva (2014): Die Ungleichbehandlung von Hausangestellten in der 24-Stunden-Pflege gegenüber anderen Arbeitnehmerinnen und Arbeitnehmern – eine Frage des Verfassungsrechts. In: Scheiwe, Kirsten/Krawietz, Johanna (Eds.): (K)Eine Arbeit wie jede andere? Die Regulierung von Arbeit im Privathaushalt. Berlin: De Gruyter, pp. 85-107.

## 4. RIGHT TO SOCIAL SECURITY (ARTICLE 9)

### 4.1 Basic benefits (*Grundsicherung*) and the methods used to assess needs

#### 4.1.1 Concerns and recommendation of the Committee and the current situation

In its Concluding Observations from 2011 (para. 21), “the Committee urges the State party to review the methods and criteria applied to determine the level of benefits and to monitor the adequacy criteria regularly to ensure that the level of benefits affords the beneficiaries an adequate standard of living”. The Federal Government does not address key problems in the assessment of livelihood protection benefits but states, to have “reappraised and made improvements to the procedure for assessing livelihood protection benefits” (p. 21, State report).

However, there are still concerns about the standard methods used to assess welfare needs. These guarantee neither the socio-cultural subsistence minimum, nor an adequate standard of living. A major problem is that the statistical comparison group for determining basic benefits is based on a sample survey of expenditure of the lowest income groups. Many households in the sample live at or below the subsistence level or even rely themselves on social welfare benefits. Moreover, without providing any justification, the state, when calculating the standard rates, ignores several of the basic costs identified in these households.

#### 4.1.2 Background and criticism of the standard method of assessing social welfare needs

An individual who does not have sufficient income or assets to ensure basic subsistence can apply for basic welfare provision. For those capable of working, the basic provision for job-seekers (*Grundsicherung*) is regulated by Book II of the German Social Code (SCB II), while the same provision for partially incapacitated and elderly persons – unemployment benefits – is covered by the Book XII of the Social Code (SCB XII). Welfare provision is means-tested. It consists of a standard benefit rate calculated to cover the regular expenditure of a household. Housing costs are supposed to be covered by the ‘cost of accommodation’, which is subject to a method of calculating ‘appropriate’ costs.<sup>22</sup>

The standard benefit rate is determined by a statistical model. This is based on the income and consumption survey (EVS), which is conducted every five years in order to gain a random, representative sample of household spending. The expenditure of households in the bottom 15% income bracket is the benchmark used to determine the standard rate.

#### Call for action:

Concerns about the method used to determine the standard rate remain. The standard rates are too low; according to the calculations of the welfare organizations Diakonie<sup>23</sup> and Paritätischer Wohlfahrtsverband<sup>24</sup> it needs to be raised by up to € 150 euros per month,

---

<sup>22</sup> See also Section 5.4.

<sup>23</sup> Cf. Diakonie Deutschland (2018): Digital press kit from 28.11.2016. Neuberechnung von Regelsätzen mit einem konsistenten Statistikmodell [Recalculation of standard rates using a consistent statistical model]. Download: [https://info.diakonie.de/fileadmin/user\\_upload/Diakonie/PDFs/Pressemitteilung\\_PDF/PressemappeRegelsatzneuberechnungPressegespraech.pdf](https://info.diakonie.de/fileadmin/user_upload/Diakonie/PDFs/Pressemitteilung_PDF/PressemappeRegelsatzneuberechnungPressegespraech.pdf).

<sup>24</sup> Der Paritätische (2016): Expertise. Regelsätze 2017. Kritische Anmerkungen zur Neuberechnung der Hartz IV-Regelsätze durch das Bundesministerium Arbeit und Soziales und Alternativberechnungen der Paritätischen Forschungsstelle [Expertise. Standard Rates 2017. Critical remarks on the recalculation of the Hartz IV rates by

depending on the individual needs of households, in order to reach the socio-cultural subsistence level. For example, the following household costs incurred by the statistical comparison group were deducted from the calculation of the standard benefit rates: houseplants, pets, gardening costs, Christmas tree, mobile phone, umbrellas, healthcare expenses not covered by statutory health insurance, and personal liability insurance. These omissions appear arbitrary and undermine the statistical model.

The statistical model should be consistently applied when calculating the minimum subsistence needs to be met by the basic provision (*Grundsicherung*). If the expenditure of low-income households is to be the benchmark for calculating the standard rates, then all living expenses incurred by such households should be included in the statistical model. The gap between this spending behaviour and that of middle-income households needs to be transparently and properly accounted for.

## 4.2 Risks of poverty among women

### 4.1.1 Concerns and recommendation of the Committee

In its Concluding Observations from 2011 (para 15), the Committee expressed concern “that the earnings gap remains considerable despite the prohibition of discrimination on the basis of gender and the existence of the principle of equal pay in the State party’s legislation”. The Committee urged the Federal Government to create effective mechanisms to ensure compliance with its own laws and regulations on equal treatment and non-discrimination. However, the Government has clearly not managed to significantly reduce this disparity. At most, it has been modestly reduced. Single mothers and elderly women, in particular, are still at high risk of falling into poverty.

### 4.2.2 Poverty in old age and poverty among single parents

Single parents have a particularly high risk of poverty at 32.5%.<sup>25</sup> This mainly affects women, who account for more than 90% of lone parents. For years, poverty among the elderly has been increasing in Germany. This increase applies differently to women and men. In 2016, the risk of poverty for women of retirement age was 20.8%, whereas it was 15.6% for men in the same age bracket.<sup>26</sup> This disparity is mainly due to women’s significantly lower pension entitlements compared to men – in 2015 the gender pension gap in Germany stood at 53%.<sup>27</sup>

The income differences between men and women are discussed in detail in the German State Party Report. The Federal Government describes measures undertaken to combat the gender pay gap of 21% (p. 11 f.) and mentions various reasons for the gap, including career choice, part-time and marginal employment, family career breaks, and role models. The

---

the Federal Ministry of Labour and Social Affairs and alternative calculations by the Paritätische]. Download: [http://www.sozialpolitik-aktuell.de/tl\\_files/sozialpolitik-aktuell/\\_Politikfelder/Arbeitsmarkt/Dokumente/2016\\_09\\_Paritaet\\_Regelsatzexpertise.pdf](http://www.sozialpolitik-aktuell.de/tl_files/sozialpolitik-aktuell/_Politikfelder/Arbeitsmarkt/Dokumente/2016_09_Paritaet_Regelsatzexpertise.pdf).

<sup>25</sup> Data for the year 2016: cf. also Statistisches Bundesamt: Lebensbedingungen, Armutsgefährdung [Living conditions, risk of poverty]. Download:

[https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/EinkommenKonsumLebensbedingungen/LebensbedingungenArmutsgefahrdung/Tabellen/ArmutgefQuoteTyp\\_SILC.html](https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/EinkommenKonsumLebensbedingungen/LebensbedingungenArmutsgefahrdung/Tabellen/ArmutgefQuoteTyp_SILC.html).

<sup>26</sup> Cf. Statistisches Bundesamt: Lebensbedingungen, Armutsgefährdung [Living conditions, risk of poverty]. Download:

[https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/EinkommenKonsumLebensbedingungen/LebensbedingungenArmutsgefahrdung/Tabellen/ArmutSozialeAusgrenzung\\_SILC.html](https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/EinkommenKonsumLebensbedingungen/LebensbedingungenArmutsgefahrdung/Tabellen/ArmutSozialeAusgrenzung_SILC.html).

<sup>27</sup> See also Section 3.2.1.

Federal Government points to an increase in funding for children's day-care to € 1 billion per year with the intention of helping people balance career and family life. It also references the positive effects of regulations on parental leave. However, such preventive measures do not help those women who find themselves with very low pension entitlements or who have already retired. Moreover, there is still an immense need to support single mothers. German taxation law, by providing financial incentives such as the Income splitting for married couples (Ehegattensplitting), promotes division of labour in marriage, where one spouse focuses solely on paid employment while the other focuses on unpaid care work and maybe earns some additional income. While this arrangement may make good financial sense for a couple in the short term, for example while they have young children or while elderly relatives require care, in the event of the couple later divorcing, the woman incurs a far higher risk of poverty.

#### **Call for action:**

It is the view of the German Anti Poverty Network that the mechanism of Income splitting for married couples (Ehegattensplitting) should be replaced by individual taxation with a transferable tax-free allowance.

While the pension reforms of 2014 allowed for time spent caring for children to be counted as a period of contribution to the state pension fund (this became known as the "mothers' pension"), this does not benefit women who rely on *Grundsicherung* in old age. Those accrued pension entitlements are offset against *Grundsicherung* rather than added to it. In this respect, the 'mothers' pension' does nothing to increase the incomes of women who rely on *Grundsicherung* in retirement. The German Anti Poverty Network therefore proposes that the state introduce personal allowances not only for retirement income from employers' and private pensions, but also for retirement income from the state pension fund. Also, contributions made through part-time work should be upgraded so that they more quickly lead to an adequate pension entitlement. Periods spent in providing care for children or relatives in need of care should also be rated more highly as contribution periods.

### **4.3 Child poverty**

Child poverty in Germany is stagnating at a high level. One in five children is poor or at risk of poverty.<sup>28</sup> This affects approximately three million children. Two million of these receive benefits related to the basic provision (*Grundsicherung*).

#### **4.3.1 Misguided family support policies**

Most family support in Germany is provided by means of tax rebates. These are in many cases most effective where women are less economically active outside the home. Currently, high-income households benefit most from this form of tax relief. This is the result of contradictory effects of children's benefits, tax abatements for dependent children, supplementary children's allowance, and welfare benefits for dependent children. For high-income households, there is a tax saving of € 277 per month for each dependent child. State support for families in the lower- and middle-income brackets in the form of child benefit

---

<sup>28</sup> Cf. EU-SILC.

works out at between 75 and 93 euros per month less than that enjoyed by high-income families.<sup>29</sup>

Current state financial support for children living in poverty comes in the form of welfare benefits for dependent children (*Grundsicherung*), supplementary child benefits for low income earners as well as services from the Educational Package.

#### 4.3.2 Insufficient welfare benefits (*Grundsicherung*) for children

##### Standard rates

In its Concluding Observations from 2011 ( para. 21), the Committee urges the Federal Government ‘to review the methods and criteria applied to determine the level of benefits and to monitor the adequacy criteria regularly to ensure that the level of benefits affords the beneficiaries an adequate standard of living’. The Federal Government, in its State Party Report (p. 21), refers to the rules for determining standard rates of *Grundsicherung*. The standard rates for children are determined separately for the age groups of 0 to 5 years, 6 to 13 years, and 14 to 17 years. However, once again we observe cuts compared with the actual expenditure of the statistical comparison group.<sup>30</sup> According to calculations by Dr. Irene Becker, who has conducted extensive research on income distribution in Germany, in a report to the Diakonie, the rates for children should be up to €78 higher in order to meet their needs.<sup>31</sup>

##### School supplies

The Government’s own reference in the State Party Report to the various supplementary benefits for school supplies, lunch, school trips and leisure activities from the education and participation package does not conceal their inadequacy. According to a survey of the Social Science Institute of the Evangelical Church in Germany, the real cost of school supplies stands at up to €200 per year, while only €100 are covered by the education and participation package.<sup>32</sup>

##### School lunch

Equally pressing is the problem of funding for school lunches. Families receiving *Grundsicherung* are required to contribute one euro per day per child from their own budget, even though the standard rate includes a monthly sum of less than one euro in total for this purpose.

The German Anti Poverty Network therefore welcomes the promise contained in the coalition agreement to revisit this issue.<sup>33</sup> We believe, however, that the enormous gap between need

---

<sup>29</sup> Becker (2012): Bedarfsgerecht statt pauschal – ein Konzept zur Reform des Kindergeldes. [Needs-based instead of flat-rate support – a concept for reforming child benefit.] In: Friedrich Ebert Stiftung Forum Politik und Gesellschaft, p. 9. Download: <http://library.fes.de/pdf-files/do/08850.pdf>

<sup>30</sup> See also Section 4.1.

<sup>31</sup> Cf. Diakonie Deutschland (2018): Digital press kit from 28.11.2016. Neuberechnung von Regelsätzen mit einem konsistenten Statistikmodell [Recalculation of standard rates using a consistent statistical model]. Download: [https://info.diakonie.de/fileadmin/user\\_upload/Diakonie/PDFs/Pressmitteilung\\_PDF/PressemappeRegelsatzneuberechnungPressegesprach.pdf](https://info.diakonie.de/fileadmin/user_upload/Diakonie/PDFs/Pressmitteilung_PDF/PressemappeRegelsatzneuberechnungPressegesprach.pdf).

<sup>32</sup> SI der EKD et al. (2016): Schulbedarfe. Bildungs- und Teilhabegerechtigkeit für Kinder und Jugendliche. [School needs. Education and the right to equal participation for children and youth.] Download: [https://www.si-ekd.de/download/Brosch\\_Schulbedarf\\_05.pdf](https://www.si-ekd.de/download/Brosch_Schulbedarf_05.pdf).

<sup>33</sup> Cf. Deutscher Bundestag (2018): Koalitionsvertrag zwischen CDU, CSU und SPD. 19. Legislaturperiode. Ein neuer Aufbruch für Europa. Eine neue Dynamik für Deutschland. Ein neuer Zusammenhalt für unser Land. [Coalition agreement between CDU, CSU and SPD. 19th legislative session. A New Departure for Europe. Fresh Momentum for Germany. Greater Cohesion for our Country.] P. 19. Download:

and current provision necessitates immediate action. The educational plans for healthy eating cited in the State Party Report cannot be implemented if families simply can't afford a healthy diet since adequate funding is not made available either for school lunches themselves, or for a commensurate bolstering of the standard benefit rates.

**Call for action:**

The German Anti Poverty Network calls on the German Federal Government to accept the following core principles for combatting child poverty:

- Family support should be more socially just and transparent. Poor families need to receive at minimum the same level of support as higher-income families.
- There must be a uniform minimum subsistence level for children, which is paid equally to all qualifying families. Additional needs-based services should be provided for children living in poverty.
- The benefits provided to meet the subsistence minimum as well as the education and participation package for children should be based on actual expenditure costs.
- School lunch should be provided free of charge to children living in poverty.
- There should be a uniform application procedure and single decision for children's subsistence benefit. The payment should be in one amount and from a single agency.



## 5. RIGHT TO AN ADEQUATE STANDARD OF LIVING (ARTICLE 11)

The Federal Government continues to neglect the issue of poverty reduction. Despite strong overall economic development and a fall in unemployment in recent years, the Government has not managed to reduce the relative risk of poverty.

### 5.1 Concerns and recommendation of the Committee, and the current situation

In its Concluding Observations from 2011 (para. 24), the Committee clearly addressed the issue of poverty in Germany and called on Germany “to adopt and implement a comprehensive anti-poverty programme, taking account of the aspects of poverty as identified by the various qualified analyses undertaken by the State party. The Committee recommends that a review of the social security benefits levels be included in such strategies. Moreover, the Committee calls on the State party to integrate human rights into the implementation of the anti-poverty programme, thereby paying particular attention to the disadvantaged and marginalized groups.”

The German Anti Poverty Network has observed that such considerations have not been included in the political strategy of the Federal Government. Instead, the political discussion has been dominated by the so-called *Lohnabstandsgebot*, namely the principle that social welfare benefits must always be lower than employment income, even though this principle has no legal standing.

Poverty reduction was also not addressed in the current coalition agreement. Moreover, the Federal Government repeatedly refers, in publications such as the National Reform Programme [*Nationales Reformprogramm*] and the National Social Report [*Nationaler Sozialbericht*], to employment placement as the most important means of its poverty reduction efforts, despite the fact that this is demonstrably not working. In short, the decline in unemployment of recent years has not led to a reduction in the risk of poverty rate.

Bearing this in mind, the Federal Government’s statements in its 2016 State Party Report, that a comprehensive anti-poverty programme would not be ‘in line with the situation in Germany’ (p. 23.) are most unsatisfactory. This claim by the Federal Government is all the more vexing since the government itself has provided various analyses of ongoing poverty trends and necessary corrective measures, for example in the Poverty and Wealth Report [*Armut- und Reichtumsbericht*].

The existing social welfare and taxation systems need reform. We take this opportunity to refer once again to the questions and findings we submitted in 2017: Germany neither fully guarantees minimum subsistence (there are grave flaws in the method of calculating the standard rates of *Grundsicherung*), nor is it sufficiently secure, as it may be withheld due to sanctions. The questions raised by the Committee in 2017 (Nos. 5 and 19) with regard to poverty, inequality and corrective measures are therefore still highly pertinent.

#### Call for action:

We propose a comprehensive poverty reduction strategy based on the following key principles:

- An appropriate method of determining the minimum subsistence level
- A fair taxation system
- Long-term effective funding of social infrastructure for the poor
- Commitment to tackle precarious employment and promote adequate employment

- A gender-equitable and family-oriented reform of the social welfare and compensation systems

## 5.2 Sanctions

Recipients of basic provision for job-seekers (*Grundsicherung*) can be sanctioned by the job center: A failure to cooperate in the eyes of the authorities (*Jobcenter*) can incur penalties that lead to benefits being reduced and ultimately being denied completely.

The current regulations and practices in relation to *Grundsicherung* for job-seekers (according to SCB II) are problematic from a human rights perspective, because they (1) cut the (already insufficient) subsistence-level benefits as defined by parliament, (2) force recipients to accept precarious work and (3) discriminate between different age groups.

### 5.2.1 Concerns and recommendations of the Committee and the current situation

The Committee, in its Concluding Observations from 2011, already criticized the sanction rules in SCB II. The State Party Report of the Federal Government of Germany deals only abstractly with the sanction rules applied to *Grundsicherung* for job-seekers, and justifies these citing the principle of subsidiarity, which is firmly anchored in German law. The Government does not respond to the charge that the humane minimum required for subsistence is undercut by sanctions. Furthermore, the report does not question whether sanctions are an appropriate, necessary or proportionate means to achieve the set goals. The Government also considers neither the social consequences of sanctions for the persons affected, nor mentions that the sanction rules of the SCB II are currently under review by the Federal Constitutional Court.

### 5.2.2 Explanation of the German context

Sanctions are governed by German social law in paragraphs 31, 31a, 31b and 32 of SCB II. Cuts to benefits are frequently imposed when recipients violate the rules. These violations may include refusing to accept or remain in a particular job, training course or other measure, or refusing to fulfil duties specified in a so-called 'workforce integration agreement' [*Eingliederungsvereinbarung*]. Sanctions are also applied for a failure to report on time to the *Jobcenter*. Such violations are punished with a reduction of at least 10% in the standard social welfare rate (for failures to report) or of 30% for so-called breaches of duty. Even stricter rules apply to young people up to 25 years. In response to an initial breach of duty, the state also reduces housing and heating benefits.

According to figures published by Germany's federal employment agency [*Bundesagentur für Arbeit*], almost a million sanctions are applied per year. The most likely group to have sanctions applied (more than 8% likelihood) are young unemployed welfare recipients. In 2017, the average entitlement reduction as a result of sanctions was 19%. This corresponds to over € 100 euros per month on average. Among young people, sanctions led to an average entitlement reduction of almost 30%, or € 127 per month. Benefits were stopped entirely for a total of 7,200 recipients in June 2016.<sup>34</sup> The sanctions rules are currently under review by the Federal Constitutional Court.<sup>35</sup>

<sup>34</sup> Cf. O-Ton-Arbeitsmarkt.de on: Bundesagentur für Arbeit, Sanktionen im SCB II. Download: [http://www.o-ton-arbeitsmarkt.de/wp-content/uploads/SGBII\\_Sanktionen.pdf](http://www.o-ton-arbeitsmarkt.de/wp-content/uploads/SGBII_Sanktionen.pdf).

<sup>35</sup> The Federal Constitutional Court has, in particular, been asked by the Gotha Social Court [Sozialgericht Gotha], to decide whether cuts in the amount of 30% or 60% of standard benefits are compatible with the fundamental right to a humane and decent level of subsistence (see Constitutional Court procedure 1 BvL 7/16).

### 5.2.3 Assessment

The Gotha Social Court convincingly showed in its explanatory statement that sanctions cause people to fall below the statutory minimum subsistence level. With the so-called 'Standard Needs Assessment Act' [*Regelbedarfsermittlungsgesetz*], German law (inadequately) defines the minimum requirements to secure the minimum socio-cultural needs (see also the State Party Report, p. 21). According to that law, if benefits are cut it is no longer possible to meet the minimum requirement as defined therein. The result is that people's basic needs are not met. Sanctions may extend as far as the complete cessation of benefit payments; thus, they may threaten physical survival.

The 'value' of sanctions, in terms of changing the behaviour of those affected, is highly dubious. The kinds of behaviour that typically lead to sanctions tend to be rooted in complex and difficult life circumstances (inability to cope with bureaucracy or language, and even psychological problems) and are not, generally, an expression of a general refusal to cooperate. Sanctions represent the diametric opposite of a successful and anxiety-free advisory and support process. It is therefore doubtful that sanctions can elicit positive learning processes. Sanctions are used as disciplinary tools to control behaviour, and socially negative effects for individuals and their family members are simply accepted as collateral damage. Income shortages and debt are the immediate consequences of benefit cuts. These then lead to social isolation and malnutrition, as the affected persons try to reduce expenditure. Sanctions have been clearly shown to lead directly to physical and mental stress and illnesses, as well as loss of heating/electricity or homelessness.<sup>36</sup>

Beyond the issue of benefit payments that are insufficient to ensure minimum subsistence, sanctions, in principle and practice, violate the legal prohibition of discriminatory practices. Young people dependent on *Grundsicherung* are sanctioned more quickly and more drastically than older recipients. There is no reasonable justification for this difference in treatment and it constitutes discrimination against young people.

#### Call for action:

The German Anti Poverty Network considers the current sanctions regime in Germany to be in violation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and calls for the abolition of sanctions that threaten minimum subsistence.

---

<sup>36</sup> Cf. inter alia Ames, Anne (2009): Ursachen und Wirkungen von Sanktionen nach § 31 SCB II. [Causes and effects of sanctions pursuant to § 31 SCB II.] Edition Hans-Böckler-Stiftung, No. 242. Download: [https://www.boeckler.de/pdf/p\\_edition\\_hbs\\_242.pdf](https://www.boeckler.de/pdf/p_edition_hbs_242.pdf); cf. Deutscher Bundestag/Wissenschaftlicher Dienste (2017): Auswirkungen von Sanktionen im SCB II. Überblick über qualitative Studien in Deutschland. [Effects of sanctions in the SCB II. Overview of qualitative studies in Germany.] 2017. Dokumentation WD 6-3000-004/17. Download: <https://www.bundestag.de/blob/497906/f2a6382d0a8b3d3afb9bb4dffdbc59/wd-6-004-17-pdf-data.pdf>.

## 5.3 Rights of asylum-seekers and job-seeking EU-citizens to a decent standard of living

### 5.3.1 Concerns and recommendations of the Committee and the current situation

The Committee expressed, in its Concluding Observations from 2011 (No. 13), concern about the situation of asylum-seekers in Germany who do not receive adequate social welfare benefits, live in inadequate and overcrowded housing, and have limited access to the labour market.<sup>37</sup> The situation of asylum-seekers in Germany has not improved significantly since then. Benefits for asylum-seekers are still below the level of basic welfare provision (*Grundsicherung*), although the latter by definition aims to meet only the minimum subsistence needs.

The situation of EU citizens has even deteriorated significantly. Since 2016, a large proportion of European Union citizens living in Germany and seeking employment or in temporary employment have been completely excluded from basic social welfare provision. They are entitled only to so-called 'bridging benefits' if they declare a willingness to leave the country.

### 5.3.2 The Act on Benefits for Asylum Applicants (ABAA)

For many years asylum-seekers in Germany received extremely low social welfare benefits under the Act on Benefits for Asylum Applicants (*ABAA*). These were set far below the standard rates established for *Grundsicherung*, and moreover for decades were not adjusted to account for rising living costs. In its decision of 18 July 2012, the Federal Constitutional Court declared the reduced benefits<sup>38</sup> – with reference to the ICESCR – unconstitutional. The reduced benefits were, according to the Court, "evidently inadequate to ensure a decent minimum subsistence level".

Despite this decision by the highest court, the ABAA still allows for less favourable treatment of asylum-seekers and persons granted temporary stay of deportation. The benefits granted are still lower than *Grundsicherung* and are inadequate to secure a reasonable standard of living in accordance with article 11 of the ICESCR. They fall below the standard rates of *Grundsicherung*: i.e., an unmarried person under ABAA receives 62 euros per month less than a person receiving basic welfare provision. Following the Constitutional Court decision of 18 July 2012, the duration of entitlement to basic welfare benefits under the Act on Benefits for Asylum Applicants was reduced from 48 to 15 months. We believe that the discrimination against asylum-seekers must end entirely.

In its State Party Report, the Federal Government justifies the cuts to basic subsistence benefits for asylum-seekers as follows: "needs were recalculated and reduced, as certain items are only relevant for persons with consolidated residence status" (p.6-7). We consider this reduction to be arbitrary and insufficiently justified. The discriminatory treatment needs to stop.

#### Benefit cuts pursuant to the Act on Benefits for Asylum Applicants

According to paragraph 1a of the Act on Benefits for Asylum Applicants, the already low benefits may be further reduced. This principally concerns people who have been granted temporary stay of deportation, and whom the authorities accuse of attempting to sabotage

---

<sup>37</sup> See also Section 2.

<sup>38</sup> Cf. BVerfG, Urteil des Ersten Senats vom 18. Juli 2012 [Federal Constitutional Court, Decision of the First Judicial Bench], 1 BvL 10/10 - Rn. (1-114). Download: [http://www.bverfg.de/e/ls20120718\\_1bvl001010.html](http://www.bverfg.de/e/ls20120718_1bvl001010.html).

their own deportation by failing to help the authorities procure a passport. Benefits may also be cut in cases where a person is accused of having fled to Germany solely to obtain welfare benefits.<sup>39</sup> In 2015, the law significantly expanded the number of people affected. The majority of persons granted temporary stay of deportation are at risk of having their benefits cut. This takes the form of a partial or full cut in the amount designated for personal needs. Those affected then receive only non-cash benefits, which means they are then, for example, unable to use public transport or take out a mobile phone contract. But such needs are precisely those covered by the constitutionally guaranteed socio-cultural subsistence minimum. The right to an adequate standard of living should not be relativized and should not be conditional on behaviour. We therefore regard cuts to benefits for asylum-seekers under the Act on Benefits for Asylum Applicants as a violation of article 11 of the ICESCR.

#### Principle of benefits in kind

In collective accommodation, benefits in kind are supposed to be provided to cover personal needs. This means that necessary food, clothing, hygiene articles etc. are made available in the form of vouchers or food packages. The Federal Government writes in its State Party Report: "As far as possible, the need for cash in initial reception centres has been replaced by benefits in kind. This ensures that benefits are used to meet asylum applicants' needs, with no money going to human traffickers." (p. 6)

The increased use of the principle of benefits in kind limits, however, the possibility of autonomous living, which, we believe, is an essential prerequisite for social participation and inclusion. Moreover, the subsistence minimum is calculated based on crude generalisations and statistics. Thus, this is merely an estimate that objectifies the asylum-seeker without making any allowances for individual lifestyle. Where most benefits are provided in kind, the recipient is denied the ability to decide which needs to prioritize. For example, if a person has little need for household appliances or transportation, but received a standardized non-cash allowance, they are unable to divert these resources to meet, for example, a more acute need for healthcare. The net result is that the individual's overall needs are not met.

#### Asylum-seekers' right to adequate housing

Many of the people who fled to Germany in 2015 and 2016 are still being housed in collective accommodation. By the end of 2016 there were approx. 400,000 people housed in this manner.<sup>40</sup> Research conducted by the German Institute for Human Rights as well as several other studies revealed that it is not possible to systematically guarantee the fundamental human rights of those living in collective accommodation.<sup>41</sup> Residents are often not in a position to complain effectively when their rights are violated, in part because the complaint mechanisms are inadequate.<sup>42</sup>

Much of the accommodation provided for refugees is still characterized by lack of privacy, poor sanitary conditions, and inadequate care for vulnerable people. This means that core

---

<sup>39</sup> Cf. Pro Asyl (2017): Das Asylbewerberleistungsgesetz [The Act on Benefits for Asylum Applicants] (AsylbLG). Article of 21 July 2017. Download: <https://www.proasyl.de/hintergrund/das-asylbewerberleistungsgesetz-asylblg/>.

<sup>41</sup> Cf. Deutsches Institut für Menschenrechte [German Institute for Human Rights] (2017): Entwicklung der Menschenrechtssituation in Deutschland. Juli 2016–Juni 2017. Bericht an den Deutschen Bundestag gemäß § 2 Abs. 5 DIMRG. [The human rights situation in Germany. July 2016–June 2017. Report to the German Federal Parliament in accordance with paragraph 2, section 5 of the Act to Regulate the Legal Status and Responsibilities of the German Institute for Human Rights (DIMRG)] p. 60. Download: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Menschenrechtsbericht\\_2017/Menschenrechtsbericht\\_2017.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Menschenrechtsbericht_2017/Menschenrechtsbericht_2017.pdf).

<sup>42</sup> Ibid.

human rights, such as the right to adequate housing (Article 11 (1) ICESCR) or the right to water and sanitation (Art. 11(1), Art. 12 (1) ICESCR) are not adequately safeguarded in the accommodation of refugees.<sup>43</sup>

Moreover, the accommodation provided scarcely considers the special needs of asylum-seekers with disabilities. There are long waiting lists to enter the few available barrier-free refugee shelters. Refugee shelters are often located in isolated places and are thus not well connected to local support systems.<sup>44</sup> For residents of collective accommodation, the right to adequate accommodation must also include access to complaint mechanisms. There are very few independent complaint bodies in Germany. These give refugees rightful and low-threshold access to a complaint procedure and should therefore be set up across the country.

### **5.3.3 Exclusion of job-seeking EU citizens from social benefits**

Since the end of 2016, most European Union citizens who are in search of employment but are unable to verify current or previous labour market activity in Germany have been excluded from receiving basic provision benefits. Since the introduction of the “Law to Regulate Claims of Foreign Persons for Basic Provision for Jobseekers”<sup>45</sup> non-German citizens have been lawfully excluded from social security benefits for a period of five years. This also applies to families with children. This overruled the case-law of the Federal Social Court [*Bundessozialgericht*], which had ruled that EU citizens seeking employment in Germany were constitutionally entitled, after a period of six months, to receive social benefits.

The lack of living subsistence and healthcare has a huge social impact: the affected persons become vulnerable in their precarious situations on the housing and labour market. Without social security no one can integrate into the regular employment market and acquire knowledge of their own rights. The plight of such migrants is easily open to exploitation by German firms. It is not uncommon for job-seeking EU citizens to slip into exploitative work situations, sometimes leading to serious forms of exploitation and even to human trafficking. Beyond that, the problem of mobile EU citizens in destitution is still often framed in a stigmatising and excluding way as an individual problem or as a problem of so-called “poverty migration” instead of an effect of an excluding structural framework and specific political decisions. Many mobile EU citizens face racial discrimination – people from Central and Eastern Europe in general and ethnic minorities like Roma<sup>46</sup> specifically – which prevents them from enjoying their human rights.

According to BAG-W, the national umbrella organisation of homeless services in Germany, about 12% of the homeless people in Germany in 2016 are mobile EU citizens, a large proportion of whom sleep on the streets.<sup>47</sup>

Nationwide surveys conducted by the German Caritas Association<sup>48</sup>, and the Diakonie<sup>49</sup> on the effects of the absence of social security benefits for EU citizens show that their exclusion

---

<sup>43</sup> Ibid. p. 12.

<sup>44</sup> Ibid. p. 14.

<sup>45</sup> Gesetz zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitsuchende

<sup>46</sup> Cf. European Union Agency for Fundamental Rights (2016): Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – Selected findings. Download: <http://fra.europa.eu/en/publication/2016/eumidis-ii-roma-selected-findings>.

<sup>47</sup> Cf. Bundesarbeitsgemeinschaft Wohnungslosenhilfe (2017): Zahl der Wohnungslosen. [Number of homeless people]. Download: [http://bagw.de/de/themen/zahl\\_der\\_wohnungslosen/index.html](http://bagw.de/de/themen/zahl_der_wohnungslosen/index.html).

<sup>48</sup> Cf. German Caritas Association (2017): Auswertung der Befragung von Einrichtungen und Diensten des Deutschen Caritasverbandes zu den Auswirkungen der Ausschlüsse von EU-Ausländer(innen) im SGB II und

from social security benefits has serious consequences, especially for children and young people. The advisory centres questioned by Diakonie indicated that, in many cases, children did not attend school due to precarious situations such as actual or impending homelessness or because their families could not afford to pay for public transport.

#### Call for action:

- The discriminatory Act on Benefits for Asylum Applicants must be repealed. Social security benefits for asylum-seekers and those granted temporary stay of deportation should not be lower than those granted to German citizens. Cash benefits should take precedence over benefits in kind, thus allowing for actual individual needs to be met and, ultimately, for a more self-determined lifestyle.
- Asylum-seekers should have equal access to work and training.
- EU citizens living and seeking employment in Germany should have equal access to basic welfare provision.
- The Federal Government should ensure that asylum-seekers' right to adequate housing is guaranteed in practice. The Government should aim to house people in their own homes. For residents of collective accommodation, the right to adequate accommodation must also include access to complaint mechanisms. Independent complaint bodies should be introduced nationwide.
- Asylum seekers with special needs, for example with disabilities, should be able to move as quickly as possible into their own homes. Their special needs should be considered in the provision of accommodation and other support.

### 5.4 Right to housing: calculating the cost of accommodation

In Germany, the right to housing is supposed to be assured through the twin pillars of social housing and the reimbursement of accommodation costs in *Grundsicherung*.

According to estimates by the national umbrella organisation of homeless services in Germany BAG-W, the number of homeless people in Germany has been steadily rising since 2009 and by 2016 had reached 860,000 people.<sup>50</sup> Tens of thousands more live in acute risk of losing their homes. There are still no nationwide statistics on homelessness. There is an acute shortage of affordable housing not only for those already without a home, but also for several other demographic groups: low-income households, especially single parents, large families, students, poor senior citizens, as well as refugees and immigrants.

In many metropolitan areas, nearly 50% of households meet the qualification criteria for entitlement to social housing. However, since 1990, the number of available social housing units has fallen by about 60%. As of 2016 there are approx. 1.2 million such subsidized apartments in Germany, but by 2020 170,000 of these will no longer be available for social

---

SGB XII. [Evaluation of the survey of facilities and services of the German Caritas Association on the impact of the exclusions of EU citizens from entitlements under SCB II and SCB XII.]

<sup>49</sup> Cf. Diakonie Deutschland (2016): Bundesweite Diakonie Umfrage zu den Auswirkungen von fehlenden Sozialleistungen für hilfebedürftige UnionsbürgerInnen und deren Auswirkungen insbesondere für Kinder und Jugendliche. [National Diakonie survey on the effects of exclusion from social security benefits for EU citizens in need and their implications in particular for children and young people].

<sup>50</sup> Cf. Bundesarbeitsgemeinschaft Wohnungslosenhilfe (2017) [Federal working group on homelessness support]: Zahl der Wohnungslosen. [Number of homeless people]. Download: [http://bagw.de/de/themen/zahl\\_der\\_wohnungslosen/index.html](http://bagw.de/de/themen/zahl_der_wohnungslosen/index.html).

housing purposes.<sup>51</sup> The German Anti Poverty Network estimates that an additional 400,000 new apartments are needed per year, of which at least 150,000 should be affordable or social housing.

In addition to the standard rate, persons receiving non-contributory basic welfare provision (*Grundsicherung*) are reimbursed for necessary and appropriate accommodation and heating costs (§ 22 SCB II, so-called costs of accommodation). However, many households are forced to pay towards the cost of accommodation from the standard benefit rate because they are unable to find cheap apartments. A benefit recipient living in an apartment whose rental costs lie above the so-called 'adequacy limit' is required by the state to reduce costs. According to recent surveys by the Federal Employment Agency, benefit recipients must make up a total shortfall of 600 million euros in additional rental costs which are not covered by the costs of the accommodation.<sup>52</sup> By applying a so-called *rational concept* (*Schlüssiges Konzept*), local administrations are charged with calculating an appropriate level of housing costs for *Grundsicherung* recipients within their municipality. This calculation is based on the benchmark of the lowest priced apartments. They do not compare this with the actual costs of available rental accommodation at any given time. They also do not consider the fact that many landlords are *per se* unwilling to rent to benefit recipients. Local authorities should be able to exercise considerable influence over the housing market and promote protected market segments. However, many municipalities, especially those with serious social problems, have sold off their social housing stock to reduce debt. Without adequate provision of social housing, the problem of providing accommodation for low-income households becomes insoluble.

A further problem is the reduction of the standard rate of social welfare to offset security deposits or co-op shares for rental accommodation. While the *Jobcenter* assumes the costs of moving to a new house for benefit recipients, following the move they are required to repay these costs in monthly installments equal to 10% of the standard rate. The German Anti Poverty Network calls for a change in welfare policy, allowing benefit recipients to repay deposits or co-op shares to the *Jobcenter* when their lease ends, without having these deducted from their benefit allowances.

The calculation of electricity costs within the standard benefit rate is also not accurate or reasonable. The various items of household expenditure by the comparison group are determined only every five years through the income and consumption survey. These, for example, do not consider electricity costs included in the rental agreement, as is typically the case in subleases. The annual adjustment index for standard benefit rates based on general wage and price trends also does not reflect changes in energy costs. Moreover, poorer households can rarely afford energy-saving devices. Supplementary payments for electricity and gas represent a frequent additional burden for benefit recipients.

In 2011, the Committee reiterated in its Concluding Observations (para. 25) "that the state party has not responded to its recommendation of 2001 to report on the extent and causes of homelessness in the State party and for programs and measures to address this problem".

---

<sup>51</sup> Cf. Bundesarbeitsgemeinschaft Wohnungslosenhilfe (2017) [Federal working group on homelessness support]: 860.000 Menschen in 2016 ohne Wohnung. [860,000 people in 2016 without a home.] Prognose: 1,2 Millionen Wohnungslose bis 2018. [Forecast: 1.2 million homeless by 2018.] Press release Download: [http://www.bagw.de/media/doc/PRM\\_2017\\_11\\_14\\_Pressemappe.pdf](http://www.bagw.de/media/doc/PRM_2017_11_14_Pressemappe.pdf).

<sup>52</sup> Cf. Federal Ministry of Labour and Social Affairs dated 28.02.2018, in response to a question from MP Katja Kipping. Download: <http://www.katja-kipping.de/kontext/controllers/document.php/344.9/9/f696bf.pdf>.



The German Anti Poverty Network finds that nothing has been done since then to address this problem.

We note with great concern that the Committee, in No. 21 of its 2017 official List of Issues, raises various questions in relation to social housing, the extent of homelessness, and measures taken to tackle it. We believe, as a matter of basic principle, that measures taken to ensure housing provision for poor households and the implementation of adequacy criteria for the costs of housing in basic provision can only be undertaken in a context where financial support is offered to structurally disadvantaged municipalities and where social housing is partially funded from federal and state coffers.

#### **Call for action:**

- Ongoing funding of social housing from the federal budget
- Permanent rather than fixed-term rental caps for subsidized housing<sup>53</sup>
- Creation of a new non-profit housing sector
- Public, social, or non-profit housing should receive priority consideration in all building developments on publicly owned lands
- Introduction of a unified and binding statistical survey of housing shortage
- Reform of rent controls (Mietpreisbremse)
- Programmes to prevent homelessness
- Protection and continuation of local development programmes

## **6. RIGHT TO HEALTH (ARTICLE 12)**

In accordance with article 12 of the ICESCR, the German Anti Poverty Network affirms that healthcare is a human right and must not be contingent on financial means or residency status. For this reason, those living on reduced incomes should be fully exempted from contributing to the costs of healthcare.

### **6.1 Concerns and recommendations of the Committee and the current situation**

In its 2011 recommendations (No.13), the Committee calls on the Federal Government to ensure that asylum-seekers receive equal treatment in terms of access to healthcare. This recommendation has not yet been implemented by the Federal Government. In particular, the legal duty imposed on medical professionals to report to the immigration authorities often prevents adequate provision of healthcare. Because undocumented persons run the risk of being reported to immigration authorities and ultimately deported if they seek medical aid, many choose not to do so. This immigration policy therefore acts as a *de facto* barrier to the right to health. Furthermore, healthcare provision for EU citizens has dramatically deteriorated since the change in the law on their rights to welfare benefits in 2016<sup>54</sup>.

---

<sup>53</sup> Translator's note: In Germany, rents in new residential buildings for which the developers availed of state subsidies or tax breaks are capped at affordable rates for a specified period of time, e.g. 15 years. In this case, the German Anti Poverty Network is calling for such caps to be made permanent.

<sup>54</sup> See also Section 5.3.3

The Federal Government does not address this problem adequately in its State Party Report. Instead, it states: "The statutory health insurance system in which the majority of people are insured guarantees comprehensive social protection in the event of illness" (p. 29). However, the protection provided by statutory health insurance does not apply to all people living in Germany. Two groups whose right to health has been systematically restricted are EU citizens without social security entitlements and asylum-seekers.

## 6.2 Exclusion of EU citizens from entitlement to social security benefits

### 6.2.1 Explanation of the German context

In 2016, there were more than 4 million people from other EU countries living in Germany. The three largest groups are from Poland (783,085), Italy (611,450) and Romania (533,660).<sup>55</sup> The "Law to Regulate Claims of Foreign Persons for Basic Provision for job-seekers" (of December 22, 2016) excludes EU citizens living in Germany who are unable to verify current or previous labour market activity in Germany or who have no other right of residence according to the Free Movement of Persons Act (FreizügG/EU) from receiving certain social security benefits. In this case, there is no obligation to provide statutory health insurance coverage to such persons. As a result, their access to healthcare and even emergency care is restricted, unless they can demonstrate that they have health insurance coverage in their country of origin.

### 6.2.2 Description of the problem

There are no official statistics on access to healthcare among immigrants from EU countries. However, statements and case studies by welfare organisations and NGOs reveal serious gaps in healthcare provision for this group of people.<sup>56</sup> In particular, those who come to Germany from Eastern Europe under the EU's free movement of labour provisions do not always find permanent regular employment in which they contribute to social security. If they lose their job, this often leads to great material distress and even loss of housing and homelessness. For example, a study conducted in Berlin showed that 46% of patients availing of medical care for the homeless originally came from other EU countries.<sup>57</sup>

### Call for action:

---

<sup>55</sup> Cf. Statistisches Bundesamt: Ausländische Bevölkerung nach ausgewählten Staatsangehörigkeiten. [Foreign population by selected nationalities.] Download: <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/MigrationIntegration/AuslaendischeBevoelkerung/Tabellen/StaatsangehoerigkeitJahre.html>

<sup>56</sup> Cf. Deutscher Caritasverband (2017): Europäische Union. Freizügigkeit der Unionsbürger/innen - Zugang zu Transferleistungen. [The European Union. Free movement of EU citizens and access to social security benefits.] Download: [https://www.caritas.de/cms/contents/caritas.de/medien/dokumente/dcv-zentrale/migration/auslaenderrecht/europaeisches-zuwand/europaeische-union-f/eu-arbeitshilfe\\_stand-juli\\_2017.pdf?d=a&f=pdf](https://www.caritas.de/cms/contents/caritas.de/medien/dokumente/dcv-zentrale/migration/auslaenderrecht/europaeisches-zuwand/europaeische-union-f/eu-arbeitshilfe_stand-juli_2017.pdf?d=a&f=pdf); cf. Diakonie Deutschland (2016): Stellungnahme zum Entwurf eines Gesetzes zur Regelung von Ansprüchen ausländischer Personen in der Grundsicherung für Arbeitsuchende nach dem Zweiten Buch Sozialgesetzbuch und in der Sozialhilfe nach dem Zwölften Buch Sozialgesetzbuch BT-Drs. [Statement on draft legislation to regulate the entitlements of foreign persons to basic provision for jobseekers in accordance with Book II of the German social code and to social security in accordance with the Book XII of the social code.] BT-Drs. [published by the German Federal Parliament] 18/10211. Download: [http://www.strengmann-kuhn.de/fileadmin/media/MdB/strengmann-kuhn\\_de/Positionspapiere\\_Autoren\\_papiere/Diakonie\\_StN\\_GE\\_EU\\_Buerger\\_SCB\\_II\\_Ausschluss\\_SVAH.pdf](http://www.strengmann-kuhn.de/fileadmin/media/MdB/strengmann-kuhn_de/Positionspapiere_Autoren_papiere/Diakonie_StN_GE_EU_Buerger_SCB_II_Ausschluss_SVAH.pdf); cf. Der Paritätische (2017): Arbeitshilfe: Ansprüche auf Leistungen der Existenzsicherung für Unionsbürger/-innen. [Guidelines: EU citizens' entitlements to benefits to secure basic subsistence.] Download: [https://gqua.de/fileadmin/downloads/tabellen\\_und\\_uebersichten/arbeitshilfe2017.pdf](https://gqua.de/fileadmin/downloads/tabellen_und_uebersichten/arbeitshilfe2017.pdf).

<sup>57</sup> Cf. Caritasverband für das Erzbistum Berlin et al. (2018): Gesundheitsbericht zur Lage der medizinischen und zahnmedizinischen Versorgung obdachloser Menschen 2016. [2016 report on the provision of medical and dental care to homeless persons. Download: [http://www.obdachlosigkeit-macht-krank.de/assets/gesundheitsbericht\\_zahn-medizinische-versorgung-wohnungsloser-menschen\\_web.pdf](http://www.obdachlosigkeit-macht-krank.de/assets/gesundheitsbericht_zahn-medizinische-versorgung-wohnungsloser-menschen_web.pdf).

The German Anti Poverty Network therefore calls on the Government to assume all medically necessary costs related to health insurance for people from other EU countries, in accordance with Book V of the German social code (SCB V).

## 6.3 Healthcare for asylum-seekers, persons granted temporary leave of deportation and undocumented migrants

### 6.3.1 Explanation of the German context

In the period until recognition of their asylum claim or during the first 15 months of residence, asylum-seekers are subject to the Act on Benefits for Asylum Applicants (ABAA), which regulates which medical services they are entitled to receive. The law limits medical treatment to “acute illness and pain” only.

### 6.3.2 Description of the problem

In 2016, 745,545 asylum applications were filed in Germany.<sup>58</sup> Under the ABAA, asylum-seekers do not have access to all the benefits of statutory health insurance. In daily medical practice, this regulation means that doctors cannot adequately treat asylum-seekers. In 2014, there were between 180,000 and 520,000 undocumented migrants living in Germany.<sup>59</sup> Although they have a formal right to medical treatment under the Act on Benefits for Asylum Applicants, in effect most of them never avail of this, because in doing so, they would risk being reported to the immigration authorities and possible deportation. Public institutions, in particular the social welfare offices (Sozialämter), have a duty under paragraph 87 section 2 of the Residence Act to inform the immigration authorities.<sup>60</sup>

#### Call for action:

- Asylum-seekers, persons granted stay of deportation and those with a humanitarian residence permit must be granted access to standard healthcare. All of those entitled to social security benefits under the Act on Benefits for Asylum Applicants (ABAA) should be covered by statutory health and nursing care insurance. The ABAA should be repealed and, in its place, those entitled to benefits should be covered by the basic provision system according to SCB II and XII.
- People without legal residency status should receive access to the healthcare system without having to divulge their personal information. We call for consistent implementation of the emergency aid paragraph (6a and 6b of the ABAA), which guarantees that healthcare professionals are reimbursed for providing acute medical care to undocumented migrants while maintaining their anonymity. Furthermore, public institutions involved in the provision and financial accounting of healthcare ought to be exempted from the obligation to provide information under paragraph 87 (2) of the Residence Act.

<sup>58</sup> Bundesamt für Migration und Flüchtlinge [Federal Office for Migration and Refugees](2018): Aktuelle Zahlen zu Asyl [Current figures on asylum], Edition: April 2018. Download: [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-april-2018.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/Asyl/aktuelle-zahlen-zu-asyl-april-2018.pdf?__blob=publicationFile).

<sup>59</sup> Cf. Vogel, Dita (2015): Update report Germany: Estimated number of irregular foreign residents in Germany (2014), Database on Irregular Migration. Download: [http://irregular-migration.net/fileadmin/irregular-migration/dateien/4.Background\\_Information/4.5.Update\\_Reports/Vogel\\_2015\\_Update\\_report\\_Germany\\_2014\\_fi\\_n-.pdf](http://irregular-migration.net/fileadmin/irregular-migration/dateien/4.Background_Information/4.5.Update_Reports/Vogel_2015_Update_report_Germany_2014_fi_n-.pdf).

<sup>60</sup> Bundesarbeitsgruppe Gesundheit/Illegalität [Federal Working Group on health/illegality] (2017): Gesundheitsversorgung für Menschen ohne Papiere. Aktuelle Herausforderungen und Lösungsansätze. [Healthcare for undocumented migrants. Current challenges and proposed solutions]. Download: [https://www.diakonie.de/fileadmin/user\\_upload/BAG\\_Gesundheit\\_Illegalitaet\\_Arbeitspapier\\_Gesundheitsversorgung\\_fu\\_r\\_Menschen\\_ohne\\_Papiere\\_April\\_2017\\_Web.pdf](https://www.diakonie.de/fileadmin/user_upload/BAG_Gesundheit_Illegalitaet_Arbeitspapier_Gesundheitsversorgung_fu_r_Menschen_ohne_Papiere_April_2017_Web.pdf).