

Fragnet National contribution to the Fundamental Rights Report 2022

GERMANY

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Policy and legal highlights 2021

Franet country study: policy and legal highlights 2021	
Issues in the fundamental rights institutional landscape	Reform of intelligence oversight: The amendment of the Federal Intelligence Service Act of 19 April 2021 provides for the establishment of a new independent body tasked with overseeing the bulk surveillance of foreign telecommunications by the German foreign intelligence agency BND. The Independent Control Council is a supreme federal authority with an institutional autonomy equivalent to that of the Federal Data Protection Commissioner. Members of the Council are six federal judges elected for twelve years by the Parliamentary Control Panel of the German Bundestag on 21 May 2021.
EU Charter of Fundamental Rights	Nomination of Charter focal point: Following the invitation by the European Commission's Charter Strategy, the Unit for EU Policy & Strategy within the European Affairs Department of the Foreign Office was nominated as Charter focal point in late June 2021.
Equality and non-discrimination	Law on the Protection of Children with Variants of Gender Development: On 13 May 2021 the " Law on the Protection of Children with Variants of Gender Development " [Unofficial translation] (<i>Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung</i>) came into force, which is intended to protect inter people from sex-changing surgical interventions in childhood.
Racism, xenophobia & Roma integration	Independent Commission on Antigypsyism: The Independent Commission on Antigypsyism , established at the Federal Ministry of the Interior, Building and Community on March 2019, published its report "Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation" in summer 2021. The report comprehensively shows manifestations of antiziganism in Germany and includes recommendations for the federal and state governments on how to act against it.

Asylum & migration	<p>Evacuation from Afghanistan: After the Taliban took power on 15 August 2021, an evacuation operation started to fly out German nationals, personnel of the international communities as well as former local staff of the federal departments and particularly vulnerable persons like human rights defenders or journalists and their dependants. Even after the military evacuation ceased end of August, people with a German reception admission are still being assisted by German authorities to enter Germany. 7.600 Persons have reached Germany so far.</p>
Data protection and digital society	<p>Landmark decision on the public duty to protect IT security: On 8 June 2021, the Federal Constitutional Court decided that the fundamental right to the integrity and confidentiality of IT systems and the fundamental right to the privacy of communication provide for a duty of the state to protect IT security from infiltration by third parties. Hence, the legislator is obliged to regulate the use of zero-day exploits by the police.</p>
Rights of the child	<p>Corona catch-up package: New support programme for children and young people by the Federal Ministry of Family Affairs, launched in September 2021. In order to provide children and young people with additional opportunities for social learning and social bonding outside schools, the programme "AUF!leben - Zukunft ist jetzt" has been started. https://www.auf-leben.org/</p>
Access to justice, including victims of crime	<p>Draft law on stalking: The Draft Act on improving the effectiveness to fight stalking and to register cyberstalking was published on 24 March 2021. It aims to raise the low thread of punishment and broadens the definition of the criminal offence in order to increase the number of criminal investigations.</p>
Convention on the Rights of Persons	<p>Legal framework for the financing of personal assistance during hospital stay introduced: Disabled People's Organisations in German have demanded for a long time that people with disabilities that are admitted to hospital should have</p>

with Disability	access to personal assistance during the stay. After long negotiations, the Federal Ministry of Health and the Federal Ministry of Labour and Social Affairs were able to agree on a respective cost model for people who receive disability benefits (Eingliederungshilfe).
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1 Equality and non-discrimination

1.1 Legal and policy developments or measures relevant to fostering equality and combating discrimination against EU citizens based on their nationality and against LGBTI people

LGBTI people

On 17 July 2021, the “Law on the Rehabilitation of Soldiers Disadvantaged under Service Law because of consensual homosexual acts, because of their homosexual orientation or because of their gender identity”[Unofficial translation] (*Gesetz zur Rehabilitierung der wegen einvernehmlicher homosexueller Handlungen, wegen ihrer homosexuellen Orientierung oder wegen ihrer geschlechtlichen Identität dienstrechtlich benachteiligten Soldatinnen und Soldaten*¹) came into force.²

Homosexual soldiers were systematically disadvantaged in the *Bundeswehr* for decades because of consensual homosexual acts or because of their homosexual orientation. In particular, professional soldiers had to hide their homosexuality. Otherwise, they had to fear professional disadvantages up to the end of their careers. Soldiers of the National People's Army of the German Democratic Republic were also exposed to legal disadvantages. With the help of the law that has come into force, those affected are legally rehabilitated and can apply for financial compensation.

On 3 March 2021, the Federal Cabinet of Germany approved the LGBTI Federal Government LGBTI Inclusion Strategy for Foreign Policy and Development Cooperation³ (*LSBTI-Inklusionskonzept der Bundesregierung für die Auswärtige Politik und die Entwicklungszusammenarbeit*).⁴ By adopting the inclusion strategy, the Federal Ministry for Economic Cooperation and

¹ Germany, Gesetz zur Rehabilitierung der wegen einvernehmlicher homosexueller Handlungen, wegen ihrer homosexuellen Orientierung oder wegen ihrer geschlechtlichen Identität dienstrechtlich benachteiligten Soldatinnen und Soldaten (2021), available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//%*5b@attr_id=%27bgbl121s2993.pdf%27%5d#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s2993.pdf%27%5D_1633529979687

² Germany, Bundeswehr (2021), *Rehabilitierung homosexueller Soldatinnen und Soldaten*, available at www.bundeswehr.de/de/ueber-die-bundeswehr/selbstverstaendnis-bundeswehr/chancengerechtigkeit-bundeswehr/rehabilitierung-homosexueller-soldatinnen-soldaten

³ Germany, The Federal Government (2021), LGBTI Inclusion Strategy for Foreign Policy and Development Cooperation, available at www.auswaertiges-amt.de/blob/2445310/7a532b519e092ed6117535b78209162e/210226-inklusionskonzept-pdf-data.pdf

⁴ Germany, Federal Ministry for Economic Cooperation and Development (2021), *Rechte von Lesben, Schwulen, Bisexuellen, transgender und intergeschlechtlichen Menschen (LSBTI)*, available at www.bmz.de/de/entwicklungspolitik/lgbti-lesben-schwule-bisexuelle-transgender-intergeschlechtlich

Development and the Federal Foreign Office aim at strengthening the rights of LGBTI people and supporting human rights work for LGBTI people.

To ensure human rights of LGBTI people are consistently taken into account, the concept suggests, among other things, training and further education measures for employees. The concept also calls for the promotion of specific human rights projects that advocate the interests of LGBTI people. By adopting the LGBTI strategy, it is recognised that foreign policy and development cooperation also have an obligation to protect LGBTI people in partner countries.⁵

In March 2021, the Bundestag passed the “Law on the Protection of Children with Variants of Gender Development” [Unofficial translation] (*Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung*)⁶, which is intended to protect inter people from sex-changing surgical interventions in childhood.⁷ The law came into force on 13 May 2021.⁸

Exceptions are only permitted for interventions that have been approved by the family court to avert a life-threatening or significant health risk. The draft bill also includes the possibility for young people over the age of 14 to make their own and self-determined decision, if the appropriate maturity is given. For this, further requirements must be met (including parental consent and approval from the family court).

1.2 Findings and methodology of research, studies, or surveys on experiences of discrimination against EU citizens on the grounds of nationality and against LGBTI people

⁵ Lesben- und Schwulenverband (LSVD) (2021), ‘Bundesregierung beschließt LSBTI*-Inklusionskonzept für die Auswärtige Politik und Entwicklungszusammenarbeit’ Press release, 03.03.2021, available at www.lsvd.de/de/ct/4595-Bundesregierung-beschliesst-LSBTI-Inklusionskonzept-fuer-die-Auswaertige-Politik-und-Entwicklungszusammenarbeit

⁶ Germany, Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) (2021), ‘Gesetzgebungsverfahren - Gesetz zum Schutz von Kindern vor geschlechtsverändernden operativen Eingriffen, 21 May 2021. Available at: www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Verbot_OP_Geschlechtsaenderung_Kind.html

⁷ Bartig, S., Kalkum, D., Le, H.M., Lewicki, A. (2021), ‘Geschlecht und Geschlechtsidentität’ in: Bartig, S., Kalkum, D., Le, H.M., Lewicki, A. *Diskriminierungsrisiken und Diskriminierungsschutz im Gesundheitswesen – Wissensstand und Forschungsbedarf für die Antidiskriminierungsforschung, Berlin, Antidiskriminierungsstelle des Bundes, pp 32-39. Available at https://www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/diskriminierungsrisiken_diskriminierungsschutz_gesundheitswesen.pdf?__blob=publicationFile&v=2*

⁸ Germany, Gesetz zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung (2021), available at www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/Bgbl_Varianten_der_Geschlechtsentwicklung.pdf;jsessionid=06BB4D2F16073F68C9253D3CC014B326.1_cid289?__blob=publicationFile&v=3

LGBTI people

On 24 March 2021, the results of the initiative and online survey **“Diversity in the Film Sector” (Vielfalt im Film)**⁹ were presented in a press conference.¹⁰ Over 6,000 members of the film industry from 440 professions took part in the online survey which took place from mid-July to the end of October 2020. The documented experiences with diversity and discrimination in front of and behind the camera show that discrimination pervades the German film industry and restricts the participation of people with different diversity backgrounds.

Among other things, the survey showed that, also out of fear of negative consequences for their career, around 40 % of the LGBTI people “never to only sometimes” openly deal with their sexual orientation and / or gender identity (34 %) in a work context.¹¹ In the private context this is only the case for 5%. Roughly 70 % of all respondents also stated that in films people from the LGBTQ group are portrayed as clichéd.

On 26 July 2021, the results of a **study commissioned by the Federal Antidiscrimination Agency (Antidiskriminierungsstelle des Bundes) “Risks of discrimination and protection against discrimination in the health sector - knowledge and research requirements for anti-discrimination research” [Unofficial translation] were published**¹². The study summarises research results from 2010 to 2020 including publications in scientific journals as well as reports from civil society organisations. In addition, seven interviews with experts dealing with health disadvantages were conducted.

The publication shows that trans people experience discrimination in health care because their life situation is not taken into account. This is attributed, among other things, to a lack of knowledge on specific trans health topics. According to the experts, in consequence, trans people use medical services less or late.

EU citizens

On 6 January 2021, the Federal Association of Non-statutory Welfare (*Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e. V.*, BAGFW), who acts as the voice of the six non-statutory welfare umbrella organisations in Germany,

⁹ For detailed information, see the organisation’s webpage (*Vielfalt im Film*), available at <https://vielfaltimfilm.de/#uber>

¹⁰ Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2021), ‘Antidiskriminierungsstelle zu Ergebnissen der Studie „Vielfalt im Film“: Diversität der Gesellschaft auch in der Filmbranche abbilden’, 24 March 2021, available at: www.antidiskriminierungsstelle.de/SharedDocs/pressemitteilungen/DE/2021/20210324_Studie_Vielfalt_im_Film.html

¹¹ For detailed information, see the results on the organisation’s webpage, available at https://vielfaltimfilm.de/wp-content/uploads/2021/03/Ergebnisse_Vielfalt_im_Film-min.pdf

¹² Bartig, S., Kalkum, D., Le, H.M., Lewicki, A. (2021), *Diskriminierungsrisiken und Diskriminierungsschutz im Gesundheitswesen – Wissensstand und Forschungsbedarf für die Antidiskriminierungsforschung*, Berlin, Antidiskriminierungsstelle des Bundes. Available at www.antidiskriminierungsstelle.de/SharedDocs/downloads/DE/publikationen/Expertisen/diskriminierungsrisiken_diskriminierungsschutz_gesundheitswesen.pdf?__blob=publicationFile&v=2

published a **study on access to social benefits for EU citizens from Member States other than Germany**¹³. The study underlines that access for EU citizens to social benefits in Germany sometimes is discriminatory and that EU citizens have difficulties in enforcing entitlements to social benefits.

The study is based on a nationwide survey of counselling centres and was carried out with the help of an online questionnaire with a total of 396 responses, among them institutions from all federal states in the areas of migration and integration, pregnancy counseling, debt counseling, assistance to the homeless and general social counseling.

The results show, among other things, that EU citizens from other Member States are sometimes rejected at the entrance to job centres (employment centres) and were unable to apply for "Hartz IV" (benefits under the unemployment and welfare package known as "Hartz IV"). Sometimes more documents are requested from them than is the case with German citizens. In some cases, social benefits are refused. Particularly problematic are reports that women on maternity or parental leave are denied their employee status despite continued employment. Additionally, more than 40 percent of the counselling centres stated that the job centres refused requests to social benefits due to a lack of language skills.

Refusal to provide benefits can have very problematic consequences: Almost 60% of the counselling centres reported that at least in some cases this increased the risk of homelessness. Furthermore, the lack of social benefits can hinder the access to integration or language courses or to other measures for labour market integration.

The survey also showed that the authorities are too demanding when it comes to submitting documents. For example, more than half of the counseling centres reported that EU citizens from other Member States had to provide additional documents to apply for child benefits - documents that in the case of German EU citizens do not have to be provided. In a press release dated 16 March 2021 the Vice President of the Federal Association of Non-statutory Welfare describes these results as alarming and underlines that the authorities must put an end to these illegal practices.¹⁴

¹³ Tießler-Marenda, E., Bugaj-Wolfram, N., Voigt, C. (2021), Auswertung der Umfrage zu Praxiserfahrungen der Mitarbeitenden in der Beratung: Schwierigkeiten von EU-Bürgerinnen und EU-Bürgern in der Durchsetzung von Leistungsansprüchen, Berlin, Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (BAGFW), available at www.bagfw.de/fileadmin/user_upload/Veroeffentlichungen/Stellungnahmen/2021/210301_Auswertung_Praxisumfrage_EU-B%C3%BCrger.pdf

¹⁴ Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (2021), 'BAGFW fordert diskriminierungsfreien Zugang zu Sozialleistungen für EU-Bürger/innen', Press release, 16 March 2021, available at www.bagfw.de/veroeffentlichungen/pressemitteilungen/detail/bagfw-fordert-diskriminierungsfreien-zugang-zu-sozialleistungen-fuer-eu-buerger-innen

Chapter 2. Racism, xenophobia and related intolerance

2.1 Findings and methodology of research, studies, or surveys on experiences of ethnic discrimination, racism and hate crime

In 2021 the German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung*, DeZIM) issued first findings of some of the 34 explorative studies,¹⁵ which are part of the **National Discrimination and Racism Monitor**.¹⁶ The Monitor aims to investigate the causes, extent and consequences of racism in Germany. The explorative studies examine how racism is perceived, what significance it has for specific social groups, which methods can be used to record it and how racism affects individuals, social groups and society as a whole. Besides the studies the Monitor consists of a representative population survey with around 6000 participants and recurring surveys of those affected as well as analyses of institutions. The 34 studies are being conducted by over 120 scientists and focus on six main topics (health system, educational system and work environment, institutional racism, handling of experience with racism, racism and media, racist ideology and attitudes).¹⁷ One of the studies examined the criteria according to which respondents would allocate ventilators in an intensive care unit if medical care were not available to all patients due to a shortage of resources (a so called triage situation). The study also looked into the question of whether people with a migrant background are faced with a higher probability of losing their jobs in the economic crisis due to the pandemic. The study was based on a representative survey of 19,000 people, conducted between April 2020 and April 2021. The initial results show that migrants would be significantly less likely to be selected by respondents in a triage situation at hospitals. It also showed that people with a migrant background are on average 50 % more likely to lose their job compared to non-migrants working in the same occupation in the same sector. This effect of discrimination increases

¹⁵ German Centre for Research on Integration and Migration, National Discrimination and Racism Monitor (*Deutsches Zentrum für Integrations- und Migrationsforschung, Nationaler Diskriminierungs- und Rassismusmonitor*), available at www.rassismusmonitor.de/kurzstudien/

¹⁶ German Centre for Research on Integration and Migration, National Discrimination and Racism Monitor (*Deutsches Zentrum für Integrations- und Migrationsforschung, Nationaler Diskriminierungs- und Rassismusmonitor*), available at www.rassismusmonitor.de/

¹⁷ German Centre for Research on Integration and Migration, National Discrimination and Racism Monitor (*Deutsches Zentrum für Integrations- und Migrationsforschung, Nationaler Diskriminierungs- und Rassismusmonitor*), available at www.rassismusmonitor.de/kurzstudien/rassismus-in-der-corona-krise/

to 300 per cent in those sectors that are most severely affected by the economic consequences of the pandemic.¹⁸

On 11 May 2021, the **Federal Anti-Discrimination Agency published its annual report for 2020**. The Agency reported that the number of complaints had increased by 78 per cent to 6,383 cases, of which one third (33 %) were related to racial discrimination.¹⁹ On the occasion of the publication of the report, Bernhard Franke, provisional head of the agency, stressed that the increase in counselling requests was unprecedented: "The trend of an increase especially in complaints of racist discrimination has once again intensified in the year of the terrible attack in Hanau and the Black Lives Matter protests. At the same time, we are experiencing a particular effect of the Corona pandemic, which has been accompanied by a further increase in counselling requests. Many other state and civil society anti-discrimination offices felt similarly. This led to the fact that we had to temporarily stop our telephone counselling due to the high number of enquiries - those seeking advice can currently only contact us via our counselling form or in writing. We observe an increased social awareness of discrimination. More and more people are actively seeking qualified counselling," said Franke.²⁰

On 22 June 2021, the Friedrich Ebert Foundation published the so-called **Centre Study (Mitte-Studie)**.²¹ It examines the development of right-wing extremist and democracy-threatening attitudes of the population on the basis of a recognised "consensus definition"; this captures six dimensions: Approval of a right-wing dictatorship, national chauvinism and the trivialisation of National Socialism as well as xenophobia, anti-Semitism and Social Darwinism. A representative population survey is conducted every two years by telephone poll. According to a scientifically recognised principle, a sample is created that roughly corresponds to the German resident population in terms of its social structure (including gender, age, federal state and level of education).²² This year's study is based on

¹⁸ German Centre for Research on Integration and Migration, National Discrimination and Racism Monitor (*Deutsches Zentrum für Integrations- und Migrationsforschung, Nationaler Diskriminierungs- und Rassismusmonitor*), available at www.rassismusmonitor.de/kurzstudien/rassismus-in-der-corona-krise/

¹⁹ Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2021), *Jahresbericht 2020*, Berlin, available at www.antidiskriminierungsstelle.de/SharedDocs/pressemitteilungen/DE/2021/20210511_jahresbericht.htm

²⁰ Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2021), 'Jahresbericht 2020 der Antidiskriminierungsstelle des Bundes', press release, 11 May 2021, available at

www.antidiskriminierungsstelle.de/SharedDocs/pressemitteilungen/DE/2021/20210511_jahresbericht.htm

²¹ Friedrich-Ebert Foundation (*Friedrich Ebert Stiftung*), Centre Study 2020/2021: 'The challenged Center' (*Mitte Studie 2020/2021, 'Die geforderte Mitte'*), <https://www.fes.de/forum-berlin/gegen-rechtsextremismus/mitte-studie-2021>

²² Friedrich-Ebert Foundation (*Friedrich Ebert Stiftung*), Centre Study 2020/2021: 'Summary of results' (*Mitte Studie 2020/2021: 'Ergebniszusammenfassung'*), available at www.fes.de/index.php?eID=dumpFile&t=f&f=65488&token=b89a7f2201fede8c6afb9782017dcbafdafcbfde

interviews with a total of 1,750 adults.²³ Results from the current survey period 2020/21 refer for the first time not only to persons with a German passport, but to the entire resident population. The study shows developments that promote democracy and those that endanger it. The respondents, for example, rate right-wing extremism as the greatest threat to democracy. Only a few respondents agree with classically anti-Semitic stereotypes. The study observes also partial/partial indecision, though, which means respondents disagree with hard-right attitudes, but do not clearly reject them either. Complementary analyses indicate that some of the partly/partially answers conceal latent agreement.²⁴ The study also concludes that Anti-Semitism is deeply rooted in German society.²⁵

In December 2021, the first survey on Black people's perspectives and experiences of discrimination in Germany was published, based on an online survey of Black, African and Afro-diasporic people.²⁶ The survey also covers the social engagement of the respondents in Germany as well as their support of family members, friends or projects abroad. On the question of institutionalised racism the study shows that racial profiling is known to more than 50 % of the respondents. "(...) more than 8 out of 10 (82.1% of n = 1617) Afrozensus respondents report having been discriminated against in contact with the police in the last two years. It is the sixth most common area of life in which they report discrimination. These results are also reflected in the respondents' statements on trust in the police (chapter 7). The questions on situations of discrimination that Black people are familiar with show that almost one in three (32.3%) of the 1945 respondents have already experienced police violence. Over half (56.7%) of 4281 respondents say they have been stopped by the police at least once in their lives for no apparent reason."²⁷

²³ Friedrich- Ebert Foundation (*Friedrich Ebert Stiftung*), Center Study 2020/2021:

'methodology' (*Mitte Studie 2020/2021*, 'Methodik'), available at www.fes.de/forum-berlin/gegen-rechtsextremismus/mitte-studie-2021/methodik

²⁴ Friedrich- Ebert Foundation (*Friedrich Ebert Stiftung*), Center Study 2020/2021: 'The challenged Center' (*Mitte Studie 2020/2021*, 'Die geforderte Mitte'), available at www.fes.de/index.php?eID=dumpFile&t=f&f=65488&token=b89a7f2201fede8c6afb9782017dcbafdafcbfde

²⁵ Friedrich-Ebert Foundation (*Friedrich Ebert Stiftung*), Center Study 2020/2021: 'Summary of results' (*Mitte Studie 2020/2021: 'Ergebniszusammenfassung'*), page 7, available at www.fes.de/index.php?eID=dumpFile&t=f&f=65488&token=b89a7f2201fede8c6afb9782017dcbafdafcbfde

²⁶ Afrozensus 2020 - Perspectives, Anti-Black Racism Experiences and Engagement of Black, African and Afrodiasporic People in Germany (*Afrozensus 2020 Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiasporischer Menschen in Deutschland*), Berlin, Each One Teach One; Citizens For Europe, available at: afrozensus.de/reports/2020/Afrozensus-2020.pdf.

²⁷ Afrozensus 2020 - Perspectives, Anti-Black Racism Experiences and Engagement of Black, African and Afrodiasporic People in Germany (*Afrozensus 2020 Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiasporischer Menschen in Deutschland*), Berlin, Each One Teach One; Citizens For Europe, page 120; available at: afrozensus.de/reports/2020/Afrozensus-2020.pdf

On 2 December, a new study by researchers from the Universities of Freiburg, Frankfurt and Berlin was published.²⁸ It looked at the question of excess mortality in Covid 19. Based on data from the Federal Statistical Office²⁹, the researchers investigated which groups of people showed increased mortality rates. Older people and people with pre-existing conditions were particularly affected. However, the researchers found that people without German citizenship also died with above-average frequency as a result of Covid 19 disease.

In Germany, no data is collected on the migration background or minority membership of people who have died. However, an analysis of the available data on the nationality of those who died shows: The share of foreign nationals in all deaths has increased significantly over the course of the pandemic. In 2021, over 4,500 more foreign nationals died between January and August alone than in the same period in 2019, the year before the pandemic, according to the authors.

The study cites the living conditions of many immigrants as reasons for the increased excess mortality³⁰: On average, their living and working conditions are worse than those of nationals. They also have limited access to healthy food, exercise and recreation. They are also more likely to work in so called "systemic jobs" - without the possibility of working from home. In addition they are more likely to rely on public transport, where the risk of infection is particularly high. According to the researchers another factor might be discrimination. Already at the beginning of the pandemic, it was recognised that people with specific pre-existing conditions and high age have special protection needs. The government in Germany reacted to this with appropriate measures. On the other hand, there was insufficient attention to the increased infection and death rates of immigrants.

Im May 2021 the number of politically motivated crimes (PMK), including right-wing motivated crimes, were published. In order to recognise developments and trends at an early stage, politically motivated crimes are recorded as soon as there is an initial suspicion; therefore the statistics represent an important early warning system. In 2020 23.604 right-wing crimes were committed, increasing by 5.65% compared to 2019 (22.342).³¹ At the press conference the Minister of Interior, Mr.

²⁸ Racism of the pandemic: Different mortality rates in connection with Covid-19 (*Rassismus der Pandemie: Unterschiedliche Sterberaten im Zusammenhang mit Covid-19*) (2021), available at: https://mediendienst-integration.de/fileadmin/Dateien/Expertise_Rassismus_Uebersterblichkeit_Covid_19_Will_Supik_Pluemecke_FINAL.pdf

²⁹ Germany, Federal Statistical Office (*Statistisches Bundesamt*) (2021), press release, available at: https://www.destatis.de/DE/Presse/Pressekonferenzen/2021/corona/pm-563_21.pdf?__blob=publicationFile

³⁰ Racism of the pandemic: Different mortality rates in connection with Covid-19 (*Rassismus der Pandemie: Unterschiedliche Sterberaten im Zusammenhang mit Covid-19*) (2021), page 9–10, available at: https://mediendienst-integration.de/fileadmin/Dateien/Expertise_Rassismus_Uebersterblichkeit_Covid_19_Will_Supik_Pluemecke_FINAL.pdf

³¹ Germany; Ministry of Interior, construction and home affairs, (*Meldung des Bundesministerium des Inneren, für Bau und Heimat*), available at:

Seehofer, said, that right-wing extremism remains the greatest threat to security in Germany, because most racist crimes are committed within this range of crimes. At just under 53 per cent, right-wing extremist offences accounted for more than half of all politically motivated crimes. The number of right-wing extremist offences thus reached a new high since recording began in 2001.³²

The number of cases of right wing extremisms in the army increased to 229 cases compared to the previous year (197 cases). In her presentation of the report on the status of Germany's armed forces by the parliament's Armed Forces Commissioner³³ Eva Högl to the parliament, she expressed her concern.³⁴ In 2020, the Military Counter-Intelligence Service (MAD) reported 477 new suspected cases in the area of right-wing extremism, 31 in the phenomenon area of Reich citizens. The MAD fulfils an important function in countering extremism and should be further strengthened in terms of personnel. Once again, the Special Forces Command (KSK) was the focus of the investigations. The working group set up by Defence Minister Annegret Kramp-Karrenbauer (CDU) had to establish that the KSK had become independent in some areas due to a "false understanding of elitism on the part of individual executives". A "misguided leadership culture, extremist tendencies and careless handling of material and ammunition" had developed, so the report states.

In May 2021 the Cabinet Committee on Combating Right-Wing Extremism and Racism of the Federal Government issued its final report.³⁵ In addition to the catalogue of 89 measures, which was issued already in November 2020,³⁶ it contained the intention to implement further measures such as research projects. Results are expected in 2022.

https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/05/pmk-2020-bundesweite-fallzahlen.pdf;jsessionid=B23B2EAC2C19AC54BE9AF9743E123D5E.2_cid295?__blob=publicationFile&v=4

³² Germany, Ministry of Interior, construction and home affairs, short report (*Meldung des Bundesministerium des Inneren, für Bau und Heimat*), available at:

<https://www.bmi.bund.de/SharedDocs/kurzmeldungen/DE/2021/05/pmk-2020.html>

³³ Germany, parliament's Armed Forces Commissioner (Wehrbeauftragte), annual report 2020 (Jahresbericht; Drucksache 19/26600), available:

<https://dserver.bundestag.de/btd/19/266/1926600.pdf>

³⁴ Germany, German Bundestag (Deutscher Bundestag), press release (*Pressemeldung*)

<https://www.bundestag.de/presse/hib/824002-824002>

³⁵ Germany, Federal Government (*Die Bundesregierung*) (2021), *Abschlussbericht des Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*, Berlin, Die Bundesregierung, available at:

www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/abschlussbericht-kabinettausschuss-rechtsextremismus.pdf

³⁶ Germany, Federal Government (*Die Bundesregierung*) (2020), catalogue of measures (*Maßnahmenkatalog*), available at:

www.bundesregierung.de/resource/blob/974430/1819984/4f1f9683cf3faddf90e27f09c692abed/2020-11-25-massnahmen-rechtsextremi-data.pdf?download=1

2.2 Legal and policy developments or measures relating to the application of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive

a) Racial Equality Directive

On 17 June 2021, the **Berlin House of Representatives** passed the Act on the Amendment of Participation in Berlin³⁷ (*Gesetz zur Neuregelung der Partizipation in Berlin*).³⁸ The core of the amendment is the Act for the Promotion of Participation in the Migration Society (*Gesetz zur Förderung der Partizipation in der Migrationsgesellschaft*, PartMigG), which replaces the Participation and Integration Act of the State of Berlin³⁹ (*Partizipations- und Integrationsgesetz des Landes Berlin*) from 2010. In addition, the Act on the Amendment of Participation in Berlin amends many regulations of other laws that have an effect on migrants in Berlin, in an attempt to align the administration with the needs and concerns of a society that is characterised by migration.⁴⁰ The basis for the amendment was a comprehensive evaluation commissioned by the Senate in 2018. As part of the legislative process, civil society was consulted and all Senate administrations and the 12 Berlin districts were involved. Act on the Amendment of Participation in Berlin provides instruments for greater diversity among employees in the administration and for more social participation of ‚persons with a migration history‘ and ‚persons with a migration background‘. The law defines persons with a ‚migration background‘ as persons who themselves or one of their parents have been born with a non-German nationality.⁴¹ The definition of a ‚person with a migration history‘ is broader. It includes persons with a migration background, persons who are racially discriminated against and persons to whom a migration background is generally attributed by others. This attribution may be linked in particular to phenotypical characteristics, language, name, origin, nationality and

³⁷ Germany, Berlin Senate Administration for Integration, Labour and Social Welfare (*Berliner Senatsverwaltung für Integration, Arbeit und Soziales*), ‚Abgeordnetenhaus beschließt Gesetz zur Neuregelung der Partizipation im Land Berlin‘, Press release, 17 June 2021, available at www.berlin.de/sen/ias/presse/pressemitteilungen/2021/pressemitteilung.1097037.php

³⁸ Germany, Act to Promote Participation in the Migration Society of the State of Berlin (*Partizipation in der Migrationsgesellschaft (PartMigG)*), 17 June 2021, available at <https://gesetze.berlin.de/bsbe/document/jlr-PartMigGBErahmen>

³⁹ Germany, Participation and Integration Act (*Partizipations- und Integrationsgesetz des Landes Berlin*), 15.12.2010, available at <https://gesetze.berlin.de/perma?d=jlr-PartIntergrGBErahmen>

⁴⁰ Germany, Berlin Senate Administration for Integration, Labour and Social Welfare (*Berliner Senatsverwaltung für Integration, Arbeit und Soziales*), ‚Abgeordnetenhaus beschließt Gesetz zur Neuregelung der Partizipation im Land Berlin‘, Press release, 17 June 2021, available at www.berlin.de/sen/ias/presse/pressemitteilungen/2021/pressemitteilung.1097037.php

⁴¹ Germany, Act to Promote Participation in the Migration Society of the State of Berlin (*Partizipation in der Migrationsgesellschaft (PartMigG)*), 17 June 2021, § 3 Abs. 2 PartMigG, available at <https://gesetze.berlin.de/bsbe/document/jlr-PartMigGBErahmen>

religion.⁴² The Act on the Amendment of Participation in Berlin regulates that persons with a migration background are given special consideration when recruiting staff for the Berlin administration. Binding regulations for job advertisements are intended to address more people with a migration background in a targeted manner. Support plans for people with a migration background will be introduced for all public offices in the state of Berlin. The number of employees with a migration background is surveyed on a voluntary basis. A newly created office accompanies the professional orientation of the administrations towards the migration society. A migration advisory board is legally anchored in every district and a separate advisory board is established for the concerns of Romnja, Roma, Sintize and Sinti.⁴³ The Act thus serves the special promotion and compensation of disadvantages of people with a migration history in their access to public services and positions as well as to social and political participation.⁴⁴

According to media reports, the law represents a compromise. A previous version of the draft had included a **fixed quota of 35 % for migrants** in the case of recruitment of new staff for the Berlin administration.⁴⁵ Especially migrant associations had campaigned for the quota.⁴⁶ The oppositional Christian Democratic Party in the Berlin House of Representatives, however, had called such a quota nonsensical, unnecessary, harmful and unconstitutional.⁴⁷ According to media reports there were also dissenting voices within the Berlin government:⁴⁸

⁴² Germany, Act to Promote Participation in the Migration Society of the State of Berlin (*Participation in der Migrationsgesellschaft (PartMigG)*), 17 June 2021, § 3 Abs. 1 PartMigG, available at <https://gesetze.berlin.de/bsbe/document/jlr-PartMigGBErahmen>

⁴³ Germany, Act to Promote Participation in the Migration Society of the State of Berlin (*Partizipation in der Migrationsgesellschaft (PartMigG)*), 17 June 2021, § 18 PartMigG, available at <https://gesetze.berlin.de/bsbe/document/jlr-PartMigGBErahmen>

⁴⁴ Germany, Berlin Senate Administration for Integration, Labour and Social Welfare (*Berliner Senatsverwaltung für Integration, Arbeit und Soziales*), 'Abgeordnetenhaus beschließt Gesetz zur Neuregelung der Partizipation im Land Berlin', Press release, 17 June 2021, available at www.berlin.de/sen/ias/presse/pressemitteilungen/2021/pressemitteilung.1097037.phphttps://www.parlament-berlin.de/ad0s/18/IIIPlen/vorgang/d18-3631.pdf

⁴⁵ MIGAZIN (2021), 'Gesetz für Migrantenquote im öffentlichen Dienst', 18 January 2021, available at www.migazin.de/2021/01/18/berlin-gesetz-fuer-migrantenquote-im-oeffentlichen-dienst/

⁴⁶ neue deutsche organisationen (2021), 'Zur 35%-Quotendebatte in Berlin: Strukturen ändern sich nicht von selbst. Wir brauchen eine Quote für Menschen, die von Rassismus betroffen sind', 21 January 2021, Press Release, available at https://neuedeutsche.org/fileadmin/user_upload/PM_Quote_ndo_21Januar.pdf

⁴⁷ Christian Democratic Party of Germany (CDU) (2021) (*Christlich Demokratische Partei Deutschlands (CDU)*), Berlin House of Representatives (*Abgeordnetenhaus Berlin*), motion for the adoption of a resolution 'Migrantenquote im Öffentlichen Dienst: unnötig, unsinnig, schädlich, verfassungswidrig', available at www.parlament-berlin.de/ad0s/18/IIIPlen/vorgang/d18-3317.pdf

⁴⁸ RBB24 (2021), 'Verwaltungsangestellte mit Migrationshintergrund sollen gefördert werden', 17 June 2021, available at www.rbb24.de/politik/beitrag/2021/06/berlin-senat-partizipation-migrationshintergrund-verwaltung-beamte.html

Berlin's Senator of Interior Andreas Geisel objected to the quota, citing a violation of the principle of equality in Article 3 of the Basic Law.⁴⁹

b) Framework Decision on Racism and Xenophobia

On 3 February 2021, the Federal Ministry of Justice and Consumer Protection issued a so called discussion proposal on the '**Draft Act on the Replacement of the Term "Race" in Article 3 paragraph 3 sentence 1 of the Basic Law**' (*Entwurf eines Gesetzes zur Ersetzung des Begriffs „Rasse“ in Artikel 3 Absatz 3 Satz 1 des Grundgesetzes*).⁵⁰ The replacement of the term "race" in the constitution (Basic Law (*Grundgesetz*)) has been demanded by civil society actors for many years.⁵¹ The amendment to the Constitution was also one of the measures that the **Commission of the Cabinet for Combating Right-wing Extremism and Racism** had set out to do as part of the 89 measures published by the Committee on 25 November 2020 (measure 36).⁵²

Article 3 of the German Constitution Article 3 contains the constitutional principle of equality. It regulates that no one shall be discriminated against or given preference on the grounds of sex, descent, race, language, nationality, origin, creed, religious or political beliefs. The 'Draft Act on the Replacement of the Term "Race" in Article 3 paragraph 3 sentence 1 of the Basic Law' (*Entwurf eines Gesetzes zur Ersetzung des Begriffs „Rasse“ in Artikel 3 Absatz 3 Satz 1 des Grundgesetzes*) provided for the term "race" to be replaced by "on racial grounds".⁵³ As a reason for the replacement the explanatory memorandum to the

⁴⁹ Tagesspiegel (2021), 'Der Irrsinn des Berliner Integrationsgesetzes - Eine deutsche Muslimin namens Gisela Meyer wäre auch bevorzugt', 28 June 2021, available at www.tagesspiegel.de/politik/der-irrsinn-des-berliner-integrationsgesetzes-eine-deutsche-muslimin-namens-gisela-meyer-waere-auch-bevorzugt/27369516.html

⁵⁰ Germany, Federal Ministry of Justice and Consumer Protection (*Bundesministerium für Justiz und Verbraucherschutz*) (2021), 'Draft Act on the Replacement of the Term "Race" in Article 3 paragraph 3 sentence 1 of the Basic Law' (*Entwurf eines Gesetzes zur Ersetzung des Begriffs „Rasse“ in Artikel 3 Absatz 3 Satz 1 des Grundgesetzes*), available at www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/DiskE_Ersetzung_Begriff_Rasse.pdf;jsessionid=E6EC2432D0D069907A4B5ACE97974741.2_cid324?blob=publicationFile&v=3

⁵¹ For ex.: German Institute for Human Rights (Deutsches Institut für Menschenrechte) (2009), policy paper, '... and what race do you belong to ...? On the problem of the term "race" in legislation?' ('Und welcher Rasse gehören Sie an? Zur Problematik des Begriffs „Rasse“ in der Gesetzgebung'), available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/policy_paper_10_und_welcher_rasse_gehoeren_sie_an_2_auflage.pdf

⁵² Germany, Federal Government, Commission of the Cabinet for Combating right-wing Extremism and Racism (*Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*) (2020), catalogue of measures (*Maßnahmenkatalog*), available at www.bundesregierung.de/resource/blob/974430/1819984/4f1f9683cf3faddf90e27f09c692abed/2020-11-25-massnahmen-rechtsextremi-data.pdf?download=1

⁵³ Germany, Federal Ministry of Justice and Consumer Protection (2021) (*Bundesministerium für Justiz und Verbraucherschutz*) (2021), 'Draft Act on the Replacement of the Term "Race" in Article 3 paragraph 3 sentence 1 of the Basic Law' (*Entwurf eines Gesetzes zur Ersetzung des Begriffs „Rasse“ in Artikel 3 Absatz 3 Satz 1 des Grundgesetzes*), available at www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/DiskE_Ersetzung_Begriff_Rasse.pdf;jsessionid=E6EC2432D0D069907A4B5ACE97974741.2_cid324?blob=publicationFile&v=3

Act pointed out that the meaning and historical reference (colonial policy and enslavement of people) of the term "race" would conflict with the protective aim of Article 3 (3) of the Constitution. To eliminate such objections to Article 3 (3) sentence 1 of the Basic Law (*Grundgesetz*) and to better reflect the protective content in the text, the wording of the Article would be revised without changing the level of protection.

The discussion draft of the Federal Ministry of Justice, however, was **strongly criticised**. According to media reports, the Federal Ministry of the Interior felt left out.⁵⁴ While the cabinet's catalogue of measures had placed the task with both ministries and provided for the establishment of a joint working group,⁵⁵ the draft now came only from the Ministry of Justice and Consumer's Protection. The Federal Ministry of the Interior had not been included. But the draft was also criticised in terms of content. The Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) affected persons' organisations and other civil society organisations were not content with the proposed wording of the draft. Their statements highlighted that it encourages the misconception that racism requires intentional action. Instead, a wording is needed that also covers unintentional and indirect discrimination.⁵⁶ The draft of the Ministry of Justice and Consumer Protection was not approved by cabinet; therefore, it was not introduced to parliament.

Parliament nevertheless discussed a constitutional amendment to the principle of equality. On 21 June 2021, the Legal Affairs Committee of the German parliament (*Deutscher Bundestag*) organised an expert hearing⁵⁷ on two draft bills of the

⁵⁴ Suliak, H (2021), 'Streichung des Merkmals "Rasse" aus Art. 3 GG BMJV verärgert Union mit "unfreundlichem Akt"', Legal Tribune online, 3 February 2021, available at www.lto.de/recht/nachrichten/n/rasse-streichung-grundgesetz-rassistisch-diskriminierung-art3-bmjbv-union-spd-menschenrechte-lambrecht/

⁵⁵ Germany, Federal Government, Commission of the Cabinet for Combating right-wing Extremism and Racism (*Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*) (2020), catalogue of measures (*Maßnahmenkatalog*) (measure 36, page 6), available at www.bundesregierung.de/resource/blob/974430/1819984/4f1f9683cf3faddf90e27f09c692abed/2020-11-25-massnahmen-rechtsextremi-data.pdf?download=1

⁵⁶ Statements on the discussion proposal on the amendment of the Basic Law to replace the words "his or her race" in Art. 3 para. 3 sentence 1 GG (*Stellungnahme zum Diskussionsentwurf zur Änderung des Grundgesetzes zur Ersetzung der Wörter „seiner Rasse" in Art. 3 Abs. 3 S. 1 GG*) by: Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2021), available at www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/aktuelles/stellungnahme_diskussion_senwurf_aenderung_gg_art_3.pdf?__blob=publicationFile&v=4; Initiative of Black Persons in Germany (*Initiative Schwarzer Menschen in Deutschland*) (2021), available at <https://isdonline.de/stellungnahme-zum-diskussionsentwurf-des-bmjbv-zur-ersetzung-des-begriffs-rasse-in-art-3-abs-3-s-1-gg/>; German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) (2021), available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Zum_Diskussionsentwurf_des_Bundesministeriums_der_Justiz_und_fuer_Verbraucherschutz.pdf

⁵⁷ Germany, German Parliament (*Deutscher Bundestag*) (2021), expert hearing in the Legal Affairs Committee (*Sachverständigen Anhörung im Rechtsausschuss*), available at www.bundestag.de/dokumente/textarchiv/2021/kw25-pa-recht-rasse-847538

oppositional parliamentary groups *Bündnis 90/die Grünen*⁵⁸ and *Die Linke*.⁵⁹ Due to a lack of majority of the oppositional parliamentary groups the draft bills were not passed by parliament.

Another key instrument announced by the catalogue of measures to combat right-wing extremism and hate crime of November 2020⁶⁰ was the **Act to Combat Right-wing Extremism and Hate Crime (*Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*)**. It passed parliament 18 June 2020⁶¹ and came into force on 1 July 2021.⁶² The Act aims to ensure effective criminal prosecution also in cases of online hate speech, since an increasing brutalisation of communication can be observed in the internet, especially in the realm of so called social media. As a side effect of this disrespectful and derogatory content the inhibition threshold for further expressions of the same kind diminishes. As the explanatory memorandum to the Act pointed out this can even lead to people withdrawing completely from public political discourse, therefore endangering freedom of expression.⁶³

For this purpose, the Criminal Code (*Strafgesetzbuch*), the Code of Criminal Procedure (*Strafprozessordnung*), the Federal Criminal Police Office Act (*Bundeskriminalamtgesetz*), the Telemedia Act (*Telemediengesetz*) and the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*) were amended. The Act introduced a mandatory obligation for social media platforms to report online content that is suspected to constitute criminal hate speech or other crime such as child pornography to the Federal Criminal Police Office (*Bundeskriminalamt*). The obligation covers only content where there are concrete indications that a

⁵⁸ Germany, German Parliament (*Deutscher Bundestag*) (2021), draft bill of the parliamentary group Bündnis 90/die Grünen (*Gesetzentwurf der Fraktion Bündnis 90/die Grünen*), BT Drs. 19/24434, available at

www.bundestag.de/resource/blob/846762/2dd0ac28071f8221ddf2367fbc513113/b_gesetzentwurf-data.pdf

⁵⁹ Germany, German Parliament (*Deutscher Bundestag*) (2021), draft bill of the parliamentary group Die Linke (*Gesetzentwurf der Fraktion der Linken*), BT Drs. 19/20628, available at www.bundestag.de/resource/blob/846758/f9ed035ce85e40fefa34ea471ca85fa0/a_gesetzentwurf-data.pdf

⁶⁰ Germany, Federal Government, Commission of the Cabinet for Combating right-wing Extremism and Racism (*Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*) (2020), catalogue of measures (*Maßnahmenkatalog*) (measure 34), available at www.bundesregierung.de/resource/blob/974430/1819984/4f1f9683cf3faddf90e27f09c692abed/2020-11-25-massnahmen-rechtsextremi-data.pdf?download=1

⁶¹ Germany, German Parliament (*Deutscher Bundestag*) (2021), available at

www.bundestag.de/dokumente/textarchiv/2020/kw25-de-rechtsextremismus-701104

⁶² Germany, Federal Law Gazette (*Bundesgesetzblatt*), available at

www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s0441.pdf#bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s0441.pdf%27%5D_1633769733215; one provision of the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*) will come into force on 1 February 2022.

⁶³ Germany, German Parliament (*Deutscher Bundestag*) (2021), Draft of an Act to Combat Right-wing Extremism and Hate Crime (*Entwurf eines Gesetzes zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*), Drucksache 19/17741, page 1, available at <https://dserver.bundestag.de/btd/19/177/1917741.pdf>; the changes made by parliament are documented here: <https://dserver.bundestag.de/btd/19/201/1920163.pdf>

criminal offence has been committed and which may have lasting negative effects on the exercise of freedom of expression in the social media.⁶⁴ In addition, the making available of child pornographic content is recorded. The catalogue of unlawful content under the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*) has been expanded to include the offence of defamation of the memory of deceased persons, as the experience gained from the assassination of Kassel District President Walter Lübcke in 2019 would have shown the extent to which agitation on the internet now also finds expression in this form. The catalogue of offences of the Criminal Code (*Strafgesetzbuch*) was expanded to the effect that the threat of dangerous bodily harm may also be punishable. Approval of offences that have not yet been committed is also covered. Insulting statements made in public, at a meeting or by distributing writings can be punished with a maximum of two years imprisonment. The offence of defamation and slander against persons in political life also applies to acts against persons up to the municipal level. Section 46 para 2 Criminal Code has been amended: Not only racist, xenophobic or other inhuman motives of a perpetrator are considered in sentencing, but also anti-semitic motives.⁶⁵ In the Code of Criminal Procedure (*Strafprozessordnung*), the regulations on traffic and inventory data collection against telecommunications service providers were extended to include measures against telemedia service providers.⁶⁶

On 22 September 2021, the **Act to Improve Criminal Law Protection Against So-Called Lists of Enemies** (*Gesetz zur Änderung des Strafgesetzbuches – Verbesserung des strafrechtlichen Schutzes gegen sogenannte Feindeslisten*) came into force.⁶⁷ The amendment to the Criminal Code (*Strafgesetzbuch*) created a criminal offence for the dissemination of so-called "enemy lists" and a criminal offence of inciting insult. The new section 192a of the Criminal Code (*Strafgesetzbuch*) is intended to close the gap in punishability between insult (section 185) and incitement to hatred (section 130) and to enable consistent action against hate speech. It is punishable by imprisonment of up to 2 years or

⁶⁴ Germany, German Parliament (*Deutscher Bundestag*) (2021), available at www.bundestag.de/dokumente/textarchiv/2020/kw25-de-rechtsextremismus-701104

⁶⁵ § 46 para 2 StGB https://www.gesetze-im-internet.de/stgb/___46.html

⁶⁶ Germany, German Parliament (*Deutscher Bundestag*) (2021), available at www.bundestag.de/dokumente/textarchiv/2020/kw25-de-rechtsextremismus-701104

⁶⁷ Germany, German Parliament (*Deutscher Bundestag*) (2021), Law amending the Criminal Code - Improvement of the protection under criminal law against so-called lists of enemies, criminalisation of the and possession of instructions for the sexual abuse of children and abuse of children and improving the fight against

and combating propaganda material and symbols of unconstitutional and and symbols of unconstitutional and terrorist organisations (*Gesetz zur Änderung des Strafgesetzbuches – Verbesserung des strafrechtlichen Schutzes gegen sogenannte Feindeslisten, Strafbarkeit der Verbreitung und des Besitzes von Anleitungen zu sexuellem Missbrauch von Kindern und Verbesserung der Bekämpfung verhetzender Inhalte sowie Bekämpfung von Propagandamitteln und Kennzeichen verfassungswidriger und terroristischer Organisationen*), available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl121s4250.pdf%27%5d#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s4250.pdf%27%5D1633772602111

a fine. This measure was also part of the cabinet committee's catalogue of measures.⁶⁸

The offence "inciting insult" is aimed at protecting individuals or groups from being exposed to content which insults them or defames them as member of a group determined by its national, racial, religious or ethnic origin, its ideology, its disability or its sexual orientation. Civil society actors criticised that the **scope of protection of section 192a** does not include the characteristics "gender" and "gender identity", with the consequence that cis women, trans and intersex people are not covered as victims of defamatory insults.⁶⁹ Also to be criticised is the legal enshrinement of the concept of "racial origin" in the Criminal Code (*Strafgesetzbuch*). Once more, the recourse to the biologicistic concept of race is in direct contradiction to the efforts to replace "race" in Article 3 (3) of the Basic Law (*Grundgesetz*).⁷⁰

Despite the developments described above in the field of criminal law, on 2 December 2021 the **Commission opened infringement proceedings** against Germany.⁷¹ The Commission states that German criminal fails to criminalise a specific form of hate speech mentioned in the Framework Decision: the public denial or gross trivialisation of these crimes. Germany therefore does not fully or accurately transpose EU rules on combating racism and xenophobia. Germany has two months to take the necessary measures and to address the shortcomings identified by the Commission.

On 13 July 2021 the final **report on Antiziganism in Germany**⁷² 'Change of perspective - Catching up on justice - Participation' (*Perspektivwechsel - Nachholende Gerechtigkeit - Partizipation*) of the Independent Commission on Antiziganism (*Unabhängige Kommission Antiziganismus*) was presented by

⁶⁸ Germany, Federal Government, Commission of the Cabinet for Combating right-wing Extremism and Racism (*Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*) (2020), catalogue of measures (*Maßnahmenkatalog*) (measure 34), available at www.bundesregierung.de/resource/blob/974430/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1

⁶⁹ Klein, J. (2021), 'Gesetzentwurf von CDU/CSU und SPD: "Verhetzende Beleidigung": Kein Schutz für Frauen und trans Menschen', queer.de, 24 May 2021, available at www.queer.de/detail.php?article_id=38949

⁷⁰ Tabbara, T (2021), 'What does rampant actually mean here? The contradictory dialectic of "race" and racism at the end of the legislature on naturalisation law and the Basic Law' (*Was heißt hier eigentlich ausufernd? Die widersprüchliche Dialektik von „Rasse“ und Rassismus zum Ende der Legislatur bei Einbürgerungsrecht und Grundgesetz*), on matters constitutional (*Verfassungsblog*), available at <https://verfassungsblog.de/was-heisst-hier-eigentlich-ausufernd/>

⁷¹ EU Commission, December infringements package (2021), available at: https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201

⁷² Independent Commission Antiziganism (*Unabhängige Kommission Antiziganismus*) (2021), final report (*Abschlussbericht*), available at www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/heimat-integration/bericht-unabhaengige-kommission-antiziganismus.pdf?__blob=publicationFile&v=5; see also 'chapter 3 Roma equality and inclusion'

Federal Minister of the Interior (*Bundesminister des Innern*) Mr. Seehofer and the Chairman of the Central Council of German Sinti and Roma (Zentralrat Deutscher Sinti und Roma) Mr. Rose.⁷³ The Commission was set up by the German Government in 2019⁷⁴ and finished its work in June 2021 with a conference.⁷⁵ The report on Antiziganism in Germany is based on the expertise of the commission members as well as on 15 external expert opinions and studies.⁷⁶ It identifies racism against Sinti and Rom as an all-encompassing everyday experience as well as a massive problem at the level of society as a whole and at the structural or institutional level in Germany, for example in schools, the police, local administration, political parties and in asylum procedures before the Federal Office for Migration and Refugees (BAMF).⁷⁷ This racism is still neither recognised nor adequately compensated in Germany. The report also points out the lack of appropriate measures and instruments to deal with antiziganism and calls for the recommendations and measures to be taken up and implemented in the next legislative period. Central demands of the UKA are, for example, the establishment of commissioners against antiziganism at federal and state level for the interdepartmental coordination of appropriate measures, as well as the establishment of an independent advisory group. It also recommended the comprehensive recognition of the National Socialist genocide of Sinti and Roma (establishment of a special fund by the Federal Ministry of Finance and compensation for damages) and the establishment of a commission to deal with the injustice committed against Sinti and Roma in Germany. It also looked into the practice of deporting Roma.⁷⁸ The Federal Minister on Interior (*Bundesminister des Innern*) Mr. Seehofer advocated the appointment of a commissioner against antiziganism and the conclusion of an international treaty between the federal

⁷³ Germany, Federal Government (Bundesregierung) (2021), 'report on antiziganims presented' ('Bericht über Antiziganismus vorgestellt'), 13 July 2021, Press Release, available at www.bundesregierung.de/breg-de/suche/bericht-antiziganismus-1915060

⁷⁴ Germany, Federal Ministry of the Interior and for Building and Home Affairs (Bundesministerium des Innern und für Bauen und Heimat) (2019), Independent Commission Antiziganism, ('*Unabhängige Kommission Antiziganismus*'), available at www.bmi.bund.de/DE/themen/heimat-integration/gesellschaftlicher-zusammenhalt/unabhaengige-kommission-antiziganismus/unabhaengige-kommission-antiziganismus-node.htm

⁷⁵ Independent Commission Antiziganism, ('*Unabhängige Kommission Antiziganismus*'), available at <https://www.institut-fuer-menschenrechte.de/veranstaltungen/detail/perspektivwechsel-nachholende-gerechtigkeit-partizipation>

⁷⁶ See also chapter 3 Roma equality and inclusion

⁷⁷ Independent Commission Antiziganism (*Unabhängige Kommission Antiziganismus*) (2021), final report ('*Abschlussbericht*'), page 16, available at www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/heimat-integration/bericht-unabhaengige-kommission-antiziganismus.pdf?__blob=publicationFile&v=5

⁷⁸ Independent Commission Antiziganism (*Unabhängige Kommission Antiziganismus*) (2021), final report ('*Abschlussbericht*'), page 411ff., available at www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/heimat-integration/bericht-unabhaengige-kommission-antiziganismus.pdf?__blob=publicationFile&v=5

government and the Central Council of the Sinti and Roma. In doing so, the minister adopted important demands of the expert commission.⁷⁹

The Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) decided in March 2021 to **classify the right-wing party Alternative for Germany (Alternative für Deutschland, AfD) as a so called "case of suspicion" of right-wing extremism**. That allows the Office for the Protection of the Constitution to observe the group in question by intelligence means. This includes the use of so-called informers and other methods of secretly gathering information. The AfD filed a complaint against this classification in front of the administrative court of Cologne. Since elections for the federal government in September took place, the court ruling will not take place before first quarter of 2022. Both a positive and a negative decision for the AfD could have otherwise influence the electoral decision of citizens in favour or against the party, the competent administrative court in Cologne announced.⁸⁰

The basis for the classification of the party as a whole as a "suspicious case", which is sought by the Office for the Protection of the Constitution, is a comprehensive expert report on the AfD. It deals with the question of how much influence the "wing", classified by the Office for the Protection of the Constitution as a right-wing extremist fraction, has within the party. The Thuringian AfD leader Björn Höcke founded the network in summer 2015. Last spring, the association was formally dissolved after pressure from the AfD's federal executive.

As long as the decision of the court is still pending, the Federal Office for the Protection of the Constitution will not be allowed to observe the party as a whole. The agency is also not allowed to make any public assessments of the AfD before the proceedings have been concluded.⁸¹

⁷⁹ Zeit online (2021), 'Seehofer favours a commissioner against antiziganism' ('Seehofer befürwortet einen Beauftragten gegen Antiziganismus'), 13 July 2021, available at www.zeit.de/politik/2021-07/antiziganismus-horst-seehofer-kommission-abschiebeverbot-sinti-roma

⁸⁰ Administrative Court Cologne (*Verwaltungsgericht Köln*), press release, available at: https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/18_20210708/index.php

⁸¹ <https://www.tagesschau.de/inland/btw21/verfassungsschutz-klage-bundestagswahl-afd-101.html>

Chapter 3. Roma equality and inclusion

3.1 Policy developments in regards to the application of the EU Roma strategic Framework for equality, inclusion and participation for 2020-2030

Please put down the name of the national Roma framework/Roma strategy/integrated set of policy measures and the link	
Please add a hyperlink if the strategy is publicly available.	
Did an evaluation of the previous Roma inclusion strategy take place? If yes, please provide reference	No
Does the strategy use the (headline) indicators as suggested in the new portfolio of indicators?	No
Was Roma civil society involved in the development of the strategy? Please provide examples?	Yes
Were NHRIs and/or equality bodies involved in the strategy development? Please provide example?	Yes
Does the new strategy link to the operational programmes for the new EU funding period 2021-2027?	within the framework of an open approach

The national implementation of the EU Framework Strategy on Equality, Inclusion and Participation of Roma by 2030 is currently still being developed. Germany intends to inform the EU Commission about the implementation strategy by the end of 2021 and then publish it. According to information from the Federal Government, the process of developing the implementation strategy has initially begun with the drafting of key points with the involvement of the ministries, the Federal Anti-Discrimination Agency, the Länder and municipal umbrella

organisations.⁸² These key points are to form the basis for Germany's report to the EU Commission. In this process, umbrella organisations and organisations of Sinti and Roma representing both the national minority and immigrant Roma are consulted. The written consultation was launched on 3 August 2021. An oral hearing of civil society representatives also took place on 16 September 2021.

According to the Federal Government⁸³, Germany is pursuing an open programme design in the Federal Operational Programme (OP) of the ESF+ in connection with the Operational Programmes for the new EU funding period 2021-2027 and the development of a new strategy. In this context, the federal government pursues an "explicit but not exclusive" approach with regard to the ESF+ (incl. EHAP+) and therefore does not provide for separate funding of individual minority groups. Nevertheless, the Roma group is mentioned by way of example in the specific objectives of the Operational Programme (OP) in order to make it clear that this minority is also officially addressed. This is particularly true for the ESF+ federal programme EHAP+ "Inclusion helps against exclusion of the most disadvantaged persons", which is tailored to these groups of people. It is aimed at the target group of homeless persons or persons threatened by homelessness as well as particularly disadvantaged newly immigrated EU citizens, including parents and their children up to the age of 18.

In addition, the package of measures of the Cabinet Commission on Combating Right-Wing Extremism and Racism (*Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*) as well as the recommendations of the Independent Commission on Antigypsyism (*Unabhängige Kommission Antiziganismus*)⁸⁴ are to be taken into account in the further process of the implementation strategy, which is planned for the next ten years.

3.2 Legal and policy developments or measures directly or indirectly addressing Roma/Travellers inclusion

The final report and catalogue of measures of the Cabinet Commission on Combating Racism and Right-Wing Extremism (*Kabinettausschusses zur*

⁸² The information was provided by email by the Federal Ministry of the Interior, for Construction and Home Affairs (*Bundesministerium des Innern, für Bau und Heimat*), Department H I 6 - National Minorities in Germany, European Minority Policy, following an official request by the German Institute for Human Rights.

⁸³ The information was provided by email by the Federal Ministry of the Interior, for Construction and Home Affairs (*Bundesministerium des Innern, für Bau und Heimat*), Department H I 6 - National Minorities in Germany, European Minority Policy following an official request by the German Institute for Human Rights.

⁸⁴ See in more detail below.

Bekämpfung von Rechtsextremismus und Rassismus) adopted on 12 May 2021⁸⁵ has set important and necessary accents for combating racism - including antiziganism. One example is the establishment of a civil society monitoring and information centre to record antiziganist incidents, which is planned thereafter.⁸⁶ So far, there is no central, nationwide civil society structure for recording antiziganist incidents that can provide information on the extent of discrimination against Sinti and Roma and that is tailored to the specific problem situations. In most regions of Germany, there are also no reporting centres or support services to which those affected by antiziganist incidents can turn.

In July 2020, the German Bundestag provided additional funding to establish a **National Discrimination and Racism Monitor (*Nationaler Diskriminierungs- und Rassismusmonitor*, NaDiRa)** at the German Centre for Integration and Migration Research (DeZIM Institute) to investigate the causes, extent and consequences of racism in Germany.⁸⁷ The first results of a short study "Measuring antigypsyism" underline that antigypsyism is a phenomenon that is socially rooted and widespread.⁸⁸

The work of the **Independent Commission on Antiziganism (*Unabhängige Kommission Antiziganismus*)** has set a milestone in the systematic analysis to combat antiziganism. Its comprehensive report "Change of Perspective. Catching up on justice. Participation"⁸⁹, which was debated in the Bundestag⁹⁰, presented at an online meeting⁹¹ and also presented to the public by the Federal Minister of

⁸⁵ Germany, Federal Government (Die Bundesregierung) (2021), Abschlussbericht des Kabinettsausschusses zur Bekämpfung von Rechtsextremismus und Rassismus, available at www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/abschlussbericht-kabinettsausschuss-rechtsextremismus.pdf?__blob=publicationFile&v=2

⁸⁶ Germany, Federal Government (Die Bundesregierung) (2021), Abschlussbericht des Kabinettsausschusses zur Bekämpfung von Rechtsextremismus und Rassismus, available at www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/sicherheit/abschlussbericht-kabinettsausschuss-rechtsextremismus.pdf?__blob=publicationFile&v=2, pp. 9 and 50.

⁸⁷ Nationaler Diskriminierungs- und Rassismusmonitor (2021), available at www.rassismusmonitor.de/.

⁸⁸ Nationaler Diskriminierungs- und Rassismusmonitor (2021), available at <https://www.rassismusmonitor.de/kurzstudien/antiziganismus-messen/>

⁸⁹ Independent Commission on Antiziganism (*Unabhängige Kommission Antiziganismus*) (2021), Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation, Berlin, Bundesministerium des Innern, für Bau und Heimat, available at https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Bericht_UKA_Perspektivwechsel_Nachholende_Gerechtigkeit_Partizipation.pdf

⁹⁰ German Bundestag (*Deutscher Bundestag*) (2021), Bericht der Unabhängigen Kommission Antiziganismus, available at www.bundestag.de/dokumente/textarchiv/2021/kw25-de-antiziganismus-846976.

⁹¹ Independent Commission on Antiziganism (*Unabhängige Kommission Antiziganismus*) (2021), Perspektivwechsel. Nachholende Gerechtigkeit. Partizipation. Online-Tagung, 04.-05.06.2021, available at www.institut-fuer-menschenrechte.de/veranstaltungen/detail/perspektivwechsel-nachholende-gerechtigkeit-partizipation

the Interior, for Building and Home Affairs⁹², shows numerous recommendations for political actions in order to come closer to this goal.

Antiziganism, which is documented in the report from different perspectives, represents a current, historically grown relationship of power and violence, the most radical manifestation of which to date was the state-organised genocide under National Socialism.

In addition to the numerous recommendations contained in the report on the various topics, the Commission has identified six central demands. According to these demands, the Commission calls for the creation of commissioners against antiziganism at the federal and state levels, each with independent advisory groups; the creation of a permanent federal-state commission, since many measures to overcome antiziganism/racism against Sinti and Roma fall under the responsibility of the states (education, justice, police, etc.); the comprehensive recognition of the National Socialist genocide against Sinti and Roma; a commission to come to terms with the injustices committed against Sinti and Roma in the Federal Republic of Germany; the recognition of Roma refugees as a group particularly in need of protection and the implementation and consolidation of participation structures.

The Commission commissioned a total of 15 expert reports as part of the preparation of the report, which were also published in 2021. These include a study on experiences of racism by Sinti and Roma in Germany⁹³, a study on the empowerment of Sinti and Roma⁹⁴, an analysis of the spread of antiziganist messages on Facebook⁹⁵, an expert opinion on antiziganism in football and football fan cultures⁹⁶, a research report on (dis)continuities of antiziganist profiling in

⁹² Federal Ministry of the Interior, for Construction and Home Affairs (*Bundesministerium des Innern, für Bau und Heimat*) (2021), Abschlussbericht der Unabhängigen Kommission Antiziganismus vorgestellt, press release, 13 July 2021, available at www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2021/07/kommission-antiziganismus.html

⁹³ Randjelović, I., Attia, I., Gerstenberger, O., Ortega, J. F., Kostić, S. (2021), Studie zu Rassismuserfahrungen von Sinti:zze und Rom:nja in Deutschland, Alice-Salomon-Hochschule Berlin, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Studie_zu_Rassismuserfahrungen_von_Sinti_zz_e_und_Rom_nja_in_Deutschland.pdf

⁹⁴ Barz, H., Kaya, A., Horvath, G., Reinhardt, D., Abed-Ali, R., in Zusammenarbeit mit: Kyuchukov, H., Nguyễn, T. V. (2021), Studie zum Empowerment von Sinti*ze und Rom*nja, Hochschule Mittweida, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Studie_zum_Empowerment_fuer_Sinti_ze_und_Rom_nja.pdf

⁹⁵ Becker, M. J. (2021), Expertise „Analyse der Verbreitung antiziganistischer Meldungen auf Facebook“, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Expertise_Analyse_der_Verbreitung_antiziganischer_Meldungen_auf_Facebook.pdf

⁹⁶ Brunssen, P. (2021), Gutachten Antiziganismus im Fußball und in Fußball-Fankulturen, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Gutachten_Antiziganismus_im_Fussball_und_in_Fussball_Fankulturen.pdf

connection with combating "travelling perpetrators"⁹⁷, a study on antiziganism in current German curricula and textbooks⁹⁸, an expert opinion on antiziganism and memorials⁹⁹, a legal expert opinion on antiziganism as a reason for persecution under asylum law in the practice of the Federal Office for Migration and Refugees and the case law of German courts¹⁰⁰, an expert opinion on Roma as test subjects in genetic studies¹⁰¹, an expert opinion on lethal police violence against Sinti and Roma from 1945 to 1980¹⁰², a study on mechanisms of institutional antiziganism with a view to communal practices and EU internal migration using the example of a large West German city¹⁰³, an analysis of research findings on antiziganist attitudes in the German population¹⁰⁴, an expert opinion on the handling of Nazi crimes committed against the Roma minority by the German judiciary after

⁹⁷ Töpfer, E. (2021), Forschungsbericht (Dis-)Kontinuitäten antiziganistischen Profilings im Zusammenhang mit der Bekämpfung „reisender Täter“, Deutsches Institut für Menschenrechte, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Forschungsbericht_Dis_Kontinuitaeten_antiziganistischen_Profilings_im_Zusammenhang_mit_der_Bekaempfung_reisender_Taeter.pdf

⁹⁸ Rath, I., Spielhaus, R. (2021), Schulbücher und Antiziganismus: Zur Darstellung von Sinti und Roma in aktuellen deutschen Lehrplänen und Schulbüchern, Georg-Eckert-Institut – Leibniz-Institut für internationale Schulbuchforschung, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Schulbuecher_und_Antiziganismus_Zur_Darstellung_v_Sinti_u_Roma_in_aktuellen_deutschen_Lehrplaenen_u_Schulbuechern.pdf

⁹⁹ Jost, S. (2021), *Expertise zum Thema „Antiziganismus und Gedenkstätten“*, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Expertise_zum_Thema_Antiziganismus_und_Gedenkstaetten.pdf

¹⁰⁰ Liebscher, D. (2021), Antiziganismus als asylrechtlicher Verfolgungsgrund in der Praxis des Bundesamtes für Migration und Flüchtlinge und der Rechtsprechung deutscher Gerichte. Rechtswissenschaftliches Gutachten, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Antiziganismus_als_asylrechtlicher_Verfolgungsgrund_in_der_Praxis_BAMF_und_Rechtsprechung_deutscher_Gerichte.pdf

¹⁰¹ Lipphardt, V. Surdu, M. (2021), Rom*nja als Proband*innen in genetischen Studien, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Expertise_Rom_nja_als_Proband_innen_in_genetischen_Studien.pdf

¹⁰² Müller-Münch, I. (2021), Tödliche Polizeigewalt gegenüber Sinti und Roma 1945 bis 1980, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Toedliche_Polizeigewalt_gegenueber_Sinti_und_Roma_1945_bis_1980.pdf

¹⁰³ Neuburger, T., Hinrichs, C. unter Mitarbeit von Dogru, I. B. und Tendler, R. (2021), Mechanismen des institutionellen Antiziganismus: Kommunale Praktiken und EU-Binnenmigration am Beispiel einer westdeutschen Großstadt, Leibniz Universität Hannover, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Forschungsbericht_Mechanismen_des_institutionellen_Antiziganismus.pdf

¹⁰⁴ Nolden, D., Supik, L. (2021), Analyse der Forschungsbefunde zu antiziganistischen Einstellungen in der deutschen Bevölkerung. Forschungsstand, Kritik, Alternativen, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Analyse_der_Forschungsbefunde_zu_antiziganistischen_Einstellungen_in_der_deutschen_Bevoelkerung.pdf

1945¹⁰⁵, an expertise on antiziganism in Bundestag debates from 2010-2019¹⁰⁶ as well as two case studies on antiziganism in Europe, namely on the effectiveness of international protection mechanisms and perspectives for Roma in a conflict and post-conflict situation in Kosovo and also on the localisation of the consequences of antiziganism using the example of the COVID 19 pandemic and its impact on Roma in Europe.¹⁰⁷

¹⁰⁵ Opfermann, U. F. (2021), Zum Umgang der deutschen Justiz mit an der Roma-Minderheit begangenen NS-Verbrechen nach 1945. Das Sammelverfahren zum „Zigeunerkomplex“ (1958-1970), available at [www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Zum Umgang der deutschen Justiz mit an d er Roma Minderheit begangenen NS Verbrechen nach 1945.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Zum_Umgang_der_deutschen_Justiz_mit_an_der_Roma_Minderheit_begangenen_NS_Verbrechen_nach_1945.pdf)

¹⁰⁶ Peters, K. unter Mitarbeit von Bey, P. (2021), Diskursivierung von ‚Sinti und Roma‘ und ‚Antiziganismus‘ in Bundestagsdebatten von 2010-2019, available at [www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Diskursivierung von Sinti und Roma und Anti ziganismus in Bundestagsdebatten von 2010 2019.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Diskursivierung_von_Sinti_und_Roma_und_Antiziganismus_in_Bundestagsdebatten_von_2010_2019.pdf)

¹⁰⁷ Karoly, M. (2021), Fallstudien zu Antiziganismus in Europa: 1. Zur Wirksamkeit internationaler Schutzmechanismen und Perspektiven für Rom:nja in einer Konflikt- und Post-Konfliktsituation: Rom:nja, Aschkali:ke und Ägypter:innen im Kosovo 2. Verortung der Konsequenzen von Antiziganismus am Beispiel der COVID 19-Pandemie und deren Auswirkung auf Rom:nja in Europa, available at [www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Fallstudien zu Antiziganismus in Europa.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/UKA/Fallstudien_zu_Antiziganismus_in_Europa.pdf)

Chapter 4. Asylum, visas, migration, borders and integration

4.1 Number of beneficiaries of international protection whose protection status was revoked in 2021

Country	Cessation of refugee status		Cessation of subsidiary protection	
	Number of refugee status revoked	Main reasons	Number of subsidiary protection status revoked	Main reasons
Germany	3.690 ¹⁰⁸	- sustainable and lasting change of the situation in the home country: the federal office for Migration and Refugees (BAMF) assumed a change for example for Angola, Armenia, Syria and Irak ¹⁰⁹	1443 ¹¹⁰	Cessation of circumstances that led to recognition: No more concrete information available

¹⁰⁸ Germany, Federal Agency Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) (2021), Current figures; November 2021; edition tables, diagrams, explanations (*Aktuelle Zahlen; Ausgabe November 2021; Tabellen, Diagramme, Erläuterungen*), page 14. The data covers the period January to November 2021. Available at: https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/AsylinZahlen/aktuelle-zahlen-november-2021.pdf?__blob=publicationFile&v=2

¹⁰⁹ German Bundestag (*Deutscher Bundestag*), BtDrs 19/31389, S. 11. The data covers the period January until April 2021. Available at <https://dserver.bundestag.de/btd/19/313/1931389.pdf>;

¹¹⁰ Germany, Federal Agency Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) (2021), Current figures; November 2021; edition tables, diagrams, explanations (*Aktuelle Zahlen; Ausgabe November 2021; Tabellen, Diagramme, Erläuterungen*), page 14. The data covers the period January to November 2021. Available at: https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/AsylinZahlen/aktuelle-zahlen-november-2021.pdf?__blob=publicationFile&v=2

4.2 National border monitoring mechanisms

Country	Legal source providing for border monitoring	Organisation(s) responsible for monitoring	Is the monitoring body at the same time the National Preventative Mechanism? (Y/N)	Are reports publicly available? [if yes, please add hyperlink]	Number of monitoring operations in 2021	Is monitoring (at least partially) funded by the EU? If so, under which modalities?
Germany						
No border monitoring mechanism in place.						

Chapter 5. Information society, privacy and data protection

5.1 Legal and policy developments or measures that have been implemented related to data protection and private life with regards to security issues

In the wake of the decision of the Federal Constitutional Court of 19 May 2020, by which the court had found that key provisions of the Federal Intelligence Service Act (*Bundesnachrichtendienstgesetz*) on the surveillance of international telecommunication violated the fundamental right to privacy of foreigners,¹¹¹ intelligence legislation was revised in spring 2021. The Act to Change the Federal Intelligence Service Act to Implement the Guidelines of the Federal Constitutional Court and the Federal Administrative Court (*Gesetz zur Änderung des BND-Gesetzes zur Umsetzung der Vorgaben des Bundesverfassungsgerichts sowie des Bundesverwaltungsgerichts*) was adopted by the German Bundestag on 25 March 2021 and issued on 19 April 2021. The Act amended eight laws *inter alia* the Federal Intelligence Service Act, the Article 10 Act (*Artikel 10-Gesetz*) and the Parliamentary Control Panel Act (*Gesetz über das Parlamentarische Kontrollgremium*).¹¹² The amendment of the Federal Intelligence Service Act specifies the thresholds for the surveillance of telecommunication of foreigners in other countries, and reorganises both the transfer of personal data collected in the context of such surveillance and the cooperation with foreign intelligence services. In addition, the amendment explicitly authorises the Federal Intelligence Service (*Bundesnachrichtendienst*) to hack and infiltrate IT systems of foreigners in other countries, and regulates the cooperation with the German military intelligence. To reform intelligence oversight, the law established an Independent Control Council (*Unabhängiger Kontrollrat*) as a supreme federal authority with an institutional autonomy equivalent to that of the Federal Data Protection Commissioner. Members of the Independent Control Council are six judges of the Federal Supreme Court (*Bundesgerichtshof*) and/or the Federal Administrative Court (*Bundesverwaltungsgericht*) who are elected by the Parliamentary

¹¹¹ Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2020), 1 BvR 2835/1, 19 May 2020, available at www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rs20200519_1bvr283517.html

¹¹² Germany, Act to Change the Federal Intelligence Service Act to Implement the Guidelines of the Federal Constitutional Court and the Federal Administrative Court (*Gesetz zur Änderung des BND-Gesetzes zur Umsetzung der Vorgaben des Bundesverfassungsgerichts sowie des Bundesverwaltungsgerichts*), 19 April 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl121s0771.pdf%27%5d

Control Panel (*Parlamentarisches Kontrollgremium*) of the German Bundestag for twelve years.¹¹³ Improved cooperation among the different German intelligence oversight bodies is provided for by the amendments of the Article 10 Act and the Parliamentary Control Panel Act. Whereas key provisions on the Independent Control Council already came into force on 22 April 2021, the rest of the the new legislation will only apply from 1 January 2022.

Another piece of intelligence legislation, the Act on the Adjustment of the Law on the Protection of the Constitution (*Gesetz zur Anpassung des Verfassungsschutzrechts*), was adopted by the German Bundestag on 10 June 2021 and came into force on 9 July 2021. Among others, the Act amended the Article 10 Act, so that all German intelligence agencies were authorised to hack IT systems in Germany in order to intercept encrypted communication (*Quellen-Telekommunikationsüberwachung*) with approval of a so-called G10 commission. In addition, the federal G10 Commission was increased from four to five members, three of whom must be fully qualified jurists. However, the fact that these members act on a honorary basis remained unchanged.¹¹⁴

The legislator also expanded the power of the police to lawfully hack IT systems. On 25 March 2021, the German Bundestag voted for the Act to Combat Sexualised Violence against Children (*Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder*) which came into force on 1 July 2021.¹¹⁵ The Act amended among others Section 100b of the Code of Criminal Procedure (*Strafprozessordnung*) and, thus, authorised criminal investigators to hack, infiltrate and search IT systems (*Online-Durchsuchung*) of individuals who are suspected to share child porn material, even if they are not suspected to do so for profit or as a gang member (which was a requirement before). The power to infiltrate and search IT systems for the purpose of criminal investigation was introduced in 2017.

¹¹³ Gärditz, K. F. (2021), 'Bundesnachrichtendienst semper reformanda', *Deutsches Verwaltungsblatt*, No. 14/2021, pp. 905-914.

¹¹⁴ Germany, Act on the Adjustment of the Law on the Protection of the Constitution (*Gesetz zur Anpassung des Verfassungsschutzrechts*), 5 July 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl121s2274.pdf%27%5d

¹¹⁵ Germany, Act to Combat Sexualised Violence against Children (*Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder*), 16 June 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*%5b@attr_id=%27bgbl121s1810.pdf%27%5d

The contested issue of lawful hacking is also a topic in the “Cybersecurity Strategy” which was adopted by the Federal Government on 8 September 2021 only two weeks before the national elections.¹¹⁶ Building on former cybersecurity strategies of 2011 and 2016, the new strategy outlines the cybersecurity framework and goals for activities of the German government in this field in the next five years.¹¹⁷ In the light of both a digitisation that was accelerated by the pandemic and a growing number of cyber attacks, the strategy aims to raise citizens’ awareness, improve the IT security of critical infrastructures, mobilise business in general and small and medium enterprises in particular. The cooperation of private business with government agencies shall be strengthened and the development of key technologies is to be promoted. Moreover, intra-agency-cooperation is to be streamlined, and Germany shall play a more active role in the EU, the NATO and other international cybersecurity fora. A coalition of around 60 privacy advocates and digital rights NGOs criticised in an open letter that the goal of the strategy to promote encryption as a precondition for a secure cyberspace is contradicted by the government’s lawful hacking policies and the strategy’s commitment to a “responsible use of zero day exploits” by the police and intelligence agencies.¹¹⁸

On 17 December 2021, a majority of state governments in the Federal Council (*Bundesrat*) rejected a draft ordinance tabled on 12 October by the Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bauen und Heimat*) that should detail the legal obligations of the telecommunication service providers to assist lawful hacking of the intelligence agencies by uploading interception software to a targeted device.¹¹⁹ The rejection, originated by the resistance of state governments in which the Greens or the Free Democrats participate, also signals the new approach with regard to lawful hacking by intelligence agencies that is taken by the new federal government that was sworn in in early December. According to its coalition agreement, the new governments aims to review the power of the domestic intelligence agencies to surveillance

¹¹⁶ Germany, Federal Government (*Bundesregierung*) (2021), ‘Ziele für die Cybersicherheit beschlossen’, News, 8 September 2021, available at www.bundesregierung.de/breg-de/suche/neue-cybersicherheitsstrategie-1958144

¹¹⁷ Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2021), *Cybersicherheitsstrategie für Deutschland 2021*, Berlin, Bundesministerium des Innern, für Bau und Heimat, available at www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/09/cybersicherheitsstrategie-2021.pdf

¹¹⁸ Offener Brief an die Deutsche Bundesregierung zur Cybersicherheitsstrategie 2021, 24 June 2021, available at www.stiftung-nv.de/sites/default/files/offener_brief_-_cybersicherheitsstrategie2021.pdf

¹¹⁹ Bundesrat Kompakt (2021), ‘Keine Zustimmung für die G 10-Mitwirkungsverordnung’, 17 December 2021, available at: <https://www.bundesrat.de/DE/plenum/bundesrat-kompakt/21/1014/1014-pk.html#top-28>.

software for lawful hacking in the context of a comprehensive assessment of security legislation. Moreover, the coalition agreement claims that the new government aims to set high thresholds for the online search of computers and other electronic devices by security authorities, to warrant transparency and effective oversight and to contribute to the fixing of known IT security flaws as quickly as possible rather than buy zero day exploits.¹²⁰

To improve cybersecurity the German Bundestag voted for the Second Act to Enhance the Security of IT Systems (*Zweites Gesetz zur Erhöhung der Sicherheit informationstechnischer Systeme*), also called "IT Security Act 2.0", on 23 April 2021.¹²¹ The Act came into force on 28 May 2021. The Act does significantly strengthen the role of the Federal Office for Information Security (*Bundesamt für Sicherheits in der Informationstechnik*, BSI): For combating botnets and online security risks the BSI was authorised to scan ports of IT systems connected to public telecommunication networks to detect vulnerabilities such as weak password protection. The Act stipulates that the BSI may operate "honeypots" and "sinkholes" to attract the attention of online criminals and track their activities. In addition, the BSI was authorised to order that large telecommunication providers must inject patch programmes to their clients' IT to delete malware, and the Office may collect logfiles of online interactions of citizens and public authorities for 18 months for further analysis of cyber threats.¹²²

On 24 June 2021, the German Bundestag voted for an amendment of the Criminal Code (*Strafgesetzbuch*) aiming at penalising the operation of "criminal trading platforms" that are used for the online marketing of illegal goods and services such as arms, child pornography, false document etc. Though the sale of such goods and services as well as its support had already been criminal offences under German law, it was argued that an effective persecution was impossible if these activities were facilitated by means of automated platforms. Hence, the new Section 127 of the Criminal Code now stipulates that any person who operates a trading platform on the internet the aim of which is to enable or encourage the commission of unlawful acts

¹²⁰ SPD, Bündnis 90/Die Grünen, FDP (2021), *Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025*, Berlin, p. 109, available at: https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf.

¹²¹ Germany, Second Act to Enhance the Security of IT Systems (*Zweites Gesetz zur Erhöhung der Sicherheit informationstechnischer Systeme*), 18 May 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBL&start=//*%5b@attr_id=%27bgbl121s1122.pdf%27%5d

¹²² Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2021), 'Bundesrat billigt IT-Sicherheitsgesetz 2.0', Press release, 7 May 2021, available at www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2021/05/it-sicherheitsgesetz.html; Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2020), 'Entwurf eines Zweiten Gesetzes zur Erhöhung der Sicherheit informationstechnischer Systeme (IT-Sicherheitsgesetz 2.0)', Gesetzgebungsverfahren, 16 December 2020, available at www.bmi.bund.de/SharedDocs/gesetzgebungsverfahren/DE/entwurf-zweites-it-sicherheitsgesetz.html

shall be liable to imprisonment up to five years or to a monetary penalty.¹²³ Critics complain the criminalisation of actions that cause no direct harm. They question the alleged gap of punishability and doubt the effectiveness of the new law. Rather they only expect an expansion of invasive investigations, including the lawful hacking of servers, without an increase of convictions.¹²⁴ The Act came into force on 1 October 2021.

The long-standing conflict over the mandatory retention of telecommunication metadata by providers is still pending. On 13 September 2021, the Grand Chamber of the CJEU held a hearing on the issue, following a referral from the Federal Administrative Court. In 2017, the German Telekom and the internet provider SpaceNet had challenged provisions of the German Telecommunication Act (*Telekommunikationsgesetz*) that require them to store metadata for up to ten weeks. The Federal Administrative Court had referred the case to the CJEU in September 2019 for a decision on the conformity of the German data retention legislation with European fundamental rights. The CJEU decision is expected to be issued not before February 2022.¹²⁵ In the political arena, the German data retention legislation was confirmed when the German Bundestag adopted the Telecommunication Modernisation Act on 22 April 2021 with majority vote: The Act aimed at a comprehensive revision of the Telecommunication Act which will come into force on 1 December 2021;¹²⁶ Sections 175 and 176 of the revised Telecommunication Act mirror the former data retention legislation of Sections 113a and 113b of the old Telecommunication Act. A parliamentary proposal to repeal the data retention provisions which was tabled by the Free Democrats was dismissed

¹²³ Germany, Act for the Amendment of the Criminal Code – Punishability of the Operation of Criminal Trading Platforms (Gesetz zur Änderung des Strafgesetzbuches - Strafbarkeit des Betriebes krimineller Handelsplattformen im Internet), 12 August 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//*%5b@attr_id=%27bgbl121s3544.pdf%27%5d. See also: Kriminalpolitische Zeitschrift (2021), 'Strafbarkeit des Betriebes krimineller Handelsplattformen im Internet', available at <https://kripoz.de/2020/11/27/strafbarkeit-des-betriebes-krimineller-handelsplattformen-im-internet/>

¹²⁴ See, for example, the critical voices of legal experts raised during a hearing of the Legal Committee of the German Bundestag on 3 May 2021. Heute im Bundestag (2021), 'Strafbarkeit krimineller Internet-Handelsplattformen', 3 May 2021, available at <https://www.bundestag.de/presse/hib/839164-839164>

¹²⁵ Legal Tribune Online (2021), 'EuGH verhandelt zur Vorratsdatenspeicherung', 13 September 2021, available at www.lto.de/recht/nachrichten/n/eugh-c79319-vorratsdatenspeicherung-datenschutz-europa-eu-ueberwachung-daten-auswertung/; Loll, A. (2021), 'Die Politik will die flächendeckende Vorratsdatenspeicherung', *Deutschlandfunk Kultur*, 18 September 2021, available at www.deutschlandfunkkultur.de/eugh-verhandelt-erneut-die-politik-will-die.1264.de.html?dram:article_id=503201

¹²⁶ Germany, Telecommunication Modernisation Act (*Telekommunikationsmodernisierungsgesetz*), 23 June 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//*%5b@attr_id=%27bgbl121s1858.pdf%27%5d

in the Home Affairs Committee of the German Bundestag with the votes of the ruling Grand Coalition on 23 June 2021.¹²⁷ However, the coalition agreement of the new federal government claims: “In view of the current legal uncertainty, the upcoming ruling of the European Court of Justice and the resulting security policy challenges, we will develop the data retention provisions in such a way that data can be stored in a legally secure manner on an ad hoc basis and by judicial order.” Thus, it seems likely that a so-called “quick-freeze” approach will be chosen for future legislation.¹²⁸

On 28 June 2021, the Act for the Amendment of the Network Enforcement Act (*Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes*) that regulates content moderation obligations of large social networks came into force. To strengthen the rights of social network users the Act requires, firstly, social networks to establish user-friendly and easily accessible online complaints mechanisms to report illegal content. Secondly, the social networks must introduce procedures that are available for users who aim to contest the decision of a social network. Thirdly, independent conciliation boards are to be instituted for the mediation of conflicts between users and the social networks outside of courts. For video sharing platforms a public conciliation board is to be established as provided for by the Directive (EU) 2018/1808 on Audio Visual Media Services. Finally, access of users to other users’ data is eased if they want to take them to court because of insulting or threatening online activities. For this end, a binding court decision on such requests for access is taken at the first instance. In addition, transparency reports of social networks must also include information on the networks’ handling of proceedings by which their decisions to delete content or block accounts are contested. Moreover, the social networks must report on their use of automated tools to detect illegal content.¹²⁹

Another amendment of the Network Enforcement Act will come into force on 1 February 2022. The amendment was provided for by the Act to Combat Right-wing Extremism and Hate Crime (*Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*) of 30 March 2021. Accordingly, social networks will be obliged then to report to the Federal Criminal Police Office (*Bundeskriminalamt*) certain criminal content, if they have become aware of it through a complaint and have removed

¹²⁷ Heute im Bundestag (2021), Ausschuss lehnt FDP-Vorstoß zu Vorratsdatenspeicherung ab, 23 June 2021, available at www.bundestag.de/presse/hib/849370-849370

¹²⁸ SPD, Bündnis 90/Die Grünen, FDP (2021), *Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025*, Berlin, p. 109, available at: https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf.

¹²⁹ Germany, Act for the Amendment of the Network Enforcement Act (*Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes*), 3 June 2021, available at: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*/%5b@attr_id=%27bgbl121s1436.pdf%27%5d.

or blocked the content. In particular, death threats and incitement of the people are to be reported. The inadequate establishment of a reporting system by a provider will be subject to a fine. For the end of effective criminal prosecution of online hate speech also the Code of Criminal Procedure (*Strafprozessordnung*) and the Telemedia Act (*Telemediengesetz*) were amended to clarify that the collection respectively transfer of telemedia services' metadata and inventory data is possible under the same conditions as it is for telecommunication services. In addition, an amendment of the Federal Criminal Police Act (*Bundeskriminalamtgesetz*) shall ensure that the Federal Criminal Police Office can both effectively perform its new duties and request relevant data from the social networks also for preventative purposes.¹³⁰ However, legal claims for an interim injunction lodged by Facebook and Google with the Administrative Court of Cologne have caused delay. The Federal Ministry of Justice and for Consumer Protection has suspended the implementation of the amendment until the claims are decided.¹³¹

5.2 Artificial intelligence and big data

Information on the legal basis on which the digital vaccination certificate technology is rolled out: Apart from Regulation (EU) 2021/953 on the EU Digital COVID Certificate no specific German law exists as legal basis for the roll out of the digital vaccination certificate. The only provision adopted in the context of the roll-out were amendments of the 5th Book of the Social

¹³⁰ Germany, Act to Combat Right-wing Extremism and Hate (*Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*), 30 March 2021, available at: https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//*/%5b@attr_id=%27bgbl121s0441.pdf%27%5d.

¹³¹ Redaktionsnetzwerk Deutschland (2021), 'Facebook und Co.: Der Kampf gegen den Hass im Netz stockt', 28 December 2021, available at: <https://www.rnd.de/politik/meldung-straftbarer-inhalte-an-bundeskriminalamt-facebook-google-und-co-wehren-sich-4SS726EDKRC6THE7WB7DRQHGE.html>.

Code (*Fünftes Sozialgesetzbuch*) and of the Federal Ministry for Health's Corona Virus Vaccination Ordinance (*Coronavirus-Impfverordnung*) aimed at regulating the financial compensation of doctors and pharmacies for issuing the certificates.¹³²

MS	Actor*	Type**	Description	Are Human Rights issues mentioned? (yes/no)	Reference
DE	Federal Government (Bundesregierung)	Government	On 27 January 2021, the Federal Government adopted its Data Strategy, "an innovation strategy for social progress and sustainable growth". The strategy aims to increase innovative and responsible data provision and data use, especially in Germany and Europe – in industry, science, civil society and public administration. At the same time, it aims to ensure fair participation based on European values, prevent data monopolies and consistently counter data misuse.	Whereas human rights are not mentioned, the strategy refers several times to fundamental rights, including the EU Fundamental Rights Charter and the General Data Protection Regulation. The strategy expresses the commitment of the German government to respect and warrant fundamental rights in the context of all	Germany, Federal Government (Die Bundesregierung) (2021), Datenstrategie der Bundesregierung. Eine Innovationsstrategie für gesellschaftlichen Fortschritt und nachhaltiges Wachstum, 27 January 2021, available at: https://www.bundesregierung.de/breg-de/suche/datenstrategie-der-bundesregierung-1845632 English version at: https://www.bundesregierung.de/breg-de/suche/data-strategy-of-the-federal-german-government-1950612

¹³² Germany, Federal Ministry for Health (*Bundesministerium für Gesundheit*) (2021), 'Fragen und Antworten zum digitalen Impfnachweis', available at www.bundesgesundheitsministerium.de/coronavirus/faq-covid-19-impfung/faq-digitaler-impfnachweis.html; See the new Section 20i (3) No. 2 of the 5th Book of the Social Code, amended by the Second Act for the Amendment of the Infection Protection Act (*Zweites Gesetz zur Änderung des Infektionsschutzgesetzes und weiterer Gesetze*) of 28 May 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl121s1174.pdf, Federal Ministry for Health (*Bundesministerium für Gesundheit*) (2021), Erste Verordnung zur Änderung der Coronavirus-Impfverordnung, 6 July 2021, available at www.bundesanzeiger.de/pub/publication/eRz2lqd2ec927djh0tS/content/eRz2lqd2ec927djh0tS/BAanz%20AT%2007.07.2021%20V1.pdf?inline

				measures regarding the use of data.	
DE	German Bundestag (<i>Deutscher Bundestag</i>)	Parliamentary	On 21 May 2021, the German Bundestag adopted the Works Councils Modernisation Act (<i>Betriebsrätemodernisierungsgesetz</i>) that amends provisions on employee representation. The act came into force on 18 June 2021. Among others, the amendment stipulates that the employer must provide detailed information to works councils if they plan to use AI tools for work processes. Works councils must agree if this touches upon processes related to recruitment, redeployment, promotion or dismissal of staff. An assessment of AI use by works councils then requires expert consultation.	The justification of the bill does neither mention human rights nor fundamental rights but explicitly refers to participation rights of employees.	Germany, German Bundestag (<i>Deutscher Bundestag</i>) (2021), <i>Entwurf eines Gesetzes zur Förderung der Betriebsratswahlen und der Betriebsratsarbeit in einer digitalen Arbeitswelt (Betriebsrätemodernisierungsgesetz)</i> . <i>Gesetzentwurf der Bundesregierung</i> , Printed Document 19/28899, 22 April 2021, available at https://dserver.bundestag.de/btd/19/288/1928899.pdf . Germany, Act for the Promotion of Works Councils Elections and of Activities of Work Councils in the Digital Workplace – Works Councils Modernisation Act (<i>Gesetz zur Förderung der Betriebsratswahlen und der Betriebsratsarbeit in einer digitalen Arbeitswelt – Betriebsrätemodernisierungsgesetz</i>), 14 June 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//*%5b@attr_id=%27bgbl121s1762.pdf%27%5d
DE	Federal Council (<i>Bundesrat</i>)	Parliamentary	On 17 September 2021, the Federal Council adopted a resolution on the EU	Yes, fundamental rights are mentioned: The	Germany, Federal Council (<i>Bundesrat</i>) (2021), <i>Beschluss des Bundesrates zum Vorschlag für eine Verordnung</i>

			<p>Commission's proposal for an Act on Artificial Intelligence (COM(2021) 206 final). The Federal Council welcomes the Commission's proposal and the risk-based approach to regulate AI applications, insisting on its consequent and feasible implementation and a narrow definition of AI. The Federal Councils warns of fragmented oversight if AI applications process personal data as independent oversight is required then by Art. 16 TFEU whereas the sector-specific oversight as proposed by the Commission may not always meet the criteria for independent oversight.</p>	<p>Federal Council warns against an overregulation of low-risk AI as this could eventually hinder digital sovereignty and the development of European AI in line with fundamental rights. The Federal Council calls, on the other hand, to strengthen fundamental rights safeguards for high-risk AI applications, and, thus, proposes, for example, to consider a wider prohibition of "scoring" systems also in the private sector.</p>	<p><i>des Europäischen Parlaments und des Rates zur Festlegung harmonisierter Vorschriften für künstliche Intelligenz (Gesetz über künstliche Intelligenz) und zur Änderung bestimmter Rechtsakte der Union COM(2021) 206 final</i>, Printed Document 488/21 (Beschluss), 17 September 2021, available at: https://dserver.bundestag.de/brd/2021/0488-21B.pdf.</p>
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Chapter 6. Rights of the child

6.1 Measures taken during the COVID 19 to ensure the well-being of children living in poverty and the protection of children from violence

<p>Measures to address the specific vulnerabilities of children living in poverty</p>	<p>The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth increased the amount of child sick leave with child sick pay to which parents are entitled in 2021 in response to the Covid-19 pandemic. Sick leave can be claimed when parents have to look after their child due to a day-care or school closure as well as when a child is ill. In 2021, each parent is entitled to 20 days of sick pay, rather than the usual 10. The 20-day maximum that normally applies to single parents was raised to 40 days. In the case of parents with multiple children, the entitlement was raised to a maximum of 45 sick-days per parent, and a maximum of 90 days for single parents. This provision pertains to all children under the age of 12 and older children with disabilities.¹³³</p> <p>The Federal Government initiated a post-Covid action programme for children: <i>Aktionsprogramme "Aufholen nach Corona für Kinder und Jugendliche"</i>. In view of the closures of child-care centres, schools and associations or severe reduction of their offerings that were imposed by the measures to curb the Covid-19 pandemic, the action programme is aimed at help children close learning gaps and to fund recreational activities for them. Two billion euros will be invested in various projects in 2021 and 2022 for this purpose.¹³⁴ One hundred million euros of this went to the "child recreation bonus", paid to families who draw benefits under Books II or XII of the Social Code (SGB II or SGB XII) the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz), the Federal War Victims' Assistance Act (Bundesversorgungsgesetz), the child allowance or a housing benefit.¹³⁵</p>
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¹³³ Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend) (2021) "Corona-Pandemie - Kinderkrankengeld wird ausgeweitet", News 19 Jan. 2021, available at www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/kinderkrankengeld-wird-ausgeweitet-164738

¹³⁴ For an overview see: Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend) (2021), "Aktionsprogramm 'Aufholen nach Corona für Kinder und Jugendliche'", 13 Sept. 2021, available at: <https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/aufholen-nach-corona>

¹³⁵ Germany, Federal Labour Agency (*Bundesagentur für Arbeit*) (2021): "Kinderfreizeitbonus: Anspruch, Antrag, Auszahlung", available at www.arbeitsagentur.de/familie-und-kinder/kinderfreizeitbonus and Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2021) "Corona-Pandemie Kinderfreizeitbonus", News 5 July 2021, available at www.bmfsfj.de/bmfsfj/themen/corona-pandemie/kinderfreizeitbonus-183156

The project "Corona Auszeit für Familien", with 50 million euros in subsidies, will start in October. The aim is to make an affordable holiday available to lower-income families (with a maximum of 15,500 euros in assets per household member) or to families with members with disabilities. The Federal Government will cover 90 percent of the costs for board and lodging. However, families will still have to cover other costs, such as travel to and from the destination and additional costs for the recreational programme. The holiday cannot last longer than one week. Families can receive this benefit once in 2021 and once in 2022. There is no legal entitlement to the benefit.¹³⁶

An additional 100 million euros was allocated to the federal programme "Sprach-Kitas - Weil Sprache der Schlüssel zur Welt ist", which promotes language education in day-care centres for young children. The extra funds are to be used to finance 1000 new additional specialists in language education at day-care centres. The centres can apply to the Federal Government for the funding. The number of applications received is already substantially greater than can be met with the funds available.¹³⁷

In principle, the federal states are responsible for education, but the federal government and the Länder see digitisation in the school system as a common task. In order to promote digital education nationwide the federal government supports the Länder financially within the so-called DigitalPakt Schule (Digital Pact for Schools). This has already been signed by the Federal Government and the Länder in an administrative agreement for the DigitalPakt on 17 May 2019.

The goal of the Digital Pact is the nationwide establishment of a modern digital education infrastructure throughout Germany until 2024. As a result of the school closures due to the pandemic, the Federal Government has also further increased the DigitalPakt Schule in 2020. This includes the three Corona grants - emergency programmes of 500 million euros each. They provide for the equipment of pupils and teachers with digital devices. In addition, the training and payment of IT administrators is financed.¹³⁸

¹³⁶ Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2021) "Aufholen nach Corona Auszeit für Familien in der Corona-Pandemie ermöglichen", News 20 July 2021, available at <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/auszeit-fuer-familien-in-der-corona-pandemie-ermoeglichen-183750> and "Rauskommen. Durchatmen. Auftanken. Eure Auszeit - staatlich gefördert", available at www.bmfsfj.de/bmfsfj/themen/corona-pandemie/corona-auszeit-fuer-familien

¹³⁷ For more information, please see www.bundesprogramm-sprachkitas.de/ and www.bmfsfj.de/bmfsfj/themen/corona-pandemie/aufholen-nach-corona

¹³⁸ For more information see: www.bundesregierung.de/breg-de/suche/digitalpakt-schule-1873530 and www.digitalpaktschule.de/

<p>Measures to protect children from violence</p>	<p>The Independent Commissioner for Issues of Sexual Child Abuse presented the revamped website "Hilfe-Portal Sexueller Missbrauch" (Help Portal Sexual Abuse). The site's new design is intended to make it easier to find help. The portal offers a telephone helpline as well as online advising. There is also a database listing counselling and emergency services nationwide.¹³⁹</p> <p>The online platform jugend.support (funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth) offers advice and assistance to children aged 12 or older in stressful situations on the internet. The platform serves as a central help desk and as a relay service connecting users with the appropriate help quickly, for instance, in connection with different types of online problems, including cyber-bullying, sexual harassment and excessive mobile use.¹⁴⁰</p> <p>The freely accessible media portal MUNDO is being realised by the media institute of the Länder, the FWU (FWU Institut für Film und Bild in Wissenschaft und Unterricht gGmbH) within the project SODIX. The portal was commissioned by the 16 Länder and receives funding from the Digital Pact for Schools. A first basic version of the media portal was launched in September 2021. In January 2021, the FWU was also contracted to create VIDIS, a nation-wide relay service for data-protection-compliant digital identity management at schools. MUNDO is aimed at supporting learners, teachers, parents and guardians in their daily work. To this end, digital media freely available on the internet are examined and assessed against the education standards for classroom use.¹⁴¹</p> <p>The German Bundestag passed framework legislation aimed at bringing the protection of children in the media up to date and enabling children to grow up well with digital media. The legislation targets three areas: protection, orientation and enforcement – the aim is for children to receive the same protection in digital environments that they receive in the analogue world. The new provisions entered into force on 1 April 2021.¹⁴² Through the new Act to Strengthen Children and Youth (KJSG) of 3 June 2021, media competence is recognised as a</p>
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¹³⁹ For detailed information see www.hilfe-portal-missbrauch.de/startseite

¹⁴⁰ For more information see www.jugend.support/ and also www.gutes-aufwachsen-mit-medien.de/informieren/article.cfm/key.3772/aus.2/StartAt.1/page.1/uactive.9

¹⁴¹ For more information see <https://mundo.schule/about>

¹⁴² Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2021): "Ministerin Giffey: 'Wir bringen den Jugendschutz ins 21. Jahrhundert,' Bundestag beschließt Reform des Jugendschutzgesetzes", News, 05 Mar. 2021, available at www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/ministerin-giffey-wir-bringen-den-jugendschutz-ins-21-jahrhundert--174214

	subject for advising for the first time and parental responsibility is strengthened (§ 16, subsect. 1, sent. 2, SGB VIII). ¹⁴³
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6.2 Legal and policy developments or measures relating to criminal proceedings

Legislative changes	<p>In 2021, there were criminal law reforms of relevance, particularly with respect to victim protection for younger and older children in cases of sexual violence. In June 2021, the Act on Combatting Sexual Violence Against Children (Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder) was announced in the Federal Law Gazette (Bundesgesetzblatt).¹⁴⁴ The word “children” in the name of this legislation refers only to children under the age of 14 (see §176 subsect. 1 no. 1 of the amended Criminal Code (StGB: Strafgesetzbuch). Children who have reached the age of 14 can be accused and prosecuted under the new provisions (§1, subsect. 3 and § 3 of the Youth Courts Act (JGG)) as can adults. In addition to significantly toughening numerous criminal law provisions, the act provides for the expansion of investigative powers and measures in the area of prevention and qualification in the justice system.¹⁴⁵ It amends the JGG to require that youth court judges possess knowledge in the fields of criminology, education, social education and youth psychology (§37, JGG, as amended). As did other bodies, the Council of Victims and Survivors at the Independent Commissioner for Issues of Sexual Child Abuse (UBSKM) welcomed the legislative amendments to combat sexual violence with the intention of basing laws for the protection of children from sexual violence on a holistic concept that requires all parties involved to fulfil their responsibilities.¹⁴⁶</p>
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¹⁴³ Germany, National Council against Sexual Violence against Children and Young People (*Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen*), (2021): Gemeinsame Verständigung des Nationalen Rates gegen sexuelle Gewalt an Kindern und Jugendlichen Arbeitsphase Dezember 2019 bis Juni 2021, p. 78, available at www.nationaler-rat.de/downloads/Gemeinsame_Verstaendigung_Nationaler_Rat.pdf#210701_NR_Broschuere_V1_BF_mtt-tmp143133.indd%3A.51413%3A1682

¹⁴⁴ Bundesgesetzblatt Jahrgang 2021 Teil I Nr. 33, published in Bonn on 21 June 2021, Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder vom 16 Juni 2021.

¹⁴⁵ Germany, National Council against Sexual Violence against Children and Young People (*Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen*), (2021): “Gemeinsame Verständigung des Nationalen Rates gegen sexuelle Gewalt an Kindern und Jugendlichen Arbeitsphase Dezember 2019 bis Juni 2021”, p. 9, available at www.nationaler-rat.de/downloads/Gemeinsame_Verstaendigung_Nationaler_Rat.pdf

¹⁴⁶ Germany, Council of Victims at the Independent Commissioner on Child Sexual Abuse (UBSKM) (*Betroffenenrat beim Unabhängigen Beauftragten für Fragen des sexuellen Kindesmissbrauchs (UBSKM)*) (2021): “Anlässlich Inkrafttreten Gesetzesreform am 1. Juli 2021: Positionen des Betroffenenrates zur Bekämpfung sexualisierter Gewalt gegen Kinder und Jugendliche”, available at https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Betroffenenrat/Aktuelles/2021_07_01/Betroffenenrat_Stellungnahme_Inkraftteten_Gesetzesreform_zur_Bekaempfung_sexualisierter_Gewalt_gegen_Minderjaehrige.pdf

Policy developments	<p>Addressing the topic of the “child-friendly justice system” at the meeting of the Conference of Justice Ministers of the Länder on 16 June 2021, the justice ministers emphasised that video recording of judicial examinations in accordance with § 58a of the Code of Criminal Procedure (StpO) is an important tool for safeguarding the interests of injured parties who need of special protection, particularly (both younger and older) children.¹⁴⁷</p> <p>In order to facilitate the effective use of this tool in practice, the justice ministers requested the Criminal Law Committee to commission a working group to draw up a set of uniform national guidelines for judicial examinations in the form of video recordings in line with § 58a StpO. Practitioners should actively participate in their development. In particular, the guidelines should contain recommendations on the subject of basic spatial and technical requirements and on requirements relating to the specialisation and training of judicial staff, as well as sample templates for requests and rulings.¹⁴⁸</p> <p>An amendment of the Courts Constitution Act (GVG: Gerichtsverfassungsgesetz) introduces a binding provision requiring judges presiding over proceedings on family matters to possess demonstrable knowledge in the fields of family law, particularly with respect to parent-and-child law (<i>Kindschaftsrecht</i>), family procedural law and those areas of the law governing children and youth services of relevance to proceedings on family matters. The incorporation of the new requirements concerning special qualifications in the GVG and the JGG has led to the addition of new content to the initial and continuing training for judges and public prosecutors in many locations.¹⁴⁹ For instance, the “Fortbildungsverbund norddeutscher Länder”¹⁵⁰ (training alliance of North German Länder) is offering training events on family-law units specifically for persons transferring to a new unit.</p>
Other measures or initiatives	<p>On 30 June 2021, the National Council on Combatting Sexual Violence Against Children and Young People (Nationale Rat gegen sexuelle Gewalt an Kindern und Jugendlichen: www.nationaler-rat.de) presented the results produced by its four working groups, including those of the working on the child-friendly justice system, to the Federal President and the Conference of</p>

¹⁴⁷ Germany, National Council against Sexual Violence against Children and Young People (*Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen*) (2021): “Gemeinsame Verständigung des Nationalen Rates gegen sexuelle Gewalt an Kindern und Jugendlichen Arbeitsphase Dezember 2019 bis Juni 2021”, p. 20, available at www.nationaler-rat.de/downloads/Gemeinsame_Verstaendigung_Nationaler_Rat.pdf

¹⁴⁸ Germany, National Council against Sexual Violence against Children and Young People (*Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen*) (2021): Gemeinsame Verständigung des Nationalen Rates gegen sexuelle Gewalt an Kindern und Jugendlichen Arbeitsphase Dezember 2019 bis Juni 2021, p. 20 available at www.nationaler-rat.de/downloads/Gemeinsame_Verstaendigung_Nationaler_Rat.pdf, see also <https://dejure.org/gesetze/StPO/58a.html>

¹⁴⁹ In Saxony, Berlin and North Rhine-Westphalia, for instance.

¹⁵⁰ This alliance, known as the Nordverbund, is made up of the Federal States of Berlin, Brandenburg, Bremen, Hamburg, Mecklenburg-Western Pomerania, Lower Saxony, Saxony, Saxony-Anhalt and Schleswig-Holstein.

Justice Ministers of the Länder. The National Council, which was established back in 2019 at the initiative of the Independent Commissioner for Issues of Sexual Child Abuse (UBSKM), recommends that the non-binding guidelines for the application of child-appropriate criteria in criminal proceedings ("Praxisleitfaden zur Anwendung kindgerechter Kriterien im Strafverfahren")¹⁵¹ be made available to active participants in criminal proceedings – by way of the justice administrations of the Federal States, if possible – in order to get them to criminal justice professionals and thus promote their implementation.¹⁵²

Building on the recommendations of the Deutscher Verein on the appropriate accommodation of minors affected by human trafficking and exploitation ("Empfehlungen des Deutschen Vereins zur bedarfsgerechten Unterbringung von Minderjährigen, die von Menschenhandel und Ausbeutung betroffen sind"),¹⁵³ the National Council intends to support the development a model for the (further) development of specialised accommodation for persons affected by human trafficking and exploitation as minors, including those who are now adults. A research project of the Federal Ministry of Justice and Consumer Protection in cooperation with the Criminological Research Institute of Lower Saxony (KFN) is evaluating the criminal law provisions on combatting human trafficking (§§ 232–233a of the StGB) with respect to their applicability in practice.¹⁵⁴ The findings will probably become available in the first quarter of 2022.¹⁵⁵

¹⁵¹ For more information, see: www.nationaler-rat.de/downloads/Praxisleitfaden_kindgerechte_Kriterien_Strafverfahren.pdf.

¹⁵² For more information, see www.nationaler-rat.de/downloads/Ergebnisvermerk_2_Sitzung_NR_AG_Kindgerechte_Justiz.pdf

¹⁵³ Bundeskooperationskonzept: Schutz und Hilfen bei Handel mit und Ausbeutung von Kindern. Empfehlungen für die Zusammenarbeit von Jugendamt, Polizei, Fachberatungsstellen und weiteren Akteuren zur Identifizierung und zum Schutz von Kindern als Opfer von Menschenhandel", 2018, pp. 30–34

¹⁵⁴ Germany, Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen (2021): "Gemeinsame Verständigung des Nationalen Rates gegen sexuelle Gewalt an Kindern und Jugendlichen Arbeitsphase Dezember 2019 bis Juni 2021", p. 76 and <https://kfn.de/blog/2021/08/workshop-evaluierung-der-strafvorschriften-zur-bekaempfung-des-menschenhandels-%C2%A7%C2%A7-232-bis-233a-stgb/>

¹⁵⁵ Kriminologisches Forschungsinstitut Niedersachsen E.V. (2021), Aktuelle Informationen 20 August 2021 <https://kfn.de/blog/2021/08/workshop-evaluierung-der-strafvorschriften-zur-bekaempfung-des-menschenhandels-%c2%a7%c2%a7-232-bis-233a-stgb/>

Chapter 7. Access to justice

7.1 Legal and policy developments or measures relevant to the implementation of the Victims' Rights Directive and the EU strategy for Victims' Rights 2020-2025

On 24 March 2021, the Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) published a Draft Act on improving the effectiveness to fight stalking and to register cyberstalking (*Gesetz zur Änderung des Strafgesetzbuches – effektivere Bekämpfung von Nachstellungen und bessere Erfassung des Cyberstalkings*).¹⁵⁶

The new Draft Act was based on the findings of an evaluation of the Act to improve the protection against *stalking* (*Gesetzes zur Verbesserung des Schutzes gegen Nachstellungen vom 1. März 2017 (BGBl. I S. 386)*). The evaluation concluded among other results that the low thread of punishment and the complicated definition of the criminal offence lead to a not sufficient number of criminal investigations in the given area.

In addition, there is a need to adjust the technical developments in the recent years into the law. There is a significant increase of crimes in the area of cyberstalking, that includes the use of so-called stalking apps and stalking ware. Perpetrators can have an easy access to e-mail and social media accounts of the respective victims, which can amount to the theft of the victims' digital identity.

The Draft Act suggests replacing the term 'consistent' (*beharrlich*) with the term 'repeatedly' (*wiederholt*) and the term 'serious' (*schwerwiegend*) with the term 'not irrelevant' (*nicht unerheblich*) and the criminal offence will be amended with elements of cybercrimes. Replacing both terms allow police investigators to lower the bars to actively prosecute cases of stalking. The previous term 'consistent' (*beharrlich*) presupposes a systematic and strategic approach by the perpetrator to violate the victim's autonomy and physical and psychological integrity, while the term 'repeatedly' does not refer to the severity of the perpetrator's offenses.

¹⁵⁶ Germany, Federal Government (2021), Entwurf eines Gesetzes zur Änderung des Strafgesetzbuches – effektivere Bekämpfung von Nachstellungen und bessere Erfassung des Cyberstalkings, available at https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RegE_Cyberstalking.pdf;jsessionid=BCB6751F50DE6AA6517EB3746D3CB0CB.1_cid297?_blob=publicationFile&v=3

If a certain act of stalking is carried out repeatedly, the police can launch a criminal investigation.

On 25 March 2021, the German Parliament has adopted the Draft Act to Combat Sexualised Violence Against Children (*Entwurf eines Gesetzes zur Bekämpfung sexualisierter Gewalt gegen Kinder*).¹⁵⁷

It aims to improve the protection of children against sexualized violence. It includes measures of prevention as well as protection of victims during investigations and legal proceedings. Thus, the Code of Criminal Procedure (Strafprozessordnung) shall be amended to warrant that victims receive more protection, including the use of video interviews with the investigative judges only, by the exclusion of the public from court proceedings, by waiving questions on their personal life, and by acceleration of proceedings.

The German NGO Coordination of Women's Shelters (*Frauenhauskoordinierung*) criticised the law for not including a gender perspective and for the lack of reference to domestic violence.¹⁵⁸

On 16 June 2021, the Conference of the Ministers of Justice from the Länder (*Justizministerkonferenz*) adopted several resolutions, including the obligation to use of video interviews with victim/witnesses by the investigative judges according to §58a Code of Criminal Procedure (*Strafprozessordnung*). This measure intends to strengthen the protection of victims and to enhance the preservation of evidence.¹⁵⁹

On 3 March 2021 the Federal Government adopted the Due Diligence Act to prevent human rights violations in supply chains (*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*).¹⁶⁰ The law aims at setting standards for responsible management of companies to secure supply chains.

In a statement, The German Institute for Human Rights calls for more effective measures to prevent human rights violations, including civil rights remedies

¹⁵⁷ Germany, German Bundestag (2020), Entwurf eines Gesetzes zur Bekämpfung sexualisierter Gewalt gegen Kinder, available at <https://dserver.bundestag.de/btd/19/237/1923707.pdf>

¹⁵⁸ Frauenhauskoordinierung e.V. (2020), Stellungnahme von Frauenhauskoordinierung zum Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz - Entwurf eines Gesetzes zur Bekämpfung sexualisierter Gewalt gegen Kinder, available at www.frauenhauskoordinierung.de/fileadmin/redakteure/Publikationen/Stellungnahmen/2020-09-11_Stlgn_FHK_RefE_Ges_sex_Gew_Kinder.pdf

¹⁵⁹ Germany, Justizministerkonferenz (2021), 92. Konferenz der Justizministerinnen und Justizminister, available at dwww.justiz.nrw.de/JM/jumiko/beschluesse/2021/Fruerhjahrskonferenz_2021/index.php

¹⁶⁰ Germany, German Government (2021), Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s2959.pdf#bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s2959.pdf%27%5D_1633805250675

against companies that do not comply with human rights standards and compensation for exploited workers.¹⁶¹

7.2 Measures addressing violence against women

On 1 March 2021, the Parliamentary Committee on Families, Senior Citizen held a public hearing on “Examining, Defining and Preventing Femicides in Germany” (*Femizide in Deutschland untersuchen, benennen und verhindern* ([19/23999](#))). It was organized by Parliamentary Group of the party Die Linke.¹⁶²

During the hearing, the majority of the participating experts supported the key concern of the proposal to establish a monitoring body that will observe all homicides of women in Germany. The monitoring body should be mandated to publish an annual report on femicides in Germany.

On 9 June 2021 the German Bundestag adopted the Draft Act on the Enhancements of the Central Register of Migrants (*Gesetzentwurf zu Weiterentwicklung des Ausländerzentralregisters (AZR)*)¹⁶³

The Draft Act aims at recording personal data of migrants in a centralized manner. The government plans to include all relevant data from the asylum-seeking procedures into the central register.

The German NGO Coordination of women’s shelters (*Frauenhauskoordinierung*) is concerned about the consequences an enhanced, centralized register of migrants may imply for marginalized groups. The recorded data may include special categories of personal data, including information on health and sexual life. This may set the applicant at risk both in Germany and in the country of origin.¹⁶⁴

¹⁶¹ German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) (2021), Stellungnahme im Rahmen der Verbändeanhörung zum Referentenentwurf des Bundesministeriums für Arbeit und Soziales, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_im_Rahmen_der_Verbaendeanhoerung_zum_Referentenentwurf_des_BMAS.pdf

¹⁶² Germany, German Bundestag (*Deutscher Bundestag*) (2021), Committee on Family, Senior Citizens, Women and Youth. Mitteilung, 15. Februar 2021, available at www.bundestag.de/resource/blob/822300/771d0dd6e78c26f3907789ee518bce53/a13-84-to-data.pdf

¹⁶³ Germany, German Bundestag (*Deutscher Bundestag*) (2021), Entwurf eines Gesetzes zur Weiterentwicklung des Ausländerzentralregisters, 31 March 2021, available at <https://dserver.bundestag.de/btd/19/281/1928170.pdf>

¹⁶⁴ Frauenhauskoordinierung e.V. (2021), Stellungnahme von Frauenkoordinierung zum Gesetzesentwurf zur Weiterentwicklung des Ausländerzentralregisters, available at www.frauenhauskoordinierung.de/fileadmin/redakteure/Publikationen/Stellungnahmen/2021-06-22_Stellungn_Weiterentw_AZR_final.pdf

On 27 May 2021, representatives of the Federal Government, Länder and local governments adopted the position paper "Securing Protection and Counselling in cases of violence – a joint statement towards a federal legal regulation" (*Schutz und Beratung bei Gewalt bundesweit sicherstellen – Gemeinsame Position für eine bundesgesetzliche Regelung*). In the framework of the programme "Together against violence against women" (*Gemeinsam gegen Gewalt an Frauen*) the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth the Federal Ministry launched a series of Round Table meetings in 2018. The position paper includes a proposition to adopt a legal entitlement for all women affected by violence to receive protection, support and counselling. This should be regulated by a Federal Law.¹⁶⁵

On 23 November 2021, the Federal Criminal Agency published the annual report on the criminal statistics of intimate partner violence for the year 2020.¹⁶⁶ Despite numerous media reports on the rise of domestic violence and intimate partner violence because of the governmental measures to intervene against the COVID-19 pandemic, the results of the report do not prove a significant increase in the area of violence. Compared to the previous year 2019, the Federal Criminal Police indicated only an increase of 4,9% of documented cases (year 2019:139.833 to year 2020:146.655 cases).

The Federal Criminal Statistics display a continuing increase of documented cases of intimate partner violence since 2016. The effect of the pandemic measures on violence against women, including intimate partner violence remains to be analysed in the future, in order to achieve evidence-based findings.

¹⁶⁵ Gemeinsam gegen Gewalt an Frauen, Runder Tisch von Bund, Ländern und Kommunen (2021), Schutz und Beratung bei Gewalt bundesweit sicherstellen – Gemeinsame Position für eine bundesgesetzliche Regelung, available at <https://www.bmfsfj.de/resource/blob/181770/42adedc8c3bbd1713416b8e09a687a91/positionspapier-runder-tisch-gewalt-an-frauen-data.pdf>

¹⁶⁶ Germany, Federal Criminal Police (Bundeskriminalamt), Intimate Partner Violence, Evaluation of the criminal statistics on the year 2020 (*Partnerschaftsgewalt, Kriminalstatistische Auswertung – Berichtjahr 2020*) (2021) https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/Partnerschaftsgewalt/Partnerschaftsgewalt_2020.html;jsessionid=A35600057CB1F0A18B1E5DFE899C7A94.live292?nn=63476

Chapter 8. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

8.1 CRPD policy & legal developments

The "Act to Modernise Passenger Transportation Law"¹⁶⁷, which focuses on new forms of mobility (e.g. shared rides arranged via app) was passed by the Bundestag on 5 March 2021. Accessibility is addressed in the law. However, it is questionable to what extent the law can ensure comprehensive accessibility encompassing the entire transport chain, including passenger information as well as booking and payment processes.

On 22 April 2021, the Bundestag passed the "Act to Strengthen the Participation of Persons with Disabilities and on state law provisions for the determination of social welfare providers for educational and participation services" ("Teilhbestärkungsgesetz")¹⁶⁸. The law is intended to strengthen the promotion of employment for people with disabilities, to strengthen the protection against violence, especially for girls and women, and to determine beneficiaries of disability services in the scope of the "integration assistance" ("Eingliederungshilfe") in view of the UN CRPD and it includes a regulation for assistance dogs. Overall, the law was welcomed from civil society, but it was criticised that this opportunity was not taken to make necessary improvements in this omnibus law, for instance to address the financing of personal assistance for people with disabilities during hospital stays or clear obligations for disability service providers regarding protection against violence (e.g. mandatory prevention and intervention strategies).¹⁶⁹

On 4 May 2021, the Federal Ministry of Labour and Social Affairs, acting as the federal CRPD focal point, published a status report on the National Action Plan for

¹⁶⁷ Germany, Act to modernise passenger transportation law (*Gesetz zur Modernisierung des Personenbeförderungsrechts*), 16 April 2021, available at: www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s0822.pdf%27%5D_1633618164945

¹⁶⁸ Germany, Act to strengthen the participation of persons with disabilities and on state law provisions for the determination of social welfare providers for educational and participation services (*Gesetz zur Stärkung der Teilhabe von Menschen mit Behinderungen sowie zur landesrechtlichen Bestimmung der Träger der Sozialhilfe*), 2 June 2021, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//*%5b@attr_id=%27bgbl121s1387.pdf%27%5d#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s1387.pdf%27%5D_1633700569120

¹⁶⁹ Kabinet-nachrichten (2021), *Teilhbestärkungsgesetz oder eher Teilhabestagnations-Gesetz?*, 28 March 2021, available at <https://kabinet-nachrichten.org/2021/03/28/teilhbestaerkungsgesetz-oder-eher-teilhbestagnations-gesetz/>

the Implementation of the UN CRPD.¹⁷⁰ The report provides an overview regarding the progress of measures defined in the first and second version of the action plan, but also added new measures provided by different government resorts. In contrast to the prior report, the listed measures have not been developed in participation of civil society and are not based on a systematic analysis of implementation deficits.

The "Accessibility Strengthening Act"¹⁷¹ aims to implement the European Accessibility Act (EAA) on national level and was passed by the Bundestag on 20 May 2021. For the first time, obligations of private companies to offer digital products and services in an accessible manner are laid down in codified German law. The Act will come into force in 2025, but for some aspects the deadline for full implementation is extended. For example, service terminals and ATMs will not have to be fully accessible until 15 years later. In addition to the implementation delays, other points of criticism can be made in regard to the law: it only stipulates accessibility for certain digital products and services, is limited to consumer transactions, and allows for numerous exceptions for private companies.

The "Act on the strengthening of intensive care and rehabilitation"¹⁷² envisages a reorganisation of medical rehabilitation and out-of-hospital intensive care. The law has been criticised, because it contains many unclear regulations which put the right to self-determination at risk.¹⁷³ For example the right of choice is limited to "legitimate wishes of the insured person". Moreover the law does not give sufficient consideration to the fact that there are different groups and needs among ventilator patients.¹⁷⁴

¹⁷⁰ For more information on the status report see the website of the focal point, available at www.gemeinsam-einfach-machen.de/GEM/DE/AS/NAP/Statusbericht_NAP/statusbericht_nap_node.html

¹⁷¹ Germany, Act for the implementation of the directive (EU) 2019/882 of the European parliament and of the council of 17 April 2019 on the accessibility requirements for products and services (*Gesetz zur Umsetzung der Richtlinie (EU) 2019/882 des Europäischen Parlaments und des Rates über die Barrierefreiheitsanforderungen für Produkte und Dienstleistungen und zur Änderung anderer Gesetze* Barrierefreiheitsstärkungsgesetz), 16 July 2021, available at [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//\[*\]@attr_id=%27bgbl121s2970.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s2970.pdf%27%5D_1633619010393](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=//[*]@attr_id=%27bgbl121s2970.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s2970.pdf%27%5D_1633619010393)

¹⁷² Germany, Act on the strengthening of intensive care and medical rehabilitation in the statutory health insurance system (*Gesetz zur Stärkung von intensivpflegerischer Versorgung und medizinischer Rehabilitation in der gesetzlichen Krankenversicherung*), 23 October 2020, available at www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&start=%2F%2F%2A%5B%40attr_id=%27bgbl120s2220.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl120s2220.pdf%27%5D_1633704364185

¹⁷³ ALS-mobil e.V. (2021), 'Klaro – immer noch das IPReG ... ODER: Jens Spahn und die CDU schaffen die häusliche Intensivpflege ab', 21 August 2021, available at www.als-mobil.de/klaro-immer-noch-das-ipreg-oder-jens-spahn-und-die-cdu-schaffen-die-haeusliche-intensivpflege-ab/

¹⁷⁴ Kabinet Nachrichten (2021), 'Auch mit außerklinischer Intensivpflege ist selbstbestimmtes Leben möglich', 15.09.2021, available at <https://kabinet-nachrichten.org/2021/09/15/auch-mit-ausserklinischer-intensivpflege-ist-selbstbestimmtes-leben-moeglich/>

On 19 November 2021, the Joint National Committee (*Gemeinsamer Bundesausschuss*, GBA) adopted a guideline on out-of-hospital intensive care. This includes requirements for cooperation between the medical and nursing care, the prescription of the service, the determination of the therapy goal, and the documentation of the weaning potential of insured patients. Different stakeholder, including representative organizations of patients and people with disabilities, participated in several working groups and were invited to submit a statement.¹⁷⁵

Shortly before the end of the current legislative period in September 2021, regulations for the financing of personal assistance for people with disabilities during a hospital stay were introduced.¹⁷⁶ The relevant departments of the Federal Ministry of Health and the Federal Ministry of Labour and Social Affairs were able to agree on a cost model after a long negotiation process. Costs will be covered for people who receive benefits in the scope of integration support ("Eingliederungshilfe") for people with disabilities.

On 16th of December the Federal Constitutional Court decided that the legislator is obliged to protect people with disabilities in the event of pandemic-related triage. In its reasoning the Court emphasized the importance of non-discrimination accompanied by effective procedural safeguards and awareness-raising.¹⁷⁷

8.2 CRPD monitoring at national level

The monitoring body for the CRPD remains located at the German Institute for Human Rights. Besides the monitoring on federal level, there currently are three project-based monitoring bodies on state level in Northrhine-Westphalia, Berlin and Saarland.

Key activities and publications in the scope of the promotion, protection and monitoring of the CRPD on federal level:

¹⁷⁵ Interessenvertretung Selbstbestimmt Leben (2021), 'Außerklinische Intensivpflege – beschlossene Sache!', 22 November 2021, press release, available at www.isl-ev.de/index.php/aktuelles/nachrichten/2602-ausserklinische-intensivpflege-beschlossene-sache.

¹⁷⁶ Germany, Act on the enactment of a Veterinary Medicinal Products Act and the adaptation of pharmaceutical and other regulations (*Gesetz zum Erlass eines Tierarzneimittelgesetzes und zur Anpassung arzneimittelrechtlicher und anderer Vorschriften*), 17 September 2021, available at [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*\[@attr_id=%27bgbl121s4530.pdf%27\]#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s4530.pdf%27%5D_1633702756670](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&start=//*[@attr_id=%27bgbl121s4530.pdf%27]#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s4530.pdf%27%5D_1633702756670)

¹⁷⁷ BVerfG, Beschluss des Ersten Senats vom 16. Dezember 2021 - 1 BvR 1541/20 -.

- Statement on the draft bill by the CDU/CSU and SPD parliamentary groups on the "Act to Modernize Passenger Transportation Law" (BT-Drucksache 19/26175)¹⁷⁸
- Statement on the Federal Government's Draft "Accessibility Strengthening Act"; Participation as an expert in the public hearing in the Bundestag's Committee on Labor and Social Affairs on accessibility requirements¹⁷⁹
- Publication of a position paper on the impact of the Covid-19 pandemic on the situation of people with disabilities with a focus on the lack of disability mainstreaming in the pandemic response and its consequences¹⁸⁰
- Participation in an expert meeting of the National Council against Sexual Violence against Children and Adolescents, during which recommendations for better protection against violence for children and adolescents with disabilities were compiled¹⁸¹
- Written statement to the Federal Joint Committee (GBA) in the non-public procedure for the guideline on out-of-hospital intensive care¹⁸²
- Amicus Curiae brief¹⁸³ on the right to inclusive education to the Federal Constitutional Court in a case concerning the deprivation of custody in order to

¹⁷⁸ German Institute for Human Rights (2021), 'Stellungnahme Gesetzentwurf der Fraktionen der CDU/CSU und SPD zur Modernisierung des Personenbeförderungsrechts (BT-Drucksache 19/26175)', 24 February 2021, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Gesetzentwurf_Fraktionen_CDU_CSU_SPD_zur_Modernisierung_Personenbefoerederungsrechts.pdf

¹⁷⁹ German Institute for Human Rights (2021), 'Stellungnahme zum Gesetzentwurf der Bundesregierung Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2019/882 des Europäischen Parlaments und des Rates über die Barrierefreiheitsanforderungen für Produkte und Dienstleistungen 19/28653', 17 Mai 2021, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Entwurf_Gesetzes_Umsetzung_Richtlinie_EU_2019_882_Europaeischen_Parlaments_und_d_Rates_ueber_Barrierefreiheitsanforderungen_fuer_Produkte_und_Dienstleistungen.pdf

¹⁸⁰ German Institute for Human Rights (2021), 'Covid-19: Auswirkungen auf die Rechte von Menschen mit Behinderungen', 28 May 2021, available at www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Position/Position_Covid_10_Auswirkungen_auf_die_Rechte_von_Menschen_mit_Behinderungen.pdf

¹⁸¹ Further information on the meeting and the work of the National council available at www.nationaler-rat.de/downloads/Gemeinsame_Verstaendigung_Nationaler_Rat.pdf

¹⁸² German Institute for Human Rights (not published yet), Written statement to the Federal Joint Committee (GBA) in the non-public procedure for the guideline on out-of-hospital intensive care, 11 June 2021.

¹⁸³ German Institute for Human Rights (not published): 'Stellungnahme an das Bundesverfassungsgericht im Rahmen der Verfassungsbeschwerde 1 BvR 1525/20', submitted 26 August 2021.

send the daughter to a special school against the will of the mother and the daughter (1 BvR 1525/20)¹⁸⁴

- Lobbying against the signing of the additional protocol on the Oviedo convention by the German government: Letter to the State Secretary of Federal Ministry of Labor and Social Affairs; Press release "Council of Europe Protocol on Bioethics - Germany must oppose the lowering of human rights protection of persons with disabilities"¹⁸⁵ and "Self-determination rights of people with disabilities in Europe at risk"¹⁸⁶; contribution to the side event „From Europe and beyond - Global Perspectives on the Draft Additional Protocol to the Oviedo Convention"¹⁸⁷ by Mental Health Europe and Validity Foundation on the 14th session of the CRPD COSP.
- In the scope of the project "The UN Convention on the Rights of Persons with Disabilities in the practice of guardianship courts", the monitoring body is currently organizing awareness raising trainings for judges and judicial officers, for persons with guardianship, for legal guardians and other stakeholders in the guardianship system.¹⁸⁸ On 11 November 2021, a digital conference was held in conclusion of the project.¹⁸⁹
- Attending regular sessions of the committee "National Action Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities" of the CRPD Focal point¹⁹⁰

¹⁸⁴ Germany, Federal Constitutional Court, 1 BvR 1525/20, which which rejected the acceptance of the constitutional complaint on 14 September 2021; available at www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2021/bvg21-088.html.

¹⁸⁵ German Institute for Human Rights (2021), 'Council of Europe Protocol on Bioethics - Germany must oppose the lowering of human rights protection of persons with disabilities', press release, 31 May 2021, available at

www.institut-fuer-menschenrechte.de/aktuelles/detail/deutschland-soll-sich-gegen-absenkung-des-menschenrechtsschutzes-von-menschen-mit-behinderungen-stellen

¹⁸⁶ German Institute for Human Rights (2021); 'Self-determination rights of people with disabilities in Europe at risk', press release. 22 November 2021, available at www.institut-fuer-menschenrechte.de/aktuelles/detail/selbstbestimmungsrechte-von-menschen-mit-behinderungen-in-europa-in-gefahr

¹⁸⁷ For more information on the event see the Mental Health Europe website on the event, available at www.mhe-sme.org/mhe-validity-event/

¹⁸⁸ For more information on the ongoing project see the German Institute for Human Rights website on the implications of the UN-CRPD on judicial practice, available at www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/die-un-brk-in-der-gerichtlichen-praxis

¹⁸⁹ For more information on the conference see website, available at www.institut-fuer-menschenrechte.de/veranstaltungen/detail/fachtag-ueber-das-potenzial-der-un-behindertenrechtskonvention-fuer-die-betreuungsrechtliche-praxis

¹⁹⁰ For more information on the committee see the focal points website on engaging with civil society, available at www.gemeinsam-einfach-machen.de/GEM/DE/AS/NAP/NAP_10/Umsetzung_NAP/Zusammenarbeit_Zivilgesellschaft/zusammenarbeit_zivilgesellschaft_node.html;jsessionid=F9A0D8A5F0FCCD0E2C93093433459A6E.1_cid32_0

- Publication of an information on the report of the UN-Special Rapporteur on the Rights of Persons with Disabilities with regard to the situation of older persons with disabilities (A/74/186)¹⁹¹
- Preparing a key points paper on necessary measures for the implementation of the UN CRPD in the light of the upcoming coalition negotiations after the federal election¹⁹²
- Contribution of two chapters of the German Institute for Human Rights's annual report to the Bundestag, namely on triage and on the reform of the law on guardianship.¹⁹³
- Publication of an information on international principles on access to justice and their application in the German judicial system.¹⁹⁴
- Active participation in the virtual fact finding mission of the EESC thematic group on disability to Germany "Good practices in social service for people with disabilities after COVID 19 in Germany".¹⁹⁵
- Organizing a conference for the staff of the Commissioner for the Interests of People with Disabilities on federal and state level on 19 November 2021.¹⁹⁶
- Participation of civil society and disabled persons organisation:
- Regular consultations with German civil society and disabled peoples organizations the associations for disability policy¹⁹⁷
- Regular exchange with the Speaker's Council of the German Council for People with Disabilities

¹⁹¹ German Institute for Human Rights (2021), 'Die Rechte älterer Menschen mit Behinderungen. Bericht der Sonderberichterstatterin für die Rechte von Menschen mit Behinderungen', 15 September 2021, available at

www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Information/Information_Die_Rechte_aelterer_Menschen_mit_Behinderungen.pdf

¹⁹² German Institute for Human Rights (2021), 'Empfehlungen zur Umsetzung der UN-Behindertenrechtskonvention in der 20. Wahlperiode (2021-2025)', 7 October 2021, available at

www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Sonstiges/Eckpunkte_Bundestagswahl_2021_MST_U_N-BRK_211004_ub2.pdf

¹⁹³ The 2021 Human Rights Report will be published in early December.

¹⁹⁴ German Institute for Human Rights (2021), 'Zugang zur Justiz für Menschen mit Behinderungen', 11 November 2021, available at <https://www.institut-fuer-menschenrechte.de/publikationen/detail/zugang-zur-justiz-fuer-menschen-mit-behinderungen>

¹⁹⁵ No public documentation available.

¹⁹⁶ No public documentation available.

¹⁹⁷ For more information see the website of the CRPD monitoring body on the consultation process ('Verbändekonsultation'), available at www.institut-fuer-menschenrechte.de/das-institut/abteilungen/monitoring-stelle-un-behindertenrechtskonvention/verbaendekonsultation.

- Regular exchange with the Federal Government Commissioner for the Interests of People with Disabilities
- Participation in the Inclusion Advisory Council (council set up by the Federal Commissioner for the Affairs of People with Disabilities bringing together DPO and CSO representatives, the CRPD focal point and monitoring bodies)¹⁹⁸
- Organising regular events for Commissioner for the Interests of People with Disabilities on federal and state level¹⁹⁹

¹⁹⁸ For more information on the council see the focal points website on engaging with civil society, available at www.gemeinsam-einfach-machen.de/GEM/DE/AS/NAP/NAP_10/Umsetzung_NAP/Zusammenarbeit_Zivilgesellschaft/zusammenarbeit_zivilgesellschaft.html

¹⁹⁹ For more information see the website of the CRPD monitoring body on the exchange with federal and state commissioners for the Interests of People with Disabilities, available at www.institut-fuer-menschenrechte.de/aktuelles/detail/treffen-der-monitoring-stelle-un-brk-mit-beauftragten-aus-bund-und-laendern.

Annex 1 – Promising Practices

<p>Thematic area</p>	<p style="text-align: center;">EQUALITY AND NON-DISCRIMINATION</p> <p>Please provide one example of a practice to tackle nationality-based discrimination, or discrimination against LGBTI people, such as awareness raising campaigns or training for relevant professionals. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2021 relevant to equality and non-discrimination of EU citizens or LGBTI people, preferably one conducted by a national equality body.</p>
<p>Title (original language)</p>	<p><i><u>No promising practice has been identified for this thematic area.</u></i></p>

<p>Thematic area</p>	<p style="text-align: center;">RACISM, XENOPHOBIA AND RELATED INTOLERANCE</p> <p>Please provide one example of a promising practice to address racism and xenophobia. Please give preference to a promising practice about either: active cooperation with CSOs in addressing racism and hate crime; or combating racism and unequal treatment in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related more generally to combating racism, xenophobia, and related intolerances.</p>
<p>Title (original language)</p>	<p>“Beirat für Angelegenheiten von Roma und Sinti” in Berlin</p>
<p>Title (EN)</p>	<p>Advisory Board for Sinti and Roma Affairs in Berlin</p>

Organisation (original language)	Land of Berlin
Organisation (EN)	Land of Berlin (state government)
Government / Civil society	Government
Funding body	Land of Berlin
Reference (incl. URL, where available)	§ 18 of the Act on the Amendment of Participation in Berlin provides the Board for Sinti and Roma Affairs, its composition and the setting up of a secretariat at the regional level (Land of Berlin). (VIS Berlin - § 18 PartMigG Landesnorm Berlin Beirat für Angelegenheiten von Roma und Sinti § 18 - Beirat für Angelegenheiten von Roma und Sinti gültig ab: 16.07.2021)
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	The Act on the Amendment of Participation in Berlin came into force on July 16, 2021. The advisory board has not yet been elected.
Type of initiative	Legal act
Main target group	Administration of the Land Berlin, civil society organisations
Indicate level of implementation: Local/Regional/National	In Berlin (regional/local)
Brief description (max. 1000 chars)	The Advisory Board for Sinti and Roma Affairs is provided by a Berlin state level act. The Act on the Amendment of Participation in Berlin addresses the administration and civil society organisations. It aims to improve the visibility, representation and political participation of people whose families have a history of migration. The board is going to consist of six elected representatives and six elected deputies of Sinti and Roma in Berlin, the state secretaries for integration, anti-discrimination, youth and families and the special commissioner for participation, migration and integration in Berlin. The senator for integration, labour and social welfare is going to be head of the board. The representatives and deputies are going to be elected by self-organizations and initiatives. The Board has the option to elect more members in order to reflect

	<p>the social diversity of Sinti and Roma in Berlin. All board members are going to be elected for a period of three years. In advance of the adoption of the law, the concept of an advisory board has been elaborated with a working group of representatives of Sinti and Roma in Berlin. The advisory board can submit statements to political initiatives that affect the rights of the minority.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>The fundamental concept is transferable to any other German Land. It's even imaginable to transfer the basic concept to other countries on federal, regional or local level. The actual implementation of the board may have to differ though. Legal acts to strengthen the participation of Sinti and Roma have the potential to combat institutional racism against this marginalized group.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The advisory board is elected by self-organisations and initiatives for a duration of three years, in which the elected members can impact the work of the board and prove their commitment. The next election offers the possibility to elect new members and thereby change the direction of the board's work.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The board can participate and intervene in political decisions. If a political measure affects the rights of the minority, the board can submit a statement. These courses of action have the potential to effectively represent the interests of the Sinti and Roma community.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The actual work depends on the elected members. The concept of an advisory board only offers the possibility to participate in political decisions. Regardless of the represented minority group or the state that implements the board, an advisory board always has the potential to improve the political visibility of the represented group.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>The concept has been elaborated in cooperation with a working group of representatives of Roma and Sinti in Berlin.</p>

<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>No information available.</p>
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<p>Thematic area</p>	<p style="text-align: center;">ROMA EQUALITY AND INCLUSION</p> <p>Please provide one example of promising practice related to the two topics addressed in the chapter. Please make the link between the selected practice and the topics explicit.</p>
<p>Title (original language)</p>	<p><i><u>No Promising Practice has been identified for this thematic area.</u></i></p>

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please provide one example of a promising practice related to the topics addressed in the chapter, i.e. data protection, and/or artificial intelligence systems.
Title (original language)	Medienpädagogisches Angebot "Datenschutz für Kinder"
Title (EN)	Media education package "Data Protection for Kids"
Organisation (original language)	Berliner Beauftragten für Datenschutz und Informationsfreiheit
Organisation (EN)	Berlin Commissioner for Data Protection and Freedom of Information
Government / Civil society	Data Protection Authority (DPA)
Funding body	Berlin Commissioner for Data Protection and Freedom of Information
Reference (incl. URL, where available)	https://data-kids.de/

<p>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</p>	<p>The media education package was launched in 2019 but a revised version was launched in August 2021, covering also pandemic-related aspects such as home schooling.</p>
<p>Type of initiative</p>	<p>Training modules for data protection awareness raising</p>
<p>Main target group</p>	<p>Teacher and children at primary schools (grade 4 to 6)</p>
<p>Indicate level of implementation: Local/Regional/National</p>	<p>Regional (but the accompanying website can be accessed by a nation-wide audience)</p>
<p>Brief description (max. 1000 chars)</p>	<p>The "Data Protection for Children" workshop targets children at primary schools to playfully raise awareness for data protection issues. School teacher can get in touch with the DPA to invite trainers. The workshop is spread over five lessons, the workshop teaches digital skills and introduces the world of data protection. School children are supposed to discover what data is, how it is collected, and why it is worth protecting. Another focus is on information about personalized advertising: By making fictitious ads, the children can deepen their understanding of personalized advertising and the use of published data. Using real-life case studies, the children discuss how they would personally behave. Additional material (also for parents) can be found online (see link above). The online material complements the website www.youngdata.de that was developed the State Data Protection Commissioner of Rhineland Palatinate.</p>

<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>Both the workshop curriculum and the content of the website aimed at raising awareness among young school children should be transferrable.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>As long as trainers are available and content is not outdated, the practice is sustainable as it is available for all Berlin primary schools.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>Whereas it is hard to assess if children who participate will change their online behaviour, the number of children who participate is measurable.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The general idea of a data protection awareness raising workshop for young school children is transferrable to all MS as issues around the digitisation of childhood and schools become more important, in particular in the context of the pandemic. The content of the workshop might be revised to make it suitable for national or regional contexts.</p>

<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>No information available.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>No information available.</p>

Thematic area	<p style="text-align: center;">RIGHTS OF THE CHILD</p> <p style="text-align: center;">Please provide a promising practice related to the topics addressed in the chapter.</p>
Title (original language)	"Was ist los mit Jaron?"
Title (EN)	"What's up with Jaron?"
Organisation (original language)	Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauch
Organisation (EN)	The Federal Government's Independent Commissioner for Issues of Sexual Child Abuse
Government / Civil society	Government
Funding body	The Federal Government's Independent Commissioner for Issues of Sexual Child Abuse, supported by the Federal State ministries responsible for cultural affairs.
Reference (incl. URL, where available)	https://www.was-ist-los-mit-jaron.de/

Indicate the start date of the promising practice and the finishing date if it has ceased to exist	June 2021
Type of initiative	Online further training
Main target group	Teachers and other school employees
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The digital course imparts basic knowledge on the topic of sexual abuse in an innovative and interactive fashion. Through the use of model situations, participants are trained to recognise children and young people affected by sexual violence. They also learn how to offer help and the opportunity to talk about the topic. The training takes only a short time (approx. 4 hours) and can be completed individually from any location. It will be accessible via browser and available without licences or fees. The first part of the course, for the primary school level, has already been released; the second part, for secondary schools, is slated for release this autumn (2021).
Highlight any element of the actions that is transferable (max. 500 chars)	All elements of the action are transferrable, provided that the use of computers is widespread.

<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>Sensitivity training on sexual abuse for teachers and other school employees is a promising approach to realising the aim of providing support to affected children and young people at an early stage.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>Participants receive basic knowledge about the topic of sexual abuse and the opportunity reflect on their own teaching practises in light of this new knowledge.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The training is low-threshold and location-independent. Participation does require the relevant electronic equipment, however.</p>

<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>No information available.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>No information available.</p>

Thematic area	ACCESS TO JUSTICE Please provide one example of a promising practice related to the topics addressed in the chapter.
Title (original language)	<u>No promising practice has been identified for this thematic area.</u>

Thematic area	<p>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</p> <p>Please provide one example of a promising practice related to projects or programmes implementing the CRPD or promoting the rights of persons with disabilities.</p>
Title (original language)	Institut für inklusive Bildung
Title (EN)	Institute for inclusive education
Organisation (original language)	Stiftung Drachensee / Christian-Albrechts-Universität zu Kiel
Organisation (EN)	Foundation Drachensee/ Christian-Albrechts university Kiel
Government / Civil society	Civil society
Funding body	Ministry of Education, Science and Culture of the federal state of Schleswig-Holstein, additional resources through revenues of public projects as well as public and private financial subsidies
Reference (incl. URL, where available)	Website of the Institut of inclusive education https://inklusive-bildung.org/en

<p>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</p>	<p>2017 (ongoing)</p>
<p>Type of initiative</p>	<p>Institute for research and education, non-profit company with limited liability (gGmbH)</p>
<p>Main target group</p>	<ul style="list-style-type: none"> - People with disabilities who would usually not have access to employment in the sphere of (university) education - Universities, colleges and other institutions for further education with programmes related to the education, disability and health sector - Administrations and private companies
<p>Indicate level of implementation: Local/Regional/National</p>	<p>Regional: The institute has established sites in different federal states (Northrhine-Westfalia, Mecklenburg-Vorpommern, Schleswig-Holstein, Sachsen-Anhalt) and plans to expand further across different regions in Germany.</p>
<p>Brief description (max. 1000 chars)</p>	<p>The Institute for Inclusive Education (Institut für Inklusive Bildung) is an institute for education and research, that qualifies people with disabilities without academic background to teach on issues of inclusion and disability rights. The so-called 'inclusive professionals' use their resources and knowledge as experts of lived experience teaching and conducting research regarding social work, pedagogy and other disciplines in the disability and health sector. Inclusive professionals conduct education and training in universities, politics and administration, associations and companies. The institute thus creates job opportunities on the first labor market while the work of the inclusive professionals at the same time raises awareness on relevant issues such as inclusive education, employment, housing etc.</p>

<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<ul style="list-style-type: none"> - The training of people with disability with no academic background and their placement in universities, colleges and trainings for public and private stakeholders - Creation of job opportunities outside sheltered workshops - Conduction of participatory research
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The institute was established in the scope of a temporary model project but was able to secure long-term funding. Additional financial resources are gained through the growing number of education and training conducted by the inclusive professionals.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>On the one hand it creates concrete job and training opportunities for people with disabilities. On the other hand their inclusion in the training of staff in the disability and health sector, public services and the private sphere can contribute to better awareness on the barriers people with disabilities face in different spheres of life and to an acknowledgment of their rights and capabilities.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>Education and training on inclusion and disability rights are crucial steps for the implementation of the CRPD for all member states. The training and employment of the inclusive professionals is supported by federal education ministries, universities, welfare organizations and service providers in the disability sector. These infrastructures, while they may vary regarding its structures and resources, are in place in all member states to the CRPD.</p>

<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</p>	<p>There is no information to what extend people with disabilities were involved in the conceptualization of the institute. Currently, the staff is inclusive and includes inclusive professionals. The institute is evaluated by the University of Leipzig in cooperation with the Technical University of Cologne. Its unclear to what extend this research is conducted participatorily, but the impact of the training and placement on the inclusive professionals is a central focus (another one is the impact of students and other learners).</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>See information on evaluation above.</p>

Annex 2 – Case Law

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one high court decision addressing discrimination against EU citizens based on nationality or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
Decision date	24 March 2021
Reference details	Higher Regional Court (<i>Oberlandesgericht Celle</i>) OLG Celle, 24.03.2021 - 21 UF 146/20 https://oberlandesgericht-celle.niedersachsen.de/startseite/aktuelles/presseinformationen/verfassungsrechtliche-zweifel-an-fehlender-regelung-der-elternstellung-gleichgeschlechtlicher-partner-198821.html
Key facts of the case (max. 500 chars)	<p>The Higher Regional Court of Celle considers it unconstitutional that in the case of two-mother families, both spouses are not automatically registered as mothers in the birth certificate. The two women concerned live in a same-sex partnership and have been married during the judicial process. Before the birth of the child, the other partner acknowledged in a notarised declaration that she “wanted to take full responsibility for the child as a parent from birth”. After the birth, the responsible registry office refused to recognise this “co-motherhood”. The Court of Celle considers the regulation in § 1592 BGB to be unconstitutional, according to which the same-sex partner of a mother cannot acquire the rights of the second parent with the birth of the child, but at the most through adoption. The Higher Regional Court of Celle submits the proceedings to the Federal Constitutional Court in Karlsruhe for decision.</p>

<p style="text-align: center;">Main reasoning/argumentation (max. 500 chars)</p>	<p>The Higher Regional Court of Celle assumes that the lack of legal regulation of “co-motherhood” violates the applicant who is married to the mother in her constitutionally protected parental rights under Article 6, Paragraph 2, Clause 1 of the Basic Law. Accordingly, "the care and upbringing of children (...) are the natural right of parents and their first and foremost duty." In these cases, the joint decision of both partners is the prerequisite new life arises. The obligation towards the child comprehends the right to be able to take care of the upbringing of the child. In the opinion of the court, the fundamental right of the child concerned to be cared for and brought up by their parents has also been violated.</p>
<p style="text-align: center;">Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>See main reasoning.</p>
<p style="text-align: center;">Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>On the basis of this constitutional assessment, the court was obliged to suspend the proceedings and submit it to the Federal Constitutional Court (<i>Bundesverfassungsgericht</i>) for a decision.</p>
<p style="text-align: center;">Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>§ 1592 BGB ermöglicht nicht die abstammungsrechtliche Zuordnung eines zweiten Elternteils, wenn ein Kind in einer gleichgeschlechtlichen Ehe zweier Frauen geboren wird, und ist aus diesem Grund mit Art. 6 Abs. 2 S. 1 i.V.m. Art. 3 Abs. 1 GG nicht vereinbar. § 1592 BGB does not allow the parentage assignment of a second parent if a child is born in a same-sex marriage of two women, and for this reason it is not in accordance with Article 6, Paragraph 2, Sentence 1 in conjunction with Article 3, Paragraph 1 of the Basic Law.</p>

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide the most relevant <u>high court</u> decision concerning the application of <u>either</u> the Racial Equality Directive or the Framework Decision on racism and xenophobia, addressing racism, xenophobia, and other forms of intolerance more generally.
Decision date	21 June 2021
Reference details	Superior Administrative Court of North Rine Westfalia (Oberverwaltungsgericht Nordrhein-Westfalen) 5 A 1386/20 ECLI:DE:OVGNRW:2021:0622.5A1386.20.00 Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Urteil vom 22. Juni 2021 – 5 A 1386/20 –, juris
Key facts of the case (max. 500 chars)	The Court decided that the removal of election posters of a right-wing party for the European election that displayed the slogan “migration kills” carried out by the town of Mönchengladbach was legal. The decision upheld the ruling of the Düsseldorf Administrative Court. The Court defines the chosen wording as incitement of the masses. Administrative Courts in other states (Länder) had ruled differently on the removal of the same election posters.

<p style="text-align: center;">Main reasoning/argumentation (max. 500 chars)</p>	<p>Although in political campaigns pointed statements cannot be prohibited, the slogan "migration kills" touches the right to human dignity. It aims to equate all migrants with murderers and implies that all German citizens should be afraid of them. Statements like that disturb the public peace by fomenting hatred and are not covered by the freedom of speech.</p> <p>It is an incitement of the masses and therefore violates § 130 of the German penal code (StGB). In interpreting the law, the Court relates to the International Convention on the Elimination of All Forms of Racial Discrimination, which was signed by Germany.</p> <p>To justify the reasoning the Court referred to the interplay of the wording and the imagery on the election posters. In addition to the slogan, the posters showed a map with German cities in which murder crimes had been committed by people who have a migraton background.</p>
<p style="text-align: center;">Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>see main reasoning.</p>
<p style="text-align: center;">Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Due to the fundamental significance of the case, the court admitted the appeal to the Federal Administrative Court. The appeal is still pending.</p>

<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>"Bei der Auslegung einer Meinungsäußerung sind die Umstände des Einzelfalls zu berücksichtigen. Hierzu gehört auch, wenn sich der Äußernde mit der nationalsozialistischen Rassenideologie identifiziert oder seine Äußerungen sonst damit in Zusammenhang stehen. Im Sinne der menschenrechts- und völkerrechtsfreundlichen Auslegung des deutschen Rechts ist zu berücksichtigen, dass die Bundesrepublik das Internationale Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung ratifiziert (ICRED - BGBl II 1969, 962 ff.) und sich in dessen Art. 4 verpflichtet hat, jede Form von rassistischer Propaganda und Rassendiskriminierung zu bekämpfen."</i> (Leitsatz 2)</p> <p>When interpreting an expression of opinion, the circumstances of the individual case must be taken into account. This also includes if the person making the statement identifies with racial ideology or if the statements are otherwise connected with it. The legal interpretation of an expression of opinion has to take into account that Germany ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICRED - BGBl II 1969, 962 et seq.). Article 4 of the Convention obliges to combat all forms of racist propaganda and racial discrimination.</p>
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<p>Thematic area</p>	<p>ROMA EQUALITY AND INCLUSION Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.</p>
<p>Decision date</p>	<p><u>No case law has been identified for this thematic area.</u></p>

Thematic area	ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION Please provide the most relevant high court decision – or any court ruling – relating to the implementation of the <u>right to an effective remedy</u> in the context of storing data in national large-scale databases and in EU IT systems (Eurodac, VIS, SIS) delivered in 2021.
Decision date	16 February 2021
Reference details	Federal Administrative Court (<i>Bundesverwaltungsgericht</i>) 1 C 29/20 ECLI:DE:BVerwG:2021:160221U1C29.20.0 www.bverwg.de/160221U1C29.20.0
Key facts of the case (max. 500 chars)	The plaintiff entered Germany in 2011 under a false identity and filed an asylum application with the Federal Office for Migration and Refugees (<i>Bundesamt für Migration und Flüchtlinge</i>). In September 2015, he revealed his true identity to the Aliens Department by presenting a Portuguese passport issued in January 2014. After he had withdrawn the asylum application, the asylum proceedings were closed. Four years later, the Federal Office ordered that the applicant be subsequently subjected to identification measures including fingerprinting and the taking of a digital photograph. The plaintiff objected to the order to undergo identification measures and filed a complaint with the Administrative Court. The competent administrative court overturned this order. The Federal Office lodged an appeal against the decision with the Federal Administrative Court.
Main reasoning/argumentation (max. 500 chars)	First, the Court stated that the authority of the Federal Office to order identification measures based on § 16 (1) of the Asylum Act (<i>Asylgesetz</i>) does not generally end with the withdrawal of the asylum application but may apply until the person leaves the country or has been deported. But it underlined in the following that this provision which implements inter alia requirements of the Dublin III-Regulation, does not apply to EU citizens whose identity has been clarified and who are entitled to freedom of movement under EU law after their asylum application has been withdrawn. The Court pointed out that after a person obtained a residence right, identification measures are only permitted by the authorities enforcing the Residence Act on the basis of § 49 of the residence Act (<i>Aufenthaltsgesetz</i>). The aim of the legislator to avoid several asylum applications by the same person does not justify a continued competence of the Federal Office on the basis of asylum regulations.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Court decided on the question if the asylum authorities have the right under the national asylum regulations to order identification measures after the asylum procedures have been closed.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>By obtaining EU citizenship or another residence title there is no longer a sufficient connection to an asylum procedure. In consequence, the Federal Office for Migration and Refugees is not allowed to take any subsequent identification measures on the basis of § 16 (1) of the Asylum Act (<i>Asylgesetz</i>).</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p><i>„Die Befugnis des Bundesamts zur nachträglichen Anordnung erkennungsdienstlicher Maßnahmen greift nicht bei Unionsbürgern, deren Identität geklärt ist und denen nach Rücknahme ihres Asylantrags ein unionsrechtliches Freizügigkeitsrecht zusteht oder deren Freizügigkeitsberechtigung vermutet wird. Die Befugnis des Bundesamts zur Anordnung erkennungsdienstlicher Maßnahmen endet... jedenfalls mit der Erteilung eines Aufenthaltstitels.“ (Leitsätze 2 und 3)</i></p> <p>The authority of the Federal Office for the subsequent order of identification measures does not apply to Union citizens whose identity has been clarified and who, after the withdrawal of their asylum application, are entitled of the right to freedom of movement under Union law or whose right to freedom of of movement is presumed. (3) The authority of the Federal Office to order identification measures shall end... in any case with the granting of a residence title. (second and third headnote)</p>

Thematic area	INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION Please provide the most relevant high court decision related to the topics addressed in the chapter, i.e. data protection, and/or artificial intelligence systems.
Decision date	8 June 2021
Reference details	Federal Constitutional Court (<i>Bundesverfassungsgericht</i>) 1 BvR 2771/18 ECLI:DE:BVerfG:2021:rs20210608.1bvr277118 German: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/06/rs20210608_1bvr277118.html English translation: www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/06/rs20210608_1bvr277118en.html
Key facts of the case (max. 500 chars)	In 2018, four persons and three organisations, supported by a strategic litigation NGO, lodged a constitutional complaint against a provision of the new police act of the federal state of Baden-Württemberg of 2017 which authorises so-called <i>Quellen-Telekommunikationsüberwachung</i> , i.e. legal hacking of electronic devices to intercept encrypted communication. The complainants argue that the provision violates the state's duty to protect the fundamental right to the integrity and confidentiality of IT systems derived from article 2 (1) read in conjunction with article 1 (1) of the Basic Law as it entails the risk that the police will not report unknown security gaps in hardware or software (zero-day exploits) to IT providers due to the interest of taking advantage of these security gaps for on-device interception operations, thereby jeopardising the complainants' IT security.
Main reasoning/argumentation (max. 500 chars)	The Federal Constitutional Court held that the fundamental right to the integrity and confidentiality of IT systems and the fundamental right to the privacy of communication (article 10 of the Basic Law) provide for a duty of the state to protect IT security from infiltration by third parties. Hence, the legislator is obliged to regulate the use of zero day exploits by the police. Even though the Court denies a duty to report zero day exploits immediately to IT providers, it argues that that a regulation has to be in place that solves the tension between the duty to protect IT security on the one hand and the protection against immediate threats on the other.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Federal Constitutional Court confirmed a decision of 2002 in which it decided that the state has the duty to protect the privacy of communication against interception by third parties. Moreover, the Court held for the first time that the state has the duty to protect IT security in general and is, thus, required to establish appropriate regulation on how the police may use zero day exploits.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Court's order had no immediate effects. The Federal Constitutional Court declared the complaint inadmissible as the complainants had failed to demonstrate that their fundamental rights could be violated. The Court argued that the complaint was lacking a detailed presentation of the overall regulatory context, thus, ignoring legal and administrative provisions that could possibly serve to protect IT security. Moreover, the Court found that the complainants had not exhausted legal remedies with lower court instances. However, as the Court's affirmed the state's duty to protect IT security, the order is seen as a milestone decision by commentators.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>"(1) Art. 10 Abs. 1 GG begründet neben einem Abwehrrecht einen Auftrag an den Staat, vor dem Zugriff privater Dritter auf die dem Fernmeldegeheimnis unterfallende Kommunikation zu schützen (Bestätigung von BVerfGE 106, 28 <37>). (2) a) Die grundrechtliche Gewährleistung der Vertraulichkeit und Integrität informationstechnischer Systeme verpflichtet den Staat, zum Schutz der Systeme vor Angriffen durch Dritte beizutragen. b) Die grundrechtliche Schutzpflicht des Staates verlangt auch eine Regelung zur grundrechtskonformen Auflösung des Zielkonflikts zwischen dem Schutz informationstechnischer Systeme vor Angriffen Dritter mittels unbekannter Sicherheitslücken einerseits und der Offenhaltung solcher Lücken zur Ermöglichung einer der Gefahrenabwehr dienenden Quellen-Telekommunikationsüberwachung andererseits." (Leitsätze 1-2)</p> <p>"(1) Art. 10(1) of the Basic Law not only gives rise to a defensive right of the individual against state interference, but also requires the state to protect individuals from private third parties gaining access to communications that are protected by the privacy of telecommunications (confirming BVerfGE 106, 28 <37>). (2) a) The protection of the confidentiality and integrity of information technology systems, as guaranteed by fundamental rights, obliges the state to help protect such systems from attacks by third parties. b) The state's duty of protection arising from fundamental rights also requires a legal framework that governs how – in a manner compatible with fundamental rights – the state is to resolve the conflicting aims of protecting IT systems against third-party attacks that exploit unknown IT security vulnerabilities on the one hand, and on the other hand keeping such vulnerabilities open so that source telecommunications surveillance can be carried out for public security purposes." (Headnotes 1 and 2)</p>

Thematic area	RIGHTS OF THE CHILD Please provide the most relevant high court decision related to the topics addressed in the chapter.
Decision date	18 march 2021
Reference details	Higher Social Court of Schleswig Holstein (<i>Landessozialgericht Schleswig Holstein</i>) L 3 AS 28/21 B ER Gesetze-Rechtsprechung Schleswig-Holstein Schleswig-Holsteinisches Landessozialgericht 3. Senat L 3 AS 28/21 B ER Beschluss Anspruch auf Ausstattung zweier Geschwister als Schüler mit digitalen Endgeräten zur Teilnahme am schulischen Distanzunterricht während der Corona-Pandemie Langtext vorhanden (juris.de)
Key facts of the case (max. 500 chars)	The plaintiffs (twins who attended the 4th grade of primary school and their sister who attended the last year of grammar school) applied for the funding of a computer and a printer in January 2021. The claim was denied on the grounds that the school proposed to provide one iPad on loan for the period of home-schooling. The plaintiffs lodged an appeal against the decision of the Social Court with the Higher Social Court.
Main reasoning/argumentation (max. 500 chars)	The Higher Social Court confirmed the decision of the Higher Social Court of North Rhine Westphalia from March 2020 (L 7 AS 719/20 B ER; L 7 AS 720/20 B) and held that, in principle, pupils who receive benefits may, under the conditions of the pandemic, be entitled to extra benefits to purchase a computer as a need for education and participation that is relevant to basic security. The necessity to participate in digital distance learning due to the pandemic-related closure of schools represents a special situation which was not anticipated by the legislator and has not been considered in the calculation and conception of the standard need according to SGB II. As a rule, in the case of distance learning, participation in school lessons is only possible if an internet-capable digital device is available at home. According to § 21 (6) of Book II of the Social Code, the need is given if it is not already covered by allowances from third parties. In the case of temporary needs, loan can be considered to fulfil the gap. In this specific case, the school was only able to provide a laptop to one plaintiff. However, in the special situation caused by the pandemic, the parallel participation of several school-age children in one household in digital distance learning must be possible.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Court decided on the question if, in times of a pandemic that caused the closure of schools, a computer is to be recognised as an additional need required for home-schooling under German welfare law and whether it is sufficient for several applicants from one family if the school can only borrow one device.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>In the present case, the Higher Social Court confirmed that the plaintiffs would have been entitled to benefits for the purchase of a computer but not for a printer. However, the complaint was rejected because, in the opinion of the Court, the plaintiffs were no longer in need of interim legal protection as they were able to go to school and were no longer forced to learn at home since the pandemic restriction had been lifted.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>"[...] <i>grundsätzlich muss in der pandemiebedingten Sondersituation die parallele Teilnahme mehrerer schulpflichtiger Kinder am digitalen Distanzunterricht möglich sein [...] Erforderlich wäre vielmehr, dass beiden die parallele Teilnahme am Distanzunterricht an digitalen Endgeräten möglich gewesen wäre.</i>" (Rn. 29)</p> <p>"[...] <i>In principle, in the special situation caused by the pandemic, it must be possible for several school-age children to participate in digital distance learning at the same time [...] Rather, it would be necessary for both to have been able to participate in distance learning on digital terminals at the same time.</i>" (paras. 29)</p>

Thematic area	ACCESS TO JUSTICE Please provide the most relevant high court decision related to the topics addressed in the chapter.
Decision date	2 February 2021
Reference details	Federal Court of Justice (Bundesgerichtshof) 4 StR 364/19 https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=02.02.2021&Aktenzeichen=4%20StR%20364/19
Key facts of the case (max. 500 chars)	With its decision of 2. February the Federal Court of Justice has ruled that a gynecologist has violated against § 174c penal code (Strafgesetzbuch) by preying his counselling, treatment, and assistance obligation by secretly filming the genital area of his patients during a preventive medical examination.
Main reasoning/argumentation (max. 500 chars)	The Court supported the decision by the Landesgericht Dortmund, that a preventive medical examination is a medical treatment because ('wegen') of an illness. Therefore, the case is based on the ground of a particular deserving protection in the framework of interdependence.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Preventive medical examinations qualify as a particular deserving protection in the framework of interdependence according to § 174c penal code (Strafgesetzbuch).
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The gynecologist was sentenced to a year and 10 months on probation.

<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>Weil er den Intimbereich seiner Patientinnen mit einer versteckten Kamera filmte, wurde ein Gynäkologe wegen sexuellen Missbrauchs unter Ausnutzung eines Beratungs-, Behandlungs- oder Betreuungsverhältnisses nach § 174c Abs. 1 Strafgesetzbuch (StGB) zu einem Jahr und zehn Monaten auf Bewährung verurteilt. Diese Entscheidung des Landgerichts Dortmund bestätigte der Bundesgerichtshof in einem nun veröffentlichten Beschluss, wie <i>LTO (Maximilian Amos)</i> berichtet. Dabei bejahte der BGH, dass es sich bei einer gynäkologischen Vorsorgeuntersuchung um eine Behandlung "wegen" einer Krankheit iSd § 174c StGB handele, da auch hier bereits ein besonders schützenswertes Abhängigkeitsverhältnis zwischen Ärztin und Patient entstehe.</p> <p>A gynecologist took footage from the private parts of his patients with a hidden camera. He was convicted to serve 1 year and 10 months on probation with charges of sexual abuse under exploitation of a relationship of counselling and assistance according to §174c, 1 German penal code. The judgement has been confirmed by the Federal Court (Bundesgerichtshof) in a newly published statement. The Federal Court confirmed that an early detection examination is a medical treatment because of a sickness in the sense of § 174c StGB (penal code). That qualifies the treatment as an interdependence underlying specialized protection provisions between a physician and a patient.</p>
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Thematic area	DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) Please provide the most relevant court judgment, which quoted the CRPD or prominently referred to the CRPD in the reasoning.
Decision date	4 October 2021
Reference details	Regional Social Court of Lower Saxony-Bremen (Landessozialgericht Niedersachsen-Bremen) Aktenzeichen: L 16 KR 423/20 https://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psml?doc.id=JURE210016336&st=null&showdoccase=1
Key facts of the case (max. 500 chars)	In October 2021 the Regional Social Court of Lower Saxony-Bremen decided that a health insurance company cannot refuse an insured person to bear the costs of an electric wheelchair for the sole reason that the insured person is blind.
Main reasoning/argumentation (max. 500 chars)	In its decision the court has attached central importance to the definition of disability in the light of the CRPD. According to supreme court rulings, having access to the immediate vicinity of the residential environment is a basic need of daily life and encompassed in the right to personal mobility according to Art 20 UN CRPD. The electric wheelchair is to be considered a medical aid that compensates the plaintiff's existing impairment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<ul style="list-style-type: none"> - Right to mobility encompasses the entitlement to be provided with the support necessary to compensate for a mobility disability - The plaintiff is not obligated to prove to the insurance company that the use of the wheelchair does not lead to self harm or harm to others

<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The insurance company is obligated to bear the costs of the electric wheel chair. The understanding of disability has to be interpreted in the light of the CRPD. According to this, it is not only a matter of the actual or perceived impairment respectively health deficits in the wording of the court. Rather, the focus is on participation in the various areas of life as well as strengthening the possibilities of planning and shaping life according to individual and personal wishes.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>„Es ist die Aufgabe des Hilfsmittelrechtes, dem Behinderten (sic!) ein möglichst selbstbestimmtes Leben zu ermöglichen und nicht, ihn von sämtlichen Lebensgefahren fernzuhalten und ihn damit einer weitgehenden Unmündigkeit anheimfallen zu lassen. Nach dieser Maßgabe kann auch ein stark Sehbehinderter mit einem Elektrorollstuhl zu versorgen sein.“ (Rn. 28) “It is the task of the law on medical aids to enable the person with disabilities to lead as self-determined a life as possible and not to keep them away from all dangers and thus to leave them largely immature. According to this stipulation, a severely visually impaired person can also be provided with an electric wheelchair.”</p>

Thematic area	DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD) Please provide the most relevant court judgment, which quoted the CRPD or prominently referred to the CRPD in the reasoning.
Decision date	16 December 2021
Reference details	German Constitutional Court AktENZEICHEN: 1 BvR 1541/20 https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/12/rs20211216_1bvr154120.html
Key facts of the case (max. 500 chars)	On June 27 2021, nine plaintiffs, all persons with disabilities or chronic illness, filed a constitutional complaint claiming that the legislature fails to protect people with disabilities against discrimination regarding intensive health care in a triage scenario during the coronavirus pandemic. The Constitutional Court sustains that the legislature is obliged to protect people with disabilities against the discriminatory application of triage and to take effective precautions without delay.
Main reasoning/argumentation (max. 500 chars)	The legislature has a duty to act arising from the given risk to life, a highest-ranking right according to Article 2 (2) sentence 1 of the constitution, and the postulate of equality in Article 3 (3) sentence 2. The constitutional court also refers to the provisions of the CRPD (art. 1 p. 1; art. 4 p. 1, art. 10, art. 11, art. 25) obliging the legislature to effectively prevent any discrimination on the grounds of disability in the allocation of pandemic-related scarce intensive medical treatment resources.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Article 3 para. 3 of the constitution (non-discrimination) has to be interpreted in accordance with the CRPD. In certain constellations of pronounced need for protection, the duty to protect can be condensed into a concrete duty to act. Such constellations include the targeted exclusion of persons because of a disability. In addition, there may be a duty to act if a disadvantage due to disability is accompanied by dangers to high-ranking legal interests, in this case the protection of life.

<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The legislature is required to comply with its duty to protect without delay by creating effective legal safeguards against potential discrimination of people with disabilities in the allocation of intensive care capacities.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>„Der Gesetzgeber muss zur Umsetzung der aus Art. 3 Abs. 3 Satz 2 GG hier auch wegen der Bedeutung des Art. 2 Abs. 2 Satz 1 GG folgenden konkreten Schutzpflicht und im Lichte der Behindertenrechtskonvention dafür Sorge tragen, dass jede Benachteiligung wegen einer Behinderung bei der Verteilung pandemiebedingt knapper intensivmedizinischer Behandlungsressourcen hinreichend wirksam verhindert wird. Der Gesetzgeber ist gehalten, seiner Handlungspflicht unverzüglich durch geeignete Vorkehrungen nachzukommen.“ (1 BvR 1541/20, paragraph 130)</p> <p>In order to implement the specific duty to protect arising from the second sentence of Article 3 (3) of the constitution, also because of the importance of the first sentence of Article 2 (2) of the constitution, and in the light of the Convention on the Rights of Persons with Disabilities, the legislature must ensure that any discrimination on the grounds of disability in the allocation of pandemic-related scarce intensive care resources is sufficiently effectively prevented. The legislature is required to fulfill its duty to act without delay by taking appropriate measures.</p>