

# **Franet National contribution to the Fundamental Rights Report 2021**

**GERMANY**

**Contractor's name:** German Institute for Human Rights

**Authors' name:** Eric Töpfer & Roger Meyer

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## Policy and legal highlights 2020

Policy and legal highlights	
<b>Issues in the fundamental rights institutional landscape</b>	<b>Establishment of independent police complaints bodies at the <i>Länder</i> level:</b> In 2020, <a href="#">Bremen</a> , <a href="#">Berlin</a> , <a href="#">Brandenburg</a> and <a href="#">Hesse</a> tabled or adopted acts to establish police ombudspersons who shall process complaints by citizens or police officers. The first police ombudsperson was appointed in 2016 in the state of Rhineland Palatinate. Baden-Württemberg and Schleswig-Holstein followed in 2017.
<b>EU Charter of Fundamental Rights</b>	<b>Green Party aims to expand scope of EU Fundamental Rights Charter:</b> On 22 November 2020, the <a href="#">Green Party adopted a new basic programme (<i>Grundsatzprogramm</i>)</a> that replaces the former basic programme of 2002. In the new programme, the party declares its commitment to develop the EU into a Federal European Republic in which equal rights are warranted for all citizens by the Charter regardless of where they live, and to expand the scope of the Charter to the national law of all Member States in order to protect the rule of law.
<b>Equality and non-discrimination</b>	<b>Berlin Anti-Discrimination Act shall protect against discrimination by public authorities:</b> In the state of <a href="#">Berlin</a> , a <a href="#">State Anti-Discrimination Act (<i>Landes-Antidiskriminierungsgesetz</i>)</a> came into force on 21 June 2020. The act shall protect against discrimination by public authorities of the state of Berlin. As such, the act is the first of its kind in Germany and aims to complement the federal General Equal Treatment Act ( <i>Allgemeines Gleichbehandlungsgesetz</i> ).
<b>Racism, xenophobia &amp; Roma integration</b>	<b>Catalogue of 89 measures to combat right-wing extremism and racism:</b> On 2 December 2020, the <a href="#">Federal Government approved the catalogue of measures to combat right-wing extremism and racism</a> . A commission of the Federal Cabinet, established in the wake of right-wing extremist terror that occurred in 2019/20, drafted the catalogue. The catalogue includes 89 measures that range from the strengthening of the intelligence services to the launch of a central helpline providing counselling services to victims of racism and increased funding of education and research. The implementation shall be funded with at least one billion Euros until 2024.
<b>Asylum &amp; migration</b>	<b>CJEU decides that Germany must recognise deserters from Syria as refugees:</b> On 19 November 2020, the <a href="#">CJEU decided the case of a Syrian who was seeking international protection in Germany</a> . Unlike the German asylum authorities, the Court held that deserters from Syria are at general risk of being persecuted in their home country and, thus, require refugee status rather than subsidiary protection.
<b>Data protection and digital society</b>	<b>Landmark decision on surveillance of extraterritorial communication:</b> On 19 May 2020, the <a href="#">Federal Constitutional Court decided that the surveillance of extraterritorial communication by the Federal Intelligence Service (<i>Bundesnachrichtendienst</i>) violates the constitution</a> . The Court held that article 10 of the German constitution also protects the right to confidential communication of foreign citizens in other

	countries, and found that the contested legislation allows for disproportionate surveillance.
<b>Rights of the child</b>	<b>Growing number of states with child rights commissioners:</b> On 20 October 2020, the <a href="#">state government of Hesse appointed a Commissioner for Child and Youth Rights</a> to promote child rights and raise awareness in all sectors of society. Hesse is the second state after Sachsen-Anhalt (2007) to establish a child rights commissioner. In <a href="#">Brandenburg, the state assembly also voted on 24 September 2020 to establish such a commissioner</a> in 2021.
<b>Access to justice, including victims of crime</b>	<b>First state report in implementation of the Istanbul Convention:</b> On 1 September 2020, <a href="#">Germany's first state report on the implementation of the Istanbul Convention</a> was submitted by the leading Federal Ministry for Family Affairs, Senior Citizens, Women and Youth to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO).
<b>Convention on the Rights of Persons with Disability</b>	<b>Third reform phase of Federal Participation Act:</b> The third reform phase foreseen by the Act to Strengthen the Participation and Self-Determination of Persons with Disabilities, also known as <a href="#">Federal Participation Act (<i>Bundesteilhabegesetz</i>)</a> , came into force on 1 January 2020. Hence, support for inclusion is now to be oriented at the individual needs of a person with disabilities. The payment of lump sums is replaced by the separate payment of a benefit for basic needs on the one hand, and tailored special benefits on the other hand.

## Chapter 1. Equality and non-discrimination

### 1.1 Legal and policy developments or measures relevant to fostering equality and combating discrimination against older people and against LGBTI people.

#### LGBTI people

On 25 November 2020, the **Federal Government has presented a bill for the protection of children with variants of gender development.**<sup>1</sup> The draft bill aims to prohibit changes to the child's sexual characteristics "if these lead to a

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<sup>1</sup> Germany, German Bundestag (*Deutscher Bundestag*) (2020) *Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung*, Printed Document 19/24686 25 November 2020, available at <https://dip21.bundestag.de/dip21/btd/19/246/1924686.pdf>.

change in the innate sex".<sup>2</sup> 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 appropriate maturity is given. For this, further requirements must be met (including parental consent and approval from the family court).

**On 7 May 2020, the Bundestag adopted "the Act to Protect against Conversion Treatments" (*Entwurf eines Gesetzes zum Schutz vor Konversionsbehandlungen*),** the purpose of which is to ban medical interventions aimed at deliberately changing, or suppressing, the sexual orientation or self-perceived gender identity of a person.<sup>34</sup> The law came into force on 12 June 2020.<sup>5</sup> The legislation is intended to stop conversion treatments for minors and persons of legal age, whose consent was obtained without their volition, as well as advertising, providing and arranging such treatments.

Violations of this law are to be penalised with a prison sentence of up to one year, or a heavy fine. This includes adults, other legal guardians, or persons with parental authority in case of gross violation of their duty of care or their educational responsibilities.

The law stipulates a counselling service by the Federal Centre for Health Education (*Bundeszentrale für gesundheitliche Aufklärung/BZgA*), especially for all those LGBTI people personally affected. It is planned that the service will be available

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<sup>2</sup> Deutsches Institut für Menschenrechte (Februar 2020). Stellungnahme. Referentenentwurf eines Gesetzes zum Schutz von Kindern vor geschlechtsverändernden operativen Eingriffen Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz vom 09.01.2020, available at

[www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2020/Downloads/021720\\_Stellungnahme\\_DIMR\\_RefE\\_SchutzKinder.pdf;jsessionid=37A9C35F971BD624050189C087DEC9E7.1\\_cid334?\\_blob=publicationFile&v=3](http://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2020/Downloads/021720_Stellungnahme_DIMR_RefE_SchutzKinder.pdf;jsessionid=37A9C35F971BD624050189C087DEC9E7.1_cid334?_blob=publicationFile&v=3)

<sup>3</sup> Germany, Federal Ministry of Health (*Bundesministerium für Gesundheit*) (2020), *Entwurf eines Gesetzes zum Schutz vor Konversionsbehandlungen*, available at:

[www.bundesgesundheitsministerium.de/fileadmin/Dateien/3\\_Downloads/Gesetze\\_und\\_Verordnungen/GuV/K/GE\\_Konversionstherapienverbot\\_bf.pdf](http://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/K/GE_Konversionstherapienverbot_bf.pdf)

<sup>4</sup> Germany, *Gesetz zum Schutz vor Konversionsbehandlungen* (2020), available at: [https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3\\_Downloads/Gesetze\\_und\\_Verordnungen/GuV/K/BGBl\\_Schutz\\_vor\\_Konversionsbehandlungen.pdf](https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/K/BGBl_Schutz_vor_Konversionsbehandlungen.pdf)

<sup>5</sup> Germany, Bundesgesetzblatt Teil I Nr. 28 (2020), Bonn, 23 June 2020, available at [www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl120s1285.pdf#bgbl\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl120s1285.pdf%27%5D\\_1601378225505](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s1285.pdf#bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl120s1285.pdf%27%5D_1601378225505)

free-of-charge, in multiple languages and anonymously. There is no official information on the implementation of this service to date.<sup>6</sup>

On 17 September 2020, the current Minister of Defence Kramp-Karrenbauer presented a study on experiences of discrimination among homosexual soldiers in the Federal Armed Forces (*Bundeswehr*) before the year 2000 (see below for details) and apologised to those affected.<sup>7</sup> **The Ministry of Defence (*Ministerium der Verteidigung*) is planning to rehabilitate and compensate gay soldiers who were systematically discriminated against between 1955 and 2000.** Kramp-Karrenbauer announced that a draft bill will follow in the near future after the intra-government consultation process (*Ressortabstimmung*).

### **Older people: Discrimination linked to the COVID-19 pandemic**

The measures taken by the government to contain the spread of the Coronavirus are based on a federal law, namely the Protection against Infectious Diseases Act (*Infektionsschutzgesetz*). The freedom-restricting measures foreseen therein are inter alia aimed at persons who would directly be endangered by an infection. For around 3,7 million people in the need of care and especially for those living in care institutions (24 % of the people in the need of care) the protective measures taken by the Länder and the health authorities have had considerable consequences on their living conditions. In a position paper on the lessons to be learned from the first six months after the start of the Covid-19 pandemic, **the federal interest group for old people and people in need of care pass the measures and their consequences for people living in nursing homes in review:**<sup>8</sup>

The residents of nursing homes experienced a sudden closure; external contacts were no longer possible from one day to the next. Visits from relatives were no longer allowed. The contacts between the residents were also very limited, they sometimes had to spend weeks in room quarantine. There were no exceptions to

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<sup>6</sup> Reply to information request at the Federal Centre for Health Education from September 2020 is still pending.

<sup>7</sup> Tagesschau (2020), *Diskriminierung in der Bundeswehr. Entschädigung für homosexuelle Soldaten*, 17 September 2020, available at: [www.tagesschau.de/inland/homosexuelle-bundeswehr-entschaedigung-101.html](http://www.tagesschau.de/inland/homosexuelle-bundeswehr-entschaedigung-101.html)

<sup>8</sup> BIVA-Pflegeschutzbund (2020), *Ein halbes Jahr Corona im Pflegeheim – Was uns die Krise lehrt. Lebensqualität und Infektionsschutz aus Sicht des Verbraucherschutzes*, Positionspapier, 08 September 2020, available at <https://www.biva.de/positionspapier-corona-im-pflegeheime-was-uns-die-krise-lehrt/>

these rules, not even for residents with dementia who were not capable of understanding the sudden prohibitions on contact or meeting at a great distance behind dividing windows

The measures and recommendations issued by the local authorities were very general, most of them did not even regulate important issues such as the residents' possibilities to exit the nursing homes to go for a walk. Overall, this led to a shift of responsibilities to the facility management of the nursing homes, giving them more decision-making authority. When weighing up a restriction of the residents' rights of freedom against a possible infection in the nursing home with the result of negative press the facility management often opted for what they considered to be the safe way: Their actions were particularly strict and the recommendations were implemented without assessing the individual case. For instance, it has happened that they issued two-week room quarantines for residents who had left the nursing home "on their own" to go for a walk in the garden. Due to the restrictions, necessary therapies were not carried out, which often led to shortcomings in care (for example pressure sores).

## **1.2 Findings and methodology of research, studies or surveys on experiences of discrimination against older people and against LGBTI people.**

### **LGBTI people**

On 2 September 2020, the **results of the survey "LGBTQI\* People on the Labour Market: Highly Educated, Frequently Discriminated Against" conducted by German Institute for Economic Research (*Deutsches Institut für Wirtschaftsforschung*) Berlin and Bielefeld University were published.** As LGBTI people are hardly represented in existing surveys, and as information on sexual orientation or gender identity in any official register data is usually missing, empirical research on the labour market situation of LGBTI people in Germany was very limited so far. That is why the Federal Ministry of Education and Research funded to the Socio-Economic-Panel, which is a longitudinal panel dataset of the population in Germany, a supplementary randomised sample, called "SOEP-LGB", of people who identify as LGBTI. The households of the "SOEP-LGB" sample were identified using randomised telephone screening. In addition, the survey was supplemented with data from an online survey at Bielefeld University

with LGBTI people recruited via social media.<sup>9</sup> Altogether, the sample size consisted of 858 people who identified as LGBTI and professional interviewers conducted the interviews.

**Although societal acceptance of LGBTI people has improved over the past two decades in Germany, the survey shows that an average of 30 percent of those who identify as LGBTI and Trans\* people in particular have experienced (rarely, sometimes or often) discrimination in their work life** within the last two years in Germany.<sup>10</sup> The self-reported discrimination of LGBTI people varies in different areas of their life. Work life constitutes one of the areas in which discrimination is experienced comparatively often (by nearly 30 %). The experience of discrimination is less when interacting with the police (6,4 %), official offices or authorities (12,5 %), or in the educational sector (23,1 %). Compared to the 30 % of LGBTI people who have experienced discrimination, trans\* people report even higher rates of discrimination (43 %; among them 7 % even report frequent discrimination). Additionally, the survey shows that one third of LGBTI people are not open to their colleagues or superiors about their sexual orientation or gender identity, probably to avoid unequal treatment or discrimination.

On 17 September 2020, the Minister of Defence Annegret Kramp-Karrenbauer presented the **study "Taboo and Tolerance. The dealing of the Federal Armed Forces with homosexuality from 1955 to the turn of the millennium"**, which gives an insight into the discrimination against homosexuals in the Bundeswehr before the year 2000.<sup>11</sup><sup>12</sup> On behalf of the Federal Ministry of Defence, the Centre for Military History and Social Sciences of the Bundeswehr (*Zentrum für Militärgeschichte und Sozialwissenschaften der Bundeswehr, ZMSBw*) has examined the history of the way of dealing with homosexuality on a broad source basis. The author of the study conducted interviews with around 60 contemporary witnesses, most of them soldiers who had served before 2000. They

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<sup>9</sup> De Vries, L., Fischer, M., Kasproski, D., Kroh, M., Kühne, S., Richter, D. Zindel, Z. (2020), LGBTQI\* People on the Labor Market: Highly educated, frequently discriminated against, DIW

<sup>10</sup> De Vries, L., Fischer, M., Kasproski, D., Kroh, M., Kühne, S., Richter, D. Zindel, Z. (2020), LGBTQI\* People on the Labor Market: Highly educated, frequently discriminated against, DIW Weekly Report, available at: [www.diw.de/documents/publikationen/73/diw\\_01.c.798215.de/dwr-20-36-1.pdf](http://www.diw.de/documents/publikationen/73/diw_01.c.798215.de/dwr-20-36-1.pdf)

<sup>11</sup> Storkmann, K. (2020), *Tabu und Toleranz. Der Umgang der Bundeswehr mit Homosexualität von 1955 bis zur Jahrtausendwende*, Zentrum für Militärgeschichte und Sozialwissenschaften der Bundeswehr (Ed.), available at [www.zmsbw.de/html/einsatzunterstuetzung/downloads/089201storkmannpreprintvu20200914.pdf?PHPSESSID=c7d458b083ec23e29c3197a2cc3bfd51](http://www.zmsbw.de/html/einsatzunterstuetzung/downloads/089201storkmannpreprintvu20200914.pdf?PHPSESSID=c7d458b083ec23e29c3197a2cc3bfd51)

<sup>12</sup> Germany, Federal Ministry of Defence (2020), *Studie „Tabu und Toleranz“ zu Homosexualität in der Bundeswehr*, 17 September 2020, available at [www.bmvg.de/de/aktuelles/studie-tabu-toleranz-homosexualitaet-bundeswehr-2336504](http://www.bmvg.de/de/aktuelles/studie-tabu-toleranz-homosexualitaet-bundeswehr-2336504)

were interviewed in person, by telephone or in writing. In addition, decision-makers from the Federal Armed Forces and the Ministry of Defence, politicians, civil servants, generals, and officers at the time were interviewed. Furthermore, the author analysed internal papers from the ministry, judgments of administrative courts, as well as personal documents and other personal records kept by those affected.

The study showed, among other things, that same-sex orientation in the Federal Armed Forces was considered a security risk up to the turn of the millennium, and made a career as an officer or non-commissioned officer impossible. If soldiers were convicted of homosexual acts according to section 175 StGB, the criminal judgment was regularly followed by a conviction by the Disciplinary and Complaints Court of the Federal Armed Forces.<sup>13</sup> There was not even a trial in all cases. Often the dismissal took place in accordance with section 55 (5) of the Law on Soldiers (*section 55 Absatz 5 Soldatengesetz*). This law made a dismissal possible, if remaining in service posed a serious threat to the reputation of the Federal Armed Forces. However, the study also showed that, although many contemporary witnesses reported high psychological pressure, many of those affected confirmed that the tolerance in the Bundeswehr was greater than the official regulations actually allowed.

### **Older people: experiences of discrimination against older people linked to the corona COVID-19 pandemic**

#### **So far, there are only few surveys on experiences of discrimination against older people linked to the corona COVID-19 pandemic available.**

In a non-representative survey with more than thousand participants, including above all relatives, on possibilities for visits in nursing homes and the consequences of social isolation, the federal interest group for old people and people in need of care (*Bundesinteressensvertretung für alte und pflegebetroffene Menschen*, BIVA) illustrates that the consequences of the restriction of visiting regulations to people living in nursing homes are judged as severe. For instance, 65 percent of the interviewees report that they have noticed a decline in the cognitive abilities of the people in need of care and even 80 percent complain that their zest for life seem to have decreased. In a position paper on the lessons to be learned from the first six months after the start of the COVID-19 pandemic, the federal interest group for old people and people in need of care report that

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<sup>13</sup> Until 1969, sex between men was sometimes severely punished according to paragraph 175 of the Criminal Code, even if it was consensual.

people in nursing home reacted to the visiting bans with depression, thoughts of suicide and even with suicide.<sup>14</sup>

**The Federal Antidiscrimination Agency (*Antidiskriminierungsstelle des Bundes*) draws attention to the fact that older people report derogatory public reporting or political statements against older people.**<sup>15</sup> By 20 April 2020, already 100 counselling cases on discrimination in connection with the Coronavirus had been received, by July 30 more than 700.<sup>1617</sup> An analysis of the first 100 counselling cases showed that 16 percent of the cases involved the elderly. For example, people with walking aids failed to do shopping due to requirements in supermarkets to use a shopping cart.<sup>18</sup> In public reporting or in political statements, older people and people with pre-existing illnesses were often summarised as "old and weak" persons. The report concludes that such a categorisation can lead to the feeling of being worth less and that such statements can be an expression of structural discrimination.

**The German Centre of Gerontology (*Deutsches Zentrum für Altersfragen, DZA*) has argued in a report that, during the pandemic, older people are often depicted as a vulnerable, helpless group that need to be protected and thereby reinforcing negative age stereotypes.**<sup>19</sup> It is true that the severity of the course and the risk of death from COVID-19 increase sharply with age. However, the authors point out that the course of the illness is essentially related to the general state of health and relevant previous illnesses and cannot be ascribed to "age" itself. The procedure of determining risk groups only based on age can lead to negative self-images of age being consolidated. There is a risk

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<sup>14</sup> BIVA-Pflegeschatzbund (2020), *Ein halbes Jahr Corona im Pflegeheim – Was uns die Krise lehrt. Lebensqualität und Infektionsschutz aus Sicht des Verbraucherschutzes*, Positionspapier, 08 September 2020, available at <https://www.biva.de/positionspapier-corona-im-pflegeheime-was-uns-die-krise-lehrt/>

<sup>15</sup> Germany, Antidiskriminierungsstelle des Bundes (2020), *Diskriminierungserfahrungen in Zeiten von Corona*, available at: [www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Corona/FAQ/FAQ\\_node.html](http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Corona/FAQ/FAQ_node.html)

<sup>16</sup> Germany, Antidiskriminierungsstelle des Bundes (2020), *Diskriminierungserfahrungen im Zusammenhang mit der Corona-Krise*, available at [www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Dokumente\\_ohne\\_anzeige\\_in\\_Publicationen/20200504\\_Infopapier\\_zu\\_Coronakrise.pdf?\\_\\_blob=publicationFile&v=2](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Dokumente_ohne_anzeige_in_Publicationen/20200504_Infopapier_zu_Coronakrise.pdf?__blob=publicationFile&v=2)

<sup>17</sup> Germany, Antidiskriminierungsstelle des Bundes (2020), *Diskriminierungserfahrungen in Zeiten von Corona*, available at: [www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Corona/FAQ/FAQ\\_node.html](http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Corona/FAQ/FAQ_node.html)

<sup>18</sup> Germany, Antidiskriminierungsstelle des Bundes (2020), *Diskriminierungserfahrungen im Zusammenhang mit der Corona-Krise*, available at [www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Dokumente\\_ohne\\_anzeige\\_in\\_Publicationen/20200504\\_Infopapier\\_zu\\_Coronakrise.pdf?\\_\\_blob=publicationFile&v=2](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/Dokumente_ohne_anzeige_in_Publicationen/20200504_Infopapier_zu_Coronakrise.pdf?__blob=publicationFile&v=2)

<sup>19</sup> Spuling, S. M., Wettstein, M., & Tesch-Römer, C. (2020). *Altersdiskriminierung und Altersbilder in der Corona-Krise*, DZA-Fact Sheet, Deutsches Zentrum für Altersfragen, available at <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-67214-2>

that social discourse about older people could lead people to believe that chances of the elderly of surviving COVID-19 are lower, which then again could lead to unjustified discrimination (for example in terms of medical treatment). The authors fear that decisions could be made based on age alone, and not on detailed information about health of the respective persons. Beyond that, the authors note that ageism is exacerbated when the public discourse on the pandemic depicts older people as a homogenous group despite high interindividual differences.<sup>2021</sup>

**In a joint statement** of different sections of the German Society for Gerontology and Geriatrics, the **scientists notice that television and radio are primarily talking about older people, without letting the elderly speak for themselves about their view** of their life situations. They call for older people to have a voice in the public media.<sup>22</sup>

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<sup>20</sup> Tesch-Römer, C. *„Es trifft sowieso nur die Alten und Kranken.“ Risikostatus, Stereotype und Diskriminierung in der Corona-Pandemie*, Präsentation im Rahmen der Reihe „COVID-19 und die Folgen“ des Wissenschaftsschwerpunktes Gesundheitswissenschaften, Universität Bremen, 15 July 2020, available at [http://www.healthsciences.uni-bremen.de/fileadmin/public-health-bremen/downloads/Tesch-Roemer\\_Corona-Stereotype\\_2020-07-14.pdf](http://www.healthsciences.uni-bremen.de/fileadmin/public-health-bremen/downloads/Tesch-Roemer_Corona-Stereotype_2020-07-14.pdf)

<sup>21</sup> Ehni, H.-J., & Wahl, H.-W. (2020). Six Propositions against Ageism in the COVID-19 Pandemic. *Journal of Aging & Social Policy*, 1-11.

<sup>22</sup> Deutsche Gesellschaft für Gerontologie und Geriatrie (2020), *Gemeinsames Statement der Sektionen für Geriatrische Medizin (II), Sozial- und Verhaltenswissenschaftliche Gerontologie (III), Soziale Gerontologie und Altenhilfe (IV) der Deutschen Gesellschaft für Gerontologie und Geriatrie (DGGG e.V.). Partizipation und soziale Teilhabe älterer Menschen trotz Corona-Pandemie ermöglichen*, 24. April 2020, available at [https://www.dggg-online.de/fileadmin/aktuelles/covid-19/20200424\\_DGGG\\_Statement\\_Sektionen\\_II\\_III\\_IV\\_Soziale\\_Teilhabe\\_und\\_Partizipation.pdf](https://www.dggg-online.de/fileadmin/aktuelles/covid-19/20200424_DGGG_Statement_Sektionen_II_III_IV_Soziale_Teilhabe_und_Partizipation.pdf)

## Chapter 2. Racism, xenophobia and related intolerance

### 1. Legal and policy developments relating to the application of the Racial Equality Directive

On 4 June 2020, the **Berlin House of Representatives (*Berliner Abgeordnetenhaus*)** voted for a **State Anti-Discrimination Act (*Landes-Antidiskriminierungsgesetz*)** that came into force on 21 June 2020. The Berlin Anti-Discrimination Act aims to protect against discrimination by public authorities of the state of Berlin. As such, the act is the first of its kind in Germany and aims to complement the federal General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*), which transposed the Racial Equality Directive into German law in 2006, but only covers employment and matters of private law. The Berlin act shall protect against direct and indirect discrimination and harassment by (staff of) public authorities not only on grounds of ethnic origin, racist or Antisemitic labelling, language, religion, belief, disability, age, gender or sexual identity, but also on grounds of chronic disease or social status. Persons who think that they have experienced discrimination can lodge legal claims for compensation by the responsible public authority within twelve months. When doing so, the burden of proof is eased, as the affected person only has to establish facts in court, which make it predominantly likely that a discrimination did actually occur. As stipulated by the act, an ombudsperson was established on 6 October 2020 to support and advice people who have experienced discrimination.<sup>23</sup> Recognised anti-discrimination organisations may represent affected persons in court. In addition, the act does provide for representative legal action by anti-discrimination organisations against structural issues. Finally yet importantly, the act promotes diversity in the Berlin administration.<sup>24</sup>

The **adoption of the Berlin act was highly controversial**. Whereas, for example, the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des*

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<sup>23</sup> Germany, Berlin Senate Administration for Justice, Consumer Protection and Antidiscrimination (*Berliner Senatsverwaltung für Justiz, Verbraucherschutz und Antidiskriminierung*) (2020), 'Neue LADG-Ombudsstelle nimmt Arbeit auf: Mehr Rechtsschutz für Berliner\*innen', Press release, 6 October 2020, available at:

<https://www.berlin.de/sen/justva/presse/pressemitteilungen/2020/pressemitteilung.1000277.php>.

<sup>24</sup> Germany, State Anti-Discrimination Act Berlin (*Landesantidiskriminierungsgesetz Berlin*), 11 June 2020, available at: [http://gesetze.berlin.de/jportal/portal/t/t22/page/bsbeprod.psml?pid=Dokumentanzeige&showdoccase=1&js\\_peid=Trefferliste&fromdoctodoc=yes&doc.id=jlr-ADiskrGBErahmen&doc.part=X&doc.price=0.0#focuspoint](http://gesetze.berlin.de/jportal/portal/t/t22/page/bsbeprod.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&fromdoctodoc=yes&doc.id=jlr-ADiskrGBErahmen&doc.part=X&doc.price=0.0#focuspoint)

*Bundes*) lauded the act as an important step,<sup>25</sup> police unions and ministers of the interior from outside Berlin, in particular, feared that the police would face mass complaints due to alleged racial profiling that would hinder effective police work. For these reasons, the Federal Minister of the Interior and several ministers for the interior of other German states threatened to stop support operations of their police forces in Berlin.<sup>26</sup> However, when a first stocktaking took place around two months after the act came into force, it showed that the number of overall complaints under the new act was modest and allegations of discrimination against the police were the exception: Until early September 2020, 66 complaints were lodged, among which only six addressed the police.<sup>27</sup>

On 9 June 2020, the **Federal Anti-Discrimination Agency published its annual report for 2019**. The Agency reported that the number of complaints had increased by 3.6 per cent to 3,580 cases of which one third (1,176 case) were related to racial discrimination.<sup>28</sup> On the publication of the report, Bernhard Franke, since May 2018 (sic!) the provisional head of the agency, called for a revision of the General Equal Treatment Act in order to extend the deadlines for submitting complaints and to allow civil society organizations and anti-discrimination authorities to take legal action.<sup>29</sup> The foreword of the annual report reminds of the risks of rising discrimination in the context of the COVID-19 pandemic as demonstrated, for instance, by cases of experiences with racism by people of Asian origin.<sup>30</sup>

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<sup>25</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2020), 'Antidiskriminierungsstelle des Bundes legt Jahresbericht 2019 vor', Press release, 9 June 2020, available at: [https://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2020/20200609\\_PK\\_Jahresbericht\\_2019.html](https://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2020/20200609_PK_Jahresbericht_2019.html).

<sup>26</sup> rbb24 (2020), 'Seehofer: "Bis auf weiteres" keine Bundespolizei-Einsätze in Berlin', 17 June 2020, available at: <https://www.rbb24.de/politik/beitrag/2020/06/seehofer-bmi-polizei-einsatz-berlin-keine-bundespolizisten-ladq-.html>.

<sup>27</sup> rbb24 (2020), 'Bisher keine Klagen auf Grundlage von Berliner Antidiskriminierungsgesetz, 4 September 2020', available at: <https://www.rbb24.de/politik/beitrag/2020/09/berlin-antidiskriminierungsgesetz-polizei-zwischenbilanz-drei-mo.html>.

<sup>28</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2020), *Jahresbericht 2019*, Berlin, available at: <https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Jahresberichte/2019.pdf>.

<sup>29</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2020), 'Antidiskriminierungsstelle des Bundes legt Jahresbericht 2019 vor', Press release, 9 June 2020, available at: [https://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2020/20200609\\_PK\\_Jahresbericht\\_2019.html](https://www.antidiskriminierungsstelle.de/SharedDocs/Aktuelles/DE/2020/20200609_PK_Jahresbericht_2019.html).

<sup>30</sup> For more information on complaints lodged with the Federal Anti-Discrimination Agency in the context of the Covid 19 pandemic see our Corona country report for July, p. 13, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/de\\_report\\_on\\_coronavirus\\_pandemic\\_july\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/de_report_on_coronavirus_pandemic_july_2020.pdf).

### 1.3 Legal and policy developments relating to the application of the Framework Decision on Racism and Xenophobia relevant to combating hate speech and hate crime

In the wake of the bloody assault against a synagogue in Halle that took place on 9 October 2019,<sup>31</sup> the Federal Government had adopted a plan to combat right-wing extremism and hate crime on 30 October 2019.<sup>32</sup> On 18 March 2020, the **Federal Cabinet decided to establish a Cabinet Commission for Combating Right-wing Extremism and Racism (*Kabinettsausschuss zur Bekämpfung von Rechtsextremismus und Rassismus*)** which shall coordinate the implementation of the above-mentioned plan and prepare additional measures.<sup>33</sup> Permanent members of the commission are the Federal Chancellor and the Vice Chancellor, the Federal Minister of the Interior, the Foreign Minister, the Minister of Justice, the Minister of Defence, and the Minister for Family Affairs, the Minister for Education, the Chief of the Federal Chancellery, the Government's Integration Commissioner, the State Minister for Culture, and the speaker of the government.<sup>34</sup>

Until early October 2020, the Commission has met two times. During its first meeting, which took place on 20 May 2020, the Commission took stock of existing measures, adopted an agenda for its work, and decided to issue a catalogue of measures in October 2020. These measures shall focus on four aspects, namely a) awareness raising and the improvement of structures to combat right-wing extremism and racism, b) prevention and political education, c) support for victims of racism, and d) recognising the value of diversity and strengthening the

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<sup>31</sup> The assault in Halle was followed by the racist attack in Hanau on 19 February 2020, when a 43-year old German killed nine persons and seriously injured several others for racist motifs in the Hesse city, before he shot himself and his mother to death. See: Germany, The Federal Public Prosecutor General (*Der Generalbundesanwalt*) (2020), 'Mitteilung zum Stand des Ermittlungsverfahrens wegen des Anschlages in Hanau am 19. Februar 2020', Press release, 20 February 2020, available at:

<https://www.generalbundesanwalt.de/SharedDocs/Pressemitteilungen/DE/2020/Pressemitteilung2-vom-20-02-2020.html>.

<sup>32</sup> Germany, Federal Government (*Die Bundesregierung*) (2019), *Maßnahmenpaket zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*, Berlin, 30 October 2019, available at:

[www.bmjbv.de/SharedDocs/Downloads/DE/News/Artikel/103019\\_Ma%C3%9Fnahmenpaket\\_Rechtsextremismus.pdf?\\_\\_blob=publicationFile&v=1](http://www.bmjbv.de/SharedDocs/Downloads/DE/News/Artikel/103019_Ma%C3%9Fnahmenpaket_Rechtsextremismus.pdf?__blob=publicationFile&v=1).

<sup>33</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), 'Bundesregierung verstärkt Kampf gegen Rechtsextremismus und Rassismus', News, 18 March 2020, available at: <https://www.bundesregierung.de/breg-de/aktuelles/ausschuss-rechtsextremismus-1731860>.

<sup>34</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), 'Zweite Sitzung des Kabinettsausschusses Kampf gegen Rechtsextremismus', News, 2 September 2020, available at: <https://www.bundesregierung.de/breg-de/aktuelles/rechtsextremismus-1754250>.

participation of people with migrant background.<sup>35</sup> The second meeting took place on 2 September 2020, focusing on hearings with representatives of civil society, in particular migrant organisations, and academia. The catalogue of measures shall be adopted at the third meeting, whereas at the fourth and final meeting, which is scheduled for the first quarter of 2021, a final report shall be issued and forwarded to the German Bundestag.<sup>36</sup> Civil society organisations warned the Commission to pay lip services and called for a serious and robust agenda against racism, antisemitism and right-wing extremism, among others by adopting a binding definition of institutional and structural racism, commissioning a study on racial profiling by police, a reform of the General Equal Treatment Act that widens the scope to cover public authorities and allow for representative legal action against discrimination.<sup>37</sup>

On 25 November 2020, the **Cabinet Commission presented a catalogue of 89 measures to combat right-wing extremism and racism and announced to spend one billion Euros** (and perhaps another 150 million Euros), from 2021 to 2024 to fund the planned activities. Among others, the list includes measures such as the establishment of a central hotline to provide counselling services for victims of racism, the criminalisation of insulting filled with hatred (*verhetzende Beleidigung*) or the compilation of "kill lists", the improvement of information exchange between the police and intelligence services, or legal hacking powers for the intelligence services to intercept encrypted communication. Moreover, it is planned to replace the term "race" in Article 3 of the German constitution, to fund research and civil society initiatives, and to promote a closer cooperation between the security authorities and civil society to combat right-wing extremism and racism.<sup>38</sup> Organisations such as the Central Council of the Jews in Germany (*Zentralrat der Juden in Deutschland*) or the Central Council of German Sinti and Roma (*Zentralrat der Deutschen Sinti und Roma*) welcomed the catalogue and

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<sup>35</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), *Bericht der Bundesregierung. Kabinettausschuss zur Bekämpfung von Rechtsextremismus und Rassismus*, 20 May 2020, available at:

<https://www.bmfsfj.de/blob/155856/da1f56a6fa9d877d7d4144930253748b/20200525-koalitionsausschuss-rechtsextremismus-data.pdf>.

<sup>36</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), 'Zweite Sitzung des Kabinettausschusses Kampf gegen Rechtsextremismus', News, 2 September 2020, available at: <https://www.bundesregierung.de/breg-de/aktuelles/rechtsextremismus-1754250>.

<sup>37</sup> Verband der Beratungsstellen für Betroffene rechter, rassistischer und antisemitischer Gewalt, EachOneTeachOne, Bundesverband Mobile Beratung and neue deutsche organisationen (2020), 'Was wir brauchen: Eine Agenda gegen Rassismus, Antisemitismus und Rechtsextremismus – und keine Sonntagsreden', Joint statement, 19 August 2020, available at: <https://neuedeutsche.org/de/artikel/was-wir-brauchen-eine-agenda-gegen-rassismus-antisemitismus-und-rechtsextremismus-und-keine-sonn/>.

<sup>38</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), *Maßnahmenkatalog des Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*, Berlin, 25 November 2020, available at: [www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1](http://www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1).

called on the government that efforts to implement the plans are now crucial.<sup>39</sup> Critical voices noted that many of the announced measures are quite vague and lack clear and detailed objectives.<sup>40</sup>

The Commission's catalogue also addressed two politically very sensitive issues, namely the highly controversial discussion about a national study on racial profiling and, secondly, right-wing extremism within the police and the Federal Armed Forces (*Bundeswehr*).

Since 17 March 2020, when the European Commission against Racism and Intolerance (ECRI) had recommended in the context of its sixth monitoring cycle "that the police authorities of the Federation and the Länder commission and participate in a **study on racial profiling** with the aim of developing and implementing measures that eliminate existing and prevent future racial profiling", the issue was on the political agenda.<sup>41</sup> Whereas it seemed in June that the Federal Government was willing to commission such a study, the Federal Minister of the Interior rejected the claims on 5 July, arguing that racial profiling by German police officers does happen only on very rare occasions, as German law prohibits it.<sup>42</sup> In the course of the summer, the focus of the discussion on a racial profiling study shifted and expanded in the wake of investigations against groups and networks of racist and right wing extremist police officers in several *Länder* (see next paragraph). The Federation of Criminal Investigators (*Bund Deutscher Kriminalbeamter*), for example, then called for a study on extremist attitudes, racism and racial profiling.<sup>43</sup> In Hesse, the state government established an

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<sup>39</sup> Zentralrat der Juden in Deutschland (2020), 'Zu Katalog des Kabinettsausschusses: Auf die Umsetzung kommt es an', Press release, 25 November 2020, available at: <https://www.zentralratderjuden.de/aktuelle-meldung/artikel/news/zu-katalog-des-kabinettsausschusses-auf-die-umsetzung-kommt-es-an/>; Zentralrat Deutscher Sinti und Roma (2020), 'Bekämpfung von Antiziganismus auf allen gesellschaftlichen und politischen Ebenen verankern', Press release, 25 November 2020, available at: <https://zentralrat.sintiundroma.de/bekaempfung-von-antiziganismus-auf-allen-gesellschaftlichen-und-politischen-ebenen-verankern/>.

<sup>40</sup> Seem, for example, Dernbach, A. (2020), 'Große Koalition einig über Demokratiegelgesetz und Streichung von „Rasse“', *Tagesspiegel*, 25 November 2020, available at: <https://www.tagesspiegel.de/politik/massnahmen-gegen-rechtsextremismus-und-rassismus-grosse-koalition-einig-ueber-demokratiegelgesetz-und-streichung-von-rasse/26659210.html>.

<sup>41</sup> European Commission against Racism and Intolerance (2020), ECRI Report on Germany (sixth monitoring cycle) - Adopted on 10 December 2019, Strasbourg, European Commission against Racism and Intolerance, p. 34, available at: <https://rm.coe.int/ecri-report-on-germany-sixth-monitoring-cycle-/16809ce4be>.

<sup>42</sup> Tagesschau.de (2020), 'Racial Profiling der Polizei. Innenministerium sagt Studie ab', 5 July 2020, available at: <https://www.tagesschau.de/inland/racial-profiling-studie-101.html>.

<sup>43</sup> Bund Deutscher Kriminalbeamter (2020), 'Eine verpasste Chance - Warum auch die Polizei von einer Studie zu extremistischen Einstellungen und "racial profiling" profitieren könnte', Press release, 6 July 2020, available at: <https://www.bdk.de/der-bdk/was-wir-tun/aktuelles/eine-verpasste-chance-warum-auch-die-polizei-von-einer-studie-zu-extremistischen-einstellungen-und-racial-profiling-profitieren-koennte-1>.

independent expert commission, chaired by the former ECHR judge Angelika Nußberger, to examine the management of misbehaviour and draft new policies for an “accountable police in the pluralist society”.<sup>44</sup> Social Democratic state ministers of the interior warned that they could commission a study on racism in the ranks of the police in their *Länder*, and the Federal Minister of Justice argued that such efforts would be in the very interest of the police.<sup>45</sup> Nonetheless, the Federal Ministry of the Interior reported on 20 October: “There will be no study which is directed against the police with insinuations and accusations. After all, the overwhelming majority of over 99 percent of the police force are committed to the Basic Law.” Instead, it was reported that the Federal Government had agreed on the compromise to commission one study on “everyday racism” (*Alltagsrassismus*) and discrimination in civil society, business and public authorities, and another study on “daily police work” (*Polizeialltag*) to analyse in detail the relation between state and society and changing social contexts, including violence and hate against police officers.<sup>46</sup> The commitment to commission both of these studies was later included into the Cabinet Commission’s catalogue of measures to combat right-wing extremism and racism.<sup>47</sup>

The uncovering of extremist groups and networks within several German police forces and other security authorities in the recent years very much influenced the **debate on racism and right wing extremism among German police officers**. In November 2018, an investigative research by journalists of the daily “*die tageszeitung*” reported on a right-wing network of active and former soldiers, police officers and members of the domestic intelligence authorities, who allegedly prepared for a “Day X” by joint combat training, the stockpiling of weapons and the compilation of lists of political enemies.<sup>48</sup> Investigations on who was behind threatening messages that were sent in August 2018 to a lawyer who had represented relatives of a victim of the right-wing murders of the so-called

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<sup>44</sup> Germany, Hesse State Government (*Hessische Landesregierung*) (2020), ‘Unabhängige Expertenkommission der hessischen Polizei berufen’, Press release, 18 August 2020, available at: <https://www.hessen.de/presse/pressemitteilung/unabhaengige-expertenkommission-der-hessischen-polizei-berufen-0>.

<sup>45</sup> Tagesschau.de (2020), ‘Debatte um Studien zur Polizei: SPD-Länder wollen nicht auf Seehofer warten’, 18 September 2020, available at: <https://www.tagesschau.de/inland/nrw-polizei-rechtsextremismus-107.html>.

<sup>46</sup> Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2020), ‘Seehofer: “Keine Rassismus-Studie in der Polizei”’, 20 October 2020, available at: <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/10/keine-studie-rechtsextremismus-polizei.html>.

<sup>47</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), *Maßnahmenkatalog des Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*, Berlin, 25 November 2020, Nos. 13 and 15, available at: [www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1](http://www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1).

<sup>48</sup> Kaul, M., Schmidt, C., Schulz, D. (2018), ‘Hannibals Schattenarmee’, *die tageszeitung*, 16 November 2018, available at: <https://taz.de/Rechtes-Netzwerk-in-der-Bundeswehr!/5548926/>.

“National Socialist Underground” (NSU) led to police officers in Hesse who had exchanged racist and neo-Nazi content via a chat group.<sup>49</sup> Whereas these so-called “NSU 2.0 investigations” are ongoing, the police in Hesse has dismissed 17 police officers from the police because of right-wing extremists attitudes by the end of October 2020 and examines another 42 cases under disciplinary law.<sup>50</sup> In North- Rhine-Westphalia, criminal investigations and disciplinary proceedings were opened against a group of 30 police officers of one unit of the police department of Essen as they were suspected having shared racist and neo-Nazi content.<sup>51</sup> In the light of these and further cases in police forces of others states and in the armed forces, the Federal Ministry of the Interior published a **situation picture on right-wing extremists in the security authorities**, namely the police, intelligence authorities, armed forces and customs authorities. According to these data on the opening of proceedings on ground of disciplinary or labour law that were collected by the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*), 1,441 persons were suspected of right-wing extremist attitudes from 1 January 2017 to 31 March 2020, most of them in the armed forces (1,064 cases). In this period, 131 officers and soldiers have been dismissed; in 119 cases, other forms of disciplinary action were taken.<sup>52</sup> According to the catalogue of measures to combat right-wing extremism and racism, the Federal Government now plans to update the situation picture for the entire civil service, as well as to improve the exchange with the *Länder* on possibilities of disciplinary action against right-wing extremists.<sup>53</sup>

A key instrument announced by the plan to combat right-wing extremism and hate crime from October 2019 is the **Act to Combat Right-wing Extremism and Hate Crime (*Gesetz zur Bekämpfung des Rechtsextremismus und der***

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<sup>49</sup> See: Von Bebenburg, P, Voigts, H. (2020), ‘„NSU 2.0. Der hessische Polizeiskandal’, in: Kleffner, H., Meisner, M. (eds.), *Extreme Sicherheit. Rechtsradikale in Polizei, Verfassungsschutz, Bundeswehr und Justiz*, Freiburg, Herder Verlag, pp. 131-146.

<sup>50</sup> Germany, Hessian Ministry of the Interior and Sport (*Hessisches Ministerium des Innern und für Sport*) (2020), ‘Rechtsradikale Verdachtsfälle konsequent verfolgt’, Press release, 29 October 2020, available at: <https://innen.hessen.de/presse/pressemitteilung/rechtsradikale-verdachtsfaelle-konsequent-verfolgt>.

<sup>51</sup> Germany, Ministry of the Interior of the State of North Rhine-Westphalia (*Ministerium des Innern des Landes Nordrhein-Westfalen*) (2020), ‘Extremistische Chats – Reul verspricht Aufklärung’, News, available at: <https://www.im.nrw/extremistische-chats-reul-verspricht-aufklaerung>.

<sup>52</sup> Germany, Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) (2020), *Lagebericht „Rechtsextremisten in Sicherheitsbehörden“*, Cologne, September 2020, available at: <https://www.verfassungsschutz.de/de/oeffentlichkeitsarbeit/publikationen/pb-rechtsextremismus/broschuere-2020-09-lagebericht-rechtsextremisten-in-sicherheitsbehoerden>.

<sup>53</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), *Maßnahmenkatalog des Kabinettausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*, Berlin, 25 November 2020, Nos. 11 and 18, available at: [www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1](http://www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1)

**Hasskriminalität**).<sup>54</sup> The Act aims to improve the persecution of online hate speech. 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*) shall be amended. It shall become mandatory 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*). In addition, to threaten someone with dangerous bodily injury shall be criminalised, as well as approving crimes that have not been committed yet. The Federal Criminal Police Office shall be authorised – also for preventive purposes – to request user data such as the IP address of the originators of suspected online content from telemedia service providers such as social media platforms. The German Bundestag voted for the act on 18 June 2020, the Federal Council adopted it on 3 July.<sup>55</sup> However, the act was not issued until early December, as the Office of the Federal President (*Bundespräsidialamt*) has doubts over its constitutionality in the light of the recent decision of the Federal Constitutional Court on law enforcement access to subscriber data (see the case law summary for the chapter on information society, privacy and data protection in the annex).<sup>56</sup> A motion of the Green Party in the German Bundestag calling on the government to revise the act immediately in line with the standards of constitutional law was rejected more than once in the Legal Committee.<sup>57</sup> According to media reports, the Federal Ministry of the Interior has sent a draft bill, which aims at amending both the provisions on access to subscriber data and the Act to Combat Right-wing Extremism and Hate Crime, to selected organisations for comments in late November. Reportedly, the plan is that the Federal President could thus issue the original Act to Combat Right-wing Extremism and Hate Crime and the act aiming at amending it at the same day, so that both could come into force before the end of 2020.<sup>58</sup> However, a Bill for the Adaptation of the Regulations on Subscribers

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<sup>54</sup> Germany, Federal Council (Bundesrat) (2020), *Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität. Gesetzesbeschluss des Deutschen Bundestages*, Printed Document 339/20, 19 June 2020, available at:

[https://www.bundesrat.de/SharedDocs/drucksachen/2020/0301-0400/339-20.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundesrat.de/SharedDocs/drucksachen/2020/0301-0400/339-20.pdf?__blob=publicationFile&v=1).

<sup>55</sup> Germany, German Bundestag (*Deutscher Bundestag*), *Basisinformation über den Vorgang: Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*, available at: <http://dipbt.bundestag.de/extrakt/ba/WP19/2599/259975.html>.

<sup>56</sup> Mascolo, G. and Steinke, R. (2020), 'Hate-Speech-Gesetz. Bedenken in Bellevue', *Süddeutsche Zeitung*, 17 September 2020, available at: <https://www.sueddeutsche.de/politik/hate-speech-hasskriminalitaet-gesetz-steinmeier-1.5034929>.

<sup>57</sup> Heute im Bundestag (2020), 'Gesetzentwürfe passieren Rechtsausschuss', 25 November 2020, available at: <https://www.bundestag.de/presse/hib/809320-809320>.

<sup>58</sup> Kaufmann, A.; Suliak, H. (2020): 'Kann das Gesetz gegen Hasskriminalität bald in Kraft treten? BMI legt Reparaturgesetz vor', *Legal Tribune Online*, 26 November 2020, available at: <https://www.lto.de/recht/hintergruende/h/gesetz-hasskriminalitaet-verfassungswidrig-reparaturbestandsdatenauskunft-ausfertigung-bundespraesident/>.

Data Disclosure to the Requirements of the Decision of the Federal Constitutional Court of 27 May 2020 (*Entwurf eines Gesetzes zur Anpassung der Regelungen über die Bestandsdatenauskunft an die Vorgaben aus der Entscheidung des Bundesverfassungsgerichts vom 27. Mai 2020*) was only tabled in the German Bundestag on 15 December 2020, without a first reading taking place before the end of the year.<sup>59</sup> Thus, also the issuance of the Act to Combat Right-wing Extremism and Hate Crime is pending.

Also in response to right-wing terror and racist incidents, the Federal Minister of the Interior appointed the members of an **Independent Expert Body on Hostility against Muslims** (*Unabhängiger Expertenkreis Muslimfeindlichkeit*) on 1 September 2020. The twelve experts from academia and civil society organisations shall analyse the changing forms of hostility against Muslims and examine its intersections with antisemitism and other forms of racism and hostility against certain groups of people. The establishment of the Independent Expert Body on Hostility against Muslims follows other independent expert bodies on antisemitism and antigypsyism; the expert body shall start its work in autumn 2020 and present its final report and recommendations within two years.<sup>60</sup>

## Studies

In cooperation with the Federal Criminal Police Office, researchers of the universities of Marburg and Osnabrück analysed the relation between racist hate crime and the regional share of migrant population. By correlating data on xenophobic hate crimes, as registered by the police and aggregated by the Federal Criminal Police Office for the national crime statistics 2015, with the regional share of refugees and other foreigners in all 402 German districts, the researchers tested the validity of competing theories in socio-psychology that explain hate crime either by the lack of contacts between natives and newly arrived migrants ("group-contact theory"), or by feelings of competition and intimidation ("threat theory"). The study found that in regions with higher numbers of migrants less racist hate

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<sup>59</sup> Heute im Bundestag (2020). 'Anpassung der Regelungen zur Bestandsdatenauskunft', 16 December 2020, available at: <https://www.bundestag.de/presse/hib/814016-814016>. See also: Germany, German Bundestag (*Deutscher Bundestag*), *Basisvorgang: Gesetz zur Anpassung der Regelungen über die Bestandsdatenauskunft an die Vorgaben aus der Entscheidung des Bundesverfassungsgerichts vom 27. Mai 2020*, available at: <http://dipbt.bundestag.de/extrakt/ba/WP19/2714/271425.html>.

<sup>60</sup> Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bauen und Heimat*) (2020), 'Bundesinnenminister Seehofer beruft Mitglieder für Unabhängigen Expertenkreis Muslimfeindlichkeit', Press release, 1 September 2020, available at: <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/09/expertenkreis-muslimfeindlichkeit.html>.

crimes were committed. The researchers tentatively concluded that the long-term presence of migrants allows for establishing social contacts and positive experiences between the groups.<sup>61</sup>

In 2020, the Federal Association of Research and Information Centres Anti-Semitism (*Bundesverband der Recherche- und Informationsstellen Antisemitismus*) published several studies on Antisemitic incidents. The first annual report of the Association documents 1,253 incidents that were counted in 2019 in four of the 16 German states; data from the other twelve German states were deemed not very meaningful due to a high number of uncounted cases.<sup>62</sup> In September 2020, the Association published a study on antisemitism in the context of the Covid-19 pandemic. The study reports a rise of Antisemitic narratives and conspiracy theories in relation to both the origins of the pandemic and the restrictions to protect public health. On the other hand, less Antisemitic incidents were counted during the lockdown in the offline world whereas online hate speech continued to proliferate in the internet.<sup>63</sup>

On 3 July 2020, the German Bundestag commissioned the German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung*) to conduct a three-years "Racism Monitor". Four nine million Euros the Centre shall conduct representative surveys to study both racist prejudices and experiences with racism. The research shall complement existing qualitative research with small samples.<sup>64</sup>

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<sup>61</sup> Germany, Federal Criminal Police Office (*Bundeskriminalamt*) (2020), 'Studie: Wo viele Ausländerinnen und Ausländer leben, gibt es weniger fremdenfeindliche Straftaten', Press release, 15 June 2020, available at: [https://www.bka.de/DE/Presse/Listenseite\\_Pressemitteilungen/2020/Presse2020/200609\\_pmRassistischeKriminalitaet.html](https://www.bka.de/DE/Presse/Listenseite_Pressemitteilungen/2020/Presse2020/200609_pmRassistischeKriminalitaet.html). The study was published at: Wagner, U. et al. (2020), 'Proportion of Foreigners Negatively Predicts the Prevalence of Xenophobic Hate Crimes within German Districts', *Social Psychology Quarterly*, Vol. 83, No. 2, pp. 195-205.

<sup>62</sup> Bundesverband der Recherche- und Informationsstellen Antisemitismus (2020), *Bericht dokumentierter antisemitischer Vorfälle 2019*, Berlin, May 2020, available at: [https://report-antisemitism.de/documents/2020-05-06\\_rias-ev-Bericht\\_dokumentierter\\_antisemitischer\\_Vorfaelle\\_2019.pdf](https://report-antisemitism.de/documents/2020-05-06_rias-ev-Bericht_dokumentierter_antisemitischer_Vorfaelle_2019.pdf).

<sup>63</sup> Bundesverband der Recherche- und Informationsstellen Antisemitismus (2020), *Antisemitismus im Kontext der Covid-19-Pandemie*, Berlin, September 2020, available at: [https://report-antisemitism.de/documents/2020-09-08\\_Rias-bund\\_Antisemitismus\\_im\\_Kontext\\_von\\_covid-19.pdf](https://report-antisemitism.de/documents/2020-09-08_Rias-bund_Antisemitismus_im_Kontext_von_covid-19.pdf).

<sup>64</sup> Deutsches Zentrum für Integrations- und Migrationsforschung (2020), 'Rassismusforschung in Deutschland wird gestärkt', Press release, 3 July 2020, available at: [https://dezim-institut.de/fileadmin/PDF-Download/200703\\_PM\\_Rassismus-Monitor.pdf](https://dezim-institut.de/fileadmin/PDF-Download/200703_PM_Rassismus-Monitor.pdf).

## Chapter 3. Roma equality and inclusion

### 1. Measures and developments addressing Roma/Travellers

While the **Independent Commission on Antigypsyism (*Unabhängige Kommission Antiziganismus*)**, which was launched in 2019, is working behind closed doors to prepare its final report, which will be presented in 2021, only few other major developments occurred.

In the context of the above mentioned **Cabinet Commission to Combat Right-Wing Extremism and Racism (*Kabinettausschuss zur Bekämpfung von Rechtsextremismus und Rassismus*)**, the Federal Government confirmed its commitment to address anti-gypsyism, among others, by the programme "Live Democracy!" ("*Demokratie leben!*").<sup>65</sup>

Seven so-called model projects are funded so far in the framework of the **second funding period of the "Live Democracy!" programme**, which started in 2020 and will terminate on 31 December 2024. These projects aim at 1) empowering Roma in Düsseldorf, 2) raising awareness for racism against Sinti and Roma through political education and learning history in Berlin, 3) establishing a competence centre on antigypsyism in Celle, 4) raising awareness for antigypsyism among media representatives in Berlin, 5) supporting remembrance in Saarbrücken, 6) funding a Roma information centre in Göttingen, and 7) developing an education programme against antigypsyism in Berlin. In addition, the Documentation and Cultural Centre of the German Sinti and Roma in Heidelberg is funded as so-called competence centre.<sup>66</sup>

In the **catalogue of 89 measures to address right wing extremism and racism** that the Federal Government published on 25 November 2020 (see

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<sup>65</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), *Bericht der Bundesregierung. Kabinettausschuss zur Bekämpfung von Rechtsextremismus und Rassismus*, 20 May 2020, p. 18, available at: <https://www.bmfsfj.de/blob/155856/da1f56a6fa9d877d7d4144930253748b/20200525-koalitionsausschuss-rechtsextremismus-data.pdf>.

<sup>66</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Womens and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2020), *Demokratie leben! Handlungsfeld Vielfaltgestaltung*, available at: <https://www.demokratie-leben.de/projekte-expertise/projekte-finden>. To find the projects choose "Antiziganismus" from the dropdown menu "Thema auswählen".

chapter 2.2 for more details), the Federal Ministry of the Interior announces to establish a national contact point in the context of the EU Roma Strategy 2030. Moreover, support for an independent monitoring to compile information on racist violence, in particular antigypsyist violence, is mentioned, as well as an evaluation of political measures that aim to combat antigypsyism in consultation with civil society, new measures in the field of political education. It is promised to advance the Documentation and Cultural Centre of the German Sinti and Roma under the programme "Live Democracy" and to invest more resources in research on antigypsyism.<sup>67</sup>

## **1.4 Policy and legal measures and developments directly or indirectly addressing Roma/Travellers inclusion**

**Incidents of antigypsyist stigmatisation in the context of the pandemic** were reported after the emergence of local Covid-19 "hotspots" in Göttingen and Berlin in May and June 2020, when Roma families were scapegoated for having caused the outbreaks due to allegedly irresponsible behaviour. Local authorities reacted harsh by quarantining and fencing whole blocks, which barred the inhabitants from access to basic needs, jobs and education and amplified the stigmatisation.<sup>68</sup> In response to these incidents, the Robert-Koch-Institute, the Federal Government's central scientific institution in the field of biomedicine and safeguarding public health, published guidelines for local health authorities on liaison, communication and cooperation with marginalised groups in early September 2020. With explicit reference to the above-mentioned incidences of Roma stigmatisation, the guidelines clarify, firstly, that it is not ethnic background determining the risks of infections, but behaviour and living conditions and, secondly, that "difficult" populations do not exist. Rather, approaches tailored to the target groups would enable all citizens to contribute to the containment of the pandemic. Thus, liaison with gatekeepers and mediators and the use of

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<sup>67</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), *Maßnahmenkatalog des Kabinettsausschusses zur Bekämpfung von Rechtsextremismus und Rassismus*, Berlin, 25 November 2020, available at: [www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1](http://www.bundesregierung.de/resource/blob/997532/1819984/4f1f9683cf3faddf90e27f09c692abed/20-11-25-massnahmen-rechtsextremi-data.pdf?download=1).

<sup>68</sup> For critical reports on the response of the authorities see, for example, Roma Center (2020), 'Hetze wegen Corona in Göttingen breitet sich aus', 4 June 2020, available at: <https://www.roma-center.de/hetze-wegen-corona-in-gottingen-breitet-sich-aus/>; Lauer, S. (2020), 'Die Legende von den "Großfamilien" am Corona-Hotspot', *Belltower*, 12 June 2020, available at: <https://www.belltower.news/antiziganismus-die-legende-von-den-grossfamilien-am-corona-hotspot-100321/>.

appropriate media and language is recommended for awareness raising and other forms of prevention, as well as for getting people involved in case of an outbreak.<sup>69</sup>

The German government expressed its commitment against anti-gypsyism also in the context of the **German EU presidency** during the second half of the year 2020. According to the Presidency's programme, Germany aims to promote a European debate on challenges and solutions for the integration of Roma. This debate shall involve civil society and aims to develop the EU framework for the national strategies for the integration of Roma after 2020.<sup>70</sup> On 12 October 2020, the German EU Presidency held a major online conference with around 300 participants from authorities of the EU Member States, EU institutions, international organisations and NGOs to discuss the EU Roma Strategy 2030 that the European Commission presented on 7 September 2020. The German Minister of the Interior confirmed that he supports the approach of the EU Commission to make the fight against antigypsyism a key issue in the coming years.<sup>71</sup>

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<sup>69</sup> Robert-Koch-Institut (2020), *Allgemeine Hinweise für Gesundheitsbehörden zur Kontaktaufnahme und Zusammenarbeit mit marginalisierten Bevölkerungsgruppen*, Berlin, 3 September 2020, available at:

[https://www.rki.de/DE/Content/InfAZ/N/Neuartiges\\_Coronavirus/Marginalisierte\\_Gruppen.html](https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/Marginalisierte_Gruppen.html).

<sup>70</sup> Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2020), *Gemeinsam in Europa – Gemeinsam für Europa. Arbeitsprogramm des Bundesministeriums des Innern, für Bau und Heimat für die deutsche EU-Ratspräsidentschaft im zweiten Halbjahr 2020*, Berlin, p.5, available at:

<https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/eu-rp/bmi-programm-eu-rp.pdf>.

<sup>71</sup> Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2020), 'High-Level-Konferenz zur Bekämpfung von Antiziganismus in der EU', Press release, 12 October 2020, available at:

<https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/10/roma-strategie-2030.html>.

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

Extension of residence permits and other authorisations to stay that expired during COVID-19 pandemic measures.

EUMS/ Republic of North Macedonia, Republic of Serbia	Category of TCN	Brief description of the measure	Legal source (legislation or case law as relevant) with hyperlink	Comments
DE	Complete this row if measures concern all/most of the TCN listed below whose (national or EU law based) permission to stay expired during COVID-19 related travel restrictions. In this case indicate in the next rows the categories to which the measure applies	The German Ministry of the Interior suggests that local authorities make use of the legal fiction of section 81, paragraph 4 of the German Residence Act ( <i>Aufenthaltsgesetz</i> ). If a foreigner applies for an extension before the residence permit expires, the previous residence title is deemed to remain in force from the time it expires until the time of the decision by the authorities.	<a href="https://www.gesetze-im-internet.de/aufenthg_2004/_81.html">https://www.gesetze-im-internet.de/aufenthg_2004/_81.html</a>  <a href="https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/t_hemen/migration/runds_chreiben-entlastung-abh-corona.pdf">https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/t_hemen/migration/runds_chreiben-entlastung-abh-corona.pdf</a>  <a href="https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/t_hemen/migration/runds_chreiben-entlastung-abh-corona.pdf">https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/t_hemen/migration/runds_chreiben-entlastung-abh-corona.pdf</a>	In some cases, municipalities have also issued general decrees, according to which a legal fiction of continued validity (without having to submit an application) is ordered for all long-term residence permits of foreigners who have their main residence in the municipality.

		<p>The application to extend the residence title can be made informally, including by telephone/email.</p> <p>In cases in which it is foreseeable that a residence permit cannot be extended, the obligation to leave the country is to be enforced as far as this is possible due to the circumstances. If it is impossible to leave the country, a <i>Duldung</i> (temporary suspension of deportation) must be granted.</p> <p>In the case of termination of employment, the current situation must be taken into account within the discretionary decision about the termination or extension of the residence title.</p> <p>Receiving short-time work benefits (<i>Kurzarbeitergeld</i>,</p>	<p><a href="https://www.mak-it-in-germany.com/en/visa/covid-19-in-germany/special-regulations-on-entry-and-residence/ads/DE/veroeffentlichungen/2020/corona/rundschreiben-20200409.pdf">ads/DE/veroeffentlichungen/2020/corona/rundschreiben-20200409.pdf</a></p> <p><a href="https://www.mak-it-in-germany.com/en/visa/covid-19-in-germany/special-regulations-on-entry-and-residence/">https://www.mak-it-in-germany.com/en/visa/covid-19-in-germany/special-regulations-on-entry-and-residence/</a></p>	
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		<p>state subsidy to avoid redundancies) has no effect on the continuation of the residence title.</p> <p>For residence titles with a statutory maximum duration of residence (e.g. ICT card, residence permit for looking for an apprenticeship, study place or job, sections 17 to 20 of the Residence Act), the legal fiction of section 81, paragraph 4 of the Residence Act applies. Foreigners have to apply for an extension of the residence title before its expiry date.</p>		
	<p>Holders of visas issued based on the <a href="#">Visa Code No. 810/2009</a> (as last amended by <a href="#">Regulation (EU) No. 2019/1155</a>) (Schengen visas)</p>	<p>Schengen Visa holders were initially exempted from the requirement of a residence permit until June 30th, then until September 30th, 2020. They were allowed to pursue employment to which their Schengen visa has been entitled. On 18 September</p>	<p><a href="https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/corona/verordnung-schengen-visa-covid19V.pdf">https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2020/corona/verordnung-schengen-visa-covid19V.pdf</a></p> <p><a href="https://www.bmi.bund.de/SharedDocs/downlo">https://www.bmi.bund.de/SharedDocs/downlo</a></p>	

		<p>2020, the Federal Ministry of the Interior announced that the exemption will end after 30 September, as international travel conditions have improved so that most Schengen Visa holders should be able to return to their countries. For persons who might be unable to return to their country, the Residence Act would allow for solutions tailored to their individual problems.</p>	<p><a href="https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/09/schengen-visas-covid-19-verordnung-ausreise.html">ads/DE/veroeffentlichungen/nachrichten/2020/migration-2te-verordnung.pdf</a></p> <p><a href="https://www.schengenisainfo.com/news/stranded-schengen-visa-holders-in-germany-permitted-to-stay-seek-employment-until-september-30/">https://www.schengenisainfo.com/news/stranded-schengen-visa-holders-in-germany-permitted-to-stay-seek-employment-until-september-30/</a></p> <p><a href="https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/09/schengen-visas-covid-19-verordnung-ausreise.html">https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/09/schengen-visas-covid-19-verordnung-ausreise.html</a></p>	
	<p>Visa-free TCN who reached the maximum of 90 days in any 180-day period under Article 4 of the <a href="#">Visa List Regulation</a></p>	<p>According to section 81 paragraph 3 of the Residence Act, the legal fiction also applies to visa-free TCN</p>	<p><a href="https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/migration/rundschreiben-entlastung-abh-corona.pdf">https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/migration/rundschreiben-entlastung-abh-corona.pdf</a></p>	

(Regulation (EU) 2018/1806)				
Holders of long-term visas issued by the EUMS (under <a href="#">Regulation (EU) No. 265/2010</a> and beyond, under national law)	The above-mentioned measures apply, particularly to the legal fiction of section 81, paragraph 4 of the Residence Act	<a href="https://www.gesetze-im-internet.de/aufenthg_2004/_81.html">https://www.gesetze-im-internet.de/aufenthg_2004/_81.html</a>		
Holders of residence permits issued under <a href="#">Regulation (EC) No. 1030/2002</a> (as last amended by <a href="#">Regulation (EU) 2017/1954</a> )	The above-mentioned measures apply, particularly to the legal fiction of section 81, paragraph 4 of the Residence Act	<a href="https://www.gesetze-im-internet.de/aufenthg_2004/_81.html">https://www.gesetze-im-internet.de/aufenthg_2004/_81.html</a>		
Holders of local border traffic permit under <a href="#">Regulation (EC) No. 1931/2006</a>	Does not apply			
Any other category of TCN not listed above.	To simplify the procedure, for persons with a temporary suspension of deportation ( <i>Duldung</i> ), an <i>ex officio</i> extension can be considered	<a href="https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/t_hemen/migration/runds_chreiben-entlastung-abh-corona.pdf">https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/t_hemen/migration/runds_chreiben-entlastung-abh-corona.pdf</a>		For the period from April 1 to October 31, 2020, asylum seekers, persons with <i>Duldung</i> and TCN, whose residence title does not entail a work permit,

				<p>are allowed to work as seasonal workers in agriculture. The permission ended by 31 October 2020; it was not limited to a certain amount of days.</p> <p><a href="https://www.bmel.de/SharedDocs/Pressemitteilungen/DE/2020/070-drittstaatsangehoerige-asylbewerber-ernte.html">https://www.bmel.de/SharedDocs/Pressemitteilungen/DE/2020/070-drittstaatsangehoerige-asylbewerber-ernte.html</a></p>
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Notes:

TCN = third-country nationals

EUMS = EU Member State

## Chapter 5. Information society, privacy and data protection

### 1. Legal and political initiatives that have been implemented to support access to, and use of, personal data

After the successful implementation of a privacy-by-design approach with the German Corona tracing app that was launched on 16 June 2020,<sup>72</sup> another key issue in relation to data protection in the context of the COVID-19 pandemic was the collection and use of contact details of visitors and guests for the purpose of contact tracing that is now required by restaurants, pubs and many other venues. Most German states made the obligation to collect these data mandatory by provision of executive ordinances issued under the national Protection against Infectious Diseases Act (*Infektionsschutzgesetz*). The obligation to collect these data is controversial for several reasons. Firstly, it was argued that the data collection interferes with the fundamental right to informational self-determination and, thus, requires a legal basis adopted by parliament rather than simply an executive ordinance rather than an executive ordinance issued by a government. Secondly, unauthorised access by third parties was an issue for the supervisory authorities, for instance, when the data of digital contact lists that were collected through an app developed by the Association of the German Hotel and Catering Business could be accessed online.<sup>73</sup> Thirdly, it was contested under which circumstances these contact details may be used for purposes other than contact tracing, namely for

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<sup>72</sup> See FRA Covid-19 Bulletin Germany No. 1, pp. 15-17, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/germany-report-covid-19-april-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/germany-report-covid-19-april-2020_en.pdf); and FRA Covid-19 Bulletin Germany No. 2, pp.17-19, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/de\\_report\\_on\\_coronavirus\\_pandemic\\_-\\_may\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/de_report_on_coronavirus_pandemic_-_may_2020.pdf).

<sup>73</sup> Germany, State Commissioner for Data Protection and Freedom of Information of Rhineland Palatinate (*Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen*) (2020), 'Auswirkungen der bundesweiten Datenpanne bei Gästelisten auf rheinland-pfälzische Betriebe - LfDI fordert Informationen zur Kontakterfassungs-App der Dehoga an', Press release, 31 August 2020, available at: <https://www.datenschutz.rlp.de/de/aktuelles/detail/news/detail/News/auswirkungen-der-bundesweiten-datenpanne-bei-gaestelisten-auf-rheinland-pfaelzische-betriebe-ldi-f/>

purposes of criminal investigation.<sup>74</sup> On 28 August 2020, the Constitutional Court of Saarland (*Verfassungsgerichtshof des Saarlandes*) decided that the state ordinance violated the state constitution and called on the government to regulate the collection of contact details by state law rather than by executive ordinance until 30 November 2020.<sup>75</sup> Several state data protection commissioners have issued opinions on the use of contact details by the police. Whereas most of them confirmed that the police is authorised to request the transfer of contact details from private parties under section 152 of the Code of Criminal Procedure, they called for a modest use of this power and a case-by-case approach arguing, among others, that people might become tempted to provide false information.<sup>76</sup> In Rhineland Palatinate, the State Data Protection Commission demanded that judges should approve police access to contact details collected by restaurants and other private parties who host guests or clients.<sup>77</sup>

The turn to home schooling that was caused by the pandemic and the sudden use of Zoom, WhatsApp, school cloud services and other digital learning platforms by teachers and students gave rise to plenty of data protection issues that caught the attention of the supervisory authorities. State data protection commissioners issued guidelines and recommendations, provided model contracts for contacting services and called on the Conference of State Ministers of Culture and Education to invest in

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<sup>74</sup> See for example: Fähmann, J., Arzt, C. and Aden, H. (2020), 'Corona-Gästelisten – maßlose polizeiliche Datennutzung', *Verfassungsblog*, 14 August 2020, available at: <https://verfassungsblog.de/corona-gaestelisten-masslose-polizeiliche-datennutzung/>.

<sup>75</sup> Germany, Constitutional Court of Saarland (*Verfassungsgerichtshof des Saarlandes*) (2020), Lv 15/20, 28 August 2020, available at: <http://www.verfassungsgerichtshof-saarland.de/verfghsaar/dboutput.php?id=359>.

<sup>76</sup> See, for example, Germany, State Commissioner for Data Protection and Freedom of Information of North Rhine-Westphalia (*Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen*) (2020), 'Corona-Kontaktlisten - Zugriffe von Strafverfolgungsbehörden', Press release, 25 September 2020, available at: [https://www.lidi.nrw.de/mainmenu\\_Aktuelles/Inhalt/Zugriffe-von-Strafverfolgungsbehoerden-auf-Corona-Kontaktlisten/Zugriffe-von-Strafverfolgungsbehoerden-auf-Corona-Kontaktlisten.html](https://www.lidi.nrw.de/mainmenu_Aktuelles/Inhalt/Zugriffe-von-Strafverfolgungsbehoerden-auf-Corona-Kontaktlisten/Zugriffe-von-Strafverfolgungsbehoerden-auf-Corona-Kontaktlisten.html);

<sup>77</sup> Germany, State Commissioner for Data Protection and Freedom of Information of Rhineland Palatinate (*Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen*) (2020), 'Polizei sollte auf Corona-Gästelisten nur mit richterlichem Beschluss zugreifen - Kugelmann: Es muss eine hohe Hürde geben', Press release, 22 July 2020, available at: <https://www.datenschutz.rlp.de/de/aktuelles/detail/news/detail/News/polizei-sollte-auf-corona-gaestelisten-nur-mit-richterlichem-beschluss-zugreifen-kugelmann-es-muss/>.

privacy-friendly solutions.<sup>78</sup> In Baden-Württemberg, the State Data Protection Commissioner warned schools against the use of Zoom before the software company implemented privacy-by-default and end-to-end encryption when launching version 5.0 of the software in June.<sup>79</sup> In the wake of the “Schrems II” decision of the CJEU, the State Data Protection Commissioner of Rhineland Palatinate noted in August that schools should not use video conference tools that process data on servers in the United States and welcomed solutions by which data are processed in Rhineland Palatinate.<sup>80</sup> Other issues came with the return to face-to-face or hybrid teaching after the summer holidays. In Rhineland-Palatinate, for example, the State Data Protection Commissioner warned the school supervisory authority, which had asked schools to demand medical certificates when students declared that they could not wear masks. The commissioner argued that there was no legal basis for this requirement to disclose sensitive data.<sup>81</sup>

On 10 September 2020, the Conference of German Data Protection Commissioners published a comprehensive decision on the use of thermal cameras and fever monitoring as a means to regulate access to publicly accessible premises or workspaces in times of the pandemic. The commissioners held that the measuring of a person’s body temperature constitutes the collection of personal data if it is staff or other means identifying the affected person. Based on a thorough assessment, the commissioners

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<sup>78</sup> See, for example, Germany, State Commissioner for Data Protection of Lower Saxony (*Landesbeauftragter für Datenschutz Niedersachsen*) (2020), ‘Einsatz von Messengern an der Schule’, Press release, 20 April 2020, available at: <https://www.datenschutz.de/einsatz-von-messengern-in-der-schule/>.

<sup>79</sup> Germany State Commissioner for Data Protection and Freedom of Information (*Landesbeauftragter für den Datenschutz und die Informationsfreiheit Baden-Württemberg*) (2020), ‘Warnung des LfDI wurde gehört – Zoom bessert nach’, Press release, 25 June 2020, available at: <https://www.datenschutz.de/warnung-des-ldi-wurde-gehört-zoom-bessert-nach/>.

<sup>80</sup> Germany, State Commissioner for Data Protection and Freedom of Information of Rhineland Palatinate (*Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen*) (2020), ‘Große Herausforderung für Schulen: Auch bei Videokonferenzsystemen muss Datenschutz sichergestellt sein’, Press release, 18 August 2020, available at: <https://www.datenschutz.rlp.de/de/aktuelles/detail/news/detail/News/grosse-herausforderung-fuer-schulen-auch-bei-videokonferenzsystemen-muss-datenschutz-sichergestellt-s/>.

<sup>81</sup> Germany, State Commissioner for Data Protection and Freedom of Information of Rhineland Palatinate (*Landesbeauftragte für Datenschutz und Informationsfreiheit Nordrhein-Westfalen*) (2020), ‘Bei Attesten zur Befreiung von der Maskenpflicht müssen Persönlichkeitsrechte gewahrt bleiben – Datenschutzbeauftragter spricht „Warnung“ gegenüber Schulaufsichtsbehörde aus’, Press release, 6 November 2020, available at: <https://www.datenschutz.de/bei-attesten-zur-befreiung-von-der-maskenpflicht-muessen-persoendlichkeitsrechte-gewahrt-bleiben-datenschutzbeauftragter-spricht-warnung-gegenueber-schulaufsichtsbehoerde-aus/>.

found that the use of thermal scanning for regulating access to publicly accessible premises such as supermarkets, public transport or airports in times of the pandemic does not meet the necessity requirement; other means to meet the purpose of protecting public health are available such as mandatory masks or limiting the number of visitors. The commissioners have less concerns regarding thermal scanning in work-related contexts, as it may be necessary to assess to the work ability, but they emphasise that data controllers have to respect fully the GDPR and national data protection law in such cases.<sup>82</sup>

On 3 July 2020, the German Bundestag adopted the Act on the Protection of Electronic Patient Data in the Telematic Infrastructure (*Gesetz zum Schutz elektronischer Patientendaten in der Telematikinfrastruktur*), the so-called Patient Data Protection Act (*Patientendatenschutzgesetz*), which aims to promote the digitalisation of the health sector.<sup>83</sup> The act stipulates that all health insurance clients may request their doctors from 2022 onwards to store health data such as diagnoses, medical reports, x-ray images, and vaccination information etc. in an electronic patient file (*elektronische Patientenakte*, ePA) that the health insurance companies hosts. The individual decision for establishing such an electronic file is voluntary, and patients shall decide which data will be stored, or deleted, and who can access the data. On 19 August 2020, the Federal Commissioner for Data Protection and Freedom of Information warned, however, that the act violates EU data protection law as it provides for the launch of electronic patient files in January 2021 without planning for an immediate realisation of the data subjects' rights to decide on the use and access of their personal data. The Federal Data Protection Commissioner, thus, warned health insurance companies to simply follow the Patient Data Protection Act when implementing the ePA. He announced to review the process at the 45 statutory insurance companies under his oversight.<sup>84</sup> On 18 September 2020, the Federal Council voted for

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<sup>82</sup> Germany, Data Protection Conference (*Datenschutzkonferenz*) (2020), *Einsatz von Wärmebildkameras bzw. elektronischer Temperaturerfassung im Rahmender Corona-Pandemie. Beschluss der Konferenz der unabhängigen Datenschutzaufsichtsbehörden des Bundes und der Länder*, 10 September 2020, available at: [https://www.datenschutzkonferenz-online.de/media/dskb/20200910\\_beschluss\\_waerembildkameras.pdf](https://www.datenschutzkonferenz-online.de/media/dskb/20200910_beschluss_waerembildkameras.pdf).

<sup>83</sup> Germany, German Bundestag (*Deutscher Bundestag*), *Basisvorgang: Gesetz zum Schutz elektronischer Patientendaten in der Telematikinfrastruktur (Patientendaten-Schutz-Gesetz - PDSG)*, available at: <http://dipbt.bundestag.de/extrakt/ba/WP19/2609/260962.html>.

<sup>84</sup> Germany, Federal Commissioner for Data Protection and Freedom of Information (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*) (2020), 'BfDI zu Folgen der Gesetzgebung des PDSG', Press release, 19 August 2020, available at: [https://www.bfdi.bund.de/DE/Infothek/Pressemitteilungen/2020/20\\_BfDI-zu-PDSG.html](https://www.bfdi.bund.de/DE/Infothek/Pressemitteilungen/2020/20_BfDI-zu-PDSG.html).

the act, which will come into force probably in early October.<sup>85</sup> The Patient Data Protection Act was issued on 14 October 2020 and came into force on 20 October.<sup>86</sup>

On 19 May 2020, the Federal Constitutional Court decided in a landmark judgment that the surveillance of extraterritorial communication, for example between EU citizens who live abroad, by the Federal Intelligence Service (*Bundesnachrichtendienst*, BND) violates the constitution. The BND's surveillance of extraterritorial communication was regulated in detail for the first time in the wake of the revelations of Edward Snowden in December 2016. Among others, a so-called Independent Body (*Unabhängiges Gremium*) of two judges and one public prosecutor was established to oversee the surveillance, whereas the legislation denied that the fundamental right to confidential communication is affected. The Federal Constitutional Court held that article 10 of the German constitution does also protect the right to confidential communication of foreign citizens in other countries. The Court found that the contested legislation allows for disproportionate surveillance, neither does warrant for an adequate protection for the communication of journalists and similar professions nor for an effective oversight, in particular when it comes to international intelligence cooperation. Now, new legislation must be adopted until the end of 2021 to satisfy the verdict of the Court, which requires inter alia for a strong and professional oversight that the "third party rule" does not inhibit.<sup>87</sup> On 16 December 2020, the Federal Cabinet adopted a bill aimed at revising the Federal Intelligence Service Act (*Bundesnachrichtendienstgesetz*). Among others, it is planned to establish an Independent Control Council (*Unabhängiger Kontrollrat*), composed of six federal judges and public prosecutors, who shall approve and oversee the

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<sup>85</sup> Germany, Federal Council (*Bundesrat*) (2020), 'Bundesrat billig Patientendatenschutzgesetz', News, 18 September 2020, available at: <https://www.bundesrat.de/DE/plenum/bundesrat-kompakt/20/993/993-pk.html#top-4>.

<sup>86</sup> Germany, Act on the Protection of Electronic Patient Data in the Telematic Infrastructure (*Gesetz zum Schutz elektronischer Patientendaten in der Telematikinfrastruktur*), 14 October 2020, available at: [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl120s2115.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s2115.pdf).

<sup>87</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2020), 1 BvR 2835/17, 19 May 2020, available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rs20200519\\_1bvr283517.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/05/rs20200519_1bvr283517.html).

surveillance of extraterritorial communication by the Federal Intelligence Service (*Bundesnachrichtendienst*).<sup>88</sup> However, critics point out, among others, that post hoc oversight should have been better laid into the hands of the Federal Data Protection Commissioner to avoid further fragmentation of intelligence oversight, that the proposed provisions on SIGINT cooperation with foreign intelligence agencies would allow the Federal Intelligence Service to evade effective oversight, and that the surveillance of “machine-to-machine communication” could undermine the protection of German citizens’ communication against being caught in the extraterritorial dragnet of the Federal Intelligence Service.<sup>89</sup>

The debate on the retention of telecommunication data (“data retention”) was revived after the discovery of a child pornography network in North Rhine Westphalia (“*Missbrauchskomplex Bergisch Gladbach*”). On 14 July 2020, the Federal Minister of the Interior called on the Federal Minister of the Interior to propose an amendment of the German regulation on data retention in order to authorise a retention period of six months. Several ministers at the state and federal level, police unions and the Federation of German Judges (*Deutscher Richterbund*), which does also represent the interests of public prosecutor, publicly seconded the move.<sup>90</sup> On 1 October 2020, the Independent Commissioner for Child Sexual Abuse Issues (*Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauchs*) published a position paper which, among others, calls for a data retention regulation in line with EU law.<sup>91</sup> The execution of the current regulation by the telecommunication service providers

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<sup>88</sup> Germany, Federal Government (*Bundesregierung*) (2020), ‘Novelle des BND-Gesetzes Rechtssicheres Handeln des Bundesnachrichtendienstes wird gestärkt’, Press release, 16 December 2020, available at: <https://www.bundesregierung.de/breg-de/suche/reform-bnd-gesetz-1827908>.

<sup>89</sup> See for example: Meister, A. (2020), ‘BND-Gesetz. Bundesregierung beschließt Geheimdienst-Überwachung wie zu Snowden-Zeiten’, netzpolitik.org, 16 December 2020, available at: <https://netzpolitik.org/2020/bnd-gesetz-bundesregierung-beschliesst-geheimdienst-ueberwachung-wie-zu-snowden-zeiten/>.

<sup>90</sup> Tagesschau (2020), ‘Vorratsdatenspeicherung bei Kinderpornographie?’, 19 June 2020, available at: <https://www.tagesschau.de/inland/vorratsdatenspeicherung-kindesmissbrauch-101.html>; Tagesschau.de (2020), ‘Richterbund für Vorratsdatenspeicherung’, 18 September 2020, available at: <https://www.tagesschau.de/inland/richterbund-vorratsdatenspeicherung-kindesmissbrauch-101.html>.

<sup>91</sup> Germany, Independent Commissioner for Child Sexual Abuse Issues (*Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauchs*) (2020), *Positionspapier 2020: Gemeinsam gegen sexuelle Gewalt an Kindern und Jugendlichen*, Berlin, September 2020, p. 4, available at: <https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Positionspapiere/UBSKM-Positionspapier-2020.pdf>.

was suspended due to a decision of the Federal Network Agency (*Bundesnetzagentur*) in 2017, and the Federal Administrative Court had referred the issue to the Court of Justice of the EU in September 2019. On 9 September 2020, the state of Mecklenburg Western Pomerania tabled a motion in the Federal Council, which aims to call on the Federal Government to prepare new data retention legislation in conformity.<sup>92</sup> According to media reports, majority vote in the Committee on Women and Youth postponed a decision on the motion by the Federal Council's plenary foreseen for October 2020.<sup>93</sup> In the aftermath of the CJEU decisions on data retention in the United Kingdom and France,<sup>94</sup> the Research Service of the German Bundestag (*Wissenschaftliche Dienste des Deutschen Bundestages*) published a report, which held that, in the light of the updated standards on data retention, the current German data retention regulation are very likely to violate EU law.<sup>95</sup> On 16 December 2020, the Federal Government approved the Bill for the Modernisation of Telecommunication (*Entwurf für eine Telekommunikationsmodernisierungsgesetz*) to implement the European Codex on Electronic Communication (EU Directive 2018/1972). The bill aims to revise the German Telecommunication Act (*Telekommunikationsgesetz*), including provisions on data retention that mirror the current regulation (see sections 174 and 175 of the bill).<sup>96</sup>

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<sup>92</sup> Germany, Federal Council (*Bundesrat*) (2020), *Entschließung des Bundesrates zur Bekämpfung von Kinderpornografie und extremistischen Straftaten. Antrag des Landes Mecklenburg-Vorpommern*, Printed Document 514/20, 9 September 2020, available at:

<https://dip21.bundestag.de/dip21/brd/2020/0514-20.pdf>.

<sup>93</sup> Greis, F. (2020), Bundesrat: 'Ausschuss lehnt Initiative zur Vorratsdatenspeicherung ab', *golem.de*, 24 September 2020, available at:

<https://www.golem.de/news/bundesrat-ausschuss-lehnt-initiative-zur-vorratsdatenspeicherung-ab-2009-151100.html>.

<sup>94</sup> CJEU, C-623/17, *Privacy International*, 6 October 2020; Joined cases C-511/18, C-512/18 and C-520/18, *La Quadrature du Net and others*, 6 October 2020.

<sup>95</sup> Germany, Research Service of the German Bundestag (*Wissenschaftliche Dienste des Deutschen Bundestages*) (2020), *Auswirkungen der neuen EuGH-Rechtsprechung zur Vorratsdatenspeicherung auf die Tätigkeit der Geheimdienste*, Berlin, 6 November 2020, p. 10, available at:

<https://www.bundestag.de/resource/blob/808602/be283d6fa68962957c934f2402f51296/WD-3-240-20-pdf-data.pdf>.

<sup>96</sup> Germany, Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*) (2020), 'TKG-Novelle verabschiedet Bundeskabinett beschließt Gesetzentwurf zur Modernisierung des Telekommunikationsrechts', Press release, 16 December 2020, available at:

<https://www.bmwi.de/Redaktion/DE/Pressemitteilungen/2020/12/20201216-tkg-novelle-verabschiedet.html>. See for the bill: Germany, Federal Council (*Bundesrat*) (2021); *Entwurf eines Gesetzes zur Umsetzung der Richtlinie (EU) 2018/1972 des Europäischen Parlaments und des Rates vom 11. Dezember 2018 über den europäischen Kodex für die elektronische Kommunikation (Neufassung) und zur Modernisierung des Telekommunikationsrechts (Telekommunikationsmodernisierungsgesetz)*, Printed Document 29/21, 1 January 2021, available at: <https://www.bundesrat.de/SharedDocs/beratungsvorgaenge/2021/0001-0100/0029-21.html>.

## 1.5 Artificial intelligence and big data

MS	Actor*	Type*	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned? (yes/no)	Reference
DE	Parliament	Report	The Enquiry Commission of the German Bundestag on Artificial Intelligence organised several semi-public expert hearings in early 2020, among others, on data protection issues (13 January) and on the regulation of automated decision-making systems (10 February). In addition, the Commission launched a public online consultation on 10 March 2020. Findings of the Commission's work were presented on 28 September 2020. According to	Yes	Yes (discrimination, dignity, privacy, self-determination/autonomy, social rights)	Germany, German Bundestag ( <i>Deutscher Bundestag</i> ) (2020), 'Im Spannungsfeld zwischen Datenschutz und Künstlicher Intelligenz', available at <a href="https://www.bundestag.de/dokumente/textarchiv/2020/kw03-pa-enquete-kuenstliche-intelligenz-673918">https://www.bundestag.de/dokumente/textarchiv/2020/kw03-pa-enquete-kuenstliche-intelligenz-673918</a> Germany, German Bundestag ( <i>Deutscher Bundestag</i> ) (2020), 'Wie algorithmische Entscheidungssysteme reguliert werden können', available at: <a href="https://www.bundestag.de/dok">https://www.bundestag.de/dok</a>

		<p>reports on the presentation, the bias of algorithms was addressed in the panel on “society, state and media”. Moreover, several members of the commission stressed the need to protect and strengthen fundamental rights and involve the public when developing artificial intelligence and related policies. The Commission’s final 794-pages-report was published on 28 October 2020. The report highlights the Commission’s commitment to the guiding principle of “human-centric AI” that means that AI applications should be oriented to human wellbeing and dignity and respect or even strengthen autonomy and liberty. This approach, the Commission hopes, would warrant users’ trust and, thus, economic success and an AI of European character. Members of the Left Party voted against the</p>		<p><a href="https://www.bundestag.de/umente/textarchiv/2020/kw07-pa-enquete-ki-681576">umente/textarchiv/2020/kw07-pa-enquete-ki-681576</a></p> <p>Heute im Bundestag (2020), ‘KI-Enquete präsentiert Ergebnisse’, 28 September 2020, available at: <a href="https://www.bundestag.de/presse/hib/794976-794976">https://www.bundestag.de/presse/hib/794976-794976</a>.</p> <p>Germany, German Bundestag (<i>Deutscher Bundestag</i>) (2020), <i>Bericht der Enquete-Kommission Künstliche Intelligenz – Gesellschaftliche Verantwortung und wirtschaftliche, soziale und ökologische Potenziale</i>, Printed Document 19/23700, 28 October 2020, available at: <a href="https://dip21.bundestag.de/dip21/btd/19/237/1923700.pdf">https://dip21.bundestag.de/dip21/btd/19/237/1923700.pdf</a>.</p> <p>Executive summary in English: <a href="https://www.bundestag.de/resource/blob/804184/f31eb697deef36fc271c0587e85e5b19/Kurzfas">https://www.bundestag.de/resource/blob/804184/f31eb697deef36fc271c0587e85e5b19/Kurzfas</a></p>
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			<p>chapters on “ethic” and “business”; the Commission’s members adopted all other chapters unanimously. However, around 300 pages of the report are dissenting opinions by groups of MPs to sub-sections of the report.<sup>97</sup></p>			<p><a href="#">sung-des-Gesamtberichts-englische-Uebersetzung-data.pdf</a>.</p>
DE	Government /Parliamentary	Adopted decision	<p>On 15 May 2020, the Federal Council (<i>Bundesrat</i>) adopted a Decision, which calls on the Federal Government to “strengthen the digital sovereignty regarding algorithms”. The Federal Council welcomes the plans of the European Commission for improved collaboration of research on artificial intelligence (AI) in Europe, and claims that Europe, based on its values and fundamental rights, is decisive for the</p>	Yes	<p>Yes (focus is on discrimination but the fundamental right to personality is also mentioned)</p>	<p>Germany, Federal Council (<i>Bundesrat</i>) (2020), <i>Entscheidung des Bundesrates: Digitale Souveränität bei Algorithmen in Europa stärken - Marktprinzip einführen</i>, Printed Document 109/20, 15 May 2020, available at: <a href="https://www.bundesrat.de/drs.html?id=109-20%28B%29">https://www.bundesrat.de/drs.html?id=109-20%28B%29</a>.</p>

<sup>97</sup> Heute im Bundestag (2020), ‘KI-Enquete legt Abschlussbericht vor’, 26 October 2020, available at: <https://www.bundestag.de/presse/hib/801126-801126>.

			<p>development of “trusted AI”. Further, the Federal Government shall both promote significant investments in AI research at the European level to secure sovereignty in this area, and engage for European legislation on AI that takes consideration of the recommendations of the German Data Ethics Commission (<i>Datenethikkommission</i>) of October 2019. The Federal Council, however, highlights that other important ethical questions are still to be addressed by regulation, in particular if existing protections against discrimination are sufficient, and which limits of data analysis and automated decision-making need to be drawn to protect fundamental rights and warrant a human-centred approach. Regulation should focus on technologies,</p>			
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			which pose a particular risk. Mechanisms to protect could warrant the transparency of the involved logic and the scope of the systems.			
DE	Other	Study	On 21 April 2020, the German Institute for Human Rights, i.e. the German NHRI, published a mapping and research study on “Business and Human Rights in the Data Economy” written by researchers from the Institute for Business Ethics at the University of St. Gallen in Switzerland. The study discusses the question if, and how, due diligence obligations can be applied to the digital economy. It concludes that companies of the digital economy could learn from existing instruments such as human rights impact assessments and other toolkits.	Yes	Yes (dignity, privacy, non-discrimination on grounds of race or gender, labour rights)	Isabel Ebert, Thorsten Busch, Florian Wettstein (2020), <i>Business and Human Rights in the Data Economy A Mapping and Research Study</i> , German Institute for Human Rights, Berlin, available at: <a href="https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/ANALYSE/Analysis_Business_and_Human_Rights_in_the_Data_Economy.pdf">https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/ANALYSE/Analysis_Business_and_Human_Rights_in_the_Data_Economy.pdf</a> .
DE	NGO	Opinion	The 3-page position paper by the NGO Algorithmwatch	No	Yes (although	Algorithm Watch (2020), <i>Automated decision-making</i>

			outlines possible principles and considerations on which to ground an informed, democratic and useful discussion regarding the use of automated-decision-making systems to curb the Covid-19 pandemic.		only privacy is explicitly mentioned it his emphasized that "[i]t is not just a matter of privacy".	<i>systems and the fight against COVID-19 – our position</i> , 2 April 2020, available at: <a href="https://algorithmwatch.org/wp-content/uploads/2020/04/AlgorithmWatch-position-on-ADMS-and-the-fight-against-COVID19-v1-20200402.pdf">https://algorithmwatch.org/wp-content/uploads/2020/04/AlgorithmWatch-position-on-ADMS-and-the-fight-against-COVID19-v1-20200402.pdf</a> .
DE	Other Non Profit	Report	The report maps AI systems deployed throughout Europe because of the COVID-19 outbreak and compares the main features of these responses and discusses the issues at stake. The second part of the report presents a more detailed analysis of the situation in 16 European countries.	Yes (though mainly descriptive when detailing the situation in the country chapters)	Yes (privacy, non-discrimination)	Chiusi, F., Fischer, S., Spielkamp, M. (eds.) (2020), <i>Automated Decision-Making Systems in the COVID-19 Pandemic: A European Perspective</i> , Berlin, Algorithm Watch & Bertelsmann Foundation, 1 September 2020, available at: <a href="https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/ADM-systems-in-the-Covid-19-pandemic_Report_by_AW_BSt_Sept_2020.pdf">https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/ADM-systems-in-the-Covid-19-pandemic_Report_by_AW_BSt_Sept_2020.pdf</a> .

DE	Other Non Profit	Report	The 300-pages report maps the current use of AI applications in 16 European countries and at the EU level. The report outlines problems and benefits and issues recommendations that in particular highlight the need for transparency but also calls for the ban of facial recognition and the promotion of an inclusive and diverse debate on AI.	Yes	Yes	Chiusi, F., Fischer, S., Kayer-Bril, N., Spielkamp, M. (eds.) (2020), <i>Automating Society Report 2020</i> , Berlin, Algorithm Watch & Bertelsmann Foundation, October 2020, available at: <a href="https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/AutomatingSocietyReport20201028.pdf">https://www.bertelsmann-stiftung.de/fileadmin/files/user_upload/AutomatingSocietyReport20201028.pdf</a> .
DE	Government	Opinion	In late June 2020, the Federal Government published its opinion on the EU Commission's White Paper on Artificial Intelligence. The opinion suggests a strong regulatory framework to ensure trust in AI. Accordingly, an integral part of "AI made in Europe" must be human-centred and transparent development. An "ecosystem of trust" shall be based on the GDPR and fundamental rights,	Yes (not specified)	Yes (autonomy, informational self-determination, privacy and data protection, freedom of profession, non-	Germany, Federal Government ( <i>Die Bundesregierung</i> ) (2020), <i>Stellungnahme der Bundesregierung der Bundesrepublik Deutschland zum Weißbuch zur Künstlichen Intelligenz – ein europäisches Konzept für Exzellenz und Vertrauen COM (2020) 65 final</i> , Berlin, 29 June 2020, available at: <a href="https://www.ki-strategie-deutschland.de/files/downloads/Stellungnahme_BReg_Weissbuch_KI.pdf">https://www.ki-strategie-deutschland.de/files/downloads/Stellungnahme_BReg_Weissbuch_KI.pdf</a> .

			<p>namely autonomy, informational self-determination, freedom of profession, non-discrimination and access to effective legal remedies. When assessing the risks, it should be differentiated between the use of AI by public authorities and its use in other sectors. The Federal Government supports the Commission's risk-based approach but calls for more than two classes of risk. Moreover, the Federal Government welcomes the plans of the Commission to consider ethical, social, legal and ecological issues when building competences and promoting international collaboration.</p>		<p>discrimination and accessibility)</p>	
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\*For the actors, please pick from the following suggestions:

Government/ Parliamentary

DPA

NGO/Other Non Profit

Academia

Domestic Courts

Business

Independent State Institution

Other

\*\* for the type, please pick from the following suggestions:

National Draft Acts / Adopted Acts

report/study

other projects

## Chapter 6. Rights of the child

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

<b>Measures to address the specific vulnerabilities of children living in poverty</b>	<p><i>e.g. income support to single-headed families or dependant on number of children in the household; meals for children provided for free; free access to health services; suspension of evictions in households with children; support for distance learning (e.g. provision of computers/tablets, or access to internet)</i></p> <p>The Federal Government has taken measures to provide targeted support for children living in poverty through additional social benefits (onetime bonus of 300 Euros paid per child in autumn 2020, support for single parents through increase of tax allowance by 2,000 Euros in 2020 and 2021, continued payment of 67% of the wage for ten weeks (or 20 weeks in case of single parents), if parents could not go to work due to sudden childcare duties caused by the closure of schools and day-care centres, emergency child benefit supplement of max. 185 Euros per month until the end of September 2020 for low-income families, which, in fact, only meant that the procedure to apply for the usual child benefit supplement was eased).<sup>98</sup></p> <p>However, these measures have hardly reached children and young people who live in particularly vulnerable situations, such as children living in institutions or homeless on the street children, or children-seeking asylum. The reason for this is that the services primarily focus on supporting families, but not on children directly. With the exception of the onetime child bonus, which only requires a child benefit entitlement, any benefits must be</p>
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<sup>98</sup> For an overview see: Germany, Federal Ministry for Family Affairs, Senior Citizens, Womens and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2020), 'Corona-Pandemie. Finanzielle Unterstützung', News, 1 October 2020, available at: <https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/finanzielle-unterstuetzung>

	<p>applied for and are not automatically paid out to those entitled / needy.<sup>99</sup></p> <p>The Federal Government has also initiated an immediate programme to provide digital learning materials, especially laptops and tablets, to pupils who lack access to such devices. The programme has a volume of 500 million Euros.<sup>100</sup></p>
<p><b>Measures to protect children from violence</b></p>	<p><i>e.g. set up of new helplines or strengthening of existing ones through training or increased number of staff; campaigning on issues related to violence and COVID 19; revision of standard operating procedures for health and social workers to ensure identification and referral of victims of violence during Covid 19; social services identify alternative methods if home visits become impossible; internet safety support to families.</i></p> <p>The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (<i>Bundesministerium für Familie, Senioren, Frauen und Jugend</i>) has provided additional funds of 225,000 Euros to promote the specialist portal for child and youth services and the helpline "Telephone Number against Sorrow" ("<i>Nummer gegen Kummer</i>") in order to expand its information and counselling services.<sup>101</sup></p> <p>In addition, the Federal Government's Independent Commissioner for Issues of Sexual Child Abuse (<i>Unabhängiger Beauftragter für Fragen des sexuellen Missbrauchs</i>) has launched the campaign "Leave no child</p>

<sup>99</sup> For this critique see for example: Deutsches Institut für Menschenrechte (2020), *Ergänzung zum Parallelbericht der Monitoring-Stelle UN-KRK*, Berlin, 30 October 2020, p. 8, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere\\_Publikationen/Ergaenzung\\_zum\\_Parallelbericht\\_der\\_Monitoring\\_Stelle\\_UN\\_KRK.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Ergaenzung_zum_Parallelbericht_der_Monitoring_Stelle_UN_KRK.pdf).

<sup>100</sup> Germany, Federal Ministry for Education and Research (*Bundesministerium für Bildung und Forschung*) (2020), 'Karliczek: 500 Millionen für Schülerlaptops können fließen', Press release, 3 July 2020, available at: <https://www.bmbf.de/de/karliczek-500-millionen-fuer-schuelerlaptops-koennen-fliesen-12016.html>.

<sup>101</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Womens and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2020), "'Nummer gegen Kummer" ab sofort länger erreichbar', News, 8 April 2020, available at: <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/-nummer-gegen-kummer--ab-sofort-laenger-erreichbar/154606>.

	<p>alone”, which provides information among others on existing help services in an age appropriate manner.<sup>102</sup></p> <p>Support and assistance services provided by child and youth welfare services could only be maintained in part. No nationwide picture can be drawn here.</p>
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## 1.6 Legal and policy measures or initiatives developed about criminal proceedings

<b>Legislative changes</b>	<p><i>e.g. reform of the criminal code</i></p> <p>Relevant legislation, namely the Act to Strengthen the Procedural Rights of Accused Persons in Juvenile Criminal Proceedings (<i>Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren</i>) and the Act Reforming the Right of Necessary Defence (<i>Gesetz zur Neuregelung des Rechts der notwendigen Verteidigung</i>) came into force already in December 2019.<sup>103</sup></p>
<b>Policy developments</b>	<p><i>e.g. guidance or training for law enforcement officers on the treatment of child suspects; amendment of police academy curriculum; training of judges; developing indicators to monitor the situation of child suspects and improve data collection</i></p> <p>After the act transposing Directive 2016/800 (i.e. the Act to Strengthen the Procedural Rights of Accused Persons in Juvenile Criminal Proceedings) came into force, the Federal Government and the states have so far not taken any executive or accompanying measures nationwide and do consider the legislative amendments made by the transposition act to be sufficient. Any systematic training events on the implementation of Directive 2016/800 are primarily organised by non-state actors (in particular by the German Association for Juvenile Courts and Juvenile Court Assistance - <i>Deutsche Vereinigung für</i></p>

<sup>102</sup> See: <http://www.kein-kind-alleine-lassen.de/>

<sup>103</sup> See: <http://dipbt.bundestag.de/extrakt/ba/WP19/2517/251767.html> and <http://dipbt.bundestag.de/extrakt/ba/WP19/2517/251736.html>.

	<p><i>Jugendgerichte und Jugendgerichtshilfen</i>).<sup>104</sup> The European Commission is pursuing infringement proceedings against Germany for its failure to notify the full transposition of Directive 2016/800 (cf. BT-Drs. 19/18483, p. 4).<sup>105</sup></p>
<p><b>Other measures or initiatives</b></p>	<p><i>E.g., relevant activities to promote alternatives to detention; community involvement or general initiatives related to the dissemination and information in relation to the entering into force of the Directive.</i></p> <p>Several youth welfare offices in German states attempt to see the changes made to the Juvenile Court Act (<i>Jugendgerichtsgesetz</i>) by the implementation of Directive 2016/800 through the Act on the Strengthening of the Procedural Rights of Accused Persons in Juvenile Criminal Proceedings as an opportunity to reorganise the participation of youth welfare in juvenile criminal proceedings and, in particular, to increase the degree of the binding nature of their own participation.<sup>106</sup></p>

<sup>104</sup> See <https://www.dvjj.de/veranstaltungen/dvjj-veranstaltungen/>

<sup>105</sup> See Germany, German Bundestag (Deutscher Bundestag) (2020), *Stand der EU-Vertragsverletzungsverfahren. Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Dr. Franziska Brantner, Markus Tressel, Agnieszka Brugger, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN*, Printed Document 19/18483, 6 April 2020, p. 4, available at: <https://dserver.bundestag.de/btd/19/184/1918483.pdf>.

<sup>106</sup> See, for example: Kaiser, F. (2020), 'Reform des Jugendgerichtsgesetzes. Gelegenheit zur Neuausrichtung der Mitwirkung gemäß § 52 SBG VIII', *Mitteilungsblatt des Zentrum Bayern Familie und Soziales*, No. 1, pp. 15-22, available at: <https://www.blja.bayern.de/veroeffentlichungen/mitteilungsblatt-1-2020/>.

# Chapter 7. Access to justice including crime victims

## 1. Victims' Rights Directive

In March 2020, the Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) published a report on restorative justice in Germany, based on an analysis of statistics on offender-victim-mediation (*Täter-Opfer-Ausgleich*) from 2017 and 2018. Among others, the report considers if Article 12 of the Victims' Rights Directive on the protection of victims in the context of compensation services is fully implemented. According to the survey of more than 70 mediation centres, respectively 5.5 % (2017) and 7% (2018) of these centres do not conduct risk assessments prior to mediation, and around 14% do not insist that the offender must fully admit the facts of the case. Thus, the authors of the report conclude that most mediation centres follow all relevant EU provisions, whereas data shows that some of the centres still not adequately implement the Victims' Rights Directive.<sup>107</sup>

On 2 September 2020, the Federal Ministry of Justice and for Consumer Protection announced to expand the federal financial aid for victims of extremist and terrorist acts to include economic losses. The change is a reaction to the right-wing attacks in Halle and Hanau in 2019 and 2020 that also hit small businesses like bars and a kiosk whose owners were not entitled to claim for compensation. Now they can do so retroactively as of 1 January 2018.<sup>108</sup>

On 22 October 2020, the Federal Government tabled the Draft Act to Combat Sexualised Violence against Children (*Entwurf eines Gesetzes zur Bekämpfung sexualisierter Gewalt gegen Kinder*) which aims to improve the

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<sup>107</sup> Hartmann, A., Schmidt, M. and Kerner, H.-J. (2020), *Täter-Opfer-Ausgleich in Deutschland. Auswertung der bundesweiten Täter-Opfer-Ausgleich-Statistik für die Jahrgänge 2017 und 2018*, Berlin, Bundesministerium der Justiz und für Verbraucherschutz, pp. 19-28, available at: [https://www.bmjv.de/SharedDocs/Downloads/DE/Service/Statistiken/Download/TOA\\_2017-2018.pdf](https://www.bmjv.de/SharedDocs/Downloads/DE/Service/Statistiken/Download/TOA_2017-2018.pdf).

<sup>108</sup> Germany, Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) (2020), 'Mehr Unterstützung für Betroffene extremistischer und terroristischer Taten', Press release, 2 September 2020, available at: [https://www.bmjv.de/SharedDocs/Artikel/DE/2020/090220\\_Unterstuetzung\\_Terroropfer.html](https://www.bmjv.de/SharedDocs/Artikel/DE/2020/090220_Unterstuetzung_Terroropfer.html).

protection of children against sexualised violence. Apart from measures that shall enhance the prevention and persecution of child pornography, it is planned to improve the protection of victims during investigations and legal proceedings. Thus, the Code of Criminal Procedure (*Strafprozessordnung*) shall be amended to warrant that victims who deserve special protection are treated with more sensitivity, e.g. by the use of (video) interviews with investigative judges only, by the exclusion of the public from court proceedings, by waiving questions on their personal life, and by the acceleration of proceedings. Moreover, judges and prosecutors handling youth protection cases shall be required by an amendment of the Juvenile Court Act (*Jugendgerichtsgesetz*) to have a special qualification to treat child victims appropriately.<sup>109</sup> The first reading of the bill in the German Bundestag took place on 10 December 2020, when it was referred to the parliament's committees for further consideration.<sup>110</sup>

## 1.7 Violence against women

The Federal Government's bill aimed at criminalising "upskirting", about which we reported in our contribution to the last annual report of the FRA<sup>111</sup>, was finally adopted in summer 2020. The Act to Amend the Criminal Code – Improvement of the Protection of Personality Rights when Taking Pictures (*Gesetz zur Änderung des Strafgesetzbuches - Verbesserung des Persönlichkeitsschutzes bei Bildaufnahmen*) was issued on 9 October 2020 and will come into force on 1 January 2021.<sup>112</sup> The act amends the Criminal Code (*Strafgesetzbuch*) by the new Section 184k. Section 184k of the Criminal Code stipulates that, anyone who intentionally or knowingly takes or transmits a picture of a person's genitals, bottom, female breasts or

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<sup>109</sup> Germany, Federal Council (*Bundesrat*) (2020), *Entwurf eines Gesetzes zur Bekämpfung sexualisierter Gewalt gegen Kinder. Gesetzentwurf der Bundesregierung*, Printed Document 634/20, 22 October 2020, available at:

[https://www.bundesrat.de/SharedDocs/drucksachen/2020/0601-0700/634-20.pdf?\\_\\_blob=publicationFile&v=1](https://www.bundesrat.de/SharedDocs/drucksachen/2020/0601-0700/634-20.pdf?__blob=publicationFile&v=1). See also: Germany, Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) (2020), 'Bundesregierung beschließt Gesetzentwurf zur Bekämpfung sexualisierter Gewalt gegen Kinder', Press release, 21 October 2020, available at: [https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/102120\\_RegE\\_Bekaempfung\\_sexualisierte\\_Gewalt\\_gegen\\_Kinder.html](https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/102120_RegE_Bekaempfung_sexualisierte_Gewalt_gegen_Kinder.html).

<sup>110</sup> See: Germany, German Bundestag (*Deutscher Bundestag*), *Basisinformationen über den Vorgang. Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder*, available at: <http://dipbt.bundestag.de/extrakt/ba/WP19/2686/268633.html>.

<sup>111</sup> Töpfer, E. (2019), *FRANET national contribution to the Fundamental Rights Report 2020. Germany*, p. 31.

<sup>112</sup> Germany, Act to Amend the Criminal Code – Improvement of the Protection of Personality Rights when Taking Pictures (*Gesetz zur Änderung des Strafgesetzbuches - Verbesserung des Persönlichkeitsschutzes bei Bildaufnahmen*), 9 October 2020, available at: [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl120s2075.pdf](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl120s2075.pdf).

underwear covering these parts of the body without the affected person's consent, provided that these areas are protected from view, who uses such a picture or makes it accessible to a third person, or who makes an authorised image accessible to a third person without consent of the affected person is to be punished with imprisonment of up to two years or with a fine.

On 1 September 2020, the leading Federal Ministry submitted Germany's first state report on the implementation of the Istanbul Convention for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). The 347-pages-report provides a comprehensive overview on measures for prevention, protection and support, on the state of substantial civil and criminal law and the persecution of sexualised violence, on relevant developments in the field of migration and asylum, and data on funding and victims' protection services.<sup>113</sup>

Regarding the implementation of Article 25 of the Istanbul Convention, the German Institute for Human Rights presented the findings of a research project<sup>114</sup> on occasion of an online seminar on "acute care after sexualised violence" that was held on 22 October 2020. The research based on desktop studies, interviews and focus groups with around 100 experts, found gaps in the geographic availability of support services, the lack of binding quality standards, problems with accounting medical services without unveiling the identity of victims, and gaps in financing the maintenance of acute services in hospitals and specific services that go beyond the costs directly related to the confidential documentation of traces which are paid in accordance with Section 27 (1) of the 5<sup>th</sup> Book of the Social Code (*Sozialgesetzbuch V*) since 1 March 2020.<sup>115</sup>

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<sup>113</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2020), GREVIO. *Erster Staatenbericht der Bundesrepublik Deutschland 2020*, Berlin, available at: <https://www.bmfsfj.de/blob/160138/6ba3694cae22e5c9af6645f7d743d585/grevio-staatenbericht-2020-data.pdf>.

<sup>114</sup> For details on the project see our previous report: Töpfer, E. (2019), *FRANET national contribution to the Fundamental Rights Report 2020. Germany*, p. 32.

<sup>115</sup> Fischer, L. (2020), *Akutversorgung nach sexualisierter Gewalt. Zur Umsetzung von Artikel 25 der Istanbul-Konvention in Deutschland*, Vorabfassung, Berlin, Deutsches Institut für Menschenrechte, October 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Aktuelles/Analyse\\_Artikel\\_25\\_Istanbul-Konvention\\_Vorabfassung.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/PDF/Aktuelles/Analyse_Artikel_25_Istanbul-Konvention_Vorabfassung.pdf).

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 is financing support services for female victims of violence from 2020 to 2023. The programme is dedicated to fund investments in the expansion and modernisation of facilities such as counselling services, women's refuges and other services. The programme has a budget of 120 million Euros for the four-year period.<sup>116</sup> Responding to the specific problems caused by the Covid-19 pandemic, such as restrictions for personal counselling or decreased capacities of women's shelters due to quarantine measures, the application deadlines have been extended in order to allow timely applications for funding of, for instance, technical equipment for remote online counselling etc.<sup>117</sup>

Moreover, the Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) is offering funds for providers of social services, including those support services for victims of violence that receive public funds under the Social Code, to help their economic survival during the pandemic. Under the Social Services Commitment Act (*Sozialdienstleister-Einsatzgesetz*) that came into force on 28 March 2020 these services may apply for 75% of their regular revenue. For now, the act is valid until 31 March 2021.<sup>118</sup>

Other measures initiated by the Federal Government in response to the pandemic were launched in the context of the initiative "Stronger than Violence" ("*Stärker als Gewalt*") that was kicked-off in November 2019 to raise public awareness for domestic violence and help lines. To increase the reach out to victims of domestic violence during the pandemic, large retailer

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<sup>116</sup> See: Germany, Federal Office for Family Affairs and Societal Tasks (*Bundesamt für Familie und gesellschaftliche Aufgaben*) (2020), *Bundesservicestelle „Gemeinsam gegen Gewalt an Frauen*", available at: <https://www.bafza.de/programme-und-foerderungen/bundesservicestelle-gemeinsam-gegen-gewalt-an-frauen/>.

<sup>117</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2020), 'Ministerin Giffey: Frauenhäuser und Frauenberatungsstellen sind systemrelevant', Press release, 9 April 2020, available at: <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/ministerin-giffey--frauenhaeuser-und-frauenberatungsstellen-sind-systemrelevant/154622>.

<sup>118</sup> See: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2020), 'Sozialdienstleister-Einsatzgesetz', Background information, 2 November 2020, available at: <https://www.bmfsfj.de/bmfsfj/sozialdienstleister-einsatzgesetz/154832>; Federal Ministry of Labour and Social Affairs (2020), 'Einsatz und Absicherung sozialer Dienstleister', 6 November 2020, available at: <https://www.bmas.de/DE/Schwerpunkte/Informationen-Corona/Sozialdienstleister-Einsatzgesetz/einsatz-und-absicherung-sozialer-dienstleister.html>.

chains in widely distributing information on counselling services under the slogan "Not secure at home?" ("*Zuhause nicht sicher?*") support the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth since April 2020. Posters and other means of information are displayed in around 26,000 supermarkets across Germany.<sup>119</sup> In addition, 15 shopping malls in nine major cities decided to join the initiative in August.<sup>120</sup>

On 10 November 2020, the Federal Criminal Police Office (*Bundeskriminalamt*) and the Federal Minister for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerin für Familie, Senioren, Frauen und Jugend*) presented the annual analysis of police crime statistics on violence in partnerships for the fifth time. Accordingly, the police registered 141,792 victims of completed or attempted partnership violence in 2019 (around 81% of them women), an increase of one percent compared to 2018. 301 women and 93 men were registered by the police as victims of murder or homicide, around 12,000 women and 5,200 men as victims of dangerous physical injury, and almost 29,000 women and 3,600 men as victims of threat, stalking and coercion.<sup>121</sup>

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<sup>119</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerin für Familie, Senioren, Frauen und Jugend*) (2020), 'Zuhause nicht sicher? – Bundesfrauenministerin Giffey startet bundesweite Kooperation mit Supermärkten gegen häusliche Gewalt', Press release, 29 April 2020, available at: <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/zuhause-nicht-sicher---bundesfrauenministerin-giffey-startet-bundesweite-kooperation-mit-supermaerkten-gegen-haeusliche-gewalt/155170>.

<sup>120</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerin für Familie, Senioren, Frauen und Jugend*) (2020), 'Bundesministerin Giffey startet bundesweite Aktion mit 15 Einkaufszentren', Press release, 28 August 2020, available at: <https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/bundesministerin-giffey-startet-bundesweite-aktion-mit-15-einkaufszentren/160142>.

<sup>121</sup> Germany, Federal Criminal Police Office (*Bundeskriminalamt*) (2020), *Kriminalstatistische Auswertung zur Partnerschaftsgewalt: Berichtsjahr 2019*, Wiesbaden, 10 November 2020, available at: [https://www.bka.de/SharedDocs/Kurzmeldungen/DE/Kurzmeldungen/201110\\_AuswertungPartnerschaftsgewalt.html](https://www.bka.de/SharedDocs/Kurzmeldungen/DE/Kurzmeldungen/201110_AuswertungPartnerschaftsgewalt.html).

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

## 1. CRPD policy & legal developments

The third reform phase foreseen by the Act to Strengthen the Participation and Self-Determination of Persons with Disabilities (*Gesetz zur Stärkung der Teilhabe und Selbstbestimmung von Menschen mit Behinderungen*),<sup>122</sup> also known as Federal Participation Act (*Bundesteilhabegesetz*), came into force on 1 January 2020. Hence, support for inclusion (*Eingliederungshilfe*) was separated from the traditional system of social welfare and is now provided for as an individual right enshrined in Book IX of the Social Code (*Sozialgesetzbuch IX*). Support for inclusion is now to be oriented at the individual needs of a person with disabilities. The payment of lump sums is replaced by the separate payment of benefit for basic needs on the one hand from tailored special benefits on the other hand, thus, improving the freedom of choice. In addition, the crediting of assets and income (of partners) was partly abolished to warrant an adequate pension plan and to encourage finding oneself a job. For the first time, persons with disabilities are now entitled to receive special support benefits that would allow them to receive assistance for higher education.<sup>123</sup> The implementation of this third phase, which would include the identification of needs, has been delayed partly by the COVID-19 pandemic, so that it is too early for an evaluation of the outcomes of this reform.

On 18 September 2020, the Federal Council (*Bundesrat*) approved the Act to Strengthen Intensive Care and Medical Rehabilitation in the Statutory Health Insurance System (*Gesetz zur Stärkung von intensivpflegerischer Versorgung und medizinischer Rehabilitation in der gesetzlichen Krankenversicherung*), that was already adopted by the German Bundestag on 2 July. The act aims to improve support for intensive care patients and strengthen their autonomy. However, the act reacts on rising numbers of patients in intensive care outside of hospitals and the abuse of benefits by shady care services; it, therefore, stipulates that only doctors with special

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<sup>122</sup> Germany, Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) (2019), *Bundesteilhabegesetz*, 23 March 2020, available at: <https://www.bmas.de/DE/Schwerpunkte/Inklusion/bundesteilhabegesetz.html>.

<sup>123</sup> Germany, Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) (2019), 'Das ändert sich im neuen Jahr', Press release, 13 December 2019, available at: <https://www.bmas.de/DE/Presse/Pressemitteilungen/2019/das-aendert-sich-im-neuen-jahr.html>.

qualification can order intensive care outside of hospitals. Although persons who choose to live in another care facility than suggested must now pay only half of the costs unlike before when they had to pay the full costs, care patients and their relatives are concerned that their right to choose where they live will be restricted. Responding to these concerns, the Federal Council called on the Federal Government to monitor the implementation of the act and publish the findings.<sup>124</sup> The Act was issued on 23 October 2020 and most of its parts came into force on 29 October.<sup>125</sup>

At the early phase of the Covid-19 pandemic, interest groups voiced concerns that persons with disabilities could be at risk of medical neglect in case of an overburdening of the health system due to the pandemic.<sup>126</sup> These concerns were caused by the publication of joint clinical-ethical guidelines for triage by medical societies. Among others, these guidelines referred to the "Clinical Frailty Scale" to inform triage decisions by medial staff that could become necessary in case of scarce availability of resources for intensive care.<sup>127</sup> The interest groups criticised that the Clinical Frailty Scale is based on an outdated view on impairment and disability, so that, for example, the need of assistance could result in the denial of life-saving intensive care support, even though it does not indicate lower survival chances. Thus, the interest groups called on the parliament to regulate the triage by law, rather than leaving the crucial issue of decisions on life and death to the medical societies. Nine persons with disabilities even lodged a complaint with the Federal Constitutional Court calling for an interim injunction against the non-action of the legislator. The Court rejected their claim on 16 July 2020, arguing that an adequate consideration of the complex issues at stake is not possible in the course of proceedings on provisional remedy, whereas it was unlikely that triage decisions might become necessary given the availability of sufficient intensive care resources

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<sup>124</sup> Germany, Federal Council (Bundesrat) (2020), 'Bundesrat billigt Anspruch auf außerklinische Intensivpflege', News, 18 September 2020, available at: <https://www.bundesrat.de/DE/plenum/bundesrat-kompakt/20/993/993-pk.html#top-3>.

<sup>125</sup> Germany, German Bundestag (Deutscher Bundestag), *Gesetz zur Stärkung von intensivpflegerischer Versorgung und medizinischer Rehabilitation in der gesetzlichen Krankenversicherung (Intensivpflege- und Rehabilitationsstärkungsgesetz - GKV-IPReG). Basisinformationen über den Vorgang*, available at: <http://dipbt.bundestag.de/extrakt/ba/WP19/2593/259305.html>.

<sup>126</sup> Netzwerk Artikel 3 and Interessenvertretung Selbstbestimmt Leben in Deutschland (2020), 'Triage - Behinderung darf kein Kriterium bei Priorisierungs-Entscheidungen sein! Commentary', 31 March 2020, available at: <https://www.isl-ev.de/attachments/article/2410/Kommentar%20zu%20Triage.pdf>.

<sup>127</sup> Deutsche Interdisziplinäre Vereinigung für Intensiv- und Notfallmedizin (2020) *Entscheidungen über die Zuteilung von Ressourcen in der Notfall- und der Intensivmedizin im Kontext der COVID-19-Pandemie. Klinisch-ethische Empfehlungen*, 25 March 2020, available at: [https://www.divi.de/joomlatools-files/docman-files/publikationen/covid-19-dokumente/COVID-19\\_Ethik\\_Empfehlung.pdf](https://www.divi.de/joomlatools-files/docman-files/publikationen/covid-19-dokumente/COVID-19_Ethik_Empfehlung.pdf).

and the moderate development of the pandemic during summer. The Court did, however, not declare the complaint inadmissible from the outset, or manifestly unfounded, and will, thus, consider the matter in more detail at a later stage.<sup>128</sup> The medical societies had already updated their triage guidelines on 17 April 2020, responding to the critique.<sup>129</sup> However, the update does not warrant non-discrimination, and medical staff is still calling for legal certainty.<sup>130</sup> On 16 December 2020, the Health Committee of the German Bundestag discussed the issues around triage without decision.<sup>131</sup> Hence, legislation on the issue was neither adopted nor tabled until the end of the year 2020.

Issues relating to the situation in care homes, the closure of sheltered workshops and the cancellation of therapies were reported in the FRA Covid-19 Bulletin No. 3 that was submitted in June 2020.<sup>132</sup> In light of these problems, and anticipating rising infection numbers in autumn, the Interest Group for Self-determined Living (*Interessenvertretung Selbstbestimmt Leben*, ISL) called in September 2020 on federal policy-makers to ease restrictions in care home visits and adopt a consistent and uniform approach that applies to all care homes regardless of their location and status. Such an approach should promote the autonomy of the patients, and warrant social contacts and the visit of therapists as far as possible under the conditions of a pandemic. Information should be provided on easy and accessible language, and supervision should be strengthened. The ISL also demanded to avoid the use of the term “risk group”, as it stigmatises persons with chronic diseases and disabilities regardless of their individual constitution and resilience. Moreover, the interest group stressed that, unlike business and freelancers, people with disabilities have not received

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<sup>128</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2020), 1 BvR 1541/20, 16 July 2020, available at: [http://www.bverfg.de/e/rk20200716\\_1bvr154120.html](http://www.bverfg.de/e/rk20200716_1bvr154120.html).

<sup>129</sup> *Ärzteblatt* (2020), ‘Triage: Medizinische Fachgesellschaften aktualisieren Empfehlungen’, 23 April 2020, available at: <https://www.aerzteblatt.de/nachrichten/112230/Triage-Medizinische-Fachgesellschaften-aktualisieren-Empfehlungen>. For the revised version of the guidelines see: Deutsche Interdisziplinäre Vereinigung für Intensiv- und Notfallmedizin (2020) *Entscheidungen über die Zuteilung von Ressourcen in der Notfall- und der Intensivmedizin im Kontext der COVID-19-Pandemie. Klinisch-ethische Empfehlungen. Version 2*, 17 April 2020, available at: <https://www.divi.de/empfehlungen/publikationen/covid-19-ethik-empfehlung-v2/viewdocument/3436>.

<sup>130</sup> ZDF heute (2020), ‘Ärzte wollen Gesetz für Triage-Situationen’, 22 December 2020, available at: <https://www.zdf.de/nachrichten/panorama/corona-intensivmedizin-divi-krankenhausbetten-100.html>.

<sup>131</sup> Heute im Bundestag (2020), ‘Gesundheitsausschuss befasst sich mit Triage’, 16 December 2020, available at: <https://www.bundestag.de/presse/hib/813880-813880>.

<sup>132</sup> FRA Covid Bulletin Germany No. 3, p. 13, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/de\\_report\\_on\\_coronavirus\\_pandemic\\_june\\_2020.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/de_report_on_coronavirus_pandemic_june_2020.pdf).

any financial support to cope with the effects of the pandemic and compensate increasing costs for assistance or the suspension of support services. Thus, the risk of poverty, isolation and neglect shall be addressed by a review of existing benefits.<sup>133</sup>

## 1.8 CRPD monitoring at national level

The structure of the monitoring for the implementation of the CRPD was not changed in 2020. It remains with the German Institute for Human Rights. In April 2020, the Institute was also tasked by the government of the state of Saarland to monitor the regional implementation of the CRPD, plus the accessibility of selected websites in accordance with EU Directive 2016/2102.

Key activities and publications of the German monitoring body have been:

- Three consultations with civil society groups organising people with disabilities to discuss inclusive school and vocational education (March 2020), mobility issues (June 2020) and the implementation of the European Accessibility Act (November 2020),<sup>134</sup>
- analysis of the action plans to implement the CRPD at the state level,<sup>135</sup>

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<sup>133</sup> Interessenvertretung Selbstbestimmt Leben (2020), *Forderungen der Interessenvertretung Selbstbestimmt Leben in Deutschland e.V. (ISL) im Zuge der Auswirkungen der Corona-Pandemie*, 9 September 2020, available at: [https://www.isl-ev.de/attachments/article/2438/200909\\_Corona-Krise%20Forderungen%20der%20ISL.pdf](https://www.isl-ev.de/attachments/article/2438/200909_Corona-Krise%20Forderungen%20der%20ISL.pdf).

<sup>134</sup> German Institute for Human Rights, *Verbandekonsultationen*, available at: <https://www.institut-fuer-menschenrechte.de/monitoring-stelle-un-brk/verbaendekonsultationen/>

<sup>135</sup> Aichele, V., Litschke, P., Striek, J. and Vief, Nils (2020), *Zukunftspotenzial entfalten. Die Aktionspläne der Länder zur Umsetzung der UN-Behindertenrechtskonvention*, Berlin, German Institute for Human Rights, March 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/ANALYSE/Analyse\\_Zukunftspotenzial\\_entfalten\\_bf.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/ANALYSE/Analyse_Zukunftspotenzial_entfalten_bf.pdf).

- monitoring of the implementation of the CRPD in the states of Berlin,<sup>136</sup> Bremen, North Rhine Westphalia and Saarland (since April 2020), including an evaluation of the Bremen action plan,<sup>137</sup>
- information on CRPD General Comment No. 6 on non-discrimination and equality,<sup>138</sup>
- opinions on draft legislation on guardianship and custody law,<sup>139</sup> the reform of intensive care and medical rehabilitation in the statutory health insurance system,<sup>140</sup> and on the revision of discriminatory terminology in criminal law.<sup>141</sup>

The following work was undertaken to address the effects of the Covid-19 pandemic:

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<sup>136</sup> Hübner, C. (2020): *Stellungnahme zu Artikel 1 Landesgleichberechtigungsgesetz (LGBG) des Referentenentwurfs eines Gesetzes zur Umsetzung des Übereinkommens der Vereinten Nationen über die Rechte von Menschen mit Behinderungen im Land Berlin der Senatsverwaltung für Integration, Arbeit und Soziales vom 15.10.2019*, Berlin, German Institute for Human Rights, available at: <https://www.institut-fuer-menschenrechte.de/publikationen/detail/stellungnahme-zu-artikel-1-landesgleichberechtigungsgesetz-lgbg>.

<sup>137</sup> Deutsches Institut für Menschenrechte (2020), *Ergebnisse der Evaluation des Bremer Landesaktionsplans zur Umsetzung der UN-Behindertenrechtskonvention*, Berlin, 12 February 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Monitoring-Stelle\\_Evaluation\\_LAP\\_Bremen\\_2020.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Monitoring-Stelle_Evaluation_LAP_Bremen_2020.pdf).

<sup>138</sup> Hübner, C. (2020), *Gleichberechtigung und Nichtdiskriminierung. Allgemeine Bemerkung Nr. 6 des UN-Ausschusses für die Rechte von Menschen mit Behinderungen*, Berlin, German Institute for Human Rights, June 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/Information\\_Gleichberechtigung\\_und\\_Nichtdiskriminierung.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/Information_Gleichberechtigung_und_Nichtdiskriminierung.pdf).

<sup>139</sup> Deutsches Institut für Menschenrechte (2020), *Stellungnahme Zum Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz „Entwurf eines Gesetzes zur Reform des Vormundschafts- und Betreuungsrechts“*, Berlin, 11 August 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme\\_Referentenentwurf\\_BMJV\\_Entwurf\\_Gesetzes\\_Reform\\_Vormundschafts\\_Betreuungsrecht.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/Stellungnahme_Referentenentwurf_BMJV_Entwurf_Gesetzes_Reform_Vormundschafts_Betreuungsrecht.pdf).

<sup>140</sup> Deutsches Institut für Menschenrechte (2020), *Stellungnahme zum Gesetzentwurf der Bundesregierung „Entwurf eines Gesetzes zur Stärkung von intensivpflegerischer Versorgung und medizinischer Rehabilitation in der gesetzlichen Krankenversicherung (Intensivpflege- und Rehabilitationsstärkungsgesetz –GKV-IPReG)“*, Berlin, 17 June 2020, available at: <https://www.institut-fuer-menschenrechte.de/publikationen/detail/zum-gesetzentwurf-der-bundesregierung-entwurf-eines-gesetzes-zur-staerkung-von-intensivpflegerischer-versorgung-und-medizinischer-rehabilitation-in-der-gesetzlichen-krankenversicherung-intensivpflege-und-rehabilitationsstaerkungsgesetz-gkv-ipreg>.

<sup>141</sup> Deutsches Institut für Menschenrechte (2020), *Stellungnahme zum Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz zur Änderung des Strafgesetzbuches*, Berlin, 28 January 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/DIMR\\_MSt\\_UNBRK\\_Stellungnahme\\_BMJV\\_Ref-E\\_20\\_StGB.PDF](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Stellungnahmen/DIMR_MSt_UNBRK_Stellungnahme_BMJV_Ref-E_20_StGB.PDF).

- contribution to the position paper “Corona Crisis: Human Rights Must Guide the Political Response” that was published by the German Institute for Human Rights in March 2020,<sup>142</sup>
- the publication of a position paper on the right to health service of people with disabilities in times of the Covid-19 pandemic,<sup>143</sup>
- organisation of a round table on triage in times of a pandemic on 15 May 2020,
- exchange of views with the federal and state commissioners for matters of people with disabilities in June 2020 to discuss in particular the challenges caused by the COVID-19 pandemic.

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<sup>142</sup> German Institute for Human Rights (2020), *Corona Crisis: Human Rights Must Guide the Political Response*, Berlin, March 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Stellungnahmen/Position\\_Paper\\_Corona\\_Crisis\\_-\\_Human\\_Rights\\_Must\\_Guide\\_the\\_Political\\_Response.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Position_Paper_Corona_Crisis_-_Human_Rights_Must_Guide_the_Political_Response.pdf).

<sup>143</sup> German Institute for Human Rights (2020), *Das Recht auf gesundheitliche Versorgung von Menschen mit Behinderungen in der Corona-Pandemie*, Berlin, April 2020, available at: [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Stellungnahmen/Stellungnahme\\_Das\\_Recht\\_auf\\_gesundheitliche\\_Versorgung\\_von\\_Menschen\\_mit\\_Behinderungen\\_in\\_der\\_Corona-Pandemie.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Stellungnahme_Das_Recht_auf_gesundheitliche_Versorgung_von_Menschen_mit_Behinderungen_in_der_Corona-Pandemie.pdf).

# Annex 1 – Promising practices

<b>Thematic area</b>	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one example of a promising practice to tackle discrimination against older people or LGBTI people such as awareness raising campaigns or ethical codes for healthcare staff held in your country in 2020. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2020 relevant to equality and non-discrimination of older people or LGBTI people, preferably one conducted by a national equality body.
Title (original language)	Praxis-Leitfaden für stationäre und ambulante Pflegedienste
Title (EN)	Practical guide for inpatient and outpatient care services
Organisation (original language)	Schwulenberatung Berlin
Organisation (EN)	Gay Counselling Berlin
Government / Civil society	Non-governmental organisation
Funding body	<p>The Schwulenberatung Berlin is financed (inter alia) by the Berlin Senate Department for Health, Care and Equality, the Berlin Senate Department for Justice, Consumer Protection and Anti-Discrimination and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.</p> <p>The guideline is based on the experiences of the three-year model project “Quality Seal Living Place Diversity” (<i>Qualitätssiegel Lebensort Vielfalt</i>) which was funded by Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.</p>
Reference (incl. url, where available)	<a href="https://uploads-ssl.webflow.com/5e611da6df9df8352cedce45/5f17f2bc334be41e2bb4676a_SchwuBe_Leitfaden_DIGITAL_KLEIN%20(1).pdf">https://uploads-ssl.webflow.com/5e611da6df9df8352cedce45/5f17f2bc334be41e2bb4676a_SchwuBe_Leitfaden_DIGITAL_KLEIN%20(1).pdf</a>

	<a href="https://uploads-ssl.webflow.com/5e611da6df9df8352cedce45/5f1009eccc422260d87e3527_Diversity%20Check_englisch.pdf">https://uploads-ssl.webflow.com/5e611da6df9df8352cedce45/5f1009eccc422260d87e3527_Diversity%20Check_englisch.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Practical guide for inpatient and outpatient care services published in July 2020.
Type of initiative	Quality management tool and practical guide
Main target group	1. Nursing homes and outpatient care services 2. Hospice-services, day care centres and similar facilities
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>In May 2020 the counselling centre "Schwulenberatung Berlin", the objective of which inter alia is to provide support in issues of mental health and age-related problems to gay, bisexual men, trans* and inter* people, has introduced a practical guide for inpatient and outpatient care services. With this tool, care facilities in Germany have now the opportunity to carry out an analysis of their openness to sexual and gender diversity.</p> <p>The guide compiles strategies for introducing, implementing and maintaining LGBTI-sensitive care. It is based on the experience of the three-year pilot project 'Quality Seal Living Place' (<i>Qualitätssiegel Lebensort</i>), which is awarded to care and nursing homes that create structural, organisational and personal conditions that integrate needs of LGBTI people.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	The criteria mentioned in the guide are generally applicable to all care settings.

<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The guide is used by care facilities to prepare for the 'Quality Seal Living Place' (Qualitätssiegel Lebensort), which is awarded to care and nursing homes integrating the needs of LGBTI people. To receive the seal, institutions must ensure that employees are trained on the topics of diversity even if there is a change in staff. The guide sensitizes persons in charge to the needs of LGBTI people, raises awareness of their specific needs and encourages professionals in dealing with diversity.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The guide is an instrument to analyse the current situation of institutions (nursing homes and outpatient care services) in relation to the requirements for good care of LGBTI * people. For better implementation, a checklist helps to check which requirements the institutions already meet and how to proceed to improve. It provides strategies for introducing, implementing and maintaining LGBTI-sensitive care.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>The guide would have to be adapted to the various national requirements and be supplemented by the countries' own experiences. In that case, it could be a good starting point for a quality instrument for other countries.</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 guide is based on the experience of the three-year pilot project "Qualitätssiegel Lebensort" (Quality Seal Living Place). LGBTI * representatives were involved in the conceptual design of the quality label.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>No information available.</p>

<b>Thematic area</b>	<p><b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b></p> <p>Please provide one example of a promising practice to address racism and xenophobia in the context of the COVID-19 pandemic. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.</p>
Title (original language)	Projekt "Rassismus, Antisemitismus, Rechtsextremismus – Stärkung von Strafverfolgung und Opferschutz"
Title (EN)	Project "Racism, Antisemitism, Right-wing Extremism – Strengthening Prosecution and Victims' Protection"
Organisation (original language)	Deutsches Institut für Menschenrechte
Organisation (EN)	German Institute for Human Rights
Government / Civil society	Civil society (National Human Rights Institution)
Funding body	Federal Ministry of Justice and for Consumer Protection
Reference (incl. url, where available)	<a href="https://www.institut-fuer-menschenrechte.de/das-institut/gefuehrte-projekte/rassismus-antisemitismus-rechtsextremismus">https://www.institut-fuer-menschenrechte.de/das-institut/gefuehrte-projekte/rassismus-antisemitismus-rechtsextremismus</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	January 2020
Type of initiative	Network-building and training
Main target group	Law enforcement (police and public prosecution) and counselling and support services for victims or racist and right-wing extremist hate crime.
Indicate level of implementation: Local/Regional/National	Project work in three regions shall serve as nation-wide model

<p>Brief description (max. 1000 chars)</p>	<p>The three-year project is implemented in cooperation with the Federal Ministry of Justice and the states of Berlin, Schleswig-Holstein and Saxony. The project aims to establish model structures for the exchange of public prosecutors, police, courts, victim support institutions, representatives of plaintiff and civil society counselling centres on the topic of racist, antisemitic and right-wing motivated crimes in order to strengthen criminal prosecution and victim protection. In the longer term, this should contribute to the effective prosecution of these crimes, strengthen access to justice for victims of racist and anti-Semitic crimes and the rights of victims, and increase the willingness to report crimes. Based on the different initial structures in the three states, structures, forms of action and focal points will be developed together with local actors. The experiences will be fed into a nationwide exchange. Approaches and instruments will be developed that can be adopted by other states.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>Improved cooperation of law enforcement and victims' support and counselling services has the potential to improve the combat against racist and right-wing violence and other hate crimes and should be transferrable to other contexts where structures for victims' support exist.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>Although the project will end in December 2022, it shall develop approaches and instruments that could be adopted in other German states,</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>The extent of networking and exchange between the different actors could be measured in terms of meetings and other forms of cooperation. If this will have any impact on combating hate crimes could be measured in terms of prosecution rates.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>Wherever structures for victims' support and counselling exist, it should be possible to promote a better exchanger and closer cooperation with law enforcement, provided that trust between both sides allows for such cooperation.</p>
<p>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the</p>	<p>An advisory body which is composed of representatives from umbrella organisations of victims' support and counselling services is reviewing and informing the work of the project.</p>

design, planning, evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	See above.

<b>Thematic area</b>	<p><b>ROMA EQUALITY AND INCLUSION</b></p> <p>Please provide one example of promising practice in relation to the legal and policy developments in regard to Roma/Travellers (or any group covered by this term as per the Council of Europe definition) in 2020 that relate to the (1) application of the EU Framework on national Roma integration strategies and (2) the preparations for the new post-2020 initiative on Roma equality, inclusion and participation or in relation to any measures in your country in 2020 to address Roma inclusion and prevent discrimination, hate crime and hate speech with a particular focus on COVID-19.</p>
Title (original language)	Modellprojekt zur Sensibilisierung von Medienschaaffenden für Antiziganismus
Title (EN)	Model project to make media professionals aware of antigypsyism
Organisation (original language)	Amaro Foro
Organisation (EN)	Amaro Foro
Government / Civil society	Civil society
Funding body	Federal Ministry of Family Affairs, Senior Citizens, Women and Youth ( <i>Bundesministerium für Familie, Senioren, Frauen und Jugend</i> )

	Co-funded by the Berlin State Anti-Discrimination Agency ( <i>Berliner Landesantidiskriminierungsstelle</i> )
Reference (incl. url, where available)	<a href="https://amaroforo.de/sensibilisierung-von-medienschaffenden-fuer-antiziganismus">https://amaroforo.de/sensibilisierung-von-medienschaffenden-fuer-antiziganismus</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	March 2020
Type of initiative	Awareness-raising project
Main target group	Media professionals
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	<p>An interdisciplinary and transcultural team is developing targeted training programmes for media professionals with different focuses, e.g. for journalists, editors and chief editors as well as for photographers or image editors, which will be offered free of charge directly in the editorial offices on request. In addition, long-term cooperation is being established with journalism schools in order to anchor the topic of antigypsyism in their curricula. The training programme shall be continuously developed and will result in a practical and tested handbook in 2024, which will be made available to media professionals free of charge for low-discrimination and sensitive reporting - with formulation aids, guiding questions, checklists and the like. In addition, various formats of exchange and cooperation with the editorial offices will be designed and established in order to ensure more self-representation of Sinti and Roma in the media. In the long term, it is planned to improve access to the editorial offices for Roma and Sinti who want to become journalists themselves. Together with the participating photographers and Roma activists, a photo pool is being set up and made available free of charge, which shows Roma and Sinti in self-determined settings and thus enables non-stereotyping</p>

	images. The project is implemented in cooperation with the New German Media Makers ( <i>Neue Deutsche Medienmacher</i> ) and will run for 5 years.
Highlight any element of the actions that is transferable (max. 500 chars)	All elements (development of trainings and handbooks, changing curricula, improving access of Roma to media) are transferrable to other contexts.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	By developing a handbook, anchoring the topic of antigypsyism in curricula of journalism schools and improving access of Sinti and Roma to the media the project has the potential to change the ways how German media report of Sinti and Roma in the long term.
Give reasons why you consider the practice as having concrete measurable impact	The number of trainings and contacts to editorial offices is measurable. Moreover, it should be possible to measure how antigypsyist media reporting will change in the long term.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Media reporting is crucial for how societies imagine Roma. Raising awareness of antigypsyism among media professionals is a promising approach to change attitudes also in other EU Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	No information available.
Explain, if applicable, how the practice provides for review and assessment.	No information available.

<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> Please, provide one example of a promising practice related to any of the topics addressed in the chapter – i.e. in relation to data protection, and/or artificial intelligence systems - in 2020.
Title (original language)	Corona-Warn-App Open Source Project
Title (EN)	Corona Alert App open-source project
Organisation (original language)	Robert-Koch-Institut
Organisation (EN)	Robert Koch Institute
Government / Civil society	Government
Funding body	Federal Ministry for Health ( <i>Bundesgesundheitsministerium</i> )
Reference (incl. url, where available)	<a href="https://www.coronawarn.app/en/">https://www.coronawarn.app/en/</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	Launch of the CWA on 16 June 2020. Development of CWA was started in early May 2020, when the German government commissioned SAP and T-Systems.
Type of initiative	Corona tracing app development
Main target group	General public
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The Corona Alert App is an app that helps trace infection chains of SARS-CoV-2 in Germany. The app is based on technologies with a decentralized approach and notifies users if they have been exposed to SARS-CoV-2, provided that affected contacts become aware of their infection and voluntarily report that they have contracted the virus via the

	<p>Corona Alert App. After initial ideas to implement a track and trace system based on cell phone location data, the Federal Government opted in May 2020 for a privacy by design solution, based on Apples's and Google's Exposure Notification System and a rolling identifier system that warrants the protection of users' privacy. Moreover, the development of the app was organised as an open-source project. The app's code is published on the platform Github for crowd review.</p>
<p>Highlight any element of the actions that is transferable (max. 500 chars)</p>	<p>Both the implementation of a privacy by design approach and the development of the app supported by an open-source community is transferrable.</p>
<p>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</p>	<p>The app will be provided, maintained and updated for the overall duration of the pandemic. The successful development as an open-source project may help promote similar activities in developing public large-scale IT projects in the future.</p>
<p>Give reasons why you consider the practice as having concrete measurable impact</p>	<p>Meanwhile around 25 million users have downloaded the app which is an indicator that privacy by design helps to build trust.</p>
<p>Give reasons why you consider the practice as transferable to other settings and/or Member States?</p>	<p>Also, in other Member States it is possible to opt for a privacy by design approach as similar projects in other states have already shown. Such projects can also be organised as open-source development projects.</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>Given the open-source approach, a community of volunteers is contributing to the design and review of the app.</p>
<p>Explain, if applicable, how the practice provides for review and assessment.</p>	<p>See above.</p>

<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	Kampagne "Zuhause nicht sicher?"
Title (EN)	Campaign "Not safe at home?"
Organisation (original language)	No single organisation but a coalition of retailers in cooperation with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth ( <i>Bundesministerium für Familie, Senioren, Frauen und Jugend</i> )
Organisation (EN)	
Government / Civil society	Business
Funding body	No funding except from provision of information posters
Reference (incl. url, where available)	<a href="https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/zuhause-nicht-sicher---bundesfrauenministerin-giffey-startet-bundesweite-kooperation-mit-supermaerkten-gegen-haeusliche-gewalt/155170">https://www.bmfsfj.de/bmfsfj/aktuelles/presse/pressemitteilungen/zuhause-nicht-sicher---bundesfrauenministerin-giffey-startet-bundesweite-kooperation-mit-supermaerkten-gegen-haeusliche-gewalt/155170</a> Information posters: <a href="https://www.bmfsfj.de/blob/jump/154652/infoposter-staerker-als-gewalt-hochfoirnat-data.pdf">https://www.bmfsfj.de/blob/jump/154652/infoposter-staerker-als-gewalt-hochfoirnat-data.pdf</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	9 April 2020

Type of initiative	Information/awareness campaign
Main target group	Victims of domestic violence
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	Anticipating a rise of domestic violence during the first lockdown to contain the pandemic, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth mobilised the large retail chains (ALDI NORD and ALDI SÜD, EDEKA, LIDL, NETTO, PENNY, REAL and REWE) and shopping malls to distribute posters with information on counselling services and helplines for victims of domestic violence. Around 26,000 supermarkets and 15 shopping centres, thus, displayed posters with information at entry or cash areas, in shop windows or on bulletin boards. Some retailers printed information also on till receipts or on packaging of their own brands. In addition, posters could be downloaded for print out and distribution by private individuals.
Highlight any element of the actions that is transferable (max. 500 chars)	Information posters to be distributed widely are transferable, provided that business partners are willing to collaborate.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	Whereas information for victims of domestic violence could be distributed permanently in supermarkets, the campaign must be seen in the context of the pandemic. Thus, it is not clear how sustainable it will be.
Give reasons why you consider the practice as having concrete measurable impact	Figures on how many victims of domestic violence contact helplines and counselling services can be measured though it is difficult to determine if this was due to the campaign or other reasons.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Information posters to be distributed widely are transferable, provided that business partners are willing to collaborate.
Explain, if applicable, how the practice involves beneficiaries	No information available.

and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	
Explain, if applicable, how the practice provides for review and assessment.	No information available.

<b>Thematic area</b>	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide one example of a promising practice relating to the topics addressed in this chapter.
Title (original language)	„inkognito App“ für Frauen in Not: <a href="https://www.bmjbv.de/SharedDocs/Pressemitteilungen/DE/2020/112720_App_Inkognito.html">https://www.bmjbv.de/SharedDocs/Pressemitteilungen/DE/2020/112720_App_Inkognito.html</a>
Title (EN)	„incognito App“ for women in distress
Organisation (original language)	Gewaltfrei in die Zukunft e.V.

Organisation (EN)	Without violence into the future
Government / Civil society	Civil society
Funding body	Federal Ministry of Justice and for Consumer Protection
Reference (incl. url, where available)	<a href="https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/112720_App_Inkognito.html">https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/112720_App_Inkognito.html</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2021-2023
Type of initiative	Development of a mobile phone application
Main target group	Victims of domestic violence
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The "incognito app" aims to enable victims of domestic violence to silently send emergency calls in acute danger situations via a stealth mobile phone app. The app shall also have the option to keep a hidden diary of violence and document injuries in a secure log that can be used in court. Moreover, the app shall serve as a signpost and provide social, legal and psychological information. The idea for the app was awarded in a hackathon organised by the German government. The development of the app will be funded with 1.7 million Euros.
Highlight any element of the actions that is transferable (max. 500 chars)	All elements of the action are transferrable, provided that the use of mobile phones is widespread.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	When the app will be launched in 2023, it can be easily downloaded from the app stores. Maintenance needs to be warranted in order to update the app and make it work with forthcoming operating systems.

Give reasons why you consider the practice as having concrete measurable impact	The added value of the app will be measurable by the use of its emergency call function, access to information and the use of secure log evidence in courts.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	Given the wide-spread use of mobile phones in EU Members States the idea of the "incognito app" should be easily adaptable in other countries.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	No information available
Explain, if applicable, how the practice provides for review and assessment.	No information available

<b>Thematic area</b>	<b>DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)</b>  Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
Title (original language)	Ergänzende Unabhängige Teilhabeberatung
Title (EN)	Complementary Independent Participation Counselling Service

Organisation (original language)	A network of around 500 counselling centres of different organisations, supported and coordinated by a central contact point ( <i>Fachstelle Teilhabeberatung</i> ) run by the <u>Gesellschaft für soziale Unternehmensberatung mbH</u>
Organisation (EN)	The central contact point for the support and coordination of the local counselling centres is run by the <u>Society for Social Enterprise Consultancy Ltd.</u>
Government / Civil society	Civil society
Funding body	Federal Ministry of Labour and Social Affairs ( <i>Bundesministerium für Arbeit und Soziales</i> )
Reference (incl. url, where available)	<a href="https://www.teilhabeberatung.de">https://www.teilhabeberatung.de</a>
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	1 January 2018
Type of initiative	Network of peer-counselling centres
Main target group	People with disabilities in general. Local counselling centres may offer services for target groups with specific disabilities.
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	The Complementary Independent Participation Advisory Service ( <i>Ergänzende Unabhängige Teilhabeberatung, EUTB</i> ) is a peer-counselling service established on the basis of Section 32 of the 9 <sup>th</sup> Book of the Social Code ( <i>Sozialgesetzbuch IX</i> ). People with disabilities and their relatives are offered free counselling services, especially with regard to social rights, independent from the welfare authorities. Counselling at the local level is often offered by people who are affected by similar problems. The network of counselling centres is supported and coordinated by a central contact point ( <i>Fachstelle</i>

	<i>Teilhabeberatung</i> ) based in Berlin which offers expertise in social law and on medical and pedagogical issues. The EUTB is funded by Federal Ministry of Labour and Social Affairs.
Highlight any element of the actions that is transferable (max. 500 chars)	The idea of independent peer-counselling, i.e. counselling by people with similar experiences and backgrounds, should be transferrable to others contexts.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	Given the legal basis of the counselling service it is warranted that it is no "one off activity".
Give reasons why you consider the practice as having concrete measurable impact	The independent work by a network of around 500 counselling centres will make a difference to people with disabilities in particular when they have questions on or problems with the social welfare authorities.
Give reasons why you consider the practice as transferable to other settings and/or Member States?	To transfer the practice to other Member States these would have to change their law accordingly and provide significant funds.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The five years planned to build up EUTB will be evaluated by surveys, telephone interviews and focus groups with counselling services, people who seek counselling, and the central contact point in Berlin. Interim findings are to be presented in April 2021; the final report will be published in December 2022.
Explain, if applicable, how the practice provides for review and assessment.	See above for the five-years evaluation.

# Annex 2 – Case Law

<b>Thematic area</b>	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one high court decision addressing discrimination against older people or against LGBTI people. Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.
<b>Decision date</b>	22 April 2020
<b>Reference details</b>	Federal Court of Justice ( <i>Bundesgerichtshof</i> ) BGH XII ZB 383/19 ECLI:DE:BGH:2020:220420BXIIZB383.19.0 <a href="https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;az=XII%20ZB%20383/19&amp;nr=106062">https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;az=XII%20ZB%20383/19&amp;nr=106062</a>
<b>Key facts of the case</b> (max. 500 chars)	With its decision of April 22, 2020 the Federal Court of Justice has ruled that the change in civil status that has been possible since the beginning of 2019 by application to the registry office is restricted to intersexual persons who cannot be physically assigned to either the male or female gender, consequently not including people with “only” perceived intersexuality.
<b>Main reasoning/argumentation</b> (max. 500 chars)	According to the Federal Court of Justice, changing the gender entry presupposes “the lack of a clearly female or male physical gender assignment” (para. 18). A deletion or change of gender information is only possible if a medical certificate confirms intersex.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	Persons to whom the male or female gender is physically assigned cannot achieve the deletion of their gender information or the entry “diverse” via Section 45b of the Civil Status Act ( <i>Personenstandsgesetz</i> ).
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	Anyone who does not have a medical certificate to prove that they are intersex, cannot change or delete gender information under the Civil Status Act nor can they obtain the entry “diverse” via Section 45b PStG. Instead, with its decision the Federal Court of Justice

	rules that they must submit an application to the local court ( <i>Amtsgericht</i> ) according to the Transsexual Persons Act ( <i>Transsexuellengesetz</i> ).
<b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)	<p>„Bereits der [...] Wortlaut des Section 45b PStG weist deutlich dahin, dass das von der Vorschrift geregelte Erklärungsrecht an das Fehlen einer eindeutig weiblichen oder männlichenkörperlichen Geschlechtszuordnung knüpft.“ (Rn. 18)</p> <p>„Fälle der nur empfundenen Abweichung des eigenen vom eingetragenen Geschlecht werden von der Neuregelung hingegen nicht erfasst [...]“ (Rn. 23)</p> <p>„Already the [...] wording of Section 45b PStG clearly indicates that the right of declaration enacted by the regulation is linked to the lack of a clearly female or male physical gender assignment [...]“(para. 18)</p> <p>„Cases of only perceived deviations between one's own gender and the registered gender are not covered by the new regulation.“ (para. 23)</p>

<b>Thematic area</b>	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE.</b> Please provide the most relevant high court decision concerning the application of <u>either</u> the Racial Equality Directive <u>or</u> the Framework Decision on racism and xenophobia, addressing racism, xenophobia and other forms of intolerance more generally.
<b>Decision date</b>	20 August 2020
<b>Reference details</b>	Federal Court of Justice ( <i>Bundesgerichtshof</i> ) 3 StR 40/20 ECLI:DE:BGH:2020:200820U3STR40.20.0 <a href="http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;client=12&amp;pos=0&amp;anz=1&amp;Blank=1.pdf&amp;nr=110342">http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;client=12&amp;pos=0&amp;anz=1&amp;Blank=1.pdf&amp;nr=110342</a>
<b>Key facts of the case</b> (max. 500 chars)	In July 2011, the defendant and his accomplices sprayed four school buildings with numerous graffiti slogans containing right-wing extremist slogans. In November 2011, he took part in an assembly in which the participants marched through the city centre with

	<p>burning torches and chanted slogans, including 'Free, social and national'. As agreed before, they were wearing white face masks and dark clothing that looked uniformly black due to the lighting. The march gave the impression of a military formation and was reminiscent of torchlight procession of the "Third Reich". On 16 July 2019, the Regional Court of Koblenz convicted the accused for damage to property that is harmful to the community and for violating the prohibition of uniforms under the Assembly Act but waived a penalty and ordered compensation, arguing that the lengthy proceedings, including pre-trial detention, had affected the defendant's life disproportionately. The public prosecutor appealed against this decision.</p>
<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The Federal Court of Justice decided in favour of the public prosecutor's appeal and held that the Regional Court did not carry out an overall assessment of the circumstances relevant for its decision. Rather, it focused solely on mitigating aspects, in particular the burdens on the accused as a result of the long duration of the proceedings and the particular disadvantages associated with pre-trial detention. On the other hand, the Regional Court had ignored the xenophobic motivation of the defendant.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>Since 2015, section 46 (2) of the German Criminal Code (<i>Strafgesetzbuch</i>) explicitly stipulates that racist, xenophobic or other inhumane motives and goals are regularly significant in terms of penal law. The Federal Court of Justice held that this also applies to acts that were committed before the amendment of the Criminal Code came into force, because the amendment had only a clarifying meaning.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>Courts need to take a racist or xenophobic motivation of a defendant into account. However, the attitude as such cannot be taken into account. Rather, the perpetrator's attitude is only important when it is actually expressed by his or her actions. This was true, according to the Federal Court of Justice's findings in the present case. Therefore, another chamber of the Regional Court will have to decide the case again.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>"Es liegt nahe, dass der Angeklagte bei beiden Taten aus fremdenfeindlichen Beweggründen handelte und/oder fremdenfeindliche Ziele verfolgte. Diese Beweggründe und Ziele sind regelmäßig strafzumessungsrechtlich beachtlich, wie § 46 StGB in der Fassung vom 12. Juni 2015 (BGBl. I S. 925) – die zentrale Norm für die Ahndung rechtswidrigen und schuldhaften Verhaltens – bestimmt; denn dessen Absatz 2 Satz 2 führt seit dem 1. August 2015 die fremdenfeindlichen Beweggründe und Ziele explizit auf. Zwar war diese aktuell gültige Fassung des § 46 StGB zu den Tatzeitpunkten nicht anwendbar (§ 2 Abs. 1 StGB). Die Gesetzesänderung hatte jedoch nur klarstellende Bedeutung, was bereits aus den</i></p>

	<p><i>Gesetzesmaterialien zu einem vorausgegangenen gleichlautenden Reform-vorhaben - aus der Zeit vor den hier gegenständlichen Taten - hervorgeht. Mit der Neuregelung wollte der Gesetzgeber lediglich verdeutlichen, dass eine auf Ausgrenzung gerichtete Tatmotivation 'zu verurteilen' und daher im Rahmen der Strafzumessung grundsätzlich strafschärfend zu würdigen ist. Keine Berücksichtigung finden kann allerdings die Gesinnung als solche. Die Einstellung des Täters ist vielmehr nur dann von Bedeutung, wenn sie in der Tat zum Ausdruck kommt." (Rn. 14)</i></p> <p>"It is obvious that the defendant acted in both acts for xenophobic motives and/or pursued xenophobic goals. These motives and goals are regularly relevant in terms of criminal law, as stipulated in section 46 of the Criminal Code in the version of 12 June 2015 (Federal Law Gazette I, p. 925) – the central norm for the punishment of unlawful and culpable conduct – because since 1 August 2015, the second sentence of paragraph 2 of the Criminal Code explicitly lists the xenophobic motives and goals. It is true that this currently valid version of second 46 of the Criminal Code was not applicable at the time of the offence (section 2 para. 1 of the Criminal Code). However, the change in the law only had a clarifying effect, which is already evident from the legal material on a previous reform project with the same wording – from the time before the acts in question here. With the new provision the legislator wanted to clarify only that a criminal motivation directed toward exclusion is to be condemned and must therefore be assessed as aggravating. However, the attitude as such cannot be taken into account. Rather, the attitude of the perpetrator is only of importance if it is expressed in the act." (para. 14)</p>
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<b>Thematic area</b>	<b>ROMA EQUALITY AND INCLUSION</b> Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.
<b>Decision date</b>	23 September 2020

<b>Reference details</b>	Regional Court Ulm ( <i>Landgericht Ulm</i> ) The decision is not published. Only media reports are available, e.g. at: <a href="https://taz.de/Antiziganistischer-Anschlag-bei-Ulm/!5711831/">https://taz.de/Antiziganistischer-Anschlag-bei-Ulm/!5711831/</a> <a href="https://www.spiegel.de/panorama/justiz/urteil-in-ulm-nach-brandanschlag-auf-roma-aeusserst-verwerflich-und-menschenverachtend-a-3e153b99-591b-405a-b03c-69c1295aa360">https://www.spiegel.de/panorama/justiz/urteil-in-ulm-nach-brandanschlag-auf-roma-aeusserst-verwerflich-und-menschenverachtend-a-3e153b99-591b-405a-b03c-69c1295aa360</a>
<b>Key facts of the case</b> (max. 500 chars)	During the night of 24 May 2019 five young neo-Nazis had thrown a torch at trailers of a French Roma family who was camping near a village in the state of Baden-Württemberg. Before this act they had already terrorised the family with “not welcome” graffiti, exploding fire crackers and placing a rotten animal amidst the camp. The public prosecutor charged the adolescents, who are aged between 17 and 19 years, with murder and arson.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The Regional Court did not follow the prosecutor’s charges because an expert came to the result that the torch was not life-threatening and no evidence could be found for the accused’s intent to kill members of the Roma family as the act was committed more or less spontaneously. According to the media reports the Court did, however, recognise the antigypsyist and racist motifs of the accused and, thus, held that most of the accused had “malign inclinations” ( <i>schädliche Neigungen</i> ) as required by the Juvenile Court Act to sentence offenders to imprisonment.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The decision did not clarify any key issues but it is reported to be the first decision of a German court against antigypsyist attempts to evict Roma.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	Because of collaborate coercion in 45 cases the Court convicted four of the five men to juvenile sentences of 10 to 16 months suspended on probation. The oldest of the accused, who had taken part in an exit programme for neo-Nazis, distanced himself from right-wing ideology and paid 5000 Euro compensation, was put on a year of probation before the Court will eventually decide his sentence. All accused must visit a concentration camp memorial and reflect on their thoughts in written form afterwards. Three of the accused must pay 1200 Euro each to a foundation which promotes education, inclusion and participation of Sinti and Roma in Germany.
<b>Key quotation in original language and translated into English with</b>	Not available

<b>reference details</b> (max. 500 chars)	
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<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> Please provide the most relevant high court decision related to the topics addressed in the chapter, i.e. in relation to data protection, and/or artificial intelligence systems.
<b>Decision date</b>	27 May 2020
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 1 BvR 1873/13 (Subscriber data II) ECLI:DE:BVerfG:2020:rs20200527.1bvr187313 <a href="http://www.bverfg.de/e/rs20200527_1bvr187313.html">http://www.bverfg.de/e/rs20200527_1bvr187313.html</a>
<b>Key facts of the case</b> (max. 500 chars)	Two privacy activists lodged constitutional complaints against section 113 of the Telecommunications Act ( <i>Telekommunikationsgesetz</i> ) and against provisions of federal acts which regulate the manual access to subscriber data (also known as inventory data) by the Federal Criminal Police Office ( <i>Bundeskriminalamt</i> ), the Federal Police ( <i>Bundespolizei</i> ), the Customs Criminal Investigation Office ( <i>Zollkriminalamt</i> ) and the federal intelligence agencies. According to the challenged provisions, the subscriber data include the name, date of birth and phone number of a subscriber as well as the address of the contractual partner, the type of service contracted and other data such as the bank details and the IP address assigned to the subscriber. Subscriber data may only be transferred by the telecommunications service provider if a requesting security authority declares this information necessary for the purpose of prosecuting criminal offenses, to avert threats to public safety or order, or to fulfil the legal tasks of the intelligence services. All challenged provisions were adopted in 2013, following a decision of the Federal Constitutional Court that had declared the previous regulation on access to subscriber data violating fundamental rights in 2012.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The Federal Constitutional Court reasoned that, in principle, the regulation of access to subscriber data is a permissible interference with the fundamental rights of informational self-determination and confidential communication under constitutional law. However, similar to the image of a double-door, such regulation must provide for a proportionate legal basis both for the transfer of the data by the telecommunications service providers

	(first door) and for the retrieval of this data by the security authorities (second door). Thus, actual legal prerequisites and a sufficiently weighty protection of legal interests must be warranted.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The Federal Constitutional Court clarified that, despite the moderate weight of the interference, using the general powers to transfer and retrieve subscriber data in the context of maintaining public security and the activities of intelligence services requires a specific danger in the individual case, or a reasonable suspicion in the context of criminal investigation or the persecution of offences. Where dynamic IP addresses are matched, this must additionally serve to protect or legally reinforce legal interests of at least considerable weight given the increased weight of the interference. Where, with regard to maintaining public security or activities of intelligence services, the thresholds for the use of powers require less than a specific danger, this must be compensated for by establishing stricter requirements for the weight of the legal interests meriting protection.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Federal Constitutional Court declared section 113 of the Telecommunications Act and the challenged provisions of the federal security laws unconstitutional. The German Bundestag must now revise these provisions until 31 December 2021.
<b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>„Der Gesetzgeber muss bei der Einrichtung eines Auskunftsverfahrens auf Grundlage jeweils eigener Kompetenzen für sich genommen verhältnismäßige Rechtsgrundlagen sowohl für die Übermittlung als auch für den Abruf der Daten schaffen. Übermittlungs- und Abrufregelungen für Bestandsdaten von Telekommunikationsdiensteanbietern müssen die Verwendungszwecke der Daten hinreichend begrenzen, mithin die Datenverwendung an bestimmte Zwecke, tatbestandliche Eingriffsschwellen und einen hinreichend gewichtigen Rechtsgüterschutz binden.“</i> (Erster Leitsatz)</p> <p>“When setting up an information procedure based on the respective authorities own competencies, the legislator must establish a proportionate legal basis for both the transfer and the retrieval of the data. Provisions on transfer and retrieval of subscriber data from telecommunications service providers must adequately limit the purposes for which these data are used, and consequently bind the use of data to specific purposes, legal prerequisites and a sufficiently weighty protection of legal interests.” (First headnote)</p>

<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> Please provide the most relevant high court decision relating to the topics addressed in this chapter.
<b>Decision date</b>	22 May 2020
<b>Reference details</b>	Higher Social Court of North Rhine Westphalia ( <i>Landessozialgericht Nordrhein-Westfalen</i> ) L 7 AS 719/20 B ER; L 7 AS 720/20 B ECLI:DE:LSGNRW:2020:0522.L7AS719.20B.ER.L7.00 <a href="http://www.justiz.nrw.de/nrwe/sqs/lsg_nrw/j2020/NRWE_L_7_AS_719_20_B_ER_L_7_AS_720_20_B.html">http://www.justiz.nrw.de/nrwe/sqs/lsg_nrw/j2020/NRWE_L_7_AS_719_20_B_ER_L_7_AS_720_20_B.html</a>
<b>Key facts of the case</b> (max. 500 chars)	The plaintiff, a pupil who receives benefits according to the 2 <sup>nd</sup> Book of the German Social Code ( <i>Sozialgesetzbuch II</i> ) and who attended the 8 <sup>th</sup> grade of a grammar school, had applied for the funding of a computer to the local job centre in January 2020. The principal of the school had confirmed that the pupil needs the computer for her homework. Both the job centre and the Social Court Gelsenkirchen denied her claim in interim legal protection proceedings. The pupil lodged an appeal against the decision of the Social Court with the Higher Social Court.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The Higher Social Court confirmed that it is true that learning materials may only be introduced to schools in North Rhine Westphalia if they were approved, which is currently not the case for desktop computers, laptops and tablets. Nevertheless, the Court argued that the acquisition of a computer with internet access became necessary when the pandemic caused the closure of schools and forced pupils into home-schooling. Thus, the Court held that, in principle, pupils who receive benefits may, under the conditions of the pandemic, be entitled to get extra benefits to purchase a computer as a need for education and participation that is relevant to basic security. As such the computer can be recognised as an “irrefutable, current additional need” under section 21 of the 2 <sup>nd</sup> Book of the Social Code. The Court estimated the financial height of the additional need with around €150 for a 10” tablet computer with 16 GB RAM.

<p><b>Key issues (concepts, interpretations) clarified by the case</b> (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.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>In the present case, the Higher Social Court decided in favour of the plaintiff's complaint only with regard to legal aid that was denied by the lower instance court. The rest of the complaint was rejected as, in the opinion of the Court, the plaintiff no longer required interim legal protection because the school had made it possible for her to use a computer with internet access due to a private donation.</p>
<p><b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)</p>	<p><i>"Die Anschaffung eines internetfähigen Endgeräts ist mit der pandemiebedingten Schließung des Präsenzs Schulbetriebs erforderlich geworden. [...] Für die Anerkennung eines entsprechenden Bedarfs spricht auch Art. 28 Abs. 1 UN-Kinderrechtskonvention (UN-KRK), die in Deutschland seit dem 18.02.1992 verbindlich ist. Danach erkennen die Vertragsstaaten das Recht des Kindes auf Bildung an; um die Verwirklichung dieses Rechts auf der Grundlage der Chancengleichheit fortschreitend zu erreichen, haben sie u.a. die Entwicklung verschiedener Formen der weiterführenden Schulen allgemeinbildender und berufsbildender Art fördern, sie allen Kindern verfügbar und zugänglich zu machen und geeignete Maßnahmen wie die Einführung der Unentgeltlichkeit und die Bereitstellung finanzieller Unterstützung bei Bedürftigkeit zu treffen."</i> (Rn. 23)</p> <p>"The acquisition of a computer terminal with internet connectivity has become necessary in times of school closure due to the pandemic. [...] The recognition of a corresponding need is also supported by Art. 28 para. 1 of the UN Convention on the Rights of the Child (UN CRC), which has been binding in Germany since 18. February 1992. Accordingly, the States Parties recognize the right of the child to education; in order to progressively achieve the realization of this right on the basis of equal opportunities, they must, among other things, promote the development of various forms of secondary schools of a general and vocational nature, make them available and accessible to all children and take appropriate measures such as the introduction of free education and the provision of financial assistance in case of need." (paras. 23)</p>

<b>Thematic area</b>	<b>ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS</b> Please provide the most relevant high court decision relating to the topics addressed in this chapter.
<b>Decision date</b>	2 July 2020
<b>Reference details</b>	Federal Court of Justice ( <i>Bundesgerichtshof</i> ) 4 StR 678/19 ECLI:DE:BGH:2020:020720U4STR678.19.0 <a href="https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;nr=109655&amp;pos=0&amp;anz=1">https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;nr=109655&amp;pos=0&amp;anz=1</a>
<b>Key facts of the case</b> (max. 500 chars)	On 3 September 2019, the Regional Court Halle had convicted a man of sexual abuse ( <i>sexueller Missbrauch</i> ) against two children in 2018, in one case in concomitance with sexual assault ( <i>sexueller Übergriff</i> ) and in the other case in concomitance with sexual coercion ( <i>sexuelle Nötigung</i> ). The accused was sentenced to three years imprisonment. In the first case, the man had lured a six-year old girl whom he knew to an abandoned factory building, removed her underpants and touched her genitals. When the girl had started to cry and asked the man to stop, he had let her go. In the second case, the man had discovered an eight-year-old girl waiting outside his house. He had lifted the child up, covered her mouth and led her to an abandoned ruin threatening her with death. Again, he had taken off the girl’s pants and underpants, licked her in the genital area and wanted her to give him a kiss. When she had refused, he had put his tongue in her mouth, and then let her go at her request. In both cases, the Regional Court declined to classify the cases as an exploitation of a defenceless situation ( <i>schutzlose Lage</i> ) of the victims in accordance with Section 177 para. 5 no. 3 of the Criminal Code. Against this the public prosecutor lodged an appeal with the Federal Court of Justice.
<b>Main reasoning/argumentation</b> (max. 500 chars)	The Federal Court of Justice reasoned that after an amendment of criminal law in 2016, the starting point for criminal liability regarding the exploitation of a defenceless situation is no longer the bending of the victim’s will in the sense of coercion, but the disregard of the identifiable opposing will of the victim. Thus, the Court’s own restrictive interpretation that exploiting a defenceless situation requires the subjective realisation of the victim that no defence or help was available is no longer justified. The Court argued further that contrary views in the legal literature are not compatible with the wording or the legislative materials. Moreover, the sense and purpose of the criminal law reform would speak for a purely objective determination of the defenceless situation, since this is the only way by which the

	comprehensive protection of sexual self-determination can be achieved as intended by the legislator.
<b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)	The Federal Court of Justice decided on the meaning of “defenceless situation” after the Criminal Code had been amended in 2016 to improve the protection of sexual self-determination. The amendment implemented the principle that any sexual act against the identifiable will of a person is a sexual assault which does not need to involve force (“no means no”). Before this amendment the Court had interpreted the concept with a view on both the objective situation that no defence or help was available to the victim and the subjective realisation by the victim that the situation actually is like this.
<b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)	The Federal Court of Justice reversed the decision to the disadvantage of the accused, as the Regional Court Halle had proceeded from a too narrow understanding of the defenceless situation. The case was referred to another chamber of the Regional Court that will have to decide the case again. It is then likely that the accused will be sentenced to a longer term of imprisonment.
<b>Key quotation in original language and translated into English with reference details</b> (max. 500 chars)	<p><i>"Der Begriff der schutzlosen Lage ist rein objektiv zu bestimmen; einer subjektiven Zwangswirkung der Schutzlosigkeit auf das Tatopfer bedarf es nicht."</i> (Leitsatz 1)</p> <p>The concept of a defenceless situation must be defined in purely objective terms; there is no need for a subjective coercive effect of defencelessness on the victim. (Headnote 1)</p>

<b>Thematic area</b>	<b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b> Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.
<b>Decision date</b>	30 January 2020
<b>Reference details</b>	Federal Constitutional Court ( <i>Bundesverfassungsgericht</i> ) 2 BvR 1005/18 ECLI:DE:BVerfG:2020:rk20200130.2bvr100518 <a href="http://www.bverfg.de/e/rk20200130_2bvr100518.html">http://www.bverfg.de/e/rk20200130_2bvr100518.html</a>

<p><b>Key facts of the case</b> (max. 500 chars)</p>	<p>The complainant, a woman with visual impairment, was being treated in a physiotherapy office which could be reached on the one hand via the premises of an orthopaedic group office and on the other hand through the courtyard via an open steel lattice staircase. After the complainant had used the way through the orthopaedic group office's waiting room several times with her guide dog, the doctors denied her access to the premises with her guide dog and asked her to use the courtyard and the stairs instead. The complainant applied to a Regional Court requesting to order the doctors to tolerate her accessing and passing through the group office. She submitted that she could not use the steel lattice staircase because the dog would shy away from the stairs because it got injured before by getting caught in the bars with its claws. The claim was rejected by the Regional Court and the complainant's appeal to the Higher Regional Court was unsuccessful.</p>
<p><b>Main reasoning/argumentation</b> (max. 500 chars)</p>	<p>The Federal Constitutional Court argued that the courts' decisions confirming the denial of access and passing through violated the complainant's fundamental right under Article 3 (3) of the Basic Law which prohibits any discrimination on grounds of disability. The Federal Constitutional Court held that the effects of the special equality guarantee enshrined in article 3 of the Basic Law were not taken into account sufficiently when the lower instances interpreted the relevant provisions of the General Equal Treatment Act (<i>Allgemeines Gleichbehandlungsgesetz – AGG</i>) as they did not consider the indirect discrimination against the complainant resulting from the general prohibition to bring dogs into the orthopaedic group office.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case</b> (max. 500 chars)</p>	<p>The prohibition of discrimination on grounds of disability is a fundamental right and at the same time an objective decision on values at the same time. This also includes the protection against disadvantages caused by measures which do not intend an exclusion but rather but entail unwanted side effect. The right to personal mobility from article 20 of the CRPD must also be taken into account when interpreting private law provisions.</p>
<p><b>Results (sanctions) and key consequences or implications of the case</b> (max. 500 chars)</p>	<p>The Federal Constitution Court found that the lower instances' assumption that the disadvantage of the complainant was not covered by section 19 (1) of the General Equal Treatment Act failed to interpret the prohibition of discrimination by private law provisions in the light of fundamental rights. Therefore, the decision was revoked and the case is referred back to the Higher Regional Court for a new decision.</p>
<p><b>Key quotation in original language and translated into English with</b></p>	<p><i>„Das Recht auf persönliche Mobilität aus Art. 20 BRK ist bei der Auslegung zivilrechtlicher Normen ebenfalls zu berücksichtigen. Nach Art. 20 Buchstabe b BRK treffen die Vertragsstaaten wirksame Maßnahmen, um für Menschen mit Behinderungen persönliche</i></p>

<p><b>reference details</b> (max. 500 chars)</p>	<p><i>Mobilität mit größtmöglicher Unabhängigkeit sicherzustellen, indem sie unter anderem ihren Zugang zu tierischer Hilfe erleichtern.</i>" (Rn. 39)</p> <p>„The right to personal mobility set out in article 20 of the CRPD must also be taken into account when interpreting private law provisions. According to article 20 lit. b of the CRPD, state parties have to introduce effective measures to ensure largely independent personal mobility of persons with disabilities, for example by facilitating access to service animals.” (para. 39)</p>
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