

Universal Periodic Review (UPR) for Germany

INTRODUCTION

ASSEDEL, the European Association for the Defense of Human Rights and Liberties, is a human rights association based in Strasbourg. Our main aim is to defend human rights and fundamental freedoms, both nationally and internationally, based on international human rights and humanitarian law, as well as to guide and support the victims of human rights violations.¹

We are a civil society organization that recognizes our responsibility to solve human rights issues worldwide. Therefore, through this report, we aim to draw the attention of the German government to the topics mentioned below and contribute to the development of human rights in Germany.

1. Implementation of International Human Rights Obligations in Light of Relevant International Humanitarian Law

1.1 Rights of refugees and asylum-seekers

Asylum applications in Germany have shown a marked increase in recent years. According to official records, a total of 244,132 asylum applications were made in 2022.² This figure is 27.94% higher than the 190,816 applications made in 2021.³ These data indicate that the number of asylum seekers in Germany seeking security and protection is quite high.

Refugees and asylum seekers who are forced to leave their countries for security reasons are subject to attacks in the camps or in their daily lives in Germany, which leads to a violation of their rights to social integration, the right to life, and correct to freedom. According to statistics, at least two refugees are subjected to attacks in Germany every day. Between 2015-2019, there were a total of 10,936 attacks, including 276 arson attacks targeted at refugees, 1,895 physical injuries, and 8,765 other attacks.⁴ It is known that there were over

¹ <https://assedel.org/>

² Bundesamt für Migration und Flüchtlinge, Aktuelle Zahlen, Dezember 2022, S. 3, 17.

³ <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2022/01/asylantraege2021.html>

⁴ Amadeu Antonio Stiftung, Leben in Gefahr: Gewalt gegen Geflüchtete in Deutschland, 2021 Dezember, 9, 94.

1,200 attacks targeted at refugees in just 2020 alone.⁵ Between January-September 2022, 711 refugees were subjected to attacks in front of their homes and their camps.⁶

The problem of inadequate and delayed recording of crimes in official statistics for refugees who are victims of attacks is a cause for concern for refugees. According to a report published jointly by the Amadeu Antonio Foundation and PRO ASYL, the lack of official records and insufficient and delayed recording of crimes in criminal statistics leads to a downplaying of the violence suffered by refugees.⁷ Despite the calls by these organizations for the Federal Ministry of the Interior to conduct a comprehensive and transparent count of incidents and promptly publish the cases, the failure of German government officials to take concrete action in this regard is hindering refugees from living in a safe environment.

The 1951 Refugee Convention⁸, New York Declaration for Refugees, and Migrants⁹, the Global Compact on Refugees and the Global Compact for Migration¹⁰ are the key legal texts that regulate the rights of migrants and refugees who are forced to leave their countries due to security or other human rights violations. The German government is responsible for ensuring that refugees within its borders have access to the rights to life, protection, and other rights. Therefore, the continued inaction of the German government towards attacks on asylum seekers or refugees will not only lead to a violation of the treaties and international humanitarian law that Germany is a party to but also increase the incidents of racist attacks and reduce social tolerance.

1.2 Gender equality & discrimination

1.2.1 Women's rights, business, and equality

The gender-based employment and pay gap that exists in the German labor market, which has become even more pronounced after the coronavirus crisis, are one of the biggest indicators that gender equality, which is considered a component and goal of sustainable development by the United Nations, has not yet been achieved in Germany.

The principle of equal pay for equal work for both male and female employees is clearly stated as an international obligation in Article 157 of The Treaty on the Functioning of the

⁵ https://ec.europa.eu/migrant-integration/library-document/leben-gefahr-gewalt-gegen-gefluechtete-deutschland_de

⁶ <https://www.trtdeutsch.com/news-inland/zahl-der-anschlage-auf-fluchtlingssheime-in-deutschland-steigt-10803622>

⁷ https://ec.europa.eu/migrant-integration/library-document/leben-gefahr-gewalt-gegen-gefluechtete-deutschland_de ; <https://www.proasyl.de/pressemitteilung/besorgniserregende-gewalt-gegen-gefluechtete-wird-durch-offizielle-statistik-bagatellisiert/>

⁸ <https://www.unhcr.org/3b66c2aa10>

⁹ <https://www.un.org/depts/german/gv-71/band1/ar71001.pdf>

¹⁰ <https://www.unhcr.org/publications/brochures/5c658aed4/global-compact-on-refugees-booklet.html>

European Union.¹¹ In addition, national laws, such as § 3 Absatz 1 of the EntgTranspG and § 7 EntgTranspG, prohibit gender-based discrimination in pay. However, according to the data from the Federal Statistical Office, women earn on average 18% less per hour than men.¹² This inequality constitutes a violation of both national and international law.

Another important problem in this regard is that the pandemic process has changed the 'partial' equality between the genders in the labor market to the detriment of women and that effective steps have not been taken by the German government in this regard. It is known that before the pandemic, women worked an average of five hours less per week than men in paid jobs. During the pandemic, the working hours of female workers have clearly decreased. As a counterargument, it is claimed that male workers also reduced their working hours during the pandemic. However, ignoring the fact that women more often reduce their working hours due to child care and unpaid household chores, and that men shorten their working hours due to the company's measures against Corona, leads to the reemergence of traditional roles that are disadvantageous to women and an incorrect interpretation of the pandemic and its negative effect on women's economic life.¹³

1.2.2 Domestic violence against women

The pandemic situation forcing almost everyone to stay at home and reducing human interactions has led to inevitable destruction for women who are victims of violence. The family minister stated in a statement that one woman is killed in Germany every three days.¹⁴ The pandemic crisis has further increased the violence experienced by women and has forced them to be in the same environment and more unprotected with their partners who show violence at home. The significant increase in calls made to the support line established for women who are victims of violence in 2020 and 2021 clearly demonstrates this violence.¹⁵

In addition, sexual assault and rape cases are other manifestations of violence against women. The Sexual Offences and Sexual Violence Prevention Act, adopted in Germany in 2016, provides for harsher penalties for sexual assault and rape and also broadens the definition of sexual assault.¹⁶ However, there has been no significant decrease in cases of violence against women since the law came into force. In 2017, cases of violence against women in Germany

¹¹ *Hantel, Peter*, Europäisches Arbeitsrecht, 2. Auflage 2019, S. 68.

¹² https://www.destatis.de/DE/Presse/Pressemitteilungen/2023/01/PD23_036_621.html

¹³ Wirtschafts- und Sozialwissenschaftlichen Instituts, Nr. 64, März 2021, S. 22, 27.

¹⁴ <https://www.bundesregierung.de/breg-de/suche/partnerschaftsgewalt-2145006>

¹⁵ <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/zahl-der-beratungen-beim-hilfetelefon-gewalt-gegen-frauen-steigt-erneut-198834>

¹⁶ Fünzigstes Gesetz zur Änderung des Strafgesetzbuches –Verbesserung des Schutzes der sexuellen Selbstbestimmung, Bundesgesetzblatt Jahrgang 2016 Teil I Nr. 52, ausgegeben zu Bonn am 9. November 2016.

increased by 3% compared to the previous year.¹⁷ In 2018, this figure continued to rise, increasing by 2%.¹⁸ These statistics indicate that despite the existence of legal regulations, violence against women remains a widespread and significant problem in society.

While legal regulations are seen as important steps in combating violence against women, there are some criticisms that need to be addressed. For example, an increase in criminal sanctions for violence against women does not necessarily mean that women in Germany are adequately protected from violence. In addition to legal measures, a more comprehensive and inclusive approach is needed to protect women and prevent violence. Furthermore, laws must be implemented comprehensively and effectively. The existence of legal regulation and the development of a practice that complies with the law are two different points. Statistical results indicate that there has been no decrease in crimes of violence against women. Therefore, both the deterrent effect of legal regulations and their full and proper implementation in practice should be monitored by authorities.

1.3 Persons with disabilities in the labor market

Another disadvantaged group in the labor market is people with disabilities. The unemployment rate among people with disabilities is 11.5%, which is twice as high as among people without disabilities.¹⁹ As a democratic country, Germany should ensure diversity and equal rights in the labor market and not just be limited to the theory but also be applied in practice. The disadvantage faced by people with disabilities is not only in the workplace but also in the education system. According to data from 2019, only 12% of people with disabilities have a qualified school diploma, known as Abitur, in Germany.²⁰ When it comes to people without disabilities, this rate is 28%. These ratios of people with and without disabilities show that people with disabilities face significant disadvantages both in the education system and in the work sector and that the German labor market lacks diversity and inclusion.

1.4 Consumer rights and the example of 'Deutsche Bahn'

Deutsche Bahn is one of the largest companies operating in the railway transportation sector in Germany and provides a significant portion of public transportation in the country. According to the company's financial reports for 2020, it transported 5.5 billion passengers in Germany. However, delays in Deutsche Bahn services have become a fundamental consumer

¹⁷ Polizeiliche Kriminalstatistik - Berichtsjahr 2017.

¹⁸ Polizeiliche Kriminalstatistik - Bundeslagebild 2018.

¹⁹ <https://www.rehadat-statistik.de/statistiken/berufliche-teilhabe/arbeits-und-erwerbslosigkeit/arbeitslos-statistik-der-bundesagentur-fuer-arbeit/>

²⁰ https://www.destatis.de/DE/Presse/Pressemitteilungen/Zahl-der-Woche/2021/PD21_20_p002.html#:~:text=Mai%202021,oder%20suchten%20nach%20einer%20T%C3%A4tigkeit.

rights problem. Because millions of people in Germany use the services of Deutsche Bahn, delays affect many people. According to Deutsche Bahn's official data, in 2019, only 75.9% of the company's long-distance trains arrived on time.²¹ While this rate has improved slightly compared to previous years, it is still not at an acceptable level. In 2020, due to the decrease in travel demand caused by the COVID-19 pandemic, the number and rate of delays for Deutsche Bahn were also low. However, when normal travel conditions return, problems related to Deutsche Bahn's delays will likely re-emerge.

Consumers have the right to expect the service to be provided as specified in the contract when they receive a service from a public transport company such as Deutsche Bahn. Deutsche Bahn's continued delays constitute a breach of its obligation to fulfill the terms of this contract. In addition, consumers are more likely to face consequences such as having to cancel or rearrange their travel plans, miss scheduled events, or be late for business meetings.

Consumers have the right to demand compensation when faced with delays. However, monetary compensation can only compensate for tangible losses such as time lost, additional transportation costs, or accommodation expenses. Emotional losses such as stress and anxiety cannot be compensated with monetary compensation. Additionally, it is difficult to fully measure the damage suffered by consumers due to the constant delays of Deutsche Bahn. For example, being late for a business meeting or a wasted vacation day may cause emotional difficulties for consumers that go beyond monetary losses and cannot be compensated for.

2. Recommendations:

Protection of asylum seekers and refugees

- Ensure that media outlets adopt a responsible publishing policy with the purpose of preventing human rights violations experienced by asylum seekers and refugees and reducing discrimination and racism towards these groups.
- Provide more intensive and effective police protection in the areas where asylum seekers and refugees reside.

Persons with disabilities

- Introduce policies encouraging private sector to create a working environment which meets the needs of individuals with disabilities with the objective of eliminating the disadvantaged position of these individuals in the job market, or enabling them to

²¹ Deutsche Bahn 2019 Integrated Report, S. 36. ; <https://bir.deutschebahn.com/2019/en/group-management-report/customer-and-quality/punctuality>

reach a much better position compared to the past;

- Improve the education and training opportunities to increase the participation of individuals with disabilities in the job market;
- Ensure that the education system and programs should meet the needs and skills of individuals with disabilities in the job market.

Gender equality & discrimination

- Ensure that workplaces provide comprehensive and trustworthy childcare facilities to their employees which would prevent women from leaving their jobs or being forced to work part-time.
- Introduce a real and effective social transformation campaign in order to achieve social and economic equality for women and to fight against the gender roles and stereotypes in the society.
- Ensure the continuation of social responsibility projects, the support of civil society organizations, and the media's conscious broadcasting policies to achieve gender equality.

Violence against women

- Provide mechanisms to eradicate domestic violence by adopting a community-based approach which can be achieved with the help of neighbors and responsible members of locally created communities when women are subjected to violence.
- Ensure that, to achieve concrete results, men are involved in the practices related to solution of this problem given that approximately 82% of gender-based violence cases have male perpetrators.
- Improve the effectiveness of the means by which male participants could take part in studies and efforts related to gender equality, social gender roles, and the unacceptability of violence.

Consumer rights

- Ensure that Deutsche Bahn adopts policies in regard to improving infrastructure, investing in staff training, and implementing stricter control measures to prevent or at least minimize the frequent delays experienced in train services.