

Franet National contribution to the Fundamental Rights Report 2020

Germany

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Franet country study: policy and legal highlights 2019	
Issues in the fundamental rights institutional landscape	New staff for Federal Data Protection Commissioner: Whereas most data protection commissioners of the <i>Länder</i> report that their resources are strained due to new tasks arising from the GDPR, the German Bundestag has approved 67 additional staff for the Federal Data Protection Commissioner for 2020. The team of the federal DPA will, thus, soon count more than 300 staff members.
EU Charter of Fundamental Rights	Federal Constitution Court decides on relation between German fundamental rights and EU Charta of Fundamental Rights: On 6 November 2019, the Federal Constitutional Court issued two decisions by which the court clarifies that German fundamental rights remain the primary standard of review in all areas that are not fully determined by EU law even if EU fundamental rights would also be applicable (Right to be Forgotten I) whereas the Court, for the first time, reviewed the domestic application of legislation that is fully harmonised under EU law on the basis of EU fundamental rights (Right to be Forgotten II).
Equality and non-discrimination	Prohibition of “conversion therapies” planned: On 18 December 2019, the Federal Cabinet adopted a bill to prohibit so-called “conversion therapies” (i.e. sexual orientation or gender identity change efforts) for minors and adults who are unable to consent . The bill is the follow-up to a report commissioned by the Federal Minister of Health and a resolution of the Federal Council to ban such therapies.
Racism, xenophobia & Roma integration	Independent Commission on Antigypsyism: On 27 March 2019, an Independent Commission on Antigypsyism was established at the Federal Ministry of the Interior, Building and Community. The commission will compile information on manifestations of antigypsyism in Germany and draft recommendations on how to tackle it until summer 2021.
Asylum & migration	New legislation to ease forced returns: On 21 August 2019, the Second Act for the Improved Enforcement of the Obligation to Leave came into force. The act inter alia provides for the detention of migrants prior to deportation in common prisons and expands the reasons for ordering detention.
Data protection and digital society	Final report of the Data Ethics Commission: On 23 October 2019, the Data Ethics Commission that was established by the Federal Government in 2018 published its final report , proposing ethical standards and recommendations to protect individuals, warrant social cohesion and promote prosperity in the age of big data and algorithmic systems.
Rights of the child	Transposition of Directive 2016/800 into national law: On 13 respectively 17 December 2019, the Act on the New Regulation of the Right of Necessary Defence and the Act to Strengthen the Procedural Rights of Accused in Juvenile Law Procedures came into force, transposing EU Directive 2016/800 into national law.
Access to justice, including victims of crime	Reform of the compensation law: The Act for the Regulation of Social Compensation Law was issued on 12 December 2019; most parts of it will come into force on 1 January 2024. The act provides inter alia for a broader definition of “violence”, covering also mental and emotional violence, for cases of stalking and human trafficking. Thus, also all victims of stalking and human trafficking may apply for compensation in the future.
Convention on the Rights of Persons with Disability	Reform of Federal Elections Act: Following a landmark ruling of the Federal Constitutional Court of 29 January 2019, the Federal Elections Act has been revised in June 2019. As a result, as from 1 July 2019 all persons over the age of 18 who are subject to legal guardianship in all their affairs or who were placed in psychiatric care by a criminal court for having committed a crime while exempt from criminal responsibility are now fully entitled to vote and to be elected, concerning both Federal Parliament and European Parliament elections.

Chapter 1. Equality and non-discrimination

1. Legal and policy developments in 2019 relevant to combating discrimination based on gender identity, religion or belief, disability, age or sexual orientation

The Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) and the Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) initiated a public consultation procedure (*Verbändeanhörung*) on the **Bill Revising the Change of the Registered Gender Marker** (*Entwurf für ein Gesetz zur Neuregelung der Änderung des Geschlechtseintrags*) in May 2019. The draft is meant to replace the current Transsexual Persons Act (*Transsexuellengesetz*).¹ It met with strong criticism by civil society and professional organisations, inter alia for not fully turning away from the requirement of a psychiatric assessment of persons applying for a change in their registered gender markers.² A revised draft was announced, but is not published yet.

The government of the state of **Berlin** tabled a draft **State Act on Non-discrimination** (*Landesantidiskriminierungsgesetz*) to the Berlin House of Representatives (*Abgeordnetenhaus Berlin*) on 12 June 2019.³ Whereas the General Equal Treatment Act (*Allgemeines Gleichstellungsgesetz*) of 2006 only applies to discrimination in the private sector, the draft act shall apply to discrimination by public authorities in the State of Berlin. The extension of equal treatment legislation to the public sector was inter alia recommended by the UN CERD Committee in its last concluding Observations to Germany in 2015.⁴ An expert hearing was organised on 13 November 2019 by the Legal Committee of

¹ Germany, Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) (2019), *Entwurf eines Gesetzes zur Neuregelung der Änderung des Geschlechtseintrags*, available at: https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_TSG_Reform.pdf.

² Bundesvereinigung Trans* e.V. (2019), *Stellungnahme der Bundesvereinigung Trans* (BVT*) e.V. zum Referentenentwurf eines Gesetzes zur Neuregelung der Änderung des Geschlechtseintrages von BMJV und BMI vom 8. Mai 2019*, Berlin, available at: <http://www.bv-trans.de/wp-content/uploads/2019/05/BVT-Stellungnahme-Referentenentwurf-BMIBMJV-10-05-2019-1.pdf>; Lesben- und Schwulenverband Deutschlands (2019): *Stellungnahmen zum Referentenentwurf des Bundesministeriums der Justiz und für Verbraucherschutz und des Bundesministeriums des Innern, für Bau und Heimat, Berlin*, available at: <https://www.lsvd.de/recht/geplante-gesetze/19-wahlperiode-2017-2021.html#c12715>; Deutsches Institut für Menschenrechte (2019), *Kurzstellungnahme zum Entwurf eines Gesetzes zur Regelung der Änderung des Geschlechtseintrags*, available at: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Kurzstellungnahme_TSG-Reform_DIMR20190510.pdf.

³ Germany, Berlin House of Representatives (*Abgeordnetenhaus Berlin*) (2019), *Landesantidiskriminierungsgesetz. Vorlage zur Beschlussfassung*, Printed Document 18/1996, 12 June 2019 available at: <https://www.parlament-berlin.de/ados/18/IIIPlen/vorgang/d18-1996.pdf>.

⁴ Committee on the Elimination of Racial Discrimination (2015), *Concluding observations on the combined nineteenth to twenty-second periodic reports of Germany*, CERD/C/DEU/CO/19-22, 13 May 2015, para. 8, available at: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Pakte_Konventionen/ICERD/icerd_state_report_germany_19-22_2013_CoObs_2015_en.pdf.

the Berlin House of Representatives. It was reported that in particular the plan to establish an ombudsperson was commended by several experts, whereas a representative of the German Police Trade Union (*Gewerkschaft der Polizei*) warned of red tape in case that the police would have to justify investigations or preventive measures drawing also on ethnic origin.⁵

On 10 April 2019, the Federal Minister of Health (*Bundesgesundheitsminister*) installed an expert commission on the **prohibition of so-called “conversion therapies”**, i.e. sexual orientation or gender identity change efforts.⁶ This was accompanied by an unanimous resolution in the Federal Council (*Bundesrat*) calling for a prohibition of such practices which was adopted on 17 May 2019.⁷ The final report of the expert commission was presented in autumn.⁸ The report includes two commissioned expert opinions on, firstly, the implications of “conversion therapies” and, secondly, legal issues, as well as contributions by other experts on a wide range of issues, e.g. information about the market of “conversion therapies”, experiences of affected persons, medical and legal aspects. Finally, it drafts a recommendation on how to regulate “conversion therapies”. The presentation of the report was followed by a ministerial draft bill tabled by the Federal Health Minister in October.⁹ The Federal Cabinet eventually adopted the bill on 18 December 2019. The bill aims to establish penal prohibition of the performance of treatments aiming at changing the sexual orientation or gender identity of minors or adults who are unable to consent as well as a ban on advertising such therapies.¹⁰

The **Federal Anti-Discrimination Agency** is meanwhile without director for around 18 months. Since Christine Lüders resigned as director of the Agency in April 2018, the position is vacant due to an

⁵ RBB 24 (2019), ‘Neues Berliner Gesetz soll Diskriminierung in Ämtern bekämpfen’, *rbb.24.de*, 13 November 2019, available at: <https://www.rbb24.de/politik/beitrag/2019/11/berlin-diskriminierung-antidiskriminierungsgesetz-verabschiedung-abgeordnetenhaus.html>.

⁶ Germany, Federal Ministry of Health (*Bundesministerium für Gesundheit*) (2019), ‘Minister Jens Spahn beruft Kommission zum Verbot der Konversionstherapien’, Press release, 10 April 2019, available at: <https://www.bundesgesundheitsministerium.de/presse/pressemitteilungen/2019/2-quartal/verbot-konversionstherapien.html>.

⁷ Germany, Federal Council (Bundesrat) (2019), *Entschließung des Bundesrates - Akzeptanz und Wertschätzung statt Pathologisierung und Diskriminierung: Menschen in ihrer sexuellen Orientierung und geschlechtlichen Identität stärken - „Konversionstherapien“ verbieten*, Printed Document 161/19 (Beschluss, 17 May 2019, available at: <https://www.bundesrat.de/drs.html?id=161-19%28B%29>

⁸ Bundesstiftung Magnus Hirschfeld (2019), *Abschlussbericht: Wissenschaftliche Bestandsaufnahme der tatsächlichen und rechtlichen Aspekte von Handlungsoptionen unter Einbeziehung internationaler Erfahrungen zum geplanten „Verbot sogenannter, Konversionstherapien“ in Deutschland zum Schutz homosexueller Männer, Frauen, Jugendlicher und junger Erwachsener vor Pathologisierung und Diskriminierung*, Berlin, available at: http://mh-stiftung.de/wp-content/uploads/Abschlussbericht_BMH_neu.pdf.

⁹ Germany, Federal Ministry of Health (*Bundesministerium für Gesundheit*) (2019), *Entwurf eines Gesetzes zum Schutz vor Behandlungen zur Veränderung oder Unterdrückung der sexuellen Orientierung oder der selbstempfundenen geschlechtlichen Identität*, Berlin, available at: https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/K/Konversionstherapieverbote/RefE_bf.pdf.

¹⁰ Germany, Federal Government (*Bundesregierung*) (2019), ‘Verbot von Konversionstherapien: Schutz der sexuellen Selbstbestimmung’, News, 18 December 2019, available at: <https://www.bundesregierung.de/breg-de/aktuelles/verbot-konversionstherapie-1707674>.

ongoing legal dispute on the selection of Lüder's successor.¹¹ Bernhard Franke, a former head of department of the Agency, serves as acting director until the matter is resolved. In December 2019, it was reported that the number of complaints received by the Federal Anti-Discrimination Agency has doubled in 2018 compared to 2016 from around 2,100 to 4,200. From January to October 2019 the Agency counted 3,500 complaints.¹²

2. Research findings, studies or surveys on either experiences of discrimination or rights awareness

On 25 October 2019, the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) published the findings of **study on sexual harassment at workplaces**, based on telephone interviews with around 1,500 respondents, in-depth interviews with 58 of them, and focus groups with victims of sexual harassment, colleagues, representatives of workers' councils, management, lawyers and others. The study also **covered workshops for people with disabilities**, given their specific vulnerability. For this purpose 60 people working in such workshops (mostly persons with cognitive impairments) were interviewed. In addition, eleven interviews were conducted with support staff and management. The interviews found a high level of satisfaction with work, and only few cases of sexual harassment were reported. The study treated these findings, however, with caution as access to the field of workshops had been very difficult and respondents were often pre-selected by support staff as deemed to be more capable to contribute to the study. It was concluded that workshops have made significant progress in terms of prevention and training of support staff and management, whereas it was identified a lack of strategies on how to respond to offenders in particular if they are disabled themselves. Thus, it was recommended to include those working in the workshops in trainings and the development of prevention concepts.¹³

¹¹ Eubel, C. (2019), 'Streit um Antidiskriminierungsstelle. Keine neue Leitung in Sicht', *Der Tagesspiegel*, 7 April 2019, available at: <https://www.tagesspiegel.de/politik/streit-um-antidiskriminierungsstelle-keine-neue-chefin-in-sicht/24191586.html>.

¹² Deutschlandfunk (2019), 'Bundesstelle: Zahl der gemeldeten Diskriminierungen stark gestiegen', 19 December 2019, available at: https://www.deutschlandfunk.de/bundesstelle-zahl-der-gemeldeten-diskriminierungen-stark.1939.de.html?drn:news_id=1082059.

¹³ Schrötzel, M, Meshkova, K and Lehmann, C. (2019), *Umgang mit sexueller Belästigung am Arbeitsplatz – Lösungsstrategien und Maßnahmen zur Intervention*, Berlin, Antidiskriminierungsstelle des Bundes, available at: https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Umgang_mit_sexueller_Belaestigung_am_Arbeitsplatz.pdf?__blob=publicationFile&v=9.

Chapter 2. Racism, xenophobia and related intolerance

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

No developments relating to the application of the Racial Equality Directive are to be reported for the national level but several states have taken the initiative:

In accordance with the coalition agreement, the government of the state of **Schleswig-Holstein** announced on 17 May 2019 that it would set up an inter-ministerial working group, involving also civil society stakeholders, to draft a **State Action Plan Against Racism** (*Landesaktionsplan gegen Rassismus*). It was planned to identify areas for action and priorities and develop specific measures and projects, based on the basis of the National Action Plan against Racism (*Nationaler Aktionsplan gegen Rassismus*) as well as on the Federal Government's Strategy for the Prevention of Extremism and the Promotion of Democracy (*Strategie der Bundesregierung zur Extremismusprävention und Demokratieförderung*). In addition, previous successful projects or measures are to be developed further or relaunched. The finalisation of the State Action Against Racism is planned for autumn 2020.¹⁴

In the state of **Rhineland-Palatinate**, the government also launched a process to draft an **Action Plan Against Racism and Group-related Misanthropy** (*Aktionsplan gegen Rassismus und Gruppenbezogene Menschenfeindlichkeit*) on 30 April 2019. The Action Plan is to be prepared in collaboration with civil society groups. The aim of the plan is to raise awareness in administration and civil society for issues of discrimination and exclusion. The Action Plan should therefore first provide information on the impact of group-based misanthropy and the threats it poses to society. A central part of the Action Plan will be measures proposed to implement the objectives. The drafting of the Action Plan is supposed to be completed by early 2020.¹⁵

On 25 September 2020, the Enquete Commission „Root causes and forms of racism and discrimination in Thuringia and its effects on social coexistence and liberal democracy“ (*Enquete-Kommission „Ursachen und Formen von Rassismus und Diskriminierungen in Thüringen sowie ihre Auswirkungen auf das gesellschaftliche Zusammenleben und die freiheitliche Demokratie“*) of the State Assembly of Thuringia (*Landtag Thüringen*) published its final report. The commission was established by the State Assembly on 26 January 2017. Composed of nine members of the State Assembly and nine independent experts, it was tasked to study racist attitudes and group-related misanthropy, identify the root causes

¹⁴ Germany, Ministry for the Interior, Rural Areas and Integration Schleswig-Holstein (*Ministerium für Inneres, ländliche Räume und Integration Schleswig-Holstein*) (2019), ‘Landtagsrede von Innenminister Grote Der beste Schutz gegen Rassismus ist die Überzeugung von der elementaren Bedeutung der Grundrechte unserer Verfassung’, Press release, 17 May 2019, available at: https://www.schleswig-holstein.de/DE/Landesregierung/IV/Presse/PI/2019/190517_LT_rassismus.html.

¹⁵ Germany, Ministry for Family Affairs, Women, Youth, Integration and Consumer Protection Rhineland-Palatinate (*Ministerium für Familie, Frauen, Jugend, Integration und Verbraucherschutz Rheinland-Pfalz*) (2019), *Landesaktionsplan gegen Rassismus und Gruppenbezogene Menschenfeindlichkeit*, available at: <https://mffjiv.rlp.de/de/themen/demokratie/landesaktionsplan-gegen-rassismus-und-gruppenbezogene-menschenfeindlichkeit/>.

the Penal Code Related to Activities Abroad (*Entwurf eines ... Gesetzes zur Änderung des Strafgesetzbuches – Modernisierung des Schriftenbegriffs und anderer Begriffe sowie Erweiterung der Strafbarkeit nach den §§ 86, 86a, 111 und 130 des Strafgesetzbuches bei Handlungen im Ausland*) was circulated for comments to relevant stakeholders on 4 September 2019. Among others, the bill aims at revising the provisions of the Penal Code in regard to the dissemination and use of signs and propaganda of organisations hostile to the constitution and incitement to hate. The bill was not adopted by the Federal Cabinet until the end of 2019.

Responding both to the rise of right-wing hate crime in general and to the anti-Semitic assault that took place on 9 October 2019 in the city of Halle in particular the Federal Government adopted a “package of measures to combat right-wing extremism and hate crime” on 30 October 2019. Among others, the Federal Government aims to amend the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*), which to date obliges social media platforms to delete alleged hate speech, in order to compel such platforms to refer alleged hate speech to the Federal Criminal Police Office (*Bundeskriminalamt*). Moreover, programmes to prevent radicalisation shall be expanded and adapted, and staff at the police and intelligence services shall be increased to target right-wing extremism and hate crime.¹⁹ On 17 December 2019, the Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bauen und Heimat*) presented its concept for combating right-wing extremism: Staff at both the Federal Criminal Police Office and the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*, the federal branch of the domestic intelligence services) shall be increased by 300 each; a central unit against hate crime shall be established at the Federal Criminal Police Office, and a new department to collect information on right-wing extremism in public services shall be established at the Federal Office for the Protection of the Constitution.²⁰ Two days later the Federal Ministry of Justice published a controversial Draft Bill to Combat Right-Wing Extremism and Hate Crime (*Entwurf eines Gesetzes zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*) aiming to amend the Network Enforcement Act (see above), the Criminal Code (*Strafgesetzbuch*) and the Code of Criminal Procedure (*Strafprozessordnung*).²¹ In particular, the planned access of authorities to passwords of internet services of alleged perpetrators and the obligation for social media platforms to refer alleged hate speech to the Federal Criminal Police Office were widely criticised by opposition parties, civil liberty organisations and umbrella organisations of internet companies.²²

¹⁹ Germany, Federal Government (*Die Bundesregierung*) (2019), *Maßnahmenpaket zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*, Berlin, 30 October 2019, available at: https://www.bmjv.de/SharedDocs/Downloads/DE/News/Artikel/103019_Ma%C3%9Fnahmenpaket_Rechtsextremismus.pdf?__blob=publicationFile&v=1.

²⁰ Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bauen und Heimat*) (2019), ‘Bundesinnenminister Seehofer: "Rechtsextremismus noch stärker in den Blick nehmen"', News, 17 December 2019, available at: <https://www.bmi.bund.de/SharedDocs/kurzmeldungen/DE/2019/12/pk-bm-bfv-bka.html>.

²¹ Germany, Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) (2019), *Gesetzgebungsverfahren: Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität*, 19 December 2019, available at: https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Bekaempfung_Rechtsextremismus_Hasskriminalitaet.html.

²² See among others: Sehl, M. (2019), ‘Justizministerin verteidigt sich nach „Passwort-Gate“ im Bundestag’, *Legal Tribune Online*, 18 December 2019, available at: <https://www.lto.de/recht/hintergruende/h/bmjv-entwurf-gesetz-hasskriminalitaet-passwoerter-tmg-tkg-internet-nutzer-konto/>.

Chapter 3. Roma integration

1. Measures and developments addressing Roma/Travellers segregation

On 27 March 2019, an **Independent Commission on Antigypsyism** (*Unabhängige Kommission Antiziganismus*) was established in the Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*). Eleven experts from academia and civil society shall compile information on manifestations of antigypsyism in Germany and draft recommendations on how to combat antigypsyism in particular at the federal level until spring 2021. In the coalition agreement between the Conservatives (CDU/CSU) and the Social Democrats (SPD) it was agreed to set up such a commission, based on the model of the Expert Commissions on Antisemitism that worked from 2009 to 2011 and from 2013 to 2017.²³ The initiative was endorsed by the German Bundestag on 22 March,²⁴ and praised by the Central Council of German Sinti and Roma.²⁵ The secretariat of the Independent Commission on Antigypsyism is located at the German Institute for Human Rights. The report of the Commission has to be tabled in parliament before the end of the current legislative period in autumn 2021.

In 2019, the second period of the **federal programm “Living Democracy!”** funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) was launched. Among others, nine “models projects” to examine methods on how to combat antigypsyism in rural areas are funded. If the model projects prove successful, it is aimed to transfer their experiences to other funding areas and organisations. The nine projects aim both to combat antigypsyism and empower Sinti and Roma.²⁶ Two examples shall illustrate the approach of the model projects: For the project “Arrived! Roma Youth in Dortmund and Duisburg” (*Angekommen! Roma-Jugendliche in Dortmund und Duisburg*) VIA e.V., a national umbrella organisation for intercultural work, is facilitating creative youths workshops (music, theatre, dance etc.) to promote exchange with youngsters from Roma communities recently immigrated from the Balkan. The project, thus, aims to reduce prejudices and inter-group violence and to promote self-consciousness

²³ Germany, Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) (2019), *Unabhängige Kommission Antiziganismus*, available at:

<https://www.bmi.bund.de/DE/themen/heimat-integration/gesellschaftlicher-zusammenhalt/unabhaengige-kommission-antiziganismus/unabhaengige-kommission-antiziganismus-node.html>.

²⁴ Germany, German Bundestag (Deutscher Bundestag) (2019), ‘Bundestag beschließt Antrag gegen Antiziganismus’, News, 22 March 2019, available at:

<https://www.bundestag.de/dokumente/textarchiv/2019/kw12-de-antiziganismus-630092>.

²⁵ Zentralrat Deutscher Sinti und Roma (2019), ‘Zentralrat begrüßt Bundestags-Debatte und Entschließungsantrag „Antiziganismus bekämpfen“’, Press release, 22 March 2019, available at:

<https://zentralrat.sintiundroma.de/zentralrat-deutscher-sinti-und-roma-begruesst-bundestags-debatte-und-entschliessungsantrag-antiziganismus-bekaempfen/>.

²⁶ Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2019), *Modellprojekte zu ausgewählten Phänomenen gruppenbezogener Menschenfeindlichkeit und zur Demokratiestärkung im ländlichen Raum*, available at:

<https://www.demokratie-leben.de/ueber-demokratie-leben/ausgewaehlte-phaenomene-gruppenbezogener-menschenfeindlichkeit-und-zur-demokratiestaerkung-im-laendlichen-raum.html#t-6>.

among Roma youths and joint perspectives with youths from other local communities.²⁷ Another project, the “Roma Antidiscrimination Network”, organised by the Roma Centre Göttingen, aims to document discrimination experienced by Roma and Sinti and make it visible. For this end, young Roma and Sinti shall collaborate in “transcultural” film and media workshops to learn the means of documentation. Thus, Roma youth shall be empowered while others are made aware of their histories and contemporary living situations.²⁸

In Bavaria, the **chief of staff (*Inspekteur*) of the state police issued an order in August 2019 that the police must not use term “Sinti” or “Roma”** for both internal investigative purposes and external public relation. He, thus, responded to a complaint by the State Commissioner for Data Protection (*Landesbeauftragter für Datenschutz*) who found the police using these terms in a discriminatory manner to label suspects or other persons when exercising his supervisory powers in regard to a random sample of police data.²⁹

2. Policy and legal measures and developments directly or indirectly addressing Roma/Travellers inclusion

In the State of Baden-Württemberg a new act came into force on 1 January 2019 by which the **existing treaty (*Staatsvertrag*) between the state and the regional organisation of Sinti and Roma is renewed** for another 15 years. The treaty aims to protect the “culture, tradition and language of the minority” and to promote “the integration of non-German Sinti and Roma who are entitled to stay”.³⁰ Several other states have launched or extended **programmes to support the integration and participation of Sinti and Roma**: In Berlin, the “Action Plan to include foreign Roma” that was launched in 2013 will be continued. The Berlin Action Plans aims to supplement existing public welfare services by providing additional support in the areas of health, education and housing through temporary measures, e.g. by establishing “training groups for newcomers with knowledge of German”, a special type of school classes, or by providing basic health services such as vaccination or financing of births for people who are not covered by health insurance.³¹ In 2019 the Berlin Action Plans provides,

²⁷ Angekommen! Roma-Jugendliche in Dortmund und Duisburg, available at: <http://www.aidd-projekt.de/>.

²⁸ Roma Antidiscrimination Network (RAN), available at: <http://www.roma-center.de/roma-antidiscrimination-network/>.

²⁹ Nordbayern.de (2019), Bayerns Polizei soll nicht mehr "Sinti" und "Roma" schreiben, 20 August 2019, available at: <https://www.nordbayern.de/region/bayerns-polizei-soll-nicht-mehr-sinti-und-roma-schreiben-1.9234965>.

³⁰ Germany, State Ministry Baden-Württemberg (*Staatsministerium Baden-Württemberg*) (2019), ‘Staatsvertrag mit Landesverband der Deutschen Sinti und Roma unterzeichnet’, Press release, 14 November 2018, available at: <https://stm.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/staatsvertrag-mit-landesverband-der-deutschen-sinti-und-roma-unterzeichnet/>; State Assembly of Baden-Württemberg (*Landtag Baden-Württemberg*) (2019), *Jährliche Unterrichtung des Landtags gemäß Artikel 2 Absatz 5 des Gesetzes zu dem Vertrag des Landes Baden-Württemberg mit dem Verband Deutscher Sinti und Roma, Landesverband Baden-Württemberg e. V. (VDSR-BW)*, Printed Document 16/6428, 14 June 2019, available at: https://www.landtag-bw.de/files/live/sites/LTBW/files/dokumente/WP16/Drucksachen/6000/16_6428_D.pdf.

³¹ Germany, House of Representatives Berlin (*Abgeordnetenhaus Berlin*) (2013), *Berliner Aktionsplan zur Einbeziehung ausländischer Roma*, Printed Document 17/1094, 19 July 2013, available at: <https://minor-wissenschaft.de/wp-content/uploads/2018/09/AktionsplanRoma.pdf>.

among others, for the deployment of interpreters for Romanes, Bulgarian and Romanian at Berlin primary schools since 2019. An evaluation of the Action Plan is to be completed by the end of 2019 to deliver input for its renewal.³² The State of Rhineland-Palatinate is funding the regional branch of the Council of German Sinti and Roma with more than €250,000 in 2019, mainly meant staff costs of the Council and its educational and cultural work.³³ Hamburg is funding several projects to support the labour market integration of families or single mothers with children from Sinti and Roma communities.³⁴

In January 2019, the **German Association of Cities (*Deutscher Städtetag*) called on the federal level, the states and the European Union to develop a comprehensive strategy** to tackle “the problems [...] which emerge from the integration of migrants from South-eastern Europe”, claiming that around 10 to 15 German cities are significantly affected through rising costs caused by their efforts to integrate immigrants from Romania and Bulgaria who have been excluded and marginalised in their home countries. The Association called in particular on the European Union to renew its relevant funding programmes beyond 2021.³⁵

³² Germany, The Commissioner of the Berlin Senate for Integration and Migration (*Die Beauftragte des Berliner Senats für Integration und Migration*), *Der Berliner Aktionsplan zur Einbeziehung ausländischer Roma*, available at: <https://www.berlin.de/lb/intmig/themen/aktionsplan-roma/>; House of Representatives Berlin (*Abgeordnetenhaus Berlin*) (2019), *Programm der Roma-Schulmediator*innen: Abgewickelt? Warum? Antwort auf die Schriftliche Anfrage der Abgeordneten Susanna Kahlefeld (GRÜNE)*, Printed Document 18/17528, 4 February 2019, available at: <http://pardok.parlament-berlin.de/starweb/adis/citat/VT/18/SchrAnfr/s18-17528.pdf>. A final report of the evaluation is not yet available but individual working papers can be accessed at: <https://minor-wissenschaft.de/portfolio/evaluation-aktionsplan-roma/>.

³³ Germany, State Assembly of Rhineland Palatinate (*Landtag Rheinland-Pfalz*) (2019), *Einwilligung des Landtags (Haushalts- und Finanzausschuss) zur Aufhebung der Sperre von Ausgaben und Verpflichtungsermächtigungen im Haushaltsjahr 2019 für Zuwendungen nach § 5 des Landeshaushaltsgesetzes 2019/2020; hier: Zuschüsse an . den Verband Deutscher Sinti und Roma – Landesverband Rheinland-Pfalz e.V.*, Printed Document 17/5089, 26 June 2019, available at: <http://dokumente.landtag.rlp.de/landtag/vorlagen/5089-V-17.pdf>.

³⁴ Germany, Legislative Assembly of the Free and Hanse City Hamburg (*Bürgerschaft der Freien und Hansestadt Hamburg*) (2019), *Stellungnahme des Senats zu dem Ersuchen der Bürgerschaft vom 30. Januar 2019 „Qualifizierung und Aktivierung von Eltern und insbesondere jungen Müttern verbessern – Kooperation zwischen Jobcenter und Jugendhilfe ausbauen“*, Printed Document 21/17963, 6 August 2019, available at: https://www.buergerschaft-hh.de/parldok/dokument/67569/stellungnahme_des_senats_zu_dem_ersuchen_der_buergerschaft_vom_30_januar_2019_qualifizierung_und_aktivierung_von_eltern_und_insbesondere_jungen_muette.pdf.

³⁵ Deutscher Städtetag (2019), ‘Probleme durch Zuwanderung aus Südosteuropa erfordern Gesamtstrategie von Bund, Ländern und EU’, *Städtetag aktuell*, 1/2019, p. 6, available at: www.staedtetag.de/imperia/md/content/dst/veroeffentlichungen/dst_aktuell/2019/staedtetag_aktuell_1_2019.pdf.

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

Unaccompanied children reaching the age of majority

Area of support	Description
Residence permit <i>Reception conditions Directive (article 6 and 7) and Qualification Directive (articles 24 and 31)</i>	In principle, all residence permits – with the exception of the settlement permit (<i>Niederlassungserlaubnis</i>) – are limited in time since they are issued for a specific purpose, e.g. for humanitarian purposes, higher education or work (Sections 16 to 36a of the Residence Act - <i>Aufenthaltsgesetz</i>). ³⁶ A specific residence permit for children does not exist. Rather the type and term of a residence permit depends on the purpose of a foreigner’s residence irrespective of her or his age. Persons who are recognised as asylum seekers, refugees or for subsidiary protection are granted residence permits under Section 25 of the Residence Act. Unaccompanied children without a residence permits are only protected against deportation (“forced return”), if the Foreigners’ Registration Authority (<i>Ausländerbehörde</i>) cannot warrant that the child is handed over to a person entitled to care or to a suitable reception facility in the return country (Section 58 (1a) of the Residence Act). This provision inhibits the enforcement of deportations and results in the toleration (<i>Duldung</i>)

³⁶ Germany, Act on the Residence, Employment and Integration of Foreigners in the Federal Republic of Germany (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*), 30 July 2004, available at: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html.

of residence. However, this does not mean in practice that a toleration is formally issued until the child reaches majority. Rather the toleration is issued on a monthly basis.

When examining the requirements for a residence permit in accordance with Section 25 of the Residence Act, there are special features to be taken into account during the age of minority which can finally lead to the issuing of a residence permit. For a long time it was unclear what happens (if, for instance, the residence permit of the affected youth would be revoked) when a child would reach the age of majority. Meanwhile the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) initiates such revocation proceedings, probably on notice by the foreigners' registration authority that is in charge of the youth.

Among these special features are the following:

- Child specific causes for flight are to be considered. A list of such child-specific causes is laid down in the UNHCR Guidelines for International Protection Child ³⁷ but they are not mentioned in the law, and the practice of the Federal Office for Migration and Refugees is incoherent in this respect.
- Minority has to be taken into account when asylum authorities consider the question if safe regions would have been available in the country of origin. Therefore unaccompanied children cannot as simply be referred to such safe regions as adult asylum seekers.

³⁷ UN High Commissioner for Refugees (UNHCR), *Richtlinien Zum Internationalen Schutz: Asylanträge von Kindern im Zusammenhang mit Artikel 1 (A) 2 und 1 (F) des Abkommens von 1951 bzw. des Protokolls von 1967 über die Rechtsstellung der Flüchtlinge*, HCR/GIP/09/08, 22 December 2009, available at: <https://www.refworld.org/docid/4bf1459f2.html>.

	The consideration of these special features does not entail the issuing of a specific residence permit. Rather they modify the scope and content of the assessment, at least in theory.
Guardianship (<i>representative under Reception Conditions Directive Article 24.1</i>)	Put simply: In Germany, guardianship for unaccompanied children usually ends when the child reaches the age of majority, since the requirements for guardianship no longer apply (Section 1773 read in conjunction with Section 1882 of the Civil Code – <i>Bürgerliches Gesetzbuch</i>). ³⁸ However, in cases in which the law of the country of origin does provide for a later age of majority, this age is usually decisive for the termination of guardianship (Section 24 (1) of the Introductory Act to the German Civil Code – <i>Einführungsgesetz zum Bürgerlichen Gesetzbuch</i>). ³⁹ If the child is a refugee, German law does apply and the guardianship ends at the age of 18, even if the law of her or his country of origin provides for another age of majority. Given the immediate termination, guardians should carefully prepare the children for the age of majority. Voluntary mentorship is possible and in particular exercised if the child and her or his guardian had a close relationship – but this model is not formally regulated and the dominant form of guardianship is “official guardianship” (<i>Amtsvormundschaft</i>).
Accommodation <i>Reception Conditions Directive Article 24.2</i>	If there is a need for limited care before full independence is reached (<i>Verselbständigung</i>) beyond the age of 18 – and this is assumed as a general rule according to Book VIII of the Social Code until the age of 21 – then the youth adult irrespective of nationality or status is entitled to receive assistance for young adults according to Section 41 of Book VIII of the Social Code which can be – and usually is – provided in the form of stationary accommodation (<i>stationäre Unterbringung</i>) according to Sections 33, 34 or 35 of Book VIII of the Social Code). ⁴⁰ This assistance can, however, be also granted in form of the full-time care (Section 33) which can mean accommodation with foster parents.

³⁸ Germany, Civil Code (*Bürgerliches Gesetzbuch*), 18 August 1896, available at: <https://www.gesetze-im-internet.de/bgb/BJNR001950896.html>.

³⁹ Germany, Introductory Act to the German Civil Code (*Einführungsgesetz zum Bürgerlichen Gesetzbuch*), 18 August 1896, available at: <https://www.gesetze-im-internet.de/bgbeg/>.

⁴⁰ Germany, Social Code – Book VIII – Child and Youth Welfare (*Sozialgesetzbuch – Ahtes Buch – Kinder- und Jugendhilfe*), 26 June 1990, available at: https://www.gesetze-im-internet.de/sgb_8/BJNR111630990.html.

	<p>In individual cases the assistance can be granted until the completion of the age of 27 years but then only as continuation assistance (<i>Fortsetzungshilfe</i>).</p> <p>In the years following 2015, another form of assistance was reanimated to improvise cheap support for incoming unaccompanied children, namely “socio-pedagogical living” (<i>sozialpädagogisches Wohnen</i>) in accordance with Section 13 (3) of Book VIII of the Social Code. As this form of assistance was initially meant to support young people (<i>junge Menschen</i>, i.e. those who are not yet 27 years old) who come for education or training purposes from rural areas to the cities humans from the surrounding countryside, it does not provide for much than basic needs and a roof over the head.</p> <p>If the youth welfare service is terminated upon reaching the age of majority, then the accommodation and care, as with all other adults, depends in particular on the residence status. Accommodation is then often provided in communal accommodation (<i>Gemeinschaftsunterkünfte</i>). Due to financial reasons is authorities increasingly turn to the provision of youth welfare by outpatient support service in communal accommodation. This means that affected juvenile refugees are no longer accommodated in stationary youth welfare.</p> <p>If the transition from youth welfare is not well prepared and, for example, the subsequent living situation is not clarified, homelessness can occur. This is an issue for so-called “care leavers”.</p>
<p>Return <i>Return Directive, Article 10</i></p>	<p>We do not know about such special measures apart from Section 58 (1a) of the Residence Act which implements Art. 10 (1) of the Return Directive. As mentioned above, Section 58 (1a) of the Residence Act provides for the obligation of foreigners’ registration authorities to examine if an unaccompanied child can be handed over to a care person or an adequate reception facility after deportation. Further detailed regulations do not exist, at least at the federal level. State legislation or administrative guidance might provide for such detailed regulation in some cases.</p>
<p>Others</p>	<p>Apart from residence permits based on an asylum status the following permissions of relevance for unaccompanied children who reach majority exist:</p> <ol style="list-style-type: none"> 1. Residence permit according to Section 25 (3) of the Residence Act in case of special grounds for the prohibition of deportation – hardly of actual relevance.

	<ol style="list-style-type: none">2. Residence permit for “well integrated” youths according to Section 25a of the Residence Act – was relevant in practice but the possibilities to acquire such as residence permit have been significantly limited by the Second Act for the Improved Enforcement of the Obligation to Leave (<i>Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht</i>) in 2019.3. Residence permit for foreigners who are “sustainably integrated” according to Section 25b of the Residence Act, possible after six or eight years of permitted respectively tolerated residence.4. Residence permit according to Section 25 (5) of the Residence Act which was introduced to reduce the amount of tolerations being renewed constantly (<i>Kettenduldungen</i>). These residence permits shall be issued if the deportation is suspended for 18 months. Hardly of actual relevance.5. Residence permit according to Section 18a of the Residence Act which is usually issued as follow-up to a toleration for reasons of vocational training or education in accordance with Section 60a (2) of the Residence Act. This residence permit is of significant actual relevance.
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Chapter 5. Information society, data protection

1. Activities developed and launched by national data protection supervisory authorities (SAs) to implement and enforce the GDPR

German data protection authorities (DPAs) both at the federal and the state level have been busy since 25 May 2018 to provide individual advice and trainings on the implementation of the GDPR and to publish recommendations for data controllers on how to meet the new legal requirements. The Federal Data Protection Commissioner published an information brochure on the GDPR, including the legal text plus explanations.⁴¹ The Conference of German Data Protection Authorities (*Datenschutzkonferenz*) is publishing briefing papers on how to read the GDPR since July 2017 which reflect the common interpretation of all German DPAs. Until early October the Conference has published 20 of these briefing papers, among others on data transfers to third countries, informed consent, the right to be forgotten or video surveillance.⁴² Some of the Conference's orientation guides also address issues related to the GDPR.⁴³ In November 2019, the 98th Conference of the Independent Data Protection Supervisory Authorities of the Federation and States (*Konferenz der unabhängigen Datenschutzbehörden des Bundes und der Länder*) adopted a so-called "Standard Data Protection Model 2.0" meant as a toolbox for data controllers in the field of business and administration to implement technical and organisations measures in line with the GDPR throughout the life-cycle of data processing processes.⁴⁴ In addition,

⁴¹ Germany, Federal Commissioner for Data Protection and Freedom of Information (*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit*) (2019), *Datenschutz-Grundverordnung - Bundesdatenschutzgesetz - Texte und Erläuterung (Info 1)*, Bonn, June 2019, available at: <https://www.bfdi.bund.de/SharedDocs/Publikationen/Infobroschueren/INFO1.html?nn=5217154>.

⁴² Germany, Data Protection Conference (*Datenschutzkonferenz*), *Kurzpapiere*, available at: <https://www.datenschutzkonferenz-online.de/kurzpapiere.html>.

⁴³ Germany, Data Protection Conference (*Datenschutzkonferenz*), *Orientierungshilfen*, available at: <https://www.datenschutzkonferenz-online.de/orientierungshilfen.html>.

⁴⁴ Germany, Data Protection Conference (*Datenschutzkonferenz*) (2019), *Das Standard-Datenschutzmodell. Eine Methode zur Datenschutzberatung und -prüfung auf der Basis einheitlicher Gewährleistungsziele (Version 2.0a)*, Trier, 7 November 2019, available at: https://www.datenschutz-mv.de/static/DS/Dateien/Datenschutzmodell/SDM-Methode_V2.0a.pdf.

the DPAs individually and collectively issued opinions on legislation tabled to implement the GDPR both at the federal and the state level, most notably the Draft Second Act for the Adjustment of Data Protection Law to the Regulation (EU) 2016/679 and for the Implementation of Directive (EU) 2016/680 which was tabled by the Federal Government on 7 September 2018 aiming to revise or amend around 150 acts and their data protection provisions.⁴⁵ The Act was finally adopted by the Federal Council on 20 September 2019.⁴⁶

All DPAs that have published activity reports in 2019, report a massive increase of their workload in the wake of the GDPR becoming valid: The Federal Data Protection Commissioner reported that his office had received more than 3,100 complaints and around 6,500 information requests from May to December 2018 which is twice as much as in 2017. Moreover, the office has been informed of around 7,300 data protection violations from federal authorities as well as postal and telecommunication companies which indicate the significant demand for raising awareness for data protection.⁴⁷ On 18 November 2019, the Federal Data Protection Commissioner reported, however, that the German Bundestag has approved an increase of his staff by 67 members. Following recent staff increases in 2017/18 the team of the Federal Data Protection Commission will, thus, soon comprise more than 300 staff members.⁴⁸ In North Rhine Westphalia, Germany's most populous state, the State Data Protection Commissioner reported that her office received around 12,000 complaints and other submissions, three times as

⁴⁵ Germany, Federal Council (*Bundesrat*) (2018), *Zweites Gesetz zur Anpassung des Datenschutzrechts an die Verordnung (EU) 2016/679 und zur Umsetzung der Richtlinie (EU) 2016/680 (Zweites Datenschutz-Anpassungs- und Umsetzungsgesetz EU - 2. DSAnpUG-EU). Gesetzesentwurf der Bundesregierung*, Printed Document 430/18, 7 September 2018, available at: <http://dipbt.bundestag.de/dip21/brd/2018/0430-18.pdf>.

⁴⁶ Germany, Federal Council (*Bundesrat*) (2019), *Beschluss zum Zweites Gesetz zur Anpassung des Datenschutzrechts an die Verordnung (EU) 2016/679 und zur Umsetzung der Richtlinie (EU) 2016/680*, Printed Document 380/19 (Beschluss), 20 September 2019, available at: <https://www.bundesrat.de/drs.html?id=380-19%28B%29>.

⁴⁷ Germany, Federal Commissioner for Data Protection and Freedom of Information (*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit*) (2019), 'Der Bundesdatenschutzbeauftragte stellt seinen 27. Tätigkeitsbericht vor: Positive Bilanz der Datenschutz-Grundverordnung, Kritik an immer mehr Befugnisse für Grundrechtseingriffe der Sicherheitsbehörden', Press release, 8 May 2019, available at: https://www.bfdi.bund.de/DE/Infothek/Pressemitteilungen/2019/16_27_TB.html.

⁴⁸ Germany, Federal Commissioner for Data Protection and Freedom of Information (*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit*) (2019), 'Bundestag stärkt Datenschutzaufsichtsbehörde', Press release, available at: https://www.bfdi.bund.de/DE/Infothek/Pressemitteilungen/2019/28_BTst%C3%A4rktDatenschutzaufsichtsbeh%C3%B6rde.html.

much as in 2017; 1,200 data breaches were reported according with Art. 33 GDPR and 22,000 contact addresses of data protection officers had to be registered.⁴⁹ In Baden-Württemberg, the number of complaints increased by 30 per cent and the number of requests for advice by 150 per cent; data breaches were reported ten times more than in 2017.⁵⁰ In Mecklenburg-Western Pomerania, the three times more complaints were lodged in 2018 than in 2017.⁵¹ In Berlin, to conclude the list of examples, the State Data Protection Commissioner received four times more complaints in 2018 than in 2017.⁵² Many DPAs reported that their resources are strained not only because of the rising numbers of complaints and information requests but also due to their new competences, in particular the mandate to process complaints which are not directed against an authority or private company located in the state, and the resulting complex interaction with other European DPAs. DPAs in Sachsen-Anhalt and Schleswig-Holstein, for example, explicitly noted that their limited resources inhibit the fulfilment of legal tasks.⁵³

⁴⁹ Germany, State Commissioner for Data Protection and Freedom of Information North Rhine Westphalia (*Landesbeauftragten für Datenschutz und Informationsfreiheit Nordrhein-Westfalen*) (2019), ‘Datenschutz im Zeichen Europas – Landesbeauftragte Helga Block veröffentlicht Datenschutz- und Informationsfreiheitsbericht’, Press release, 24 May 2019, available at: <https://www.datenschutz.de/datenschutz-im-zeichen-europas-landesbeauftragte-helga-block-veroeffentlicht-datenschutz-und-informationsfreiheitsbericht/>.

⁵⁰ Germany, State Commissioner for Data Protection and Freedom of Information Baden-Württemberg (*Landesbeauftragten für Datenschutz und Informationsfreiheit Baden-Württemberg*) (2019), ‘LfDI Baden-Württemberg Dr. Stefan Brink stellt den 34. Tätigkeitsbericht zum Datenschutz vor’, Press release, 4 February 2019, available at: <https://www.datenschutz.de/lfdi-baden-wuerttemberg-dr-stefan-brink-stellt-den-34-taetigkeitsbericht-zum-datenschutz-vor/>.

⁵¹ Germany, State Commissioner for Data Protection and Freedom of Information Mecklenburg Western Pomerania (*Landesbeauftragten für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern*) (2019), ‘Ein Jahr DS-GVO – Der Landesbeauftragte für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern legt seinen 14. Tätigkeitsbericht vor und zieht Bilanz’, Press release, 21 May 2019, available at: <https://www.datenschutz.de/ein-jahr-ds-gvo-der-landesbeauftragte-fuer-datenschutz-und-informationsfreiheit-legt-seinen-14-taetigkeitsbericht-vor-und-zieht-bilanz/>.

⁵² Germany, State Commissioner for Data Protection and Freedom of Information Berlin (*Landesbeauftragten für Datenschutz und Informationsfreiheit Berlin*) (2019), ‘Jahresbericht 2018 der Berliner Beauftragten für Datenschutz und Informationsfreiheit’, Press release, 28 March 2019, available at: <https://www.datenschutz.de/jahresbericht-2018-der-berliner-beauftragten-fuer-datenschutz-und-informationsfreiheit/>.

⁵³ Germany, State Commissioner for Data Protection Schleswig-Holstein (*Landesbeauftragte für Datenschutz Schleswig-Holstein*) (2019), ‘Hart am Wind – Landesbeauftragte für Datenschutz stellt Tätigkeitsbericht 2019 vor’, Press release, 24 May 2019, available at: <https://www.datenschutz.de/datenschutz-und-informationsfreiheit-in-schleswig-holstein-hart-am-wind-landesbeauftragte-fuer-datenschutz-stellt-taetigkeitsbericht-2019-vor/>; State Commissioner for Data Protection Sachsen-Anhalt (*Landesbeauftragte für Datenschutz Sachsen-Anhalt*) (2019), *15. Tätigkeitsbericht*, 15 February 2019, pp. 6- 8, available at: https://datenschutz.sachsen-anhalt.de/fileadmin/Bibliothek/Landesaemter/LfD/PDF/binary/Informationen/Veroeffentlichungen/Taetigkeitsberichte/TB_15/15_Taetigkeitsbericht_Datenschutz.pdf.

2. Artificial intelligence and big data

MS	Actor*	Type**	Description	Are Ethical concerns mentioned? (yes/no)	Are Human Rights issues mentioned? (yes/no)	Reference
DE	Other (Think Tank and Private Foundation)	Report (Guidelines)	On 7 March 2019, the think tank iRights.lab and the Bertelsmann Foundation presented their „Algo.Rules“, a catalogue of criteria aiming to allow for a socially beneficial design of algorithmic systems. The criteria were developed in a participatory process involving 400 experts consulted in workshops and interviews.	Yes	Yes	iRights.lab and Bertelsmann Stiftung (2019), <i>Algo. Rules. Rules for the Design of Algorithmic Systems</i> , Berlin, 7 March 2019, available at: https://irights-lab.de/wp-content/uploads/2019/03/Algo.Rules_EN.pdf .
DE	DPAs	Other projects (declaration)	On 3 April 2019, the 97 th Conference of Independent Data Protection Supervisory Authorities of the Federation and the States (<i>Konferenz der unabhängigen Datenschutzaufsichtsbehörden des Bundes und der Länder</i>) adopted the “Hambach Declaration in Artificial Intelligence” (<i>“Hambacher Erklärung zur Künstlichen Intelligenz”</i>) that outlines seven data protection requirements for the use of artificial intelligence (AI): 1) The use of AI must respect human dignity, 2) AI must be only used for legitimate purposes, 3) AI needs to be transparent and explicable, 4) AI must not discriminate against, 5) the use of personal data for the training of AI needs to be limited to what is necessary (principle of data minimisation), 6) AI needs to be accountable, 7) the use of AI needs technical and organisational standards to comply with data protection provisions.	Yes. The declaration also calls for an appropriate governance of developing AI systems which should also consider “ethical principles”.	The declaration often refers to “fundamental rights” (<i>Grundrechte</i>), “freedom rights” (<i>Freiheitsrechte</i>) or “rights” in general. Explicitly mentioned is “human dignity” and “non-discrimination”	Germany, Data Protection Conference (<i>Datenschutzkonferenz</i>) (2019), <i>Hambacher Erklärung zur Künstlichen Intelligenz - Sieben datenschutzrechtliche Anforderungen. Entschließung der 97. Konferenz der unabhängigen Datenschutzaufsichtsbehörden des Bundes und der Länder</i> , Hambach, 3 April 2019, available at: https://www.datenschutzkonferenz-online.de/media/en/20190405_hambacher_erklaerung.pdf
DE	Independent State	Report	On 16 September 2019, a study on the risks of discrimination by the use of algorithmic decision systems commissioned by the	The focus of the study is on the	Ethics are sometimes but rarely	Orwat, C. (2019), <i>Diskriminierungsrisiken durch Verwendung von Algorithmen</i> , Berlin, Antidiskriminierungsstelle des Bundes, 16 September 2019, available at:

	Institution		Federal Anti-Discrimination Agency was published. The study compiles information on cases of discrimination through algorithmic decision-making in particular in the private sector, maps reasons for discrimination, identifies areas where action is needed and outlines recommendations for equality bodies: Due to the difficulties for affected persons to detect and prove algorithm-based discriminations they should act as representative bodies by collecting and investigating publicly available data on the outcomes of differentiation decisions, and by using their specific expertise as starting point for systematic empirical investigations, anti-discrimination-testing and algorithm audits. To warrant access to relevant documentation it is recommended to extend the powers of equality bodies by law.	human right not to be discriminated against, and the fair processing of sensitive data.	mentioned, mostly when referring to other research.	https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Studie_Diskriminierungsrisiken_durch_Verwendung_von_Algorithmen.html .
DE	Other	Report	On 23 October 2019, the Data Ethics Commission (<i>Datenethikkommission</i>), a body of 16 (mostly academic) experts that was established by the Federal Government on 18 July 2018, published its 240-pages-report. The report aims answering the guiding questions of the Federal Government by drafting ethical standards and guidelines and issuing recommendations to protect individuals, warrant social cohesion and promote prosperity in the age of big data and algorithmic systems (whereby understanding artificial intelligence as a specific form of such systems). The commission issues 75 recommendations, calling among others for „risk-adapting regulation systems for the use of algorithmic systems“ which should assess the „criticality“ of systems and score their potential for damage.	Yes, data ethics is the key concept which guided the work of the commission	Yes, human dignity, individual self-determination, physical and emotional security and the right to privacy are seen as key principles, along with democracy, fairness and solidarity and sustainability. The ECHR and the EU Fundamental	Datenethikkommission (2019), <i>Gutachten der Datenethikkommission</i> , Berlin, available at: https://datenethikkommission.de/wp-content/uploads/191015_DEK_Gutachten_screen.pdf .

					Rights Charta should guide a “European way” for developing algorithmic systems.	
DE	Parliamentary	Other projects	The Enquete Commission „Artificial Intelligence“ of the German Bundestag held 12 sessions from January to early December 2019 that focussed, among others, on the risks of discrimination, transparency requirements for algorithmic systems, and economic effects. The final report of the commission will be published in summer 2020. Short interim reports of three sub-groups of the Commission were published on 18 December 2019, namely reports on AI and 1) the economy, 2) the state and 3) health. The reports stress that IT security, data protection, social and ecological responsibility, transparency and non-discrimination are crucial to establish trust and foster acceptance of the new technology.	Yes, briefly in some interim reports of the sub-groups.	Human rights are not mentioned explicitly but fundamental rights and data protection as well as non-discrimination are mentioned briefly in the interim reports.	Germany, German Bundestag (Deutscher Bundestag), Enquete-Kommission „Künstliche Intelligenz – Gesellschaftliche Verantwortung und wirtschaftliche, soziale und ökologische Potenziale“, available at: https://www.bundestag.de/ausschuesse/weitere_gremien/enquete_ki . Germany, German Bundestag (Deutscher Bundestag) (2019), <i>Enquete Kommission Künstliche Intelligenz. Projektgruppe „KI und Wirtschaft“ - Zusammenfassung der vorläufigen Ergebnisse</i> , Printed Document 19(27)92, 18 December 2019, available at: https://www.bundestag.de/resource/blob/672894/e82fdd5cb437de0aaf0da3d7033f84a3/PG-1-Projektgruppenbericht-data.pdf . Germany, German Bundestag (Deutscher Bundestag) (2019), <i>Enquete Kommission Künstliche Intelligenz. Projektgruppe „KI und Staat“ - Zusammenfassung der vorläufigen Ergebnisse</i> , Printed Document 19(27)93, 18 December 2019, available at: https://www.bundestag.de/resource/blob/672932/8dafccf73bce9d9560223d1683d82cb9/PG-2-Projektgruppenbericht-data.pdf . Germany, German Bundestag (Deutscher Bundestag) (2019), <i>Enquete Kommission Künstliche Intelligenz. Projektgruppe „KI und Gesundheit“ - Zusammenfassung der vorläufigen Ergebnisse</i> , Printed Document 19(27)94, 18 December 2019, available at: https://www.bundestag.de/resource/blob/672950/fed938366dcf1b3f79c2ff177e0f86f5/PG-3-Projektgruppenbericht-data.pdf .
DE	DPA	Report (Position Paper)	On 6 November 2019, the 98th Conference of Independent Data Protection Supervisory Authorities (<i>Konferenz der unabhängigen Datenschutzaufsichtsbehörden</i> also known as	No	Yes	Germany, Data Protection Conference (<i>Datenschutzkonferenz</i>) (2019), <i>Positionspapier der DSK zu empfohlenen technischen und organisatorischen Maßnahmen bei der Entwicklung und dem Betrieb von KI-Systemen</i> , 6 November 2019, available at:

			<p><i>Datenschutzkonferenz</i>) published a position paper on the technical and organisational measures for the development and operation of artificial intelligence systems which details the principles of the Hambach Declaration (see above). The paper shall provide a framework for the use of AI in line with the GDPR and aims to intensify the dialogue with other relevant stakeholders.</p>			<p>https://www.datenschutz-mv.de/static/DS/Dateien/Entschliessungen/Datenschutz/20191106_Positionspapier_TOM_KI_Systeme.pdf.</p>
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3. Data retention

Apart from the developments that have been reported last year in our contribution to the Fundamental Rights Report 2019 nothing has changed in relation to data retention in Germany. These developments are, however, not covered yet by the FRA’s online overview on “data retention across the EU” which seems to date from 2016/17.

The Bill to Strengthen Civil Liberties (*Entwurf für ein Gesetz zur Stärkung der Bürgerrechte*) that was tabled on 8 December 2017 by the liberal Free Democratic Party (*Freie Demokratische Partei*) in order to abandon the German data retention regulation is still pending in parliamentary proceedings after it was referred to the committees on 1 February 2018.⁵⁴ On 2 March 2019, Ulrich Kelber, the newly elected Federal Commissioner for Data Protection and Freedom

⁵⁴ Germany, German Bundestag (*Deutscher Bundestag*), *Gesetz zur Stärkung der Bürgerrechte (Bürgerrechtstärkungs-Gesetz - BüStärG) – Basisinformation über den Vorgang*, available at: <http://dipbt.bundestag.de/extrakt/ba/WP19/2304/230471.html>.

of Information (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*) also called in an interview with the newspaper ‘Handelsblatt’ for the abandonment of the data retention regulation in the light of decisions by the Court of Justice of the European Union.⁵⁵

On 25 September 2019, the **Federal Administrative Court (*Bundesverwaltungsgericht*) decided to refer a question about the interpretation of the e-Privacy Directive 2002/58/EC to the CJEU**, before eventually deciding two cases with regard to the German data retention regime. The two cases concerned decisions by the Administrative Court of Cologne (*Verwaltungsgericht Köln*) stopped data retention of telecommunication data by two service providers in 2018 (see “data retention” section in Chapter 5 our contribution to the Fundamental Rights Report 2019). These cases were brought for revision to the Federal Administrative Court by the Federal Network Agency (*Bundesnetzagentur*). Whereas the Federal Administrative Court acknowledges the CJEU’s decisions on the British (*Watson*) and Swedish (*Tele2 Sverige*) data retention regimes it argues that the German legislation on data retention differs significantly in terms of the affected means of communication, the retention periods, access to data and technical safeguards for data protection. Thus, the Federal Administrative Court now wants the CJEU to issue an opinion on whether an obligation to retain data without probable cause can in no case be justified by Art. 15 (1) of Directive 2002/58/EC. The Court notes a tension between the rights to privacy and data protection (Art. 7 and 8 of the Fundamental Rights Charter) and the right to liberty and security (Art. 6 of the Charter) and alleges a difference with recent ECHR jurisprudence.⁵⁶

Given the referral of the case to the CJEU it seems unlikely now that the Federal Constitutional Court (*Bundesverfassungsgericht*), listing complaints against the German data retention regime in its public preview of cases which might be decided in 2019,⁵⁷ will issue a decision before the end of the year.⁵⁸

⁵⁵ Neuerer, D. (2019), ‘Bundesdatenschützer Kelber fordert endgültiges Aus für Vorratsdatenspeicherung’, *Handelsblatt*, 2 March 2019, available at: <https://www.handelsblatt.com/politik/deutschland/terrorbekaempfung-bundesdatenschuetzer-kelber-fordert-endgueltiges-aus-fuer-vorratsdatenspeicherung/24057672.html>.

⁵⁶ Germany, Federal Administrative Court (*Bundesverwaltungsgericht*) (2019), ‘EuGH soll Vereinbarkeit der deutschen Regelung zur Vorratsdatenspeicherung mit dem Unionsrecht klären’, Press release, 25 September 2019, available at: <https://www.bverwg.de/pm/2019/66>. See for the decisions: Germany, Federal Administrative Court (*Bundesverwaltungsgericht*) (2019), BVerwG 6 C 12.18, 25 September 2019, available at: <https://www.bverwg.de/entscheidungen/pdf/250919B6C12.18.0.pdf>, and: BVerwG 6 C 13.18, 25 September 2019, available at: <https://www.bverwg.de/entscheidungen/pdf/250919B6C13.18.0.pdf>.

⁵⁷ Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), ‘Übersicht für das Jahr 2019’, available at: https://www.bundesverfassungsgericht.de/DE/Verfahren/Jahresvorausschau/vs_2019/vorausschau_2019_node.html.

⁵⁸ See Schulze, M. (2019), ‘Ein Weg aus der Zwickmühle für das Bundesverfassungsgericht’, *Verfassungsblog*, 26 September 2019, available at: <https://verfassungsblog.de/ein-weg-aus-der-zwickmuehle-fuer-das-bundesverfassungsgericht/>.

Chapter 6. Rights of the child

1. Procedural safeguards for children who are suspects in criminal proceedings

Legislative changes	<p>The Federal Government tabled the bill to implement Directive 2016/800 (Bill to Strengthen Procedural Rights of Accused in Juvenile Law Procedures – <i>Entwurf eines Gesetzes zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren</i>) on 9 August 2019.⁵⁹ The focus of the bill is on strengthening the role of juvenile court assistance (<i>Jugendgerichtshilfe</i>) and on lowering of the requirements for a necessary defence. After an expert hearing on 21 October, the bill was adopted by the German Bundestag on 14 November 2019 with minor amendments as recommended by the Legal Committee.⁶⁰ Most parts of the act came into force on 17 December 2019, a few sections will come into force only on 1 January 2020.⁶¹</p> <p>In addition, the Federal Government tabled another bill on 9 August 2019, namely the Bill on the New Regulation of the Right of Necessary Defence (<i>Entwurf eines Gesetzes zur Neuregelung des Rechts der notwendigen Verteidigung</i>) that also aims at implementing elements of Directive 2016/800.⁶² The bill would comprehensively regulate the information rights of an accused young person by amending Section 70a to the Juvenile Justice Act (<i>Jugendgerichtsgesetz</i>). With regard to the right to information, this kind of implementation could become a blueprint for the entire area</p>
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⁵⁹ Germany, Federal Council (*Bundesrat*) (2019), *Entwurf eines Gesetzes zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren. Gesetzentwurf der Bundesregierung*, Printed Document 368/19, 9 August 2019, available at: <https://www.bundesrat.de/drs.html?id=368-19>.

⁶⁰ Kriminalpolitische Zeitschrift, 'Referentenentwurf zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren', available at: <https://kripoz.de/2018/10/16/referentenentwurf-zur-staerkung-der-verfahrensrechte-von-beschuldigten-im-jugendstrafverfahren/>. See also: Germany, German Bundestag (*Deutscher Bundestag*), *Gesetzgebung: Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren*, available at: <https://dipbt.bundestag.de/extrakt/ba/WP19/2517/251767.html>.

⁶¹ Germany, Act to Strengthen Procedural Rights of Accused in Juvenile Law Procedures (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Jugendstrafverfahren*), 9 December 2019, available at: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl119s2146.pdf.

⁶² Germany, Federal Council (*Bundesrat*) (2019), *Entwurf eines Gesetzes zur Neuregelung des Rechts der notwendigen Verteidigung. Entwurf der Bundesregierung*, Printed Document 364/19, 9 August 2019, available at: <https://www.bundesrat.de/drs.html?id=364-19>.

	of child-oriented justice as such detailed and concrete rights to information have not yet been provided for in other contexts in which children come into contact with the justice system. The bill was adopted by the German Bundestag on 14 November 2019. ⁶³ The act came into force on 13 December 2019. ⁶⁴
Policy developments	Nothing to report yet.
Other measures or initiatives	The only stakeholders in the field who seem to anticipate the forthcoming implementation of the Directive are those who offer training courses for criminal lawyers . Courses introducing the Directive are being offered for while which is probably due to the anticipated expansion of the market for legal counselling.

2. Legal and policy measures or initiatives developed about child internet safety

The Federal Government has tabled a **Bill for the Amendment of the Criminal Code to Criminalise Attempts of Cybergrooming** (*Entwurf eines ... Gesetzes zur Änderung des Strafgesetzbuches - Versuchsstrafbarkeit des Cybergroomings*) on 9 August 2019. By this the Federal Government hopes to improve online child protection against sexual abuse. Accordingly, the bill would amend Section 176 (6) of the Criminal Code criminalise the establishment of online contacts aiming at sexual activities with alleged children even if they are in fact parents or covert police investigators. Such activities could result in up to five years prison.⁶⁵ The Federal Council (*Bundesrat*) decided that the bill does not go far enough and proposes to criminalise all attempts of cybergrooming, including attempts to contact a child which is not available then, for example, due to technical reasons.⁶⁶ Moreover, the Federal Council proposed to allow the uploading of fake child pornography material by covert investigators as a means for them to prove their credibility to alleged offenders. The Federal Government tabled an amended version of its initial bill in the German Bundestag (*Deutscher Bundestag*) where an expert hearing was organised on 6 November.⁶⁷

⁶³ Germany, German Bundestag (*Deutscher Bundestag*), *Gesetzgebung: Gesetz zur Neuregelung des Rechts der notwendigen Verteidigung*, available at:

<https://dipbt.bundestag.de/extrakt/ba/WP19/2517/251736.html>.

⁶⁴ Germany, Act on the New Regulation of the Right of Necessary Defence (*Gesetz zur Neuregelung des Rechts der notwendigen Verteidigung*), 10 December 2019, available at:

http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl119s2128.pdf.

⁶⁵ Germany, Federal Council (*Bundesrat*) (2019), *Entwurf eines ... Gesetzes zur Änderung des Strafgesetzbuches - Versuchsstrafbarkeit des Cybergroomings*, Printed Document 365/19, 9 August 2019, available at: <http://dipbt.bundestag.de/dip21/brd/2019/0365-19.pdf>.

⁶⁶ Germany, Federal Council (*Bundesrat*) (2019), *Stellungnahme des Bundesrates zum Entwurf eines ... Gesetzes zur Änderung des Strafgesetzbuches - Versuchsstrafbarkeit des Cybergroomings*, Printed Document 365/19 (Beschluss), 20 September 2019, available at:

<https://www.bundesrat.de/drs.html?id=365-19%28B%29>.

⁶⁷ Kriminalpolitische Zeitschrift, 'Versuchsstrafbarkeit des Cybergroomings', available at:

<https://kripoz.de/2019/04/30/versuchsstrafbarkeit-des-cybergroomings/>. See also: Germany, German Bundestag (*Deutscher Bundestag*), *Gesetzgebung: Gesetz zur Änderung des Strafgesetzbuches - Versuchsstrafbarkeit des Cybergroomings*, available at:

<https://dipbt.bundestag.de/extrakt/ba/WP19/2517/251731.html>.

Chapter 7. Access to justice including crime victims

1. Victims' Rights Directive

The Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) published a **Draft Bill for the Modernisation of Criminal Procedure** (*Referentenentwurf eines Gesetzes zur Modernisierung des Strafverfahrens*) on 8 August 2019 for comments by relevant stakeholders. The bill aims for a comprehensive reform of the Code of Criminal Procedure (*Strafprozessordnung*). Among others, it provides for the mandatory audio-visual recording of judicial examinations of adult sex crime victims of sexual crimes by amending Section 58a (1) Code of Criminal Procedure. Accordingly, an examination would have to be recorded if the victim's interests could thus be better safeguarded and the victim consents to the recording before the examination. Moreover, the assignment of a victim's lawyer shall become appropriate in all rape cases, even if the case did not involve physical violence but action was taken against the victim's will. The bill also aims to establish harmonised national quality standards for court interpreters by a Federal Court Interpreter Act (*Gerichtsdolmetschergesetz*).⁶⁸ The Federal Cabinet adopted the bill on 23 October. To accelerate the legislative procedure, the Conservatives and the Social Democrats in parliament tabled an equally-worded bill in the German Bundestag on 5 November 2019. The first reading took place two days later, and an expert hearing was organised on 11 November. On 15 November 2019, the German Bundestag adopted the bill.⁶⁹ The Act for the Modernisation of Criminal Procedure was issued on 10 December and most parts came into force on 13 December 2019.⁷⁰

2. Violence against women

On 26 June 2019, the Federal Cabinet voted for a comprehensive **reform of compensation law** by which the former Federal War Victims Relief Act (*Bundesversorgungsgesetz*) of 1950 and the Victims Compensation Act (*Opferentschädigungsgesetz*) of 1976 will be replaced by new 14th Book of the Social Code (*Sozialgesetzbuch XIV*). The bill provides, among others, for a

⁶⁸ Germany, Federal Ministry of Justice and for Consumer Protection (*Bundesministerium der Justiz und für Verbraucherschutz*) (2019), *Referentenentwurf – Gesetz zur Modernisierung des Strafverfahrens*, 8 August 2019, https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_Modernisierung_Strafverfahren.pdf.

⁶⁹ Kriminalpolitische Zeitung, 'Entwurf eines Gesetzes zur Modernisierung des Strafverfahrens', available at: <https://kripoz.de/2019/05/24/eckpunkte-zur-modernisierung-des-strafverfahrens/>; Germany, German Bundestag (*Deutscher Bundestag*): *Gesetzgebung: Gesetz zur Modernisierung des Strafverfahrens*, available at: <https://dipbt.bundestag.de/extrakt/ba/WP19/2549/254955.html>.

⁷⁰ Germany, Act for the Modernisation of Criminal Procedure (*Gesetz zur Modernisierung des Strafverfahrens*), 10 December 2019, available at: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl119s2121.pdf.

broader definition of “violence”, covering also mental and emotional violence, for cases of stalking and human trafficking. Thus, also all victims of stalking and human trafficking, mostly women, may apply for compensation in the future. Moreover, the bill provides for quick support of victims of violence who are in need of psychotherapeutic support through the means of trauma ambulance services. The bill also aims for an introduction of case management systems for victims of violence and it provides for victims of mental violence to become also eligible for compensation.⁷¹ On 7 November 2019, the bill was adopted by the German Bundestag.⁷² The Act for the Regulation of Social Compensation Law (*Gesetz zur Regelung des Sozialen Entschädigungsrechts*) was issued on 12 December 2019 and most parts will come into force on 1 January 2024.⁷³

On 14 November 2019, the German Bundestag adopted the Act for the Protection against Measles and to Strengthen Vaccination Prevention (*Gesetz für den Schutz vor Masern und zur Stärkung der Impfprävention*). In the course of the parliamentary proceedings, the Health Committee also commended to amend the proposed bill in order to provide for the **cost takeover by health insurance for the securing and documentation of evidence if persons affected by sexual violence or abuse do not want to involve the police** in the immediate aftermath of an incident but rather prefer to do this on a confidential basis with the option to retrieve evidence later to initiate criminal investigations. For this purpose Section 27 (1) of the Fifth Book of the Social Code (*Fünftes Sozialgesetzbuch*) will be amended. The act will be issued in early 2020.⁷⁴ In the Federal Council (*Bundesrat*), the states of **Rhineland Palatinate and Bremen proposed to criminalise “upskirting”** (i.e. the covert taking of pictures or filming under women’s skirts from a lower perspective) on 20 September 2019. Similar proposals were tabled by the states of Bavaria, North Rhine Westphalia and Saarland. All states call on the Federal Government to draft a bill.⁷⁵ The Federal Council endorsed the proposals on 8 November. On 13 November 2019, the Federal Government adopted a bill that, among others, aims to criminalise upskirting.⁷⁶

⁷¹ Germany, Federal Government (*Bundesregierung*) (2019), ‘Soziales Entschädigungsrecht. Opfern schneller und besser helfen’, News, 26 June 2019, available at: <https://www.bundesregierung.de/breg-de/aktuelles/soziales-entschaedigungsrecht-1640562>; Germany, Federal Council (*Bundesrat*) (2019), *Entwurf eines Gesetzes zur Regelung des Sozialen Entschädigungsrechts*, Printed Document 351/19, 9 August 2019, available at: <http://dipbt.bundestag.de/dip21/brd/2019/0351-19.pdf>.

⁷² Germany, German Bundestag (*Deutscher Bundestag*), *Gesetzgebung: Gesetz zur Regelung des Sozialen Entschädigungsrechts*, available at: <https://dipbt.bundestag.de/extrakt/ba/WP19/2517/251749.html>.

⁷³ Germany, Act for the Regulation of Social Compensation Law (*Gesetz zur Regelung des Sozialen Entschädigungsrechts*), 12 December 2019, available at: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl119s2652.pdf.

⁷⁴ German Bundestag (*Deutscher Bundestag*): *Gesetzgebung: Gesetz für den Schutz vor Masern und zur Stärkung der Impfprävention (Masernschutzgesetz)*, available at: <https://dipbt.bundestag.de/extrakt/ba/WP19/2517/251722.html>.

⁷⁵ Germany, Federal Council (*Bundesrat*) (2019), ‘Beschluss: Upskirting soll strafbar werden’, News, 20 September 2019, available at: <https://www.bundesrat.de/DE/plenum/bundesrat-kompakt/19/980/85.html#top-85>.

⁷⁶ Kriminalpolitische Zeitung, ‘Upskirting’, available at: <https://kripoz.de/2019/06/27/upskirting/>.

In January 2019, the Federal Association of Women Support Services and Women Emergency Call Services (*Bundesverband Frauenberatungsstellen und Frauennotrufe*) launched the **four-years-project „Make it Work!“** funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*). To combat sexual discrimination, harassment and violence at the workplace, the project aims to train and educate employers and management and support the establishment of preventative mechanisms. So far, two focus regions have been selected to test how networks against sexual harassment at the workplace can be established. On 1 May, the project launched a social media campaign to make employees and employers aware of their rights and obligations in cases of sexual harassment at work.⁷⁷

In February 2019, the **project „Article 25 Istanbul Convention: Acute care after sexual violence“** was kicked-off at the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) in collaboration with the Federal Association of Women Support Services and Women Emergency Call Services. The objective of the project is to identify and research existing acute care services in order to identify problems and gaps and draft recommendations how to improve the implementation of Article 25 of the Istanbul Convention. The project is funded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and shall be completed in June 2020. Focus groups are organised in six German regions to study practices of emergency support after sexual violence. In addition individual interviews are conducted with representatives from hospitals, health insurance, ambulant services for sexual violence.⁷⁸

⁷⁷ Bundesverband Frauenberatungsstellen und Frauennotrufe (2019), ‘bff-Projekt „make it work!“ ist gestartet! Für einen Arbeitsplatz ohne sexuelle Diskriminierung, Belästigung und Gewalt!’, Press release, 16 April 2019, available at: <https://www.frauen-gegen-gewalt.de/de/aktuelles/nachrichten/nachricht/bff-projekt-make-it-work-ist-gestartet.html>.

⁷⁸ Deutsches Institut für Menschenrechte (2019), *Projekt „Artikel 25 Istanbul-Konvention: Akutversorgung nach sexualisierter Gewalt“*, available at: <https://www.institut-fuer-menschenrechte.de/themen/frauenrechte/istanbul-konvention/projekt-artikel-25-istanbul-konvention/>.

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

1. CRPD policy & legal developments

Following a landmark ruling of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 29 January 2019,⁷⁹ Section 13 no. 2 and 3 of the Federal Elections Act (*Bundeswahlgesetz*) have been removed as of 1 July 2019, by Article 1 of the **Federal Act for the Amendment of the Federal Elections Act and Other Laws** (*Gesetz zur Änderung des Bundeswahlgesetzes und anderer Gesetze*) of 18 June 2019.⁸⁰ Further to abolishing the provisions in Section 13 of the Federal Elections Act, which excluded certain categories of persons with mental disabilities from the right to vote, safeguards were added as to 1) securing that any assistance in the voting process is limited to “technical” assistance only, i.e. shall not alter, influence or replace the will of the person concerned, and as to 2) clarifying that any manipulation of the voter’s will by an assisting person is a criminal offence under Section 107a of the German Criminal Code. As a result, as from 1 July 2019 all persons over the age of 18 who are subject to legal guardianship in all their affairs or who were placed in psychiatric care by a criminal court for having committed a crime while exempt from criminal responsibility are now fully entitled to vote and to be elected, concerning both Federal Parliament and European Parliament elections.

In April 2019, the Permanent Conference of the State Ministers of the Interior (*Ständige Konferenz der Innenminister und -senatoren der Länder*) decided to introduce a **nationwide emergency call app** for access to the emergency call services 110 (police) and 112 (fire brigade) which should also be accessible for people with disabilities. The Federal Government has funded the development of a prototype and its subsequent model testing in selected control rooms. The evaluation of the project results has proven the usability of the emergency call app, thus, enabling a mobile emergency call solution also for people with auditory and speech impairments by means of a text-based service via touch screen control. It is now aimed to roll out the emergency call app nationwide by late 2019. Since 2018, people with auditory and speech impairments can make a barrier-free and free 24-hour emergency call nationwide via a relay service. It is currently examined whether the possibility of such barrier-free emergency calls should also be codified when amending the Telecommunications Act (*Telekommunikationsgesetz*) to implement the Directive 2018/1972/EU.⁸¹

⁷⁹ Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2019), ‘Wahlrechtsausschlüsse für Betreute in allen Angelegenheiten und wegen Schuldunfähigkeit untergebrachte Straftäter verfassungswidrig’, Press release, 21 February 2019, available at: <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2019/bvg19-013.html>.

⁸⁰ Germany, Act for the Amendment of the Federal Elections Act and Other Laws (*Gesetz zur Änderung des Bundeswahlgesetzes und anderer Gesetze*), 18 June 2019, available at: http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl119s0834.pdf.

⁸¹ Germany, Federal Ministry for Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) (2019), *Zweiter und dritter Staatenbericht der Bundesrepublik Deutschland zum*

In the State of Saarland, the new **Saarland Disabled Persons' Equality Act** (*Saarländisches Behindertengleichstellungsgesetz*) was passed on 19 June 2019. The act is significantly strengthening the legal framework for equal opportunities for people with disabilities. The legislator has incorporated important elements from the UN Convention on the Rights of Persons with Disabilities (CRPD) with regard to the concept of disability, accessibility and the position of the State Commissioner for Disabled Persons (*Landesbehindertenbeauftragter*). Moreover, the Saarland State Assembly decided to establish an independent body for the monitoring of the implementation of the CRPD in Saarland. Saarland will, thus, become the second German state after North Rhine Westphalia with such an independent monitoring body.⁸²

2. CRPD monitoring at national level

No update of the table needed.

Key activities of the German body for the monitoring of the CRPD implementation have been the publication of a report on the interim results after 10 years of CRPD, the 31st consultation with civil society organisations representing the interests of people with disabilities, focussing on these interim results and sexual abuse of children with disabilities.⁸³

Table: Structures set up for the implementation and monitoring of the CRPD

EUMS	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
DE	Federal Ministry for Labour and Social Affairs (<i>Bundesministerium für Arbeit und Soziales</i>); the 16 Federal States (<i>Länder</i>) designated their own sub-focal points	Federal Government Commissioner for Matters Relating to Persons with Disabilities (<i>Beauftragte der Bundesregierung für die Belange von Menschen mit Behinderungen</i>)	German Institute for Human Rights (<i>Deutsches Institut für Menschenrechte</i>)

Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen, July 2019, p. 20, available at: <https://www.bmas.de/SharedDocs/Downloads/DE/Thema-Internationales/staatenbericht-un-behindertenrechtskonvention.pdf>.

⁸² Germany, Saarland Disabled Persons' Equality (*Saarländisches Behindertengleichstellungsgesetz*), 26 November 2003, available at: http://sl.juris.de/cgi-bin/landesrecht.py?d=http://sl.juris.de/sl/SBGG_SL_2003_rahmen.htm.

⁸³ Information received from the CRPD monitoring body by email on 11 December 2019.

Annex 1 – Promising Practices

Thematic area	EQUALITY AND NON-DISCRIMINATION Please provide one example of a rights awareness campaign held in your country in 2019 relevant to equality and non-discrimination, preferably one conducted by a national equality body. Where no such campaign was held, please provide an example of a promising practice implemented in 2019 in your country (this could include innovative initiatives at local level) to combat discrimination on any one of the following grounds: religion or belief, disability, age, sexual orientation, gender identity or sex characteristics Where relevant, always highlight any relevance or reference to multiple discrimination.
Title (original language)	Maßnahmenplan für die Initiative „Berlin tritt ein für Selbstbestimmung und Akzeptanz geschlechtlicher und sexueller Vielfalt“
Title (EN)	Plan of measures for the initiative „Berlin is advocating for self-determination and acceptance of gender and sexual diversity“
Organisation (original language)	Senat von Berlin
Organisation (EN)	Berlin Senate (regional government)
Government / Civil society	Government
Funding body	Berlin Senate
Reference (incl. url, where available)	https://www.berlin.de/sen/lads/schwerpunkte/lgbti/igsv/
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	23 July 2019
Type of initiative	Action plan including 92 individual measures
Main target group	All citizens of Berlin with a focus on LGBTI* persons
Indicate level of implementation: Local/Regional/National	Regional
Brief description (max. 1000 chars)	<p>In July 2019 the Berlin Senate adopted an action plan with 92 individual measures in nine areas of action related to the rights of LGBTI* persons. Areas of action are inter alia combating hate crime and discrimination, protecting LGBTI* refugees, raising awareness for gender and sexual diversity in the care sector, administrative change, or raising visibility of gender and sexual diversity. The action plan builds upon a recent initiative that was launched in 2009/10 and which was evaluated after its termination in close collaboration with the LGBTI* community. The action plan aims to mobilise all departments of the Berlin Senate as well as the city districts and shall also involve other stakeholders. Though most of the German Länder have adopted actions plans for LGBTI* issues, the Berlin action plan is so far the most comprehensive one.</p>
Highlight any element of the actions that is transferable (max. 500 chars)	In particular the participatory approach to develop the action plan should be transferrable to other contexts. It could help to warrant that measures fit to the local or regional context.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	Given the wide array of stakeholders that shall be mobilised to implement the action plan it seems likely that its implementation will have lasting effects.
Give reasons why you consider the practice as	See above (sustainability)

having concrete measurable impact	
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	See above (transferrable elements)
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	Though it is not known if evaluation and review will include other beneficiaries and stakeholders than the heads of administration who will discuss the progress on a six-months basis, the Berlin LGBTI* community was closely involved in the design and planning of the action plan.
Explain, if applicable, how the practice provides for review and assessment.	No information available.

Thematic area	RACISM, XENOPHOBIA AND RELATED INTOLERANCE Please provide one example of a promising practice to address discriminatory ethnic profiling within law enforcement agencies and other relevant national authorities. Where no such practice exists, please provide one example of a promising practice related to combating racism, xenophobia and related intolerances.
Title (original language)	MehrWERT für den Beruf - Peer Training für Berufseinsteiger
Title (EN)	Added VALUE for profession – peer training for career beginners
Organisation (original language)	Sächsische Jugendstiftung
Organisation (EN)	Saxonian Youth Foundation
Government / Civil society	Semi-government (In legal terms the foundation is governed by civil law but it was established 20 years ago by the Saxonian parliament and received one million Euro as kick-off capital. Its board is dominated by representatives of the parliament and the state government)
Funding body	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend)
Reference (incl. url, where available)	https://www.demokratie-leben.de/aktuelles/modellprojekt-fuer-mehr-demokratie-wird-etabliertes-regelangebot.html https://www.saechsische-jugendstiftung.de/peertraining
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	August 2017
Type of initiative	Peer training programme for youths to increase awareness for diversity and democratic values
Main target group	Youths from 14 to 17 years
Indicate level of implementation: Local/Regional/National	Regional
Brief description (max. 1000 chars)	The programme organises diversity trainings to empower juvenile peers to implement workshops on discrimination and racist prejudices in school

	classes. The juvenile peers are trained in moderation and communication techniques. Initially, the programme was funded as „model project“ in the framework of the federal programme „Living Democracy!“ for three years. In late 2019 the funding of the project was transferred to the state government of Saxony. The name of the programme is now „Peer Training Sachsen“.
Highlight any element of the actions that is transferable (max. 500 chars)	The basic idea of the programme that juvenile peers are in a better position to make youth groups aware of discrimination and racism and promote diversity and democratic values as they speak the “same language” and share common experiences (“peer education”) should be transferrable to others contexts.
Give reasons why you consider the practice as sustainable (as opposed to ‘one off activities’)	As funding was taken over by the state government of Saxony the programme is now in a position to continue its work on a stable basis, unlike before, when it was only funded as a three-year “model project”.
Give reasons why you consider the practice as having concrete measurable impact	The number of peers trainings is measurable. The impacts in terms of increasing awareness for racist discrimination could, in theory, be measured by surveys among the trainers and their peers. It is, however, unknown if such surveys were undertaken in the past or iff these are planned in the future.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Provided that sustainable funding is available, the idea of “peer education” for youths could be transferred to other Member States as peer education is mostly organised in school contexts.
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.	The overall “Living Democracy” programme was evaluated by a consortium of research institutes led by the German Youth Institute (Deutsches Jugendinstitut). If the programme as continued with funding from the state government of Saxony will be evaluated is not known.

Thematic area	ROMA INTEGRATION Please provide one example of promising practice in relation to addressing a Roma/Travellers segregation at either national, regional or local. These could be (not limited to) in the area of segregation in education, residential segregation, segregation in healthcare services or in employment.
	No promising practice has been identified for this thematic area.

Thematic area	Asylum, visas, migration borders and integration Please provide a promising practice on the support provided to unaccompanied children when reaching majority.
Title or short description of promising practice in original language and in English	Counselling Service Unaccompanied Minors and Careleavers (Fachberatungstelle UMF & Careleaver)
Organisation (Government / Civil society) in charge of promising practise (original language/English)	Refugee Council Thuringia (Flüchtlingsrat Thüringen e.V.)
Funding body	Ministry for Education, Youth and Sports of the State of Thuringia (Ministerium für Bildung, Jugend und Sport des Freistaates Thüringen)
Reference (incl. url, where available)	https://www.fluechtlingsrat-thr.de/projekte/fachberatungstelle-umf-careleaver
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	15 October 2019 to 14 October 2020
Main target group	Staff of public and non-public youth welfare services and unaccompanied children and young adult refugees
Brief description (around 1000 characters)	The Refugee Council Thuringia offers advice, information, qualification and professional exchange for interested experts of youth welfare organisations as well as unaccompanied minor foreigners and young adult refugees. Topics are issues in the context of the asylum procedure, residence and asylum law, perspectives of residence and access to education and the labour market.
Indicate level of implementation: Local/Regional/National	Regional
Indicate success factors – why has the practice effectively promoted integration?	As the project has only started in October 2019 it is too early to indicate success factors. Other publicly funded projects for unaccompanied children when reaching the age of majority are not known.
If the initial funding of the initiative ended, how has the initiative been continued/followed-up?	
Explain, if applicable, how the practice is being reviewed and assessed.	No information available.
Does the initiative apply to both asylum seekers and protection status holders – and/or support the transition from one to the other?	Yes
Does the initiative specifically support persons in need of international protection as they turn 18? If so, which type of support is provided?	Yes, the project offers counselling services to the youth and young adults.

Thematic area	INFORMATION SOCIETY, DATA PROTECTION Please provide one example of a promising practice in relation to one of the topic addressed in this Chapter
	No promising practice has been identified for this thematic area.

Thematic area	RIGHTS OF THE CHILD Please provide one example of a promising practice in relation to one of the topic addressed in this Chapter.
	No promising practice has been identified for this thematic area.

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide one example of a promising practice in relation to one of the topic ad-dressed in this Chapter
Title (original language)	Make it work!
Title (EN)	Make it work!
Organisation (original language)	Bundesverband Frauenberatungsstellen und Frauennotrufe
Organisation (EN)	Federal Association of Women Counselling Services and Emergency Hotlines
Government / Civil society	Civil society
Funding body	Federal Ministry for Family Affairs, Senior Citizens, Women and Youths (Bundesministerium für Familie, Senioren, Frauen und Jugend)
Reference (incl. url, where available)	https://www.frauen-gegen-gewalt.de/de/aktuelles/nachrichten/nachricht/bff-projekt-make-it-work-ist-gestartet.html
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	January 2019 to December 2022
Type of initiative	Awareness raising project
Main target group	Employers and management
Indicate level of implementation: Local/Regional/National	National
Brief description (max. 1000 chars)	To combat sexual discrimination, harassment and violence at the workplace, the project aims to train and educate employers and management and support the establishment of preventative mechanisms. So far, two focus regions have been selected to test how networks against sexual harassment at the workplace can be established. On 1 May, the project launched a social media campaign to make employees and employers aware of their rights and obligations in cases of sexual harassment at work. The implementation of the projects is building on a network of 180 specialised counselling services.

Highlight any element of the actions that is transferable (max. 500 chars)	Awareness raising to combat sexual discrimination, harassment and violence at the workplace by training and educating employers and management should be transferrable to others contexts.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The project is only funded for four years but given its aim to raise awareness and foster the establishment of preventative mechanisms it is likely to produce sustainable outcomes.
Give reasons why you consider the practice as having concrete measurable impact	The number of trainings and targeted employers and managers is measurable as well as if preventative mechanisms were established in the aftermath.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Though wide networks of women counselling services might not exist in other Member States, the general idea of raising awareness for sexual discrimination, harassment and violence at the workplace should be easily transferrable as these problems persist throughout Europe.
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.

Thematic area	Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) Please provide one promising practice example of projects or programmes implementing the CRPD or furthering the rights of persons with disabilities.
Title (original language)	Inlusionskataster NRW [Nordrhein-Westfalen]
Title (EN)	Inclusion cadastre North Rhine Westphalia
Organisation (original language)	Zentrum für Planung und Evaluation Sozialer Dienste (ZPE) der Universität Siegen
Organisation (EN)	Center for Planning and Evaluation of Social Services at the University of Siegen
Government / Civil society	Academia
Funding body	Ministry for Labour, Integration and Social Issues of the State of North Rhine Westphalia (Ministerium für Arbeit, Integration und Soziales Nordrhein-Westfalen)
Reference (incl. url, where available)	https://inklusionskataster-nrw.de/start
Indicate the start date of the promising practice and the finishing date if it has ceased to exist	2015
Type of initiative	Internet platform listing good practices for inclusive planning, projects etc.

Main target group	Municipalities and local actors who work on the inclusion of people with disabilities
Indicate level of implementation: Local/Regional/National	Regional
Brief description (max. 1000 chars)	The Inclusion Cadastre North Rhine Westphalia (NRW) is an Internet platform on which suggestions (practical examples of successful inclusion, project ideas and planning activities) are given for the development of inclusive communities in order to show which examples of successful inclusion already exist in the Land and which experiences were made. The cadaster entries are selected from areas of education, leisure, housing, municipal planning etc. and ordered along the five dimensions of participation, awareness raising, accessibility, flexible support services, public welfare services. The aim is to facilitate learning processes and foster exchange. For this purpose the project also organizes workshops and fora for discussion and exchange. The project is based on the results of the research project "Inclusive Community Planning" (2012-2013), in the framework of which the Center for Planning and Evaluation of Social Services at the University of Siegen developed the working aid "Inclusive Community Planning" which was listed as promising practice in 2016.
Highlight any element of the actions that is transferable (max. 500 chars)	Establishing an internet platform to compile information of practices and projects that aim to implement inclusive communities (and accompanying events) is, in principle, easily transferrable, provided that resources are available to maintain and update the service.
Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')	The practice is a project funded by a state ministry. Given this project logic the sustainability of the practice is obviously dependent on long-lived funding. If this is granted is unclear from the available information.
Give reasons why you consider the practice as having concrete measurable impact	The impact of the cadastre could be best measured by the participation and satisfaction of stakeholders in the accompanying workshops and discussion fora.
Give reasons why you consider the practice as transferrable to other settings and/or Member States?	Provided that internet access is available to most stakeholders the idea of such an cadastres of local inclusion initiatives is also transferrable to other settings and Member States.
Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.	The development of the Inclusion Cadastre is based on the research project "Inclusive Community Planung" which found great interest to build inclusive communities on the one hand but a high level of insecurity on how to implement this. The development of the cadastre responds to these findings. The platform is redeveloped on a continuous basis on close cooperation with those who are responsible for the local projects and initiatives.
Explain, if applicable, how the practice provides for review and assessment.	Apart from the above mentioned redevelopment of the platform in close cooperation with contributors no additional mechanism for review or assessment is reported.

Annex 2 – Case law

Thematic area	<p>EQUALITY AND NON-DISCRIMINATION</p> <p>Please provide one high court decision addressing discrimination on any one of the following grounds: gender identity, religion or belief, disability, age, or sexual orientation. Where relevant, always highlight any relevance or reference to multiple discrimination in the case you report</p>
Decision date	20 February 2019
Reference details	<p>Federal Labour Court (Bundesarbeitsgericht) 2 AZR 746/14 ECLI:DE:BAG:2019:200219.U2AZR746.14.0 https://juris.bundesarbeitsgericht.de/zweitesformat/bag/2019/2019-06-18/2_AZR_746-14.pdf</p>
Key facts of the case (max. 500 chars)	<p>The plaintiff, a Catholic chief of medicine in a Catholic hospital, was dismissed by his employer in 2009 after he had been married for second time in 2008. The employment contract had been signed by the parties on the basis of the Basic Regulations of Church Services in the Context of Church Employment (Grundordnung des kirchlichen Dienstes im Rahmen kirchlicher Arbeitsverhältnisse) issued by the Archbishop of Cologne in 1993. Accordingly, the second marriage of marriage of the plaintiff was seen to be invalid according to the Church's understanding of faith and legal system and, thus, deemed as a serious breach of loyalty which could justify dismissal. The plaintiff took legal action against his dismissal and was successful in the first two instances. The Federal Labour Court referred the case to the CJEU, asking for interpretation of Directive 2000/78/EC, and finally decided the case on the basis of the CJEU judgment of 11 September 2018 (C-68/17).</p>
Main reasoning/argumentation (max. 500 chars)	<p>The Federal Labour Court found that the dismissal of the plaintiff was not justified by reasons of behaviour or by the person of the plaintiff. With his second marriage the plaintiff had neither violated an effectively agreed loyalty duty nor a legitimate expectation of loyalty by his employer. The provision of the employment contract referring to the Basic Regulations of Church Services was invalid insofar as life in a second marriage was determined as a serious breach of loyalty. The Court held that this provision discriminated the plaintiff against other senior employees who are not Catholics without being justified under Section 9 (2) of the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz). This follows from an interpretation of Section 9 (2) of the General Act on Equal Treatment in conformity with Union law, but at least from the primacy of application of Union law.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue decided by the court was the relationship between the right to self-determination (based on freedom of religion) of religious organisations on the one hand and the principle of non-discrimination in the area of employment on the other hand.</p>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Federal Labour Court's judgement became final as the Archbishop of Cologne decided not to bring the case to the Federal Constitutional Court. With the judgement, the Federal Labour Court implemented CJEU Judgement of 11 September 2018, C-68/17, IR v JQ contradicting an earlier judgement by the Federal Constitutional Court of 22 October 2014, 2 BvR 661/12.</p>
Key quotation in original language and translated into	<p>„Die Vorgaben des Gerichtshofs in der Entscheidung vom 11.9.2018 (EuGH, ECLI:EU:C:2018:696 = NZA 2018, 1187 = AP RL</p>

English with reference details (max. 500 chars)	<p>2000/78/EG Nr. 43 – IR) sind zudem nur dann von Relevanz, wenn eine Kirche oder eine ihr zugeordnete Einrichtung unterschiedliche Loyalitätsanforderungen an Arbeitnehmer mit vergleichbaren (Leitungs-)Tätigkeiten allein aufgrund ihrer Konfession stellt. [...] Jenseits des Bereichs konfligierenden Diskriminierungsschutzes verbleibt den Religionsgemeinschaften auch unionsrechtlich uneingeschränkt das Recht auf Selbstbestimmung und auf Achtung des Status [...].“ (Rn. 70)</p> <p>“The requirements of the Court of Justice in the decision of 11 September 2018 (CJEU, ECLI:EU:C:2018:696 = NZA 2018, Page 1187 = AP RL 2000/78/EC No. AP 43 - IR) are also only relevant if a church or an institution assigned to it places different loyalty requirements on employees with comparable (management) activities solely on the basis of their confession. [...] Beyond the area of conflicting protection against discrimination, the right to self-determination and respect for status also remains unrestricted for the religious communities under Union law.” (para. 70)</p>
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Thematic area	<p>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</p> <p>Please provide the most relevant high court decision concerning the application of either the Racial Equality Directive, the Framework Decision on racism and xenophobia, or relevant to addressing racism, xenophobia and other forms of intolerance more generally.</p>
Decision date	8 April 2019
Reference details	<p>Bavarian Higher Administrative Court (Bayerischer Verwaltungsgerichtshof) 10 B 18.483 https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2019-N-7290?hl=true&AspxAutoDetectCookieSupport=1</p>
Key facts of the case (max. 500 chars)	<p>The plaintiff, a German citizen of Indian decent, challenged the Federal Police (Bundespolizei) checking his identity and cross-checking his data with police databases during a train trip from Lindau to Munich on 7 January 2014, claiming that he was affected by discriminatory racial profiling. The complaint was rejected by the Administrative Court of Munich on 27 July 2016 to be without merit. Against this decision the plaintiff appealed to the Bavarian Higher Administrative Court. On 4 April 2019, the Federal Police recognised that the identity check was illegal. The plaintiff called on the court to issue a declare the illegal nature of him being checked by the police (Anerkenntnisurteil), arguing that he is regularly travelling on train for professional reasons which entails a significant risk of being checked by the Federal Police in the future again. The Bavarian Higher Administrative Court established that the identity check and the follow-up cross-checking of the plaintiff’s personal data by the Federal Police was against the law.</p>
Main reasoning/argumentation (max. 500 chars)	<p>The court’s decision was based both on the fact that the Federal Police recognised the illegality of the identity check and because the plaintiff has a legitimate interest in the court’s finding as he is regularly travelling on train between Lindau and Munich for professional reasons and is, thus, at risk of being affected by identity checks also in the future.</p>

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Due to the proactive recognition of the illegality of the identify check by the Federal Police the court did not clarify any key issues. Rather it judicially confirmed the recognition of the Federal Police.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court decided that the Federal Police has to pay the costs for the legal procedures in both instances. An appeal was not allowed. Thus, the tactic of the Federal Police to avoid the case being taken to higher instances for a conclusive clarification of key issues around alleged racial profiling in trains was successful.
Key quotation in original language and translated into English with reference details (max. 500 chars)	<p>“Die Beklagte hat das Anerkenntnis des im Berufungsverfahren streitgegenständlichen Klagebegehrens wirksam erklärt. Ferner liegen die für den Erlass eines Anerkenntnisurteils erforderlichen Sachurteilsvoraussetzungen vor, insbesondere hat der Kläger ein berechtigtes Interesse an der begehrten Feststellung. Er nimmt einen Lehrauftrag in Kempten wahr und fährt daher weiterhin regelmäßig mit dem Zug auf der Strecke Lindau - München, so dass aufgrund im Wesentlichen unveränderter Verhältnisse auch künftig mit Personenkontrollen zu rechnen und damit eine Wiederholungsgefahr gegeben ist.” (Rn. 12)</p> <p>“The defendant [i.e. the Federal Police] has effectively recognised that the claim at issue in the appeal procedure is valid. Moreover, the preconditions for issuing an acknowledgement judgment are met. In particular, the plaintiff has a legitimate interest in findings as requested by him. He holds a teaching position in Kempten and is, thus, regularly travelling by train on the route Lindau-Munich. Given circumstances which essentially remain the same, future identify checks can be expected and thereby a risk of repetition exists.” (para. 12)</p>

Thematic area	<p>ROMA INTEGRATION</p> <p>Please provide the most relevant high court decision addressing violations of fundamental rights of Roma in the context of education, employment, health, housing, etc. In particular, focus on cases where discrimination or segregation (not limited to segregation in education or housing) are addressed.</p>
Decision date	No case law has been identified for this thematic area.

Thematic area	<p>INFORMATION SOCIETY, DATA PROTECTION</p> <p>Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter</p>
Decision date	6 November 2019
Reference details	<p>Federal Constitutional Court (Bundesverfassungsgericht) 1 BvR 16/13 (“Right to be Forgotten I”) ECLI:DE:BVerfG:2019:rs20191106.1bvr001613 http://www.bverfg.de/e/rs20191106_1bvr001613.html</p>
Key facts of the case (max. 500 chars)	The plaintiff, a man who was convicted for murder in 1982 and released in 2002, lodged a constitutional complaint against a judgment of the

	<p>Federal Court of Justice (Bundesgerichtshof). In November 2012, the Federal Court of Justice had rejected the plaintiff’s claim to limit the availability of personal information in media coverage of the murder case that was accessible free of charge at the online archive of the newsmagazine DER SPIEGEL and was, thus, also ranking high on internet search engines when searching for the name of the plaintiff. The Federal Court of Justice had argued that the plaintiff’s interest to protect his privacy has to stand behind the newsmagazine’s right to free speech and its interest to inform the public.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Federal Constitutional Court held that claims for protection against the dissemination of old press articles by means of an online archive must be reviewed based on a balancing of the conflicting fundamental rights interests. In the light of the realities of internet communication, time must be considered as a particularly weighty factor in this balancing (“right to be forgotten”). In this regard, it must be taken into account to what extent the operator of an online archive makes use of means to limit the dissemination of old press articles on the internet in order to ensure protection of affected persons – especially regarding the listing of these articles in search engine results for the affected person’s name. Even though the issues at stake fell into the scope of application of EU law, the Federal Constitutional Court, pointing to the Article 9 of the EU Data Protection Directive („media privilege“ which provides for domestic leeways to regulate the processing personal data for journalistic, artistic or literary purposes), argued that it concerned a matter of legislation that is not fully harmonised under EU law and thus allows for different legislative designs at Member State level. Therefore the Court held that it will primarily rely on the fundamental rights of the Basic Law (Grundgesetz) as the standard for reviewing the interpretation of the relevant legislation. This follows from the Court’s finding that where EU law provides for regulatory leeways, it seeks to accommodate the diversity of fundamental rights regimes; and it rests on the presumption that the application of German fundamental rights simultaneously ensures the level of protection required by EU fundamental rights. Accordingly, an additional review on the basis of EU fundamental rights is only necessary if there are specific and sufficient indications showing that the Basic Law does not afford adequate fundamental rights protection.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Federal Constitutional Court considered the relation between the plaintiff’s general right of personality on the one hand and the newsmagazine’s right to freedom of speech and freedom of press on the other hand in the context of internet communication. The key question raised by the court was if online press archives may be required to take measures to protect an individual’s “right to be forgotten“. As the issue at stake fall into the scope of application of EU law, namely Data Protection Directive 95/46/EC, the Court also clarified the applicable standard of review in regard to cases concerning matters of ordinary legislation that are not fully harmonised under EU law and thus allow for different legislative design at Member State level.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>As the Federal Court of Justice had failed to meet these requirements developed by the Federal Constitutional Court to balance the conflicting fundamental rights it suspended the challenged decision, holding that it violated the plaintiff’s right of personality, and referred the case back to the Federal Court of Justice.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>“a) Der verfassungsrechtliche Maßstab für den Schutz gegenüber Gefährdungen durch die Verbreitung personenbezogener Berichte und Informationen als Teil öffentlicher Kommunikation liegt in den äußerungsrechtlichen Ausprägungen des allgemeinen Persönlichkeitsrechts, nicht im Recht auf informationelle Selbstbestimmung.</p>

	<p>b) Bei der Entscheidung über einen Schutzanspruch kommt der Zeit unter den Kommunikationsbedingungen des Internets ein spezifisches Gewicht zu. Die Rechtsordnung muss davor schützen, dass sich eine Person frühere Positionen, Äußerungen und Handlungen unbegrenzt vor der Öffentlichkeit vorhalten lassen muss. Erst die Ermöglichung eines Zurücktretens vergangener Sachverhalte eröffnet den Einzelnen die Chance zum Neubeginn in Freiheit. Zur Zeitlichkeit der Freiheit gehört die Möglichkeit des Vergessens.</p> <p>c) Aus dem allgemeinen Persönlichkeitsrecht folgt kein Anspruch, alle personenbezogenen Informationen, die im Rahmen von Kommunikationsprozessen ausgetauscht wurden, aus dem Internet entfernen zu lassen. Insbesondere gibt es kein Recht, öffentlich zugängliche Informationen nach freier Entscheidung und allein eigenen Vorstellungen zu filtern und auf die Aspekte zu begrenzen, die Betroffene für relevant oder für dem eigenen Persönlichkeitsbild angemessen halten.</p> <p>d) Für den Grundrechtsausgleich zwischen einem Presseverlag, der seine Berichte in einem Onlinearchiv bereitstellt, und den durch die Berichte Betroffenen ist zu berücksichtigen, wie weit der Verlag zum Schutz der Betroffenen die Erschließung und Verbreitung der alten Berichte im Internet – insbesondere deren Auffindbarkeit durch Suchmaschinen bei namensbezogenen Suchabfragen – tatsächlich verhindern kann. “ (Zweiter Leitsatz)</p> <p>“a) The constitutional standard for the protection against risks arising from the dissemination of reports and information about persons as part of public communication are based on the general right of personality in its manifestation as a right protecting against statements concerning one’s person, not in the right to informational self-determination.</p> <p>b) When deciding on a claim for protection, time has a specific weight under the communication conditions of the internet. The legal system must protect persons against being publicly confronted with previous positions, statements and actions without any restrictions. Only the possibility that past events fade away gives individuals the opportunity to make a new start in freedom. The temporality of freedom includes the possibility of forgetting.</p> <p>c) The general right of personality does not give rise to a claim to have all personal information, that have been exchanged in the course of communication processes, removed from the internet. In particular, there is no right to filter publicly accessible information according to one’s own free decision and solely according to one’s own ideas and to limit it to those aspects which those affected consider relevant or appropriate for their own self-image.</p> <p>d) In order to balance the fundamental rights of a press publisher that makes its reports available in an online archive and those affected by the reports, it must be taken into account to what extent the publisher can actually prevent the indexing and dissemination of the old reports on the internet – in particular their retrieval by search engines using name-related search queries – in order to protect the persons affected.” (Second headnote)</p>
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Thematic area	RIGHTS OF THE CHILD Please provide the most relevant high court decision in relation to one of the topic addressed in this Chapter.
	No case law has been identified for this thematic area.

Thematic area	ACCESS TO JUSTICE, INCLUDING RIGHTS OF CRIME VICTIMS Please provide the most relevant high court decisions in relation to one of the topic addressed in this Chapter..
Decision date	10 January 2019
Reference details	Higher Social Court of Berlin-Brandenburg (Landessozialgericht Berlin-Brandenburg) L 13 VG 3/18 https://sozialgerichtsbarkeit.de/sgb/esgb/export.php?modul=esgb&id=205220&exportformat=HTM
Key facts of the case (max. 500 chars)	The plaintiff, a female victim of violence, challenged the decision of the Berlin pension office (Versorgungsamt) to reject her application for victim's pension according to the Victims Compensation Act (Opferentschädigungsgesetz) and the Federal Pension Act (Bundesversorgungsgesetz). She had submitted her application in March 2011 after three assaults by her partner in 2006 and 2007 which eventually lead to the conviction of her partner because of bodily harm in May 2009. The pension office had rejected her application, arguing that she should have been aware of the risk of violence through her partner and was, thus, co-responsible and not eligible for victims pension in accordance with Section 2 of the Victims Compensation Act. The woman successfully challenged the decision of the pension office at the Social Court of Berlin (Sozialgericht Berlin) which decided in November 2017 that the pension office has to pay pension. Against this decision the pension office appealed at the Higher Social Court of Berlin-Brandenburg.
Main reasoning/argumentation (max. 500 chars)	The Higher Social Court confirmed the decision of the Social Court and argued that the plaintiff was not co-responsible for her victimisation as it was impossible for her to anticipate the violence by her partner even though it took place repeatedly. The first assault happened unexpectedly, in the second instance she was already going to escape when attacked by her partner, and the third assault took place despite her partner's remorse and promises to make a therapy. The court therefore argued that the plaintiff did not act carelessly nor in any other way unreasonably so that the reasons listed in Section 2 of the Victims Compensation Act to justify rejection of pension applications were not met.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court did not clarify key issues as it only referred to earlier jurisprudence of the Federal Social Court (Bundessozialgericht) which had decided repeatedly that the rejection of victims pension applications for reasons of co-responsibility is only justified if affected persons act in gross negligence. To assess the eligibility for pension it is therefore necessary to consider the overall situation and context of victimisation, including the individual situation of the victim and her or his relation to the offender. However, the case shows that long-standing jurisprudence of the Federal Social Court is still ignored by pensions offices whereas the decisions of which have to be challenged by victims of violence in lengthy legal proceedings, if they are challenged at all.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court decided that the Berlin pension office has to pay victims pension to the plaintiff and that it has to compensate her costs for the legal proceedings.

<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>„Die leichtfertige Selbstgefährdung setzt nach der Rechtsprechung des BSG einen erhöhten Grad von Fahrlässigkeit, der etwa der groben Fahrlässigkeit im Sinne des bürgerlichen Rechts entspricht, voraus. Allerdings gilt im Gegensatz zum bürgerlichen Recht nicht der objektive Sorgfaltsmaßstab des § 276 BGB, sondern ein individueller, der auf die persönlichen Fähigkeiten des Opfers abstellt. Zu prüfen ist danach, ob sich das Opfer auch anders hätte verhalten können oder müssen, weiter, ob es sich der erkannten oder grob fahrlässig nicht erkannten Gefahr nicht entzogen hat, obwohl ihm dies zumutbar gewesen wäre. Dafür ist die gesamte tatnahe Situation, wie sie sich nach natürlicher Betrachtungsweise darstellt, zu würdigen. Ergänzend sind die individuellen Beziehungen zwischen Täter und Opfer zu berücksichtigen, etwa ob sie seit langem miteinander Umgang hatten und welcher Art der Umgang war, ferner das frühere Verhalten von Täter und Opfer in vergleichbaren Situationen.“</p> <p>“According to the case law of the BSG [Federal Social Court], careless self-endangerment presupposes an increased degree of negligence, which corresponds for instance with gross negligence in the sense of civil law. However in contrast to civil law the yardstick is not the objective diligence as established by Section 276 of the Civil Code but individual diligence, which takes into account the personal abilities of the victim. Therefore it has to be examined whether the victim could have acted differently or had to do so. Moreover, it has to be considered whether the victim did not withdraw him-/herself from the recognized or grossly negligently not recognized danger even though it would have been reasonable to do. For this purpose, the entire situation in which an offence took place must be taken into consideration. In addition, the individual relationships between the perpetrator and the victim must be taken into account, such as whether they have had contact with each other for a long time and what kind of contact they had, as well as the previous behaviour of the perpetrator and the victim in comparable situations.”</p>
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<p>Thematic area</p>	<p>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</p> <p>Please provide the most relevant high court decision making reference to the CRPD or employing the CRPD in their reasoning.</p>
<p>Decision date</p>	<p>29 January 2019</p>
<p>Reference details</p>	<p>Federal Constitutional Court (Bundesverfassungsgericht) 2 BvC 62/14 ECLI:DE:BVerfG:2019:cs20190129_2bvc006214 http://www.bverfg.de/e/cs20190129_2bvc006214.html http://www.bverfg.de/e/cs20190129_2bvc006214en.html (English translation)</p>
<p>Key facts of the case (max. 500 chars)</p>	<p>Eight applicants lodged election scrutiny complaints (Wahlprüfungsbeschwerden) with the Federal Constitutional Court after their protest against the national election held on 22 September 2013 had been rejected by the German Bundestag in October 2014. All applicants had been excluded from the 2013 national election due to Sections 13 (2) or 13 (3) of the Federal Elections Act (Bundeswahlgesetz) which bar persons from suffrage if they either have been appointed a caretaker or are placed in an psychiatric hospital because of a crime for which they lack criminal responsibility. The applicants argue that their exclusion from suffrage did violate the principle of universal suffrage (Article 38 (1) of the Basic Law) and the prohibition of discrimination on grounds of disability (Article 3 (3) of the Basic Law)</p>

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Federal Constitutional Court held that the legislator may, in principle, exclude persons from suffrage who are unable to participate in the communication process between the people and the government that is facilitated by elections. However, relevant provisions have to be appropriate and justified. The court held that neither of the two provisions excluding people with mental disabilities from federal elections met the requirements: a) Referring to the appointment of a caretaker (Section 13 (2) of the Federal Elections Act) left the exclusion from suffrage to chance as many people with the same need of support have not been appointed a caretaker if they are, for example, supported by their families. b) People who are in psychiatric hospitals due to committing crimes while lacking criminal responsibility (Section 13 (3) of the Federal Election Act) do not necessarily lack the cognitive capabilities to vote. Thus, the challenged provisions violate both the principle of universal suffrage and the prohibition of discrimination on grounds of disability.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The Federal Constitutional Court decided on the conditions under which persons with mental disabilities may be excluded from universal suffrage.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Federal Constitutional Court declared both Section 13 (2) and Section 13 (3) of the Federal Elections Act as incompatible with Article 38 (1) and Article 3 (3) of the Basic Law. On 1 July 2019, both sections were deleted from the Federal Elections Law by the Act on the Amendment of the Federal Elections Law and other Acts (Gesetz zur Änderung des Bundeswahlgesetzes und anderer Gesetze) of 18 June 2019. Moreover, most of the German Länder have meanwhile revised their state elections acts accordingly as these included similar provisions.</p>
<p>Key quotation in original language and translated into English with reference details (max. 500 chars)</p>	<p>“3. Ein Ausschluss vom aktiven Wahlrecht kann verfassungsrechtlich gerechtfertigt sein, wenn bei einer bestimmten Personengruppe davon auszugehen ist, dass die Möglichkeit der Teilnahme am Kommunikationsprozess zwischen Volk und Staatsorganen nicht in hinreichendem Maße besteht. 4. § 13 Nr. 2 BWahlG verfehlt die verfassungsrechtlichen Anforderungen an eine gesetzliche Typisierung, weil er den Kreis der von einem Wahrechtsausschluss Betroffenen ohne hinreichenden sachlichen Grund in gleichheitswidriger Weise bestimmt. 5. § 13 Nr. 3 BWahlG ist nicht geeignet, Personen zu erfassen, die typischerweise nicht über die Fähigkeit zur Teilnahme am demokratischen Kommunikationsprozess verfügen.” (Leitsätze 3 bis 5)</p> <p>“3. The exclusion from the right to vote may be justified under constitutional law if a certain group of persons must be considered not sufficiently capable of participating in the communication process between the people and state organs. 4. § 13 no. 2 of the Federal Elections Act fails to satisfy the constitutional requirements regarding statutory categorisation, since the group of persons affected by the exclusion from voting rights is determined in a manner that runs counter to the right to equality without sufficient factual reasons. 5. § 13 no. 3 of the Federal Elections Act is not suitable for identifying persons who are generally incapable of participating in the democratic communication process.” (Headnotes 3 to 5)</p>