

# COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO GERMANY  
FROM 27 NOVEMBER TO 1 DECEMBER 2023

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## SUMMARY

Commissioner Dunja Mijatović and her team visited Germany from 27 November to 1 December 2023. During the visit, the Commissioner held discussions with the German authorities, national human rights structures, civil society organisations, children and youth representatives, and other interlocutors. This report focuses on the two main issues raised during the visit: the structures and legal frameworks in place to protect and promote human rights, and access to social rights, in particular protection from poverty and the right to adequate housing.

### **Structures and legal frameworks to protect and promote human rights**

Germany has ratified most international human rights instruments, but there is limited awareness among relevant authorities as to how these apply to the national context where, generally, the Constitution and the domestic courts are relied upon for the protection of individual rights. Few structures exist at federal, regional, or local level that could increase awareness of or access to internationally-guaranteed human rights, and the continued lack of disaggregated data on the composition of the population and their respective access to rights hinders effective monitoring and evaluation. Human rights awareness among the public is generally low and there are concerns with respect to equality in accessing justice, particularly for socioeconomically-disadvantaged groups.

The Commissioner welcomes the increase in resources made available to the national human rights institution and efforts made to strengthen the independence of the national equality body, but notes that both have limited powers in comparison to other such structures in Europe, and that their competences should be strengthened considerably to enable them to effectively perform their important mandates, including with respect to stronger protection, investigation and litigation powers.

The government has committed itself to strengthening children's rights within the legal order, but little progress has been made towards ensuring that relevant authorities and administrative entities know of their obligation to give primary consideration to the best interests of the child. There is no central authority that could effectively coordinate measures aimed at the protection and promotion of children's rights at all levels and across all portfolios, and the rights and needs of children and young people often remain overlooked in relevant policymaking decisions. All necessary measures must be taken to effectively safeguard the rights of children at all levels, including by strengthening opportunities for their effective participation, establishing more independent complaints mechanisms, and providing the existing structures with reliable funding to ensure their ability to perform their important mandates.

Progress on the rights of persons with disabilities has, overall, been limited, as lack of political commitment, and persistent resistance to change among the existing and well-financed exclusionary structures, hinder the achievement of an independent life in the community for persons with disabilities. Most professionals still promote segregated structures and so-called "protected spaces", including special schools, sheltered workshops and residential facilities for persons with disabilities, and budget considerations are often cited for favouring centralised approaches over individual choice. Accessibility remains elusive in many vital areas of life and the private sector has no legal obligation in this regard, rendering inclusion and participation practically impossible in many contexts. The authorities should invest in inclusive structures and accelerate the transition for affected persons from segregated lifestyles to inclusion in high-quality mainstream settings. More efforts are required to promote the genuine and effective participation of persons with disabilities, and to raise rights awareness among persons with disabilities themselves, as well as relevant professionals and society at large.

Despite the growing numbers of reported cases of discrimination, insufficient political attention and resources appear to be devoted to the promotion of full and effective equality across all sectors and

no inter-ministerial strategy or intentions of cooperation have been formulated for that purpose. The government has committed itself to improving the effectiveness of equality legislation, which is widely considered to be deficient, but no timetable has been set yet. Particular attention should be paid to the mounting levels of xenophobia and racism, which have the potential to undermine social cohesion and destabilise democratic institutions. The Commissioner notes considerable concern among her interlocutors about the rise of the far-right in the political sphere in Germany. The authorities should accelerate the reform of the equality law, in close consultation with the equality body and relevant communities, to bring it in line with European standards and engage in comprehensive awareness-raising and training activities, including among legal professionals and government officials, of applicable standards.

### **Social rights**

The Commissioner notes that social rights are often not seen as legally binding obligations, but rather considered subject to the availability of resources. She notes that the high levels of poverty and social exclusion in Germany are disproportionate to the wealth of the country. Persistent narratives in political discourse and the media that people become dependent on social support, as a result of indolence or negligence, rather than structural and inter-generational disadvantage and exclusion, continues to hamper effective access to social rights. Poverty is particularly prevalent among children, older persons, and persons with disabilities.

The government has taken welcome steps to render the social welfare system more accessible and increase social security provisions. More efforts are required, however, to address growing inequality in Germany, remove the existing barriers to accessing social rights, and minimise the negative long-term impacts of poverty on individual health, education, and employment prospects. Increased attention must be paid in this context to addressing the high rates of poverty among the most disadvantaged groups. All relevant actors should cooperate at an inter-agency and inter-ministerial level in the interest of beneficiaries, and rights-holders should be provided with timely information and advice about their entitlements. The Commissioner calls on the authorities to accept all provisions of the European Social Charter, accept to be bound by the Collective Complaints procedure, and ensure that all social policy developments and implementation are informed by relevant international and European standards and guidance.

The Commissioner is concerned about the rise in homelessness in Germany which affects a growing number of families and young people amid an acute shortage of affordable housing. Available emergency shelters frequently lack basic conditions and do not effectively protect their users from violence or human rights violations. The inability to keep up with rental payments regularly leads to evictions, even where this results in homelessness. Urgent steps must be taken to address the acute affordable housing deficit through all available means, including interventions in the housing market. Comprehensive and long-term measures are needed to prevent and eradicate homelessness, particularly among children, women, older persons, families and other vulnerable groups, including through changes to the tenancy law. The authorities should develop a human rights-based housing strategy and adopt the National Action Plan on the eradication of homelessness without delay.

## INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Germany from 27 November to 1 December 2023. The visit focused on the structures and legal frameworks in place to protect and promote human rights (chapter 1) and access to social rights, in particular (chapter 2 of this report).
2. During the visit, the Commissioner met with the Federal Minister for Housing, Urban Development and Building Klara Geywitz, the Minister of State for Europe and Climate Anna Lührmann, the Federal Commissioner for the Affairs of Persons with Disabilities Jürgen Dusel, the Federal Commissioner for Human Rights Policy and Humanitarian Assistance Luise Amtsberg, State Secretary of the Federal Ministry for Family, Seniors, Women and Youth (BMFSFJ) Margit Gottstein, State Secretary of the Ministry of Justice, State Secretary Angelika Schlunck, State Secretary of the Federal Ministry of Labour and Social Affairs (BMAS) Rolf Schmachtenberg, and the Parliamentary Committee on Human Rights and Humanitarian Aid. In Saxony, the Commissioner met with the Saxon State Minister for Social Affairs and Social Cohesion Petra Köpping and the Commissioner for Children and Youth of Saxony Susann Rührich. She also met with the Director of the German Institute for Human Rights (GIHR) Beate Rudolf, the Independent Federal Anti-Discrimination Commissioner Ferda Ataman, as well as a wide range of civil society actors working on the topics covered, children and young people, self-representative organisations of persons with disabilities, anti-discrimination advice centres, and people experiencing poverty and homelessness.
3. The Commissioner would like to thank the German Permanent Representation in Strasbourg and the authorities in Berlin for their assistance in organising her visit. She expresses her gratitude to all interlocutors in Germany for sharing with her their knowledge and experience.<sup>1</sup> The Commissioner was particularly impressed by the openness of the people she met and their willingness to share their personal stories and hardship. She is inspired by the many volunteers and activists who work incessantly to assist and help the most vulnerable members of society across Germany.

## 1 STRUCTURES AND LEGAL FRAMEWORKS TO PROTECT AND PROMOTE HUMAN RIGHTS

4. International human rights obligations are habitually considered a foreign affairs matter in Germany, while the Constitution (Grundgesetz) and the court system are relied upon as guarantors for the protection of human rights in the country.<sup>2</sup> According to the discussions held during her visit, the Commissioner understands that international human rights standards generally, and social rights in particular, are very rarely invoked before national courts, either because they are not known, or because they are not considered applicable. In terms of accessing the courts, ongoing research suggests that there are shortcomings regarding the equality of access to justice in Germany owing to a variety of reasons, including economic and social barriers.<sup>3</sup>
5. The German Institute for Human Rights (GIHR), Germany's national human rights institution, was established in 2001 with the mandate to report on and raise awareness of human rights in Germany and abroad, and contribute to the prevention of human rights violations. It was created on the basis of the UN Paris Principles and accredited with A status by the UN Global Alliance of NHRIs. It is also mandated to provide policy advice and conduct applied research on human rights issues.

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<sup>1</sup> This report was finalised on 22 February 2024. All online documents quoted in the report were last accessed on that date.

<sup>2</sup> The position of Federal Government Commissioner for Human Rights Policy and Humanitarian Assistance was established in 1998 as part of the Federal Foreign Office, with the [mandate](#) to help shape human rights policy in Germany's external relations, while the protection of individual human rights in Germany is considered the responsibility of the courts, as guaranteed by Article 19(4) of the Constitution.

<sup>3</sup> See, for instance, Interim report of the project [Is access to justice equal?](#), Berlin Social Science Centre, July 2022.

The GIHR has set up a monitoring body for the UN Convention on the Rights of the Child (CRC) and was designated as the National Monitoring Mechanism for the UN Convention on the Rights of Persons with Disabilities (CRPD). Since November 2022, the GIHR has been entrusted by the federal government with continuous and independent national reporting on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. The Commissioner welcomes the fact that the institute continues to enjoy broad support and is highly respected for its independence and expertise.

6. In 2015, the Commissioner's predecessor recommended the strengthening of the GIHR, including as regards investigation powers, the ability to file judicial complaints, independence and composition of the GIHR's governance body, and resources.<sup>4</sup> While the Commissioner acknowledges a considerable increase in resources and expansion in responsibilities since then, several of the issues raised in 2015 have still not been addressed, as documented in the recent accreditation process of the GIHR.<sup>5</sup> The Commissioner highlights that the powers granted to the GIHR to effectively protect human rights in Germany are narrower than those of the majority of other NHRIs in Council of Europe member states, as it is not mandated, for instance, to conduct investigations, access places of deprivation of liberty, make recommendations to the authorities, or file cases in courts.<sup>6</sup>
7. Germany's equality body, the Federal Anti-Discrimination Agency (FADA, see further below) functions as the national contact point for people affected by discrimination, can receive individual complaints and is entrusted with providing independent assistance and information to complainants on anti-discrimination matters. While it may seek voluntary, out-of-court settlement between parties, it cannot itself investigate complaints, lodge proceedings before the courts or support claimants in their proceedings, nor can it bring parties into a binding arbitration process, making it one of the least powerful equality bodies in Europe.<sup>7</sup>
8. There are few structures at national, regional or local level to facilitate awareness of and access to internationally-guaranteed human rights. Very few designated complaints mechanisms have been built. Another structural problem for the implementation of human rights obligations is the lack of disaggregated data on specific groups and their enjoyment of human rights, including children, persons with disabilities, persons with socio-economic disadvantages and persons with a minority background. The federal government therefore frequently does not have the necessary information required by international monitoring bodies to assess the implementation of human rights obligations.<sup>8</sup>
9. The available structures for the implementation of internationally-guaranteed human rights are discussed throughout the remainder of this chapter, which focuses on three human rights fields: children's rights, the rights of persons with disabilities, and protection from discrimination. While it is beyond the scope of this report to exhaustively address each of these areas, the Commissioner wishes to raise some of the main shortcomings that, in her view, restrict opportunities to enjoy human rights across the three fields, with a view to promoting their effective implementation. Access to social rights, and in particular protection from poverty and the right to adequate housing, are discussed in greater detail in the second chapter.

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<sup>4</sup> See [Report by the Commissioner for Human Rights](#) following his country visit to Germany in April/May 2015.

<sup>5</sup> See [Report by Sub-Committee on Accreditation](#) of the Global Alliance of National Human Rights Institutions relating to the NHR of Germany, September & October 2023.

<sup>6</sup> See European Network of National Human Rights Institutions [Baseline study](#) on implementation of the Council of Europe Recommendation on NHRIs.

<sup>7</sup> See an [overview of mandates of European equality bodies](#) provided by the European Network of Equality Bodies, Equinet.

<sup>8</sup> Germany was, for example, not in a position to provide information on the number of minors in custody [awaiting deportation](#) to the UN Committee on the Rights of the Child, nor could it [submit figures](#) on the various types of housing support (social housing and housing allowances) for vulnerable families to the ECSR.

## 1.1 CHILDREN'S RIGHTS

10. Germany ratified the CRC in 1992, but has made little progress since then in strengthening the rights of children as independent subjects. The National Monitoring Mechanism under the CRC, set up within the GIHR in late 2015 following a recommendation by the UN Committee on the Rights of the Child (UNCRC), was made permanent in 2023. No other institutions dedicated to realising children's rights have been established, despite this having also been recommended by the UNCRC in 2004, 2014 and 2022. During her visit, the Commissioner heard reports that the rights and needs of children and young people often remain overlooked in relevant policymaking, despite regular expressions of commitment. The federal government's 2019 combined periodic reports to the UNCRC, for instance, describes the realisation and strengthening of children's rights as a "central point of reference for state policy in Germany," which is, however, not reflected in relevant policy and budget decisions.<sup>9</sup> According to the interlocutors of the Commissioner, the BMFSFJ, owing to its limited capacities along with a broad range of functions, is not equipped to address all the issues that appear relevant to ensure that the rights of children and young people receive adequate recognition and priority at central and Länder levels.<sup>10</sup>

### 1.1.1 CHILDREN'S RIGHTS IN THE GERMAN LEGAL ORDER

11. While the rights of parents are explicitly mentioned in the German Constitution, repeated calls by international actors, including the Commissioner, to enshrine children's rights in the Constitution, have not been realised.<sup>11</sup> Recognition for the specific rights, needs, and concerns of children and young people in policymaking and judicial processes is reportedly insufficient, an issue which became apparent during the pandemic, when Germany imposed particularly strict and long-lasting school closures compared to other European countries, despite available evidence as to their adverse long-term impacts on children. The UNCRC has repeatedly expressed concern about the fact that the principle of the best interests of the child is not systematically applied in all judicial and administrative proceedings involving children, whether as affected parties, as victims, witnesses or defendants.<sup>12</sup>
12. As an instrument of international law, the CRC has the status of federal law in Germany. Anchoring children's rights in the Constitution would thus place them at the highest level in the legal order, ensuring that children are recognised not only as objects of care, but as rights-holders, and reminding relevant authorities of their duty to give primary consideration to the best interests of the child. While included as an objective in the government's coalition agreement, no timeline has been set for the incorporation of children's rights into the Constitution, and the Commissioner has learned that expectations are low in this regard.<sup>13</sup>
13. The UNCRC has moreover considered it essential for Germany to establish a body at national level, with corresponding structures in the Länder, to coordinate all government activities relating to children's rights, and to develop an effective strategy, supported by sufficient human, technical and financial resources, to provide guidance to the Länder on how to implement the CRC with a focus on children in disadvantaged situations, including children with disabilities and socio-economically

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<sup>9</sup> See the federal government's [combined fifth and sixth reports to the UNCRC](#), 5 April 2019.

<sup>10</sup> As a federal system, the German Federal Republic consists of 16 federal states (Länder) whose state governments have their own competences.

<sup>11</sup> See the [letter](#) addressed by the Commissioner for Human Rights to the Federal Minister of Justice and Consumer Protection and Federal Minister for Family Affairs, Senior Citizens, Women and Youth, 21 July 2021.

<sup>12</sup> See UN Committee on the Rights of the Child, Concluding Observations on the combined fifth and sixth periodic reports of Germany, [CRC/C/DEU/CO/5-6](#), 13 October 2022.

<sup>13</sup> See the coalition agreement entered into by three governing parties on 7 December 2021, at [Koalitionsvertrag 2021 \(bundesregierung.de\)](#).

disadvantaged children. The Commissioner notes, however, that no steps have been taken towards the implementation of these recommendations.

14. The recent state report of Germany to the UNCRC refers to “numerous easily accessible contact and complaint points located in children’s immediate living environment, particularly at municipal level, where children or their representatives can turn in case of individual complaints,” referring to Children’s Commissioners at Länder and municipal level. However, Children’s Commissioners have only been established in four Länder (Brandenburg, Hesse, Saxony, Saxony-Anhalt) and in only 1% of municipalities.<sup>14</sup> Where these exist, they may have some influence on municipal politics related to children, however, their mandates do not include the receipt of individual complaints from children. There are also no lawyers or contact points specialised in the legal counselling of children, as recommended in the Council of Europe guidelines on child-friendly justice.<sup>15</sup> In fact, there are few institutions in Germany to which children can turn and receive support to claim their rights independently, and which could help make their needs and concerns visible.
15. The GIHR has called for an extension of the existing children’s commissions at municipal and Länder level and a strengthening of their functions in such a way that children are systematically provided with easily accessible complaint mechanisms at federal, regional and local levels.<sup>16</sup> The resulting structures should enable children at different levels to seek advice and assistance independently from their parents and should ensure that their interests are carried from the municipal to the Länder level, and ultimately on to the federal level, to increase awareness and create the necessary conditions for ensuring that primacy is given to the best interests of children in all matters affecting them.

### 1.1.2 CHILD PARTICIPATION

16. The general voting age for federal parliament elections in Germany is 18 years. The Commissioner welcomes the commitment by the federal government as part of the coalition agreement to promote the effective participation of children and youth through a variety of measures. The government lowered the voting age for European Parliament elections to 16 years in November 2022.<sup>17</sup> In addition, the voting age for municipal elections has been lowered to 16 years in 11 of the 16 Länder. In December 2023, moreover, Berlin became the seventh Land to allow voting from 16 years of age in regional Parliament elections.<sup>18</sup> A competence centre for the development and strengthening of youth and child participation was created on 1 January 2023 and a corresponding National Action Plan on Participation is foreseen. According to discussions held during the visit, however, no concrete measures are expected to be taken in this legislative period, despite some hearings having taken place in the course of 2023.
17. The Commissioner learned that a lack of structural mechanisms to facilitate self-organisation and effective participation of children and youth, including in schools and educational institutions, is also an issue. A law adopted in June 2021 foresees, among other things, efforts to “strengthen the participation of young people, parents and families”, but does not mention children.<sup>19</sup> When pupils and students began mobilising to protect the environment as part of the international Fridays for Future movement, for example, many politicians and school administrations threatened serious sanctions for violating the legal obligation to attend school. This reaction disregarded the constitutionally-guaranteed rights of children to freedom of opinion and freedom of assembly that

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<sup>14</sup> See Map of available Children’s Commissioners at Länder level at [Kinderbeauftragte auf Landesebene in Deutschland 2022 – Landkarte Kinderrechte \(landkarte-kinderrechte.de\)](https://www.landkarte-kinderrechte.de).

<sup>15</sup> See [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#), adopted by the Committee of Ministers on 17 November 2010.

<sup>16</sup> See GIHR, [List of Issues submitted by the National CRC Monitoring Mechanism](#), 11 February 2021.

<sup>17</sup> See Deutscher Bundestag, Press release, [Wahlalter bei Europawahl auf 16 Jahre abgesenkt](#), 10 November 2022.

<sup>18</sup> See [Wahlalter für Berliner Landesparlament wird auf 16 Jahre gesenkt](#), 14 December 2023.

<sup>19</sup> See Gesetz zur Stärkung von Kindern und Jugendlichen ([Kinder- und Jugendstärkungsgesetz - KJSG](#)), adopted 15 June 2021.

may be disproportionately infringed upon through threats of blanket sanctions under school laws.<sup>20</sup> Further, while a small network of child and youth parliaments at Länder and municipal level is being developed, these often operate without clear mandates or adequate resources and do not consider themselves able to provide effective input for planning and decision-making processes affecting children and youth. This was also the experience reported by the existing pupil councils during the pandemic.<sup>21</sup>

18. According to the GIHR, children and youth in care institutions are often not made aware of their rights and are rarely consulted on measures that are taken on their behalf, resulting in experiences of dependence and defencelessness that run counter to the asserted aim of installing a sense of safety and responsabilisation.<sup>22</sup> In this context, the Commissioner notes with concern the continued reports of children facing violence and coercion in alternative care, particularly in closed institutions.<sup>23</sup> She was impressed by the clear vision, courage and dedication of the children and youth she met during the country visit and points to their concrete demands for improved and dignified treatment in welfare and justice institutions.<sup>24</sup> She also welcomes the growing engagement within the child and youth welfare services in raising rights awareness and strengthening the participation of children and youth in institutions, including through the Federal Youth Welfare Ombudsman Network.<sup>25</sup>

## 1.2 THE RIGHTS OF PERSONS WITH DISABILITIES

19. Germany ratified the CRPD in 2009 and underwent its periodic evaluation by the CRPD Committee in August 2023. The Commissioner notes the limited progress in promoting the rights of persons with disabilities in Germany due, among other things, to a lack of recognition that disability is the responsibility of all government entities, and an overall approach to disability from a medical, rather than a human rights, perspective.<sup>26</sup> The CRPD Committee called on the government to systematically review the conformity of existing laws, policies and practices with the obligations under the CRPD and to ensure that disability-related measures were mainstreamed as a cross-cutting issue in all areas of law. During her visit, the Commissioner noted that key concepts enshrined in the CRPD were not always adequately understood, owing in part to an incorrect official translation of the Convention.<sup>27</sup>
20. The 2002 Law on Equal Treatment of persons with disabilities (BGG), which has been amended several times since its adoption, was introduced to eliminate discrimination against persons with disabilities, and ensure their self-determination and equal participation in society.<sup>28</sup> The Act applies primarily to public authorities at federal level and is complemented by respective regional equality

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<sup>20</sup> See also [the Parallel Report submitted by the National CRC Monitoring Mechanism](#) to the Committee on the Rights of the Child on the Combined 5th and 6th Periodic Reports of the Federal Republic of Germany, October 2020.

<sup>21</sup> See [National Coalition NGO Germany Written Supplement](#) (8 February 2021 - 12 February 2021). According to a UNICEF study, optimism and general satisfaction among children and young people in Germany decreased substantially in 2022, making Germany one of the EU countries with the lowest satisfaction rate. The report suggests that this may be linked to a lack of regard for the concerns of young people in public debate. See [Ein Versprechen an die Jugend](#), UNICEF Report on the situation of children in Germany 2023, UNICEF Germany, September 2023.

<sup>22</sup> See [Zwangmaßnahmen in der Kinder- und Jugendhilfe - Eine kinderrechtliche Perspektive](#), German Institute for Human Rights, May 2021.

<sup>23</sup> See CRC Concluding observations, above, footnote 12.

<sup>24</sup> See the demands formulated by the Youth Conference Saxony, September 2023, at <https://www.landesjugendkonferenz.de/eine-neue-starke-stimme-sachsen-hat-eine-vertretung-der-jungen-menschen-aus-wohngruppen-der-jugendhilfe/>.

<sup>25</sup> See [Bundesnetzwerk Ombudschaft in der Kinder- und Jugendhilfe e.V. \(ombudschaft-jugendhilfe.de\)](#).

<sup>26</sup> See also Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of Germany, [CRPD/C/DEU/CO/2-3](#), 8 September 2023.

<sup>27</sup> The term 'inclusion', for instance, has been translated as 'integration', which has not been corrected despite repeated efforts by organisations of persons with disabilities. See [shadow translation](#) into German, which is now used also in Austria.

<sup>28</sup> See Gesetz zur Gleichstellung von Menschen mit Behinderungen ([BGG](#)), adopted 27 April 2002.

laws. In line with Article 1 of the above law, the Federal Government Commissioner for Matters relating to Persons with Disabilities, who cooperates with 16 Commissioners at Länder level,<sup>29</sup> shall “ensure that the federal government’s responsibility to ensure equal living conditions for people with and without disabilities is fulfilled in all areas of social life”. Critics have pointed out that the law is little-known among public authorities and often insufficiently implemented. In addition, it does not cover areas in which most cases of discrimination occur, including housing, the employment market or public transport, as these are regulated through private law.<sup>30</sup> In addition, independent monitoring of access to rights under the CRPD, which is indispensable for full implementation, is established by law and permanently funded only in one region (North Rhine-Westphalia), by means of a long-term, contractual agreement.<sup>31</sup>

21. According to the GIHR, which is the national independent body set up to promote and monitor implementation of the CRPD, very little progress has been made since the entry into force of the Convention in terms of creating choices for persons with disabilities and promoting a more enabling environment for them.<sup>32</sup> While some action plans on the implementation of the CRPD were adopted and some areas of law have undergone reform, the CRPD is viewed as having considerably declined in political significance over the years. From discussions with her interlocutors, the Commissioner gained the impression that the CRPD is not afforded the political prioritisation that it requires, as the key human rights instrument providing specific standards concerning the rights of persons with disabilities, and that any proposal for rights-enhancing measures is met by reservations relating to financial feasibility, rather than considered a necessary step towards human rights compliance.

### 1.2.1 SEGREGATED STRUCTURES

22. A highly-developed system of segregated structures for persons with disabilities, such as special schools, workshops for persons with disabilities, and special residential facilities, continues to exist in Germany and has in some areas even been expanded, which goes against the duty to facilitate the full enjoyment by persons with disabilities of their right to live independently within the community.<sup>33</sup> The GIHR has noted a “misguided rhetoric of inclusion, in which different political and social stakeholders refer to segregated structures as part of an inclusive system”, and concluded that the recommendation by the CRPD Committee in 2015 – to dismantle segregated structures step-by-step – had “at best been taken up hesitantly and at worst been negated”.<sup>34</sup> During her meetings with organisations of persons with disabilities, the Commissioner learned that the perpetuation of well-established and -financed exclusionary structures keep the affected persons in situations of dependency and vulnerability that are easy to enter, but very hard to exit.
23. The Commissioner is particularly concerned about the number of children with disabilities in special schools, which has remained very high over the years, and is even increasing in some areas.<sup>35</sup> While the government referred to growing rates of inclusion in Germany, according to experts, this is primarily the result of an increasing number of children being identified as having special needs in the aftermath of the pandemic. Meanwhile, the rate of students attending special schools has

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<sup>29</sup> See the list of Commissioners for matters relating to persons with disabilities at Länder level at [Der Beauftragte der Bundesregierung für die Belange von Menschen mit Behinderungen - Behindertenbeauftragte in den Bundesländern \(behindertenbeauftragter.de\)](#).

<sup>30</sup> See also Hans Böckler Stiftung, Press release, [Gesetzesevaluierung unter Beteiligung des HSI](#), 21 November 2022.

<sup>31</sup> Thus far, independent monitoring of access to rights in line with Article 33.2 of the CRPD at Länder level has been established by law only in only four Länder (Berlin, North Rhine-Westphalia, Rhineland-Palatinate and Saarland). See GIHR [Factsheet on Independent Monitoring](#), June 2023.

<sup>32</sup> See GIHR, [National CRPD Monitoring Mechanism Parallel Report](#) to the UN Committee on the Rights of Persons with Disabilities for Germany’s 2nd/3rd State Party review procedure, July 2023.

<sup>33</sup> See Article 19 of the CRPD.

<sup>34</sup> See above, footnote 32.

<sup>35</sup> See [Inklusion in Deutschlands Schulen: Eine bildungsstatistische Momentaufnahme 2020/21](#), Bertelsmann Stiftung.

increased in several regions, including Baden-Württemberg and Bavaria.<sup>36</sup> Inclusive education is often still structurally impeded by inconsistent commitment by the Länder authorities, the provision of inferior equipment to inclusive schools compared to special schools, and the concentration of inclusive education opportunities in only a few schools.

24. Against the background of a lasting and severe shortage of high-quality inclusive schooling opportunities, and persistent barriers against children with disabilities in mainstream schools, parents often succumb to the narrative that their children with disabilities can best be supported in the “protective environment” of special schools. Yet only 27% of children in special schools manage to obtain a basic school leaving certificate, which has adverse effects on their career opportunities and often channels them, from the beginning, into a life of dependence and low levels of vocational engagement.<sup>37</sup>
25. While the employment situation of persons with disabilities in Germany has improved since the entry into force of the CRPD, persons with disabilities continue to be structurally disadvantaged when accessing the general labour market, are less likely to be able to sustain themselves on their vocational income and almost twice as likely to be unemployed than persons without disabilities.<sup>38</sup> Women with disabilities are less often employed than men and are much more likely to work part-time. Although young persons with disabilities should, by law, be trained in regular professions, they are often steered into lower-ambition activities that are considered suitable for them. According to the BMAS, 80-90% of all school leavers with disabilities undergo an initial period of at least one year in a so-called ‘transition system’, while the majority either begin their vocational training in a sheltered workshop, or do not learn a vocation at all. Only around 10% of school leavers with disabilities in any given year reach mainstream vocational training for a regular occupation, and even fewer aim for the academic sector.<sup>39</sup>
26. The Commissioner is concerned about the fact that the number of persons employed in segregated “sheltered workshops for persons with disabilities” continues to grow.<sup>40</sup> As the over 300,000 employees of these workshops are not considered in employment, but in rehabilitation, labour rights are not applied to them and wages are well below the statutory minimum wage.<sup>41</sup> Although sheltered workshops are supposed to promote transition to the general labour market, the transition rate has remained below 0.5% for many years. By law, reasonable accommodation in workplaces is only mandatory if a person with severe disabilities already works in the company or is hired, which discourages many employers from hiring persons with disabilities in the first place. Since 2018, employers with at least 20 positions must fill at least 5% with persons with disabilities, or pay a monthly levy of between €140 and €360 (which is tax deductible) into a fund that promotes the participation of persons with severe disabilities in working life.<sup>42</sup> Until the end of 2023, an additional fine of up to €10,000 became payable in case no inclusion efforts had been made. This

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<sup>36</sup> See [NGO Submission to the 2<sup>nd</sup> and 3<sup>rd</sup> Periodic Report of Germany on the CRPD focused on Article 24 \(Education\)](#), July 2023. In some cities, such as Cologne, there has been a 60% increase of children with intellectual disabilities, with the percentage being twice as high for children without German citizenship.

<sup>37</sup> See information provided by the [Family Advice Centre for Persons with Disabilities and their families](#), last updated on 8 December 2023.

<sup>38</sup> See [Third Report of the BMAS, Participation – Impairment – Disability](#), 2021. In 2018, the unemployment rate of persons with disabilities was 11.2%, compared to 6.52% for persons without disabilities.

<sup>39</sup> See GIHR [Annual Report 2020](#).

<sup>40</sup> See GIHR, [Beschäftigung unterhalb des Mindestlohns unzulässig](#), June 2023.

<sup>41</sup> People working in sheltered workshops receive remuneration according to a complex system, with a salary of, on average, €212 per month. According to the organisation of women with disabilities ‘[Weibernetz](#)’, women in workshops experience a gender pay gap of some 7%. Transport to and from the workshops is provided (unlike transport to regular employment). Workshop employees may also be recipients of other social support benefits.

<sup>42</sup> As of 1 January 2024, the [Law for the promotion of an inclusive labour market](#) increased the levy to approximately €700.

was very rarely enforced, however, despite the fact that only some 50% of companies fulfil the requirements.<sup>43</sup>

27. In addition to the special structures in the education and labour fields, Germany's housing system includes a range of segregated residential facilities for persons with disabilities. The number of people living in these facilities has increased since 2009, while outpatient and personal support services are lacking, especially for persons with intellectual and multiple impairments.<sup>44</sup> The Commissioner wishes to stress that living in such residential facilities significantly impacts the right to independent living, as enshrined in the CRPD, as well as the rights to privacy, choice regarding support options, participation, and inclusion in the community.<sup>45</sup> Almost 50% of persons with disabilities who receive housing benefits live in residential facilities (64.4% of those with intellectual impairments) and they reportedly encounter difficulties when wishing to transfer their housing assistance to independent lifestyles in their own homes or in foster families. Cost considerations are reportedly often cited as reasons against such transfers, despite the fact that expenditure per person in residential facilities are generally higher.
28. The Commissioner is particularly concerned about the high rates of violence against persons with disabilities in Germany which continue to be reported, and which disproportionately affect women and girls.<sup>46</sup> Violence occurs particularly often in segregated structures and care facilities, as the ability of persons with disabilities to seek support is diminished and their exposure to coercion and abuse increased. During her visit, the Commissioner also heard distressing accounts of women and girls being subjected to physical examinations and treatment without consent, and without even being informed about the purposes of the treatment. The Commissioner learned that there are no independent complaints mechanisms available to persons with disabilities in institutions, and they are not systematically or effectively included in the decision-making processes that affect them, as the concept of supported decision-making remains virtually unknown.

### 1.2.2 ACCESSIBILITY AND EFFECTIVE PARTICIPATION

29. The 2016 Federal Act for the Promotion of Participation and Autonomy of Persons with Disabilities (BTHG), which has progressively entered into force in four reform stages between 2017 and 2023, was adopted to improve the implementation of the CRPD through the more efficient provision of person-centred assistance with a view to promoting inclusion. Persons with disabilities have, however, been critical of the fact that the group of people entitled to benefits under the law is restricted, that all measures are subject to resource conditionality, and that an overall patronising approach by the authorities and society at large has been impeding real progress. According to the GIHR, persons with disabilities and their needs continue to be given only scant consideration in decision-making processes, while awareness about accessibility as a basic prerequisite for equal participation remains limited.
30. Although the federal government's coalition agreement addresses accessibility and establishes a federal accessibility initiative, no concrete legislative projects or funding programmes have been planned, and none of the municipalities have succeeded in achieving the legally-defined target of accessible public transport by 2022. The lack of obligation for the private sector to provide accessibility for persons with disabilities has long been acknowledged as problematic, but remains unaddressed. The Commissioner learned with interest during her visit that amendments to the BGG

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<sup>43</sup> In 2022, not one company was fined. See [Inklusion](#), Die Zeit, 20 December 2023.

<sup>44</sup> See [European Semester 2020-2021 country fiche on disability equality Germany](#), February 2021.

<sup>45</sup> See also [Wer Inklusion will, sucht Wege – Zehn Jahre UN-Behindertenrechtskonvention in Deutschland](#), GIHR, March 2019.

<sup>46</sup> See, among others, [Human Rights Now!](#) Joint Civil Society Report on the 2<sup>nd</sup> and 3<sup>rd</sup> State Reports of the German Federal Government on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities by Germany, submitted by the Alliance of German Non-Governmental Organisations on the CRPD, July 2023.

are planned, with a view to introducing a legal obligation to commit to accessibility also within the private sector.

31. According to organisations of persons with disabilities, the BTHG has had no discernible positive effect on person-centred services, as all decisions must pass an “appropriateness and reasonableness test”, which significantly limits choice and decision-making options. Preliminary evaluation processes in the Bundestag (the Parliament) of the implementation of the law also point to issues related to the right of choice and preference, as well as to the quality of participation of persons with disabilities and their representative organisations in the overall planning process.<sup>47</sup> The Commissioner notes in this context that representative organisations have repeatedly called for the elaboration of participation standards, in order to ensure qualitative rather than quantitative modes of participation, as they frequently receive invitations for various forms of consultations at different levels, of which most remain without detectable impact.
32. The Commissioner is concerned about the lack of progress in creating effective mechanisms for the participation of persons with disabilities in public life, both through reasonable accommodation measures and enhanced accessibility, and through ensuring meaningful involvement of persons with disabilities and their representative organisations in all relevant decision-making. She stresses that, according to the European Committee of Social Rights (ECSR), failure to adopt effective measures, within a reasonable timeframe, towards a coordinated policy for social integration and participation in the life of the community by persons with disabilities, constitutes a violation of Article 15§3 of the revised European Social Charter.<sup>48</sup>

### 1.3 PROTECTION FROM DISCRIMINATION

33. According to a survey conducted by the FADA in 2017, one in three persons in Germany considered that they had been discriminated against in the course of the last two years, but only 6% had sought legal recourse.<sup>49</sup> A recent report by the European Union Agency for Fundamental Rights on the experiences of people of African descent concluded that Germany had the highest incidence of discrimination based on skin colour in the 13 surveyed EU member states over the last five years.<sup>50</sup> Despite these high figures, and the consistent reports by experts and anti-discrimination advice and community centres regarding the growing frequency of discrimination in Germany, the Commissioner gained the impression during her visit that basic equality and non-discrimination standards remain very little known in Germany, and that there is limited awareness of and reference to relevant international obligations in policymaking and jurisprudence. One notable exception is the explicit reference to international obligations to protect persons with disabilities against discrimination in the December 2021 judgment of the Constitutional Court, relating to medical triage decisions.<sup>51</sup>

#### 1.3.1 THE LEGAL FRAMEWORK FOR THE PROTECTION AGAINST DISCRIMINATION

34. In 2006, and after several infringement procedures by the European Commission for failing to transpose the four European Equality Directives, Germany adopted the General Law on Equal Treatment (AGG). An evaluation concluded in 2016 that important reforms to the AGG were required, both from a legal perspective and in terms of its effectiveness and enforceability.<sup>52</sup> The main points of criticism include the fact that the AGG is essentially applicable only to private law

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<sup>47</sup> See [Report on the state and results of measures taken according to Article 25II – IV BTHG](#), 23 December 2022.

<sup>48</sup> See [European Disability Forum \(EDF\) and Inclusion Europe v. France](#), Complaint No. 168/2018, adopted on 19 October 2022.

<sup>49</sup> See [Diskriminierungserfahrungen in Deutschland – Ergebnisse einer Repräsentativ- und einer Betroffenenbefragung](#), 2017.

<sup>50</sup> See [Being Black in the EU – Experiences of People of African Descent](#), EU Survey on Immigrants and Descendants of Immigrants, EU Agency for Fundamental Rights, 2023.

<sup>51</sup> See [Decision of the First Senate of the Federal Constitutional Court, 1 BvR 1541/20](#), of 16 December 2021.

<sup>52</sup> See [Evaluation des AGG, erstellt im Auftrag der Antidiskriminierungsstelle des Bundes](#), October 2016.

relationships. Except in the field of public law employment, persons who consider themselves to have been discriminated against by public authorities must rely on the general prohibition of discrimination laid down by Article 3 of the Constitution. It is also considered problematic that the AGG expressly justifies differential treatment on any ground in the housing field, when it serves to create or maintain balanced settlement structures. In addition, the AGG creates only limited obligations to promote equal opportunities and provides protection against discrimination in individual contractual relations only with respect to ethnic origin. For other grounds, such as age, sexual orientation or gender identity, religion or disability, protection is only provided in so-called bulk business, i.e. in contracts that are used in comparable format for an unlimited number of persons.

35. The effectiveness of the AGG is thus limited, including from a procedural point of view. The time limit of two months laid down in the law for initiating a complaint serves as important obstacle to accessing justice, considering that many victims, in particular where discrimination on the ground of ethnic origin is at stake, remain unaware of the existence of the AGG or their rights under it, may not immediately know where to turn to, or may initially be reluctant to seek legal recourse.<sup>53</sup> In addition, experts have pointed out that the law establishes barriers to potential claimants by not effectively shifting the burden of proof to the respondent, in line with European standards,<sup>54</sup> and by only granting associations the right to provide legal advice, and not to bring claims to court. As court proceedings are costly, and the level of compensation awarded has been low, the field of anti-discrimination is unattractive for lawyers which raises the threshold for those affected, in addition to the emotional burden and the long duration of litigations.<sup>55</sup>
36. As the Länder hold competence in important sectors, such as education and policing, the AGG, as federal law, should be complemented by anti-discrimination laws at Länder level. Most laws concerning education and schools have no anti-discrimination provisions, while research has revealed a particularly high number of incidents of discrimination in the education field, directed especially against Muslim students.<sup>56</sup> Thus far, however, Berlin is the only Land that has adopted comprehensive anti-discrimination legislation, covering public authorities as well as the private sector.<sup>57</sup>
37. The Commissioner welcomes the federal government's commitment in the coalition agreement to "evaluate the AGG, close protection gaps, improve legal protection and extend its scope of application" and notes the unanimous appeals by civil society, independent experts and international monitoring bodies for a substantive reform of the law.<sup>58</sup> However, progress on this commitment has been lagging and, according to her interlocutors, the AGG is not expected to undergo reform during this legislative period. Despite the well-known shortcomings of the AGG, the Ministry of Justice has not yet initiated the evaluation and amendment processes.
38. Germany ratified the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD) in 1973 and has recently undergone an evaluation on its combined 23<sup>rd</sup> to 26<sup>th</sup> report to the CERD Committee. The Commissioner notes that the lack of disaggregated data in Germany has again

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<sup>53</sup> See also [ECRI Report on Germany](#) (sixth monitoring cycle), adopted on 10 December 2019.

<sup>54</sup> See [ECRI GPR no. 7](#), paragraph 11; [EU Directive 2000/43/EC](#) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, recital 21 and art. 8; and [EU Directive 2006/54/EC](#) implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, recital 30 and art 19.

<sup>55</sup> See [Deutschland nach vorne bringen](#): Dokumentation zur Fachtagung zur Reform des Allgemeinen Gleichbehandlungsgesetzes der Antidiskriminierungsstelle des Bundes, Dokumentation vom 20. April 2023 in Berlin.

<sup>56</sup> See FADA study, above, footnote 50.

<sup>57</sup> See [Landesantidiskriminierungsgesetz \(LADG\)](#), adopted on 11 June 2020.

<sup>58</sup> See, among others, the [Bündnis AGG Reform jetzt](#) and ECRI, above, footnote 54.

been raised by the Committee as an impediment to the formulation of effective public policies against racial discrimination and inequalities in the enjoyment of rights.<sup>59</sup>

39. The Commissioner is concerned about persistent reports of racial profiling carried out by the federal police and at Länder level, which, as a form of racial discrimination by state actors, cannot be effectively litigated in civil and administrative law.<sup>60</sup> She notes the low level of rights awareness with respect to racial discrimination in Germany and the lack of progress in implementing international standards. As access to justice remains limited, especially for those groups who are most exposed to discrimination, many violations appear to persist over years until they are eventually corrected by the courts and then, with even further delay, are translated into relevant policy changes. She notes in this context calls by the CERD Committee for the German authorities to raise awareness and knowledge of the provisions of the CERD and its justiciability among judges, lawyers and public officials to ensure that it is applied in relevant cases, and to extend these efforts to members of parliament, the Länder authorities and the general public.

### 1.3.2 THE INSTITUTIONAL FRAMEWORK FOR THE PROTECTION AGAINST DISCRIMINATION

40. The FADA, which was set up at the federal level as the implementing structure under the AGG in 2006, is mandated to carry out awareness-raising work, take measures to prevent discrimination on any of the grounds covered by the AGG, and conduct academic research. In addition, it can receive individual complaints and provide independent assistance, information, and referrals, but does not have the power to open investigations or bring legal cases, nor can it effectively support victims of discrimination in their proceedings (see above). According to the European Commission against Racism and Intolerance (ECRI), the FADA would require a stronger mandate and more resources to carry out all the functions and responsibilities provided in ECRI's revised General Policy Recommendation No. 2 on Equality Bodies to combat racism and intolerance at national level and the relevant EU Equality Directives.<sup>61</sup>
41. The FADA is headed by the Federal Anti-Discrimination Commissioner who, until 2022, was appointed by the BMFSFJ upon a proposal by the federal government, and was thus not considered fully independent. The Commissioner welcomes the amendment of the AGG in April 2022 to strengthen the independence of the Federal Commissioner, providing for the head of FADA to be elected by the Bundestag for a term of five years (with one possible re-election), and the election in July 2022 of the first Independent Federal Anti-Discrimination Commissioner. She notes with appreciation the considerable work accomplished by the Independent Commissioner to raise awareness of the rising prevalence of discrimination in Germany. According to FADA's last Annual Report, there were 8,827 submissions in 2022, the highest ever number and more than double the number received in 2019. Submissions most often concerned racial discrimination (43%), disability (27%) and gender discrimination (21%).<sup>62</sup> Approximately 20% of claimants considered themselves to have been discriminated against by a public authority and thus fell outside the scope of the AGG and FADA's mandate.
42. The Commissioner notes the concrete proposals put forward by the Independent Commissioner for amending the AGG, including the extension of the discrimination grounds to include socio-economic background and citizenship, to expand the scope of application to actions taken by the federal government, to remove the privileges under church law and the possibility for all employers to set minimum and maximum age requirements for employees, and to adopt legislation

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<sup>59</sup> See Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined 23<sup>rd</sup> to 26<sup>th</sup> reports of Germany, [CERD/C/DEU/CO/23-26](#), 8 December 2023.

<sup>60</sup> See among other reports BUG, [Alternative report to the UN Committee on the Elimination of Racial Discrimination CERD concerning the German governmental report during the 111<sup>th</sup> session](#), 11 September 2023.

<sup>61</sup> See above, footnote 55.

<sup>62</sup> See [Annual Report 2022](#), Federal Anti-Discrimination Commissioner, June 2023.

recognising the denial of reasonable accommodation as discrimination, which would be in line with the caselaw of the European Court of Human Rights.<sup>63</sup> In addition, the Independent Commissioner has called for an extension of the deadline for making claims in cases of discrimination from 2 to 12 months, and for reducing the burden of proof standard to one on the “balance of probabilities”.

43. Since the mandate of FADA is limited to matters falling under federal competencies, it is important for the Länder to establish their own anti-discrimination and equality structures. However, only Berlin has established an independent structure with a comprehensive mandate to address all forms of discrimination in the public and private spheres, in line with its anti-discrimination legislation. While some entities have also been set up in other Länder, they form part of the administration and thus cannot be considered independent.<sup>64</sup> The Commissioner welcomes the establishment of largely independent police complaints mechanisms in four Länder (Mecklenburg-West Pomerania, Rhineland-Palatinate, Schleswig-Holstein and Thuringia), in addition to Berlin, where the Land’s anti-discrimination law (LADG) also allows for complaints against police behaviour, including acts of discrimination. However, she regrets that there is still no independent complaints mechanism to turn to in cases of discrimination by the federal police, despite a recommendation to that effect by the Commissioner’s predecessor in 2015.<sup>65</sup>
44. Public awareness of the many facets of discrimination, including their intersectional manifestations, remains low in Germany, which makes it particularly important that affected individuals have an effective possibility to seek independent advice and information about their rights. The Commissioner notes that an evaluation of the availability of quality advice on the prohibition of discrimination and the applicability of the AGG concluded that there are only some 100 advice centres across the territory of Germany, and that their geographic distribution is uneven.<sup>66</sup> Most centres work in bigger cities or in those regions where particular efforts have been made, such as Berlin, Hamburg or North-Rhine Westphalia. Advice centres are usually small, struggle with inadequate resources, and have often only been functioning for one or two years. While new centres have recently been created, many of them cannot be considered independent from the government. In this context, the Commissioner welcomes the efforts by the Independent Anti-Discrimination Commissioner to support the work of independent advice centres across Germany.<sup>67</sup>
45. The Commissioner is particularly concerned about reports regarding growing manifestations of xenophobic attitudes and racism in society.<sup>68</sup> In her discussions with civil society organisations engaged in combating racial discrimination, she learned that their working conditions have considerably deteriorated. Public hostility against them has increased, sometimes to the point where actors feel at risk of attack, and support from relevant authorities, including financial, has diminished amid an overall polarisation in society. The Commissioner finds particularly worrisome reports by interlocutors that the work of human rights defenders is increasingly seen as political rather than legal which, in the eyes of some politicians, disqualifies relevant organisations from accessing funding for cooperation projects. The Commissioner reiterates that human rights defenders play a central role in ensuring that state policies are human rights-compliant and in keeping authorities accountable, in line with constitutional protections and the country’s international human rights obligations. Germany has been offering support and safety to human

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<sup>63</sup> See [Grundlagenpapier zur Reform des Allgemeinen Gleichbehandlungsgesetzes](#), Antidiskriminierungsstelle, 8 July 2023. See also European Court of Human Rights, [Cam v. Turkey](#), Judgment of 23 February 2016, Application no.51500/08.

<sup>64</sup> See European Court for Human Rights, [Basu v. Germany](#), Judgment of 18 October 2022, Application no. 215/19, which also raises issues with respect to the way in which the authorities examine allegations of racial discrimination (burden of proof).

<sup>65</sup> See above, footnote 4.

<sup>66</sup> See [Gut beraten! Auf dem Weg zu einer flächendeckenden Antidiskriminierungsberatung](#). FADA, October 2022.

<sup>67</sup> See [information on activities by FADA](#) to promote the accessibility of independent advice and information.

<sup>68</sup> See [Rechtswotivierte rassistische und antisemitische Gewalt in Sachsen 2022](#) and [Diskriminierungserfahrungen in Sachsen](#), DeZIM Institut, 2022.

rights defenders coming from abroad and it should continue to do the same for human rights defenders working on issues related to human rights obligations in Germany.

#### 1.4 CONCLUSIONS AND RECOMMENDATIONS

46. The Commissioner notes that awareness of human rights in Germany is still limited, and that a rather minimalistic and textual approach to the implementation of international instruments has been adopted. She further understands that many legal professionals and parts of the judiciary are not fully aware of the applicable international standards. Few structures exist at federal, Länder, or local level that could increase awareness of or access to internationally-guaranteed human rights, and the continued lack of disaggregated data on the composition of the population and their respective access to rights is impeding effective human rights monitoring and evaluation. The Commissioner welcomes the increase in resources made available to the GIHR and the amendment of the AGG in July 2022 to strengthen the independence of the head of the FADA, but notes with concern that both the national human rights institution, and the national equality body, have limited powers in comparison to other such structures in Europe. Their competences should be strengthened considerably to enable them to effectively perform their important mandates.
47. The Commissioner calls on the authorities to strengthen the GIHR in line with international and Council of Europe standards, and in close consultation with the GIHR and relevant civil society actors. The GIHR should be provided with stronger protection powers, granted access to documents and data and to places of deprivation of liberty. It should have the right to be consulted on draft laws that impact human rights, be able to bring constitutional complaints, and have the power to address recommendations to public authorities. The process of nomination of members of its governing body should fully preserve the independence of the institution. The authorities should continue to ensure that any new human rights mandate allocated to the GIHR is accompanied by adequate resources to carry out the work.
48. The Commissioner calls on the authorities to reinforce FADA's competences, powers and resources in line with the relevant standards for equality bodies,<sup>69</sup> particularly by enhancing its status in relevant legislative processes and strengthening its competences to support victims through legal assistance and litigation. In addition, the authorities should engage in broad awareness-raising and education activities regarding the existence and functioning of international human rights and their applicability in Germany as a state party to most of these instruments. The Commissioner further calls on the authorities to redouble their efforts, in close cooperation with affected communities and based on the principles of self-identification and anonymity, to collect data and information on the demographic composition of the population and its access to rights, disaggregated by ethnic groups, gender, age and regions.

##### **With respect to children's rights**

49. The Commissioner welcomes the commitment of the government to strengthen children's rights, including by anchoring them in the Constitution, and acknowledges the various steps taken to enhance the effective participation of children and young people in decisions that affect them. However, no tangible progress has been made towards ensuring that relevant authorities at federal, regional and municipal level are aware of their obligation to give primary consideration to the best interests of the child and notes that there is still no coherent approach to the involvement and standing of children in administrative and judicial proceedings. Germany still has no central authority that would be tasked with the effective coordination of measures aimed at the protection and promotion of children's rights at all levels and across all relevant ministries, and very few complaints mechanisms where children could seek advice independently from their parents.

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<sup>69</sup> See ECRI GPR no. 2 and ongoing negotiations on two new [EU Directives on binding standards](#).

50. The Commissioner calls on the authorities to adopt all necessary measures to strengthen children's rights within the legal order and ensure that the best interests of the child are systematically taken into account and given primary consideration in all relevant actions concerning children, whether taken by social welfare institutions, courts, administrative authorities or legislative bodies, in line with Article 3 of the CRC. Binding standards should be adopted to ensure that all proceedings involving children are conducted in a child-friendly manner.
51. The Commissioner calls on the authorities to create a central structure that can ensure that the interests and concerns of children are given sufficient attention across all ministries and coordinate, through relevant actors at Länder and local level, the necessary policy changes to effectively safeguard the rights of children at all levels. More independent complaints mechanisms should be established, and the existing structures and networks provided with reliable funding to ensure their ability to perform their important mandates independently and effectively, including with respect to combating and preventing violence against children.
52. The Commissioner calls on the authorities to enhance their engagement in strengthening the effective participation of children and young people at all levels, including through the extension, reinforcement and reliable funding of existing mechanisms. All professionals working with children, particularly in care institutions, should receive advanced training on children's rights and their right to be heard in line with Article 12 of the CRC, and existing participation mechanisms should undergo regular evaluation by children and young people themselves. The National Action Plan on Participation of Children and Youth should be developed with effective involvement of children and youth representatives, and adopted as soon as possible.

**With respect to the rights of persons with disabilities**

53. Progress on ensuring the human rights of persons with disabilities in Germany has been overall limited in recent years. Overprotective attitudes, insufficient political commitment and a persistent resistance to change among the existing, well-financed and segregated structures often channel persons with disabilities from childhood into lifelong dependence and vulnerability, hindering the achievement of an independent and autonomous lifestyle for persons with disabilities that Germany has committed itself to by acceding to the CRPD. Deinstitutionalisation has been regressing in past years, as most professionals continue to promote segregated institutions and so-called "protected spaces", including special schools, sheltered workshops and residential facilities for persons with disabilities, while budget considerations at federal, regional, and local level support centralised approaches over individual choice.
54. While noting efforts by the government to enhance the participation of persons with disabilities, the Commissioner is concerned about the fact that self-representative organisations find themselves occupied with numerous rounds of somewhat burdensome consultations, while often lacking the opportunity to have genuine impact on decisions taken. In addition, accessibility is still elusive in many vital areas, as the private sector has no obligation in this regard, which renders inclusion and participation practically impossible in many cases.
55. The Commissioner encourages the authorities to redouble their efforts towards ensuring that persons with disabilities have effective opportunities to lead independent lives, fully included in the community. She calls on them to develop a comprehensive deinstitutionalisation strategy to prevent further institutionalisation and accelerate the transition for affected persons from life in segregated structures (including special schools, sheltered workshops and special residential facilities) to inclusion in high-quality mainstream settings, and to invest in human rights compliance as a priority. The available funding should be channelled into inclusive, rather than exclusionary, structures.

56. The Commissioner calls on the authorities to take urgent steps towards the creation of a comprehensive violence prevention and response strategy to protect persons with disabilities against all forms of violence in public and private settings. To be effective, this strategy must be developed in close consultation with persons with disabilities and their representative organisations, and must be accompanied by a significant enhancement of independent monitoring in all institutional settings, in line with Article 16.3 of the CRPD.
57. The Commissioner encourages the authorities to make progress in removing the barriers that persons with disabilities face in daily life, including in schools and on the labour and housing markets, and engage in comprehensive awareness-raising and education activities regarding the rights of persons with disabilities among persons with disabilities themselves, as well as relevant professionals and society at large, providing information on their right to inclusion and the available opportunities.
58. The Commissioner calls on the authorities to redouble their efforts to promote the effective participation of persons with disabilities in all relevant processes through systematic and active involvement of self-representative organisations, including those representing children and youth, and to develop, in close consultation with persons with disabilities, participation standards to ensure, for instance, that consultations occur with sufficient time being allocated and in accessible formats. She further calls on them to institute an obligation for the application of accessibility standards both in the public and private sector and to take all necessary measures, including relevant sanctions, to ensure their implementation. Barriers to equal access should be removed in a continuous and systematic way and statutory requirements established for the provision of reasonable accommodation in the public and private sector, in line with Articles 4.1(e) and 5.3 of the CRPD.

#### **With respect to protection from discrimination**

59. The Commissioner is concerned about the reportedly low level of awareness of international non-discrimination and equality concepts and standards in Germany, including among holders of public office and members of the legal profession. Despite the growing numbers of reported cases of discrimination, not enough political attention and resources appear to be devoted to the promotion of full and effective equality across all sectors. No inter-ministerial strategy has been formulated for that purpose and no specialised departments have been created in line ministries to enhance awareness of and compliance with relevant standards. While welcoming the government's commitment to reviewing the AGG and closing existing protection gaps, the Commissioner notes that no tangible progress has been made in this regard.
60. The Commissioner is further concerned about racial profiling, which reportedly persists at the levels of the federal and Länder police, and by the limited progress in ensuring that independent complaints mechanisms against discriminatory police action exist at all levels. While welcoming amendments to the AGG in 2022 to render the head of the FADA independent, and noting the substantial work accomplished by the Independent Commissioner since her election in July 2022, the Commissioner notes that FADA's competences remain inadequate to carry out all the important functions of an equality body, and that, at Länder level, only Berlin has established an independent structure with a comprehensive mandate to address all forms of discrimination. She is further concerned about the lack of accessibility of independent information and advice for possible victims of discrimination across Germany, as well as the many obstacles faced by civil society organisations engaged in combating discrimination.
61. The Commissioner calls on the authorities to accelerate the reform of the AGG, in close consultation with communities, relevant civil society organisations and the FADA, to extend its scope in line with international standards and make it fully effective in protecting individuals from all forms of discrimination, including by introducing a generally-applicable right for associations to

take legal action and by ensuring that European standards regarding the shifting of the burden of proof in discrimination cases are effectively applied. Legislation should be adopted that clearly defines and prohibits discriminatory profiling.<sup>70</sup> The Commissioner further calls on the authorities to engage in comprehensive awareness-raising and training activities, including among legal professionals and holders of public offices, of applicable international and national standards on anti-discrimination and equality. To that end, the network of independent information and advice centres which provide vital legal support to possible victims of discrimination should be supported and further extended, notably through the provision of sustainable funding.

62. The Commission calls on the authorities to give political priority to addressing the growing cases of discrimination experienced in Germany, paying particular attention to the mounting levels of xenophobia and racism, which have the potential to undermine social cohesion and destabilise democratic institutions. All necessary steps should be taken to establish independent anti-discrimination structures at Länder level, and the visibility and accessibility of all available anti-discrimination bodies should be expanded by providing them with adequate human, technical and financial resources. In addition, the authorities should formulate a cross-government strategy to enhance the level of awareness of anti-discrimination and equality standards across all ministries.

## 2 ACCESS TO SOCIAL RIGHTS

63. The Commissioner notes that Germany ratified the revised European Social Charter on 29 March 2021, accepting 88 of its 98 paragraphs, but neither Article 30 (right to protection against poverty and social exclusion), nor Article 31 (right to housing).<sup>71</sup> Germany is one of only four states parties that have not ratified the 1991 Protocol amending the European Social Charter to improve its effectiveness, and has not accepted to be bound by the Collective Complaints Procedure of the European Social Charter, which was introduced in 1995 to increase the speed and impact of the implementation of the Charter.
64. The Commissioner welcomes that, on 20 April 2023, Germany ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), resulting, as of 20 July 2023, in the possibility of individual complaints to be submitted to the UN Committee on Economic, Social and Cultural Rights (CESCR) by either individuals or civil society organisations. Thus far, however, the Optional Protocol remains widely unknown in Germany.
65. Through the discussions held during her visit, the Commissioner learned that social rights are often not considered legally binding, but rather subject to the availability of resources. Civil society actors and the GIHR observe that the general discourse pertaining to social rights, including protection from poverty and the right to adequate housing, is disconnected from discussions of human rights and entitlements, and that the German Constitution, with its focus on civil and political rights, is not often referred to as basis for state obligations in the field of social rights. The Commissioner notes a lack of recognition of the indivisibility of human rights, including among Parliamentarians and government officials. In this context, she notes that the Constitutional Court clarified in 2010 that the protection of the inherent dignity of all human beings, enshrined in Article 1 of the Constitution in combination with the reference to Germany as a social state in Article 20, obliges the state to provide a level of social assistance that enables beneficiaries not only to cover material needs, but also enjoy a minimum level of participation in society.<sup>72</sup>

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<sup>70</sup> See [ECRI GPR no. 11](#), PACE Resolution [2364 \(2021\)](#). See also Commissioner for Human Rights, [Ethnic profiling a persisting practice in Europe](#), 9 May 2019.

<sup>71</sup> See [list of signatures and ratifications](#) related to the European Social Charter.

<sup>72</sup> See BverfG, Judgment by the First Senate, [1 BvL 1/09, 9 February 2010](#).

66. The Commissioner wishes to reiterate the importance of social rights as a precondition for the dignified exercise of all human rights. She notes that the high levels of poverty and social exclusion in Germany are disproportionate to the wealth of the country as Europe's largest economy, and that the persistent narrative in political discourse and the media that poverty or homelessness are caused by the affected individuals themselves, due to their choice, indolence or negligence, hinders progress in ensuring effective access to social rights. She is further concerned about the growing levels of inequality in Germany, that threaten social cohesion. The Commissioner noted unanimous and serious concern among her interlocutors regarding the rise of the far-right in the political sphere, which, as many fear, threatens democracy in Germany. The issues raised below should be seen within this overall context.<sup>73</sup>

## 2.1 PROTECTION FROM POVERTY

67. Poverty and income inequality have considerably increased in Germany over the past years, with a record level of almost 21% of the population at risk of poverty in 2022.<sup>74</sup> According to a study of the Institute for Economic and Social Science, poorer households have not benefited from the overall positive economic development and declining rate of unemployment over the past decade, but have fallen further behind: between 2010 and 2019, the proportion of very poor people, with less than 50% of the medium income at their disposal, increased by 40%.<sup>75</sup> As a result of growing poverty, and an increase in food costs by 15% since 2022, the number of beneficiaries of food banks in Germany has almost doubled over the past two years, from 1.1 million in 2020 to 2 million in 2022, of which 28% are children and young people, and almost a quarter are older people.<sup>76</sup>

### 2.1.1 ACCESS TO BENEFITS

68. The Commissioner welcomes the federal government's comprehensive reform of the welfare system in January 2023, which introduced a notable increase in basic social security provision (now called "Bürgergeld") to persons with low or no income, and aims to facilitate entry to the labour market for those currently unemployed through more training opportunities, among other things. Owing to the substantial rise in the cost of living, the Bürgergeld was increased again, as of January 2024, to €561 per single adult. While welcome, the allowance still remains significantly below the €725 considered necessary by rights organisations and experts.<sup>77</sup> For instance, only €5 per person per day is earmarked for food, with even less for children. While an additional allowance is provided for housing and heating costs up to what is considered an "adequate level", this support does not take account of the substantial increases in market rates for both throughout Germany.

69. In 2017, the ECSR concluded that Germany was not in conformity with Article 13.1 of the revised Charter, considering that the total level of social assistance available to every person in need, including basic and additional benefits, fell below the poverty threshold.<sup>78</sup> For years, experts have criticised the applied method of calculating allowances in Germany as outdated and based on an unrealistic needs assessment that does not take due account of the precarity of life experienced by parts of the population. Instead of committing to a minimum level of existence of 60% of the median income, as recommended by the ECSR, benefits are counted based on the average expenditure of 15% of the poorest households, of which a further 25% is deducted. While

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<sup>73</sup> [Polls](#) consistently indicate a comfortable lead for the Alternative for Germany (AfD) in the three Länder (Thüringen, Saxony and Brandenburg) that will hold parliamentary elections in September 2024.

<sup>74</sup> See Federal Office of Statistics, [Gut ein Fünftel der Bevölkerung Deutschlands von Armut oder sozialer Ausgrenzung bedroht](#), 16 May 2023.

<sup>75</sup> See 'Armut grenzt aus', [Bericht des WSI](#) (Wirtschafts- und Sozialwissenschaftliches Institut), November 2022.

<sup>76</sup> See 'Zahlen und Fakten', [Tafel Deutschland](#), Stand November 2023.

<sup>77</sup> See Paritätischer Gesamtverband, [Bürgergeld zu niedrig: Paritätischer fordert armutsfesten Regelsatz von 725 Euro](#), 9 November 2022.

<sup>78</sup> See [ECSR Conclusions XXI-2 \(2017\)](#). The ECSR clarified that the level of social security benefits, when paid as income-replacement benefits, should never fall below the poverty threshold.

alternative methods of calculation, that reflect real needs, have been prepared,<sup>79</sup> the amount of the Bürgergeld is still defined through this outdated method, thereby failing to guarantee an adequate standard of living.

70. The Commissioner notes the persistent narrative by parts of the political spectrum in Germany, and supported by the media, that the Bürgergeld should be significantly below the minimum wage income, to ensure that employment remains desirable and that beneficiaries have an incentive to become independent from social services. This argument overlooks, however, that the minimum wage in Germany remains, even after gradual increases effected by the current government, below 60% of the median income, and that Germany has a particularly large low-income economy in which workers still depend on social support even while in employment.<sup>80</sup> In March 2023, the ECSR concluded that Germany was not in conformity with Article 4.3 of the Charter, due to the continuously very high gender pay gap, and considered that the absence of information requested in relation to Article 4.1, enshrining the right of workers to a remuneration that will give them and their families a decent standard of living, amounted to a breach of Germany's reporting obligations.<sup>81</sup>
71. The Commissioner is concerned by the negative impact of this narrative on the well-being of low-income workers and unemployed persons, who are experiencing shame and stigma as a result of their poverty. While in Dresden, the Commissioner spoke to affected persons who had worked hard for years without being able to extract themselves from poverty, but had delayed requesting social support due to their fear of the resulting hostility and discrimination. Indeed, experts and rights organisations have estimated that over 50% of people entitled to social protection support in Germany do not claim it.<sup>82</sup> While exact information on the non-take-up of rights and benefits is scarce, the introduction of the Bürgergeld is generally viewed as an improvement in comparison to the previous welfare model (called "Hartz IV").
72. In addition, the Commissioner learned during her visit that access to social benefits continues to be hindered by lack of awareness among rights-holders, complex application procedures, and lacking coordination between the various levels of administration and responsibilities. Many of the responsible offices at municipal level have not returned to normal opening hours after the COVID-19 pandemic, rendering it very difficult to obtain advice or submit applications in person. This places persons with limited access to digital devices, or lacking digital skills, in a position of acute disadvantage. The Commissioner learned that charity organisations working across the country to provide advice to those in need are overwhelmed with requests, and that municipalities tend to send beneficiaries to those advice centres rather than trying to respond to requests themselves, as they are often understaffed and struggling to keep up with the rising number of applications. In addition, the Commissioner learned from her interlocutors that relevant authorities often lack a sufficiently wholistic approach to help applicants navigate between the various offices who are responsible for them, resulting in delays and accountability gaps.

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<sup>79</sup> See Irene Becker and Verena Tobsch, Report commissioned by the Parliamentary fraction Bündnis 90/Die Grünen, *Ermittlung der „Grünen Garantiesicherungs-Regelbedarfe*, 20 January 2020.

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<sup>80</sup> In 2021, 8.6% of all employed persons in Germany were living below the at-risk-of-poverty threshold. See Federal Office of Statistics, *Working poor: At-risk-of-poverty rate among employed persons*.

<sup>81</sup> See *ECSR Conclusions XXII-3 (2022)*. The European Commission country report on gender equality, *Germany 2023*, assesses the gender pay gap at 19%.

<sup>82</sup> See *Non-take-up of means-tested social benefits in Germany*, Deutsches Institut für Wirtschaftsforschung discussion paper (2019).

### 2.1.2 PARTICULARLY AFFECTED GROUPS

73. According to the European Commission 2023 Country Report, Germany is moving away from the European average in terms of reducing social inequalities.<sup>83</sup> The urban-rural gap for people at risk of poverty or social exclusion is more than ten times higher than the EU average (7.8 percentage points in 2021, compared to 0.6 in the EU) and has been continuously increasing since 2016. The number of children at risk of poverty is growing steadily. According to figures published by the Federal Office of Statistics in July 2023, approximately 25% of children and young people in Germany live in poverty or at risk of poverty, placing Germany in the top third of EU countries in terms of prevalence of child poverty.<sup>84</sup> Young people from disadvantaged socio-economic backgrounds are three times less likely to be in higher education.<sup>85</sup> Among children of parents with lower education, 37.6% are at risk of poverty, compared to 6.7% among those with parents with higher education.
74. According to the German Children's Fund, over two thirds of poor children in Germany have lived in poverty for five or more years.<sup>86</sup> Children of single parents and those growing up in households of three or more children are particularly affected (with rates of 41% and 31%, respectively). Child poverty is increasingly dependent on the locality in which children grow up, as social segregation has increased sharply. In September 2022, the UNCRRC expressed concern about the high number of children living in poverty in Germany and called on the authorities to develop a national strategy against child poverty that addresses the root causes. It further called for a reform of the social benefits system, "based on an adequate subsistence level and a stronger method of calculation (...) with a particular focus on children from disadvantaged families, including migrant children, children without a regular residence status and children of single parents."<sup>87</sup>
75. In this context, the Commissioner welcomes the commitment by the federal government to introduce a basic child safeguard (called Kindergrundsicherung, KGS) which is meant to combine five different types of entitlements into one centralised and unbureaucratic form of support for all children, thereby streamlining efforts to combat child poverty in Germany. She notes with concern that the KGS excludes the children of asylum seekers, who will even see a reduction of benefits by €20. The KGS is expected to take effect from 1 January 2025. Child experts and charities have called for this support to constitute a minimum of €350 and up to €754, depending on parental income, while the current child subsidy minimum lies at €250 per child.<sup>88</sup> The Commissioner has learned that the ensuing benefits will be significantly lower than originally envisioned and, due to applicable tax deductions, disproportionately advantageous for wealthier families. In addition, only basic payments will be automated, meaning that the families most affected by poverty will still have to reapply every six months.<sup>89</sup> Child rights experts also insist that the law on the KGS should foresee ongoing monitoring, evaluation, and adaptation processes, to ensure that the allowance remains proportionate to inflation and other cost developments and constitutes an effective tool to interrupt inter-generational cycles of poverty.
76. Older people are particularly affected by poverty, since pensions are often inadequate to meet the elevated cost of living, even for individuals who have worked full-time throughout their working

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<sup>83</sup> See European Commission 2023 [Country Report – Germany, SWD\(2023\) 605 final](#), June 2023.

<sup>84</sup> See Press release, Federal Office of Statistics, [Kinder und Jugendliche von Eltern mit niedrigem Bildungsabschluss besonders von Armut bedroht](#), 26 July 2023.

<sup>85</sup> See [Education Policy Outlook Germany, OECD](#) 2020.

<sup>86</sup> See [Kinderreport Deutschland 2023](#), *Child poverty in Germany*, Deutsches Kinderhilfswerk e.V., 2023.

<sup>87</sup> See CRC Concluding observations, above, footnote 12.

<sup>88</sup> See Kinderschutzbund (Child Protection Association), [Stellungnahme des Kinderschutzbund Bundesverband e.V. zum Referentenentwurf einer Kindergrundsicherung](#), 6 September 2023.

<sup>89</sup> See Wirtschafts- und Sozialwissenschaftliches Institut, [Policy Brief No 81, 11/23](#).

life.<sup>90</sup> The situation is especially alarming for single women, because the contribution-based pension system undervalues child-rearing and other care activities that have often prevented them from being in formal and/or full-time employment over years. In addition, the above-mentioned gender pay gap translated into a gender pension gap of over 40% in 2020, the highest in the OECD area.<sup>91</sup> Since 2003, pensioners have also suffered from the decreased rates of national health insurance coverage for vision, hearing and mobility aids, among others, which often make these necessary items unaffordable.

77. Persons with disabilities are also disproportionately affected by poverty because they are far more likely to be in part-time and low-income employment (see above, para. 25) and because they are, even if in good employment, less likely to accrue wealth, due to the high costs they incur for personal assistance and other support measures, for which allowances are income-dependent. According to self-representative organisations, women with disabilities are particularly threatened with poverty and often live in highly precarious conditions, owing to the intersecting forms of discrimination they experience in the labour market.

## 2.2 RIGHT TO ADEQUATE HOUSING

78. The German Constitution does not contain an explicit right to adequate housing. The Constitutional Court has, however, held that the right to a minimal subsistence, drawn from the inherent human dignity in a social state, also implies a right to shelter.<sup>92</sup> The constitutions of some Länder, such as Bavaria, Berlin, Bremen and Saxony, contain an explicit reference to the right to adequate housing.<sup>93</sup>

### 2.2.1 AFFORDABILITY OF HOUSING

79. Germany has experienced a significant reduction in the size of its social housing stock over the past 25 years, down from approximately 3 million dwellings to just over 1 million.<sup>94</sup> According to the OECD, Germany's social housing stock stood at 2.7% of all dwellings in 2020, well below the OECD average of 6.9%.<sup>95</sup> The decline over the last decades is partly due to a slowdown in new social housing construction, as well as the privatisation of existing stock, whereby social dwellings have been converted into market-rate rental housing. Social housing contracts, usually established for a period of 30 years, often have not been renewed upon expiry. As a result, Germany has a significant scarcity of affordable housing, particularly in Berlin and other large cities. In 2018, the percentage of people living in households with housing costs above 40% of their disposable income was higher in Germany (14.2%) than the EU average (9.6%),<sup>96</sup> and is reported to have risen further to 16% in 2022.<sup>97</sup>
80. Already in November 2018, the CESCR had expressed concern about the very high level of rental prices and rent increases, and the acute shortage of affordable housing, coupled with the

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<sup>90</sup> In 2017, the ECSR concluded a situation of non-conformity with Articles 12.1 and Article 13.1 of the European Social Charter, considering that neither old age and invalidity pensions, nor social and medical assistance, were adequate in all cases. See above, footnote 83. In January 2024, the Federal Office of Statistics revealed that [42.3% of pensioners in Germany](#) had a net income of less than €1250.

<sup>91</sup> See [Wide gap in pension benefits between men and women](#), OECD March 2020.

<sup>92</sup> See BVerfG judgment, above, footnote 74.

<sup>93</sup> See also Scientific Service of the Bundestag, *Recht auf Wohnen: Ausgestaltung und Rechtswirkung in den Verfassungen der Bundesländer und der EU-Mitgliedstaaten*, [WD 3 - 3000 - 120/19](#), 2019.

<sup>94</sup> See [Bauen und Wohnen 2024 in Deutschland](#), Verbändebündnis Soziales Wohnen, Januar 2024.

<sup>95</sup> See OECD Affordable Housing Database at [Affordable Housing | Compare your country](#).

<sup>96</sup> See Eurostat, [Housing costs a challenge to many households](#), 20 March 2020. (the Text was edited on 20 March 2024 to correct an inaccuracy in the date).

<sup>97</sup> See GIHR [Bundesregierung muss die im Koalitionsvertrag vereinbarten Maßnahmen im Mietrecht angehen](#), 16 October 2023. (the Text was edited on 20 March 2024 to correct an inaccuracy in the date).

decreased number of apartments available as social housing in Germany.<sup>98</sup> According to a recent study, the estimated housing shortage, including social and affordable housing, had reached 910,000 dwellings at the end of 2022.<sup>99</sup> During her visit, the Commissioner learned of the direct impacts of this shortage in affordable housing: while lower-income families find themselves increasingly unable to pay their rent, moving to smaller or cheaper apartments is often impossible, due to the very tight market and the unwillingness of many landlords to accept them as tenants.

81. The Commissioner notes the recognition by the federal government of the existence of a housing crisis. She welcomes the creation of a separate Ministry for Housing, Urban Development and Building in December 2021 and the commitment in the coalition agreement to a revised target of building 400,000 new housing units every year, including 100,000 social housing units in the 2021-2025 legislative period. However, only about 60% of the general construction target has been reached so far and the number of available social housing stock has diminished even further during the past year.<sup>100</sup> Moreover, other measures foreseen in the coalition agreement, such as the imposition of a limit on permissible rent increases in particularly tense housing markets, or the prolongation of rent control measures to protect the right to affordable housing of lower-income families have not been followed through.
82. Given the fact that the construction of more social housing units can only offer solutions in the mid- to long-term, urgent steps are required now to address the acute lack of affordable housing in Germany. In this context, the Commissioner refers to the recent report by the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, according to which all available options should be considered to counteract the adverse repercussions of the escalating housing unaffordability, including interventions in the housing market such as rent ceilings and rent containment measures, the reduction of vacant housing, and the conversion of vacant buildings into housing units.<sup>101</sup>

### 2.2.2 HOMELESSNESS AND PROTECTION FROM EVICTION

83. Reflecting a wider European trend, homelessness in Germany has increased sharply in recent years, including among families with children and youth. The Commissioner welcomes the commitment of the federal government to develop a National Action Plan on Eradicating Homelessness by 2030, but notes delays in its preparation. In December 2022, the BMAS published for the first time a comprehensive report on the number and living conditions of people experiencing homelessness in Germany.<sup>102</sup> According to the report, 262,600 persons were homeless at the end of January 2022, of whom 178,000 lived in emergency shelters, 37,500 lived on the street, and the remainder lived in so-called hidden homelessness, i.e., they could not afford their own home and were moving between short-term arrangements. One year later, in January 2023, there were 372,000 people reported to be living in emergency shelters, including 130,000 Ukrainians.<sup>103</sup> With the number of homeless families growing, over a quarter of the homeless persons in shelters are children.
84. As homelessness is considered a matter of public order in Germany, the accommodation of persons experiencing homelessness in emergency shelters falls under the competency of the local

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<sup>98</sup> See CESCR, Concluding observations on the sixth periodic report of Germany ([E/C.12/DEU/CO/6](#)) of 27 November 2018.

<sup>99</sup> See [Bauen und Wohnen in der Krise: Aktuelle Entwicklungen und Rückwirkungen auf Wohnungsbau und Wohnungsmärkte](#), Pestel Institute Hannover, January 2023.

<sup>100</sup> According to an interview with the Minister for Housing in the *Rheinische Post* on 22 December 2023, 270,000 apartments were completed in 2023 and 265,000 are expected to be built in 2024. In 2022, only 22,545 social housing apartments were built, while 36,500 former social housing units were released onto the private market. See [Zahl der Sozialwohnungen in Berlin sinkt - Bestand in Brandenburg stabil](#), rbb24, 31 July 2023.

<sup>101</sup> See *Adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, [A/78/192](#), presented during the 78<sup>th</sup> session of the General Assembly, 15 August 2023.

<sup>102</sup> See BMAS, [Ausmaß und Struktur von Wohnungslosigkeit: Der Wohnungslosenbericht 2022](#), December 2022.

<sup>103</sup> See Federal Office of Statistics [End January 2023 some 372 000 accommodated in emergency shelters](#), 2 August 2023.

authorities. According to the GIHR, standards in these shelters vary, but are generally deplorable, with little respect for privacy, no dedicated rooms for women or families, and inadequate sanitary conditions.<sup>104</sup> The number of available places is also limited. Although the shelters are meant as temporary emergency solutions, most of the people stay there for long periods of time, with the majority staying over two years. During her visit, the Commissioner spoke to individuals who had become homeless because they were unable to keep up with rental payments, despite being in paid employment. Once homeless, however, it is very hard to find an apartment, as many landlords are reluctant to accept people experiencing homelessness as renters and usually require a certificate to prove the absence of rent arrears. The latter requirement is considered one of the main obstacles to finding an apartment for people experiencing precarious housing situations.<sup>105</sup>

85. The Commissioner learned that homelessness is also caused by a lack of coordination between the various care systems, for instance, when people are released from care institutions, such as clinics or youth welfare services, into homelessness.<sup>106</sup> Some municipalities have created specialist offices, where persons in precarious housing situations can seek advice and be referred to the relevant entity that can provide rental support or help to identify short-term housing solutions, with a view to preventing homelessness.<sup>107</sup> This is a promising initiative, but its effects are limited by the continued lack of rights-awareness among the affected, often resulting in help being sought at a late stage, when eviction is already imminent.
86. The Commissioner notes with concern that evictions still regularly result in homelessness. Relevant standards developed by the CESCR, according to which, evictions should be carried out in line with legal guarantees and never result in individuals being rendered homeless or vulnerable to the violation of other human rights,<sup>108</sup> have not been translated into national law and remain little-known, including among legal professionals. According to German tenancy law, the owner is allowed to issue an extraordinary termination of the rental contract in case of non-payment of rent. While the tenant can refuse that termination and seek recourse and retroactive payment of rent arrears, including through the social welfare office, the jurisprudence of the Federal Supreme Court provides that this will only annul the extraordinary termination of the contract.<sup>109</sup> It will not, however, prevent the owner from issuing a regular termination, which may then lead to eviction even if it results in homelessness. While welcoming the commitment of the federal government in the coalition agreement to eradicate the causes of homelessness, *inter alia* by reviewing relevant parts of national tenancy law, the Commissioner has learned during the visit that no progress has been made thus far.

### 2.3 CONCLUSIONS AND RECOMMENDATIONS

87. While welcoming steps taken by the federal government to reform the social welfare system, making it more accessible, increasing social security provisions and providing more training opportunities for the unemployed, the Commissioner is concerned about the persistent lack of awareness and recognition that social rights are human rights triggering state obligations, and that

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<sup>104</sup> See GIHR, [Notunterkünfte für Wohnungslose menschenrechtskonform gestalten: Leitlinien für Mindeststandards in der ordnungsrechtlichen Unterbringung](#), September 2022.

<sup>105</sup> See *De Jure Temporary, De Facto Permanent: Shelters for People Experiencing Homelessness in Germany*, European Journal of Homelessness, [Volume 15, No. 1 2021](#). The certificate is issued by SCHUFA, a private credit bureau supported by creditors.

<sup>106</sup> A child who is released from a care institution upon turning 18, for instance, may be entitled to receive housing support. However, the child will often not know about that possibility, nor will social services be informed beforehand, so that the young person may undergo a destabilising period of homelessness before a solution is found.

<sup>107</sup> A list of specialist offices is maintained by the [Federal Association Housing Support \(BAGW\)](#), which is an association of social organisations and providers of social services and facilities in the private and public sector for homeless people.

<sup>108</sup> See [General comment No. 7: The right to adequate housing \(art. 11\(1\)\)](#) of the Covenant: Forced evictions. CESCR E/1998/22 adopted at the sixteenth session of the CESCR on 20 May 1997.

<sup>109</sup> See [BGH Judgment of 16 February 2005 – VIII ZR 6/04](#).

individual entitlements must not be made dependent on the availability of resources.<sup>110</sup> The Commissioner regrets that social benefits are still calculated according to outdated statistical methods, rather than based on a needs assessment that pays particular attention to the most vulnerable. She is concerned by the growing inequality in Germany and considers that urgent attention must be paid to devising effective redistribution mechanisms to minimise the negative long-term impacts on individual health, education and employment prospects caused by entrenched poverty. The persistent narrative that persons become dependent on social support as a result of indolence, incompetence and negligence rather than due to structural and inter-generational disadvantage and exclusion, continues to impede effective progress and should be proactively addressed.

88. The Commissioner calls on the German authorities to accept all provisions of the European Social Charter. She further calls on them to accept to be bound by the Collective Complaints Procedure introduced by the Additional Protocol of 1995 and, given the lack of awareness related to social rights among rights-holders, grant the right to lodge complaints to national NGOs. Social policy development and implementation should be informed by the decisions and conclusions of the ECSR and the available guidance from the CESCR, including as regards the applicable methods used for the calculation of basic and additional social security benefits.
89. The Commissioner calls on the authorities to take all necessary steps to remove existing barriers to accessing social rights, including by ensuring that rights-holders have effective and timely access to information and advice regarding their entitlements and that applications can be submitted in person and in non-digital format. In addition, all relevant actors should cooperate at inter-agency and inter-ministerial level in the interest of the rights-holder and should be equipped with the necessary human and financial resources required to ensure prompt and effective assistance where necessary.

#### **With respect to protection from poverty**

90. The Commissioner calls on the authorities to take determined steps to break the cycle of growing child poverty, through targeted measures that focus the attention and resources on children and families who are at increased risk of precarious life situations, and investing in expanding the available infrastructure for children in or at risk of poverty, including with regard to free school meals, transport and cultural participation. The level of the KGS should be increased to guarantee the minimum level of subsistence for all children, particularly those living in poorest households, which includes asylum seekers.
91. The Commissioner calls on the authorities to address the high rates of poverty among older persons and ensure that basic pension benefits guarantee the rights to food, affordable energy and an adequate standard of living, and that the particular disadvantages experienced by older women are effectively addressed. Necessary aids such as glasses, hearing and mobility aids, should be made affordable for all older persons.
92. The Commissioner calls on the authorities to take all necessary measures to address the increased risk of poverty among persons with disabilities, including by paying increased attention to the intersection between poverty and disability in poverty reduction policies, and by ensuring that the requirements for individual support and personal assistance measures for persons with disabilities are revised to enable them to save earnings and guarantee their financial security in later life, on a similar footing to persons without disabilities.

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<sup>110</sup> According to the ECSR, states parties enjoy a margin of appreciation in their resource allocation, but must strive to realise the rights enshrined in the revised Charter to the maximum of their available resources, ensuring steady progress and paying close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable. See [FEANTSA v Slovenia, Collective Complaint No 53/2008](#).

### **With respect to the right to adequate housing**

93. The Commissioner welcomes the commitment by the government to address the existing housing crisis and the lack of affordable housing stock, particularly in larger cities. However, there is limited recognition of the right to housing as an individual and justiciable human right that should be accessible for all.<sup>111</sup> She stresses that the fulfilment of the right to adequate housing and the eradication of homelessness are key societal objectives that should be advanced through a human rights-based housing strategy and the close cooperation of all concerned ministries, including the Ministry of Justice, the BMFSFJ, as well as the Länder and municipal authorities. Housing legislation at all levels should foresee adequate opportunities for people experiencing precarious housing situations to participate meaningfully in the design, implementation, and monitoring of housing policies and decisions, in line with the UN Guidelines for the implementation of the right to adequate housing.<sup>112</sup>
94. The Commissioner is concerned about the rise in homelessness in Germany, affecting a growing number of families with children and young people. The fact that it is considered an issue of public order, rather than a human rights violation, and that it is handled by local authorities, results in significant differences in treatment of persons experiencing homelessness across the territory. Very often, available emergency shelters lack basic, dignified conditions and do not effectively protect their users from violence or violations of their human rights. Evictions still regularly result in homelessness, conflicting with available guidance from the CESCR.
95. The Commissioner calls on the authorities to take urgent steps to address the acute affordable housing deficit through all available measures, including targeted investment in social housing and appropriate interventions in the private housing market, to improve access for lower-income families.
96. She further calls on the authorities to develop, in close consultation with persons experiencing homelessness, relevant civil society organisations and the GIHR, binding minimal standards for the conditions of emergency shelters, which should be based on human rights and children's rights, gender-sensitive, and prepared with due attention to equality and non-discrimination standards. As a rule, children should be moved into more permanent housing solutions without delay.
97. The Commissioner further calls on the authorities to engage in comprehensive and long-term measures to prevent and eradicate homelessness, particularly among children, women, older persons, families, and other vulnerable groups. Homelessness advice and prevention work should be expanded at all levels and the National Action Plan on Eradicating Homelessness by 2030 adopted without delay, with close coordination of all involved competences and levels of administration. In addition, amendments to the tenancy law should be considered promptly and effective safeguards put in place to ensure that evictions do not result in homelessness.

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<sup>111</sup> See also [The right to affordable housing: Europe's neglected duty](#), Commissioner for Human Rights, 23 January 2020.

<sup>112</sup> See [Guidelines for the Implementation of the Right to Adequate Housing](#), Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/HRC/43/43, 26 December 2019.