



German Institute  
for Human Rights

# Third Review of Germany under the Universal Periodic Review (UPR) of the UN Human Rights Council

Report by the German Institute for Human Rights

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## I. Human rights in the context of displacement and migration<sup>1</sup>

### Family reunification for persons granted subsidiary protection status

1. Since March 2016, the right to family reunification for persons granted subsidiary protection status in Germany has been suspended for two years.<sup>2</sup> This particularly affects refugees from Syria. As a result, families are separated for far longer than two years, since the visa procedure at German missions abroad often takes several months or even more than a year.<sup>3</sup> To extend, in 2018, the suspension of family reunification – as some have already called for – would exacerbate this highly problematic human rights issue.

### Legal capacity under asylum and residence law

2. In 2015, the federal legislator raised the age of legal capacity under asylum and residence law from 16 to 18<sup>4</sup>, thus implementing the recommendations made during the second cycle and by the UN CRC Committee.<sup>5</sup>

### Schooling for refugees/asylum seekers<sup>6</sup>

3. In most of the federal states there is no legal or factual possibility to attend school for children<sup>7</sup> living in reception centres for refugees and asylum seekers. Children that spend months living in such reception centres are deprived of their human right to education<sup>8</sup> over a long period. In legal terms, the primary reason is that, in the vast majority of the federal states, mandatory school attendance does not apply to children living in reception centres.<sup>9</sup> In practice, schooling can often not be provided or can only be provided with a delay due to insufficient capacities in the schools in the vicinity of the reception centres.<sup>10</sup> In addition, there is often a delay in passing information from the reception centre to the school authority in charge of enrolment.<sup>11</sup>

### Discrimination in the school system<sup>12</sup>

4. Despite some progress, equal opportunities for children with a migration background have not yet been achieved in the education system.<sup>13</sup> In early child education, the total share of migrant children has increased, but is still significantly below average. Children and adolescents with a migration background are considerably over-represented at school types that provide a lower form of qualification. There is often a close correlation with low socio-economic status. Three times fewer young people without German citizenship attain a level of qualification required to access higher education, and they are more likely to leave the school system without a general secondary school diploma than young people with German citizenship. Further reduction of discrimination against people with a migration background in the school system is, therefore, key to the full implementation of the human right to education.

### Dual citizenship<sup>14</sup>

5. In 2014, an amendment to the law on citizenship entered into force, according to which persons with dual citizenship who have grown up in Germany are no longer required to choose between their German citizenship and the foreign citizenship once they reach the age of legal majority (elimination of the “obligation to choose”).<sup>15</sup> This is a positive development since the previous rule was problematic given the constitutional and human

rights requirements under the principle of equal treatment and the prohibition of deprivation of citizenship.<sup>16</sup>

## II. Prohibition of discrimination

### Mandate of the Federal Anti-Discrimination Agency<sup>17</sup>

6. Since the second UPR cycle there have not been any changes in anti-discrimination law. According to an evaluation commissioned by the FADA<sup>18</sup>, there are barriers to the effective legal protection of those affected by discrimination, in particular the excessively short (two month) deadline for filing actions and the insufficient procedural rights of associations, which can only provide assistance during the proceedings, but cannot bring (class) actions themselves. CEDAW has urged Germany to implement the key recommendations of the evaluation.<sup>19</sup> Also, the FADA has not been granted its own right of action, despite the recommendation of the UN HRC.<sup>20</sup>

### Combating racially motivated crime<sup>21</sup>

7. The committees of inquiry of the German Bundestag and the parliaments of several of the federal states have performed important work in examining the failure of the authorities to investigate the murders committed by the National Socialist Underground (NSU) and have made numerous recommendations for reforms, particularly regarding the police and the judiciary. In implementation those recommendations, the federal legislator has explicitly made it an aggravating circumstance under the Penal Code if a criminal offence is racially motivated.<sup>22</sup> To date, however, there is no comprehensive and independent study of the actual implementation of the recommendations in administrative regulations and administrative practice, especially with regard to the question of whether and how police work has changed at the national and federal state levels to ensure that the police responds to and investigates racially motivated crime appropriately.<sup>23</sup>

### Racial profiling<sup>24</sup>

8. The legislatures at the national and federal state levels have not yet revised laws that foster the practice of racial profiling.<sup>25</sup> One example of a statutory provision that needs to be revised is Section 22 (1) (a) of the Federal Police Act, which has already been expressly criticised by European and international human rights bodies.<sup>26</sup> Pursuant to that provision, the Federal Police may carry out, without any cause, checks on people in trains or at stations for the purpose of monitoring migration. Regulations of federal states allow the respective federal state police to check passers-by or residents in places with high crime levels even without grounds for suspicion. According to reports, such measures are disproportionately directed at black people and people who are assumed to have a migration background. It is a positive development that, at the federal state level, debate has begun in some cases on an explicit statutory ban on “racial profiling” and the topic is increasingly being addressed in the core training and further training of federal state police forces. However, key steps to seriously combat the practice of racial profiling have yet to be taken.

### National Action Plan against Racism<sup>27</sup>

9. In June 2017, the Federal Government adopted the “National Action Plan to Fight Racism – Positions and Measures to Combat Ideologies of Inequality and Related

Discrimination” (NAP).<sup>28</sup> This second edition of the NAP includes the issues of homophobia and transphobia. The NAP now explicitly recognizes that democratic states like Germany committed to the rule of law are not immune to institutionalized racism. It remains a challenge for state and society as a whole to continuously counteract the phenomena.

### **Ban on religious attire<sup>29</sup>**

10. Germany rejected the recommendations made on this subject during the second cycle, citing the decision of the Federal Constitutional Court of 24 September 2003. In 2015, the Court, however, ruled that a blanket ban on teachers wearing religious attire is impermissible.<sup>30</sup> As a result, some federal states, which had stricter bans, amended their school laws or took measures to clarify the situation.<sup>31</sup> The Constitutional Court decided that the ruling also applies to preschool teachers.<sup>32</sup> In 2017, the federal legislator adopted a ban prohibiting the covering of faces by soldiers, civil servants and judges, as well as in the context of identity checks.<sup>33</sup> Information is not available about the number of women in Germany who wear a burqa.<sup>34</sup> The Federal Police has not reported any problems with identifying women who are fully covered.<sup>35</sup>

## **III. Human rights and law enforcement bodies**

### **Mandatory identification for police / independent police complaints bodies<sup>36</sup>**

11. Although Germany, in the second UPR cycle, rejected the recommendations on the independent and effective investigation of suspected police misconduct, there have been some positive developments. Around half of the federal states now ensure that police officers are identifiable by making it mandatory for them to wear name or number tags. The largest federal state, North Rhine-Westphalia, however is planning to move away from mandatory identification. Since 2014, three federal states have established independent police complaints bodies in the form of federal state police commissioners, albeit with limited resources and powers.<sup>37</sup> Public prosecutors therefore largely remain dependent on the work of police investigators.<sup>38</sup> As a result, the problem concerning the lack of institutional and hierarchical independence when investigating relevant allegations of misconduct by police officers remains.

### **Civil liberties in the fight against terrorism<sup>39</sup>**

12. In response to the attack on a Christmas market in Berlin on 19 December 2016, the federal legislator very quickly adopted a range of counter-terrorism laws, which provide for measures allowing the preventive detention or restriction of the freedom of movement of people who are deemed “potential threats” and of convicted extremists, in certain cases without judicial authorisation.<sup>40</sup> Several federal states are planning to include similar powers in their police laws. To some extent, the new powers are incompatible with human rights norms which prohibit the general authorization of preventive detention; this applies in particular to the use of detention pending deportation for the purpose of averting “potential threats”.<sup>41</sup> In addition, the cumulative effect of control measures against people who are considered “potential threats” could amount to a deprivation of their liberty. There is no intention to evaluate the laws from a human rights perspective.

## **Surveillance and information exchange by law enforcement bodies and intelligence agencies<sup>42</sup>**

13. For the purpose of combating terrorism as well as day-to-day crimes such as burglary surveillance powers and powers to exchange personal data among authorities have been significantly expanded since 2015 – opening the door to considerably increasing encroachments on the right to privacy, without careful examination of their actual benefit and proportionality.<sup>43</sup> Also, the emergence of “areas beyond control” with limited access to effective legal protection against unlawful or incorrect data processing in the context of increasing international cooperation of the police and intelligence agencies is a cause for concern.

## **IV. Human rights education<sup>44</sup>**

14. Human rights education is key to realizing human rights and must be a compulsory part of school curricula and of core and continued occupational training for human rights-sensitive professional fields. However, human rights are specified as a general educational objective in the school laws of just three of the 16 federal states<sup>45</sup>; their inclusion in school curricula is largely only implicit.<sup>46</sup> Despite recommendations by UN human rights bodies<sup>47</sup>, there is still a lack of systematic education on internationally guaranteed human rights in core and continued occupational training or relevant groups of professionals (in particular the judiciary, police, medical/nursing staff, as well as other professions in the field of social work).

## **V. Rights of persons with disabilities**

### **Human rights in the field of psychiatry**

15. In the field of psychiatry<sup>48</sup>, Germany has received strong criticism in the past from UN human rights bodies.<sup>49</sup> Involuntary commitment, isolation, use of restraints, coerced administration of medication, as well as immobilization by sedation are, by way of statutory exceptions under certain conditions, still legally permissible at the national and federal states levels.<sup>50</sup> As a result of high court rulings, the constitutional requirements for statutory provisions have been raised since 2011. However, in reality such methods continue to be widespread in Germany and are not a rare exception. Since 2016, the Federal Government is funding a major research project on the prevention of coercive measures. There are, however, no indications of a fundamental review of the psychiatric system from a human rights perspective and, in particular, of the system being geared towards psychiatry without coercion.

### **Accessibility in the private sector<sup>51</sup>**

16. In Germany, the private sector still is not subject to adequate legal obligations to ensure accessibility.<sup>52</sup> In 2016, the Federal Act on Equal Opportunities for People with Disabilities (BGG)<sup>53</sup> was reformed, resulting in a significant improvement of accessibility regulations for the public sector. However, an opportunity was missed to impose effective obligations on the private sector in the course of that reform; the private sector was deliberately omitted by the federal legislator. Mandatory rules for the private sector have been introduced only sporadically in recent years and are essentially limited to a small segment of passenger accommodation rules: long-distance buses.<sup>54</sup> The federal states

are not doing everything in their power to improve accessibility in areas of life controlled by the private sector.

### **Inclusive labour market<sup>55</sup>**

17. Persons with disabilities continue to suffer greater exclusion from the labour market than persons without disabilities. Despite some progress in terms of employee numbers and employment rate, over half of working age persons with disabilities is not integrated in the labour market.<sup>56</sup> The statutory requirement of a five percent share of employees with severe disabilities has not been met. The unemployment rate of persons with severe disabilities decreased somewhat between 2011 and 2015, but at 13.4% is still significantly higher than the general unemployment rate of 8.2%. In addition, persons with severe disabilities stay unemployed for significantly longer time than other unemployed persons (52 weeks compared to 38 weeks).<sup>57</sup> In the course of a fundamental reform of the law on social participation<sup>58</sup>, regulations to promote work life participation were revised in 2016. Some new instruments were introduced which, in the view of the Federal Government, are designed to enable more tailored support. It is still too early to judge the effectiveness of these new measures.<sup>59</sup>

## **VI. Business and human rights**

18. In December 2016, the Federal Government adopted the National Action Plan on Business and Human Rights (NAP).<sup>60</sup> According to the NAP, all German companies are expected to integrate, in the coming years, human rights due diligence into their corporate processes and to carry out regular reviews of such measures. Another positive aspect is the intention of identifying relevant industries and sectors for promoting the implementation of the UN Guiding Principles. Effective control of the implementation in all fields of business in Germany of the state obligation to protect, however, is still lacking. Nor are any changes planned in terms of access to the German legal system for persons who have suffered human rights violations outside of Germany. The NAP also does not call for specific rules for public sector enterprises or private enterprises owned by the German state.

## **VII. Rights of the child**

19. In its evaluation of the Federal Child Protection Act in 2015, the Federal Government found that 70% of all state institutions providing child and youth services have an established procedure for children and adolescents to submit complaints.<sup>61</sup> Efforts of the federal lawmaker to supplement these internal mechanisms with external, independent complaints bodies in the form of ombudspersons for child and youth services have failed during the expiring parliamentary term. From a human rights perspective such independent complaints bodies are essential.

## VIII. Gender-related violence

### Protection against violence in refugee shelters

20. At the time when large numbers of asylum seekers arrived in 2015/2016, the Federal Government took the initiative to devise concepts for protection against violence in refugee accommodation facilities and has begun implementation of these concepts in parts of the country. This commendable initiative is financed until the end of 2017. Implementation of the concepts will only in part be complete by then. Genuinely sustainable implementation of the extensive measures set out in the concepts within the segments cooperation, underlying conditions, risk management, staff development, as well as monitoring and evaluation, calls for a statutory basis for the concepts and further financing of the initiative.

### Human rights-based monitoring and data collection

21. Following ratification by Germany, of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>62</sup>, deliberations towards establishing an integrated data collection and monitoring system on gender-related violence in Germany are commencing. While this is a positive development as such, it is important that this system follows a human rights-based approach.

### Protection against violence in residential homes for persons with disabilities<sup>63</sup>

22. Women with disabilities are two to three times more likely to be victims of physical, psychological or sexual violence than the average woman in Germany.<sup>64</sup> In 2015, approximately 85,000 women with mental or psychiatric disabilities were living in residential homes and were, thus, subject to an increased risk level.<sup>65</sup> In its concluding observations in 2015, the UN CRPD Committee recommended the development of a comprehensive and effective strategy to protect women and girls with disabilities against violence and to ensure that complaints about incidences of violence within institutions are processed by an independent body.<sup>66</sup> The financing of the project “women’s representatives in institutions” is to be welcomed in this context. Generally speaking, however, adequate political consequences are yet to be drawn from the findings of research on violence suffered by women and girls with disabilities.

## IX. Human rights and Sustainable Development Goals

23. In order to implement the Sustainable Development Goals (SDG) of the United Nations, Germany revised its national sustainability strategy in 2016 through a participatory process with civil society.<sup>67</sup> However, there is not yet a systematic linkage with human rights, although Germany advocated for such linkage during the SDG negotiations. At least Goal 1 (end poverty) was included in the German Sustainability Strategy. However, only one indicator was specified.<sup>68</sup> The strategy, thus, is falling short of the already insufficient domestic standards for poverty and wealth monitoring. When the strategy is revised in 2019, the recommendations of the UN human rights treaty bodies should be used as guiding indicators.

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<sup>1</sup> See Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.196.

<sup>2</sup> Section 104 (13) of the Residence Act pursuant to the Integration Act of 31.07.2016, Federal Law Gazette 2016 Part I, p. 1939.

<sup>3</sup> See for example the response by the Federal government to an interpellation by members of the parliamentary group „DIE LINKE“ of 10 March 2017, Bundestag printed document 18/11473, p.21 et seq.; for more detail, see “Das Recht auf Familie. Familieneinheit von Kindern und Eltern ermöglichen – auch für subsidiär Geschützte”, Deutsches Institut für Menschenrechte [German Institute for Human Rights], 16.12.2016, [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Stellungnahmen/Stellungnahme\\_Das\\_Recht\\_auf\\_Famile.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Stellungnahmen/Stellungnahme_Das_Recht_auf_Famile.pdf).

<sup>4</sup> Section 12 of the Asylum Act pursuant to the Act on Acceleration of the Asylum Process of 20.10.2015, Federal Law Gazette 2015 Part I, p. 1722.

<sup>5</sup> See UN Committee on the Rights of the Child (2014), Concluding observations on the combined third and fourth periodic reports of Germany, UN Doc. CRC/C/DEU/CO/3-4, para. 68/69.

<sup>6</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.170.

<sup>7</sup> In this report, the term “child” covers all persons that come under the protection of the UN Convention on the Rights of the Child.

<sup>8</sup> Articles 28 and 29 of the UN Convention on the Rights of the Child, Article 13 of the International Covenant on Economic, Social and Cultural Rights.

<sup>9</sup> Massumi, Mona et al. (2015): Neu zugewanderte Kinder und Jugendliche im deutschen Schulsystem. Bestandsaufnahme und Empfehlungen. Cologne: Mercator-Institut für Sprachförderung und Deutsch als Zweitsprache [Mercator Institute for Language Promotion and German as a Second Language], Zentrum für LehrerInnenbildung der Universität zu Köln [Teacher Training Centre of the University of Cologne]; Robert Bosch Expertenkommission zur Neuausrichtung der Flüchtlingspolitik [Robert Bosch Expert Committee on the Reshaping Realignment of Refugee Policy] (2015): Themendossier Zugang zu Bildungseinrichtungen für Flüchtlinge: Kindertagesstätten, Schulen und Hochschulen. Robert Bosch Foundation.

<sup>10</sup> Cf. the responses given by the federal state governments of North Rhine-Westphalia and Saxony to a survey by the children’s rights monitoring department of the German Institute for human rights inquiring about access to schooling for refugee children and youth, [www.landkarte-kinderrechte.de](http://www.landkarte-kinderrechte.de). Also: Braun, Frank / Lex, Tilly (2016). Berufliche Qualifizierung von jungen Flüchtlingen. Eine Expertise. Munich: Deutsches Jugendinstitut e. V. [German Youth Institute], p. 23 ([http://www.dji.de/fileadmin/user\\_upload/bibs2016/Braun\\_Lex\\_Expertise\\_Fluechtlinge.pdf](http://www.dji.de/fileadmin/user_upload/bibs2016/Braun_Lex_Expertise_Fluechtlinge.pdf)).

<sup>11</sup> Klaus, Tobias / Millies, Marc (2017): Recherche zur Bildungssituation von Flüchtlingen in Deutschland. Forschungsgruppe Modellprojekte e. V. (FGM) (Verfügbar unter: [http://www.b-umf.de/images/Recherche\\_Bildung.pdf](http://www.b-umf.de/images/Recherche_Bildung.pdf)), S. 22f.

<sup>12</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.116.

<sup>13</sup> Concerning the figures in the following text, see: Autorengruppe Bildungsberichterstattung [Educational Reporting Authoring Group] (2016): Bildung in Deutschland 2016. Ein indikatorengestützter Bericht mit einer Analyse zur Bildung und Migration. 1st edition. Bielefeld: Bertelsmann, pp. 10–11.

<sup>14</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.55 (not adopted).

<sup>15</sup> Second Act on Amendment of the Act on Citizenship, Federal Law Gazette 2014 Part I, p. 1714. Even before amendment of the Act, persons who were citizens of both an EU Member State and Switzerland were not obliged to choose between citizenships.



<sup>16</sup> For a human rights assessment of the previous legal situation, see Zimmermann, Andreas / Schütte, Janine / Sener Meltem (2013): *Deutsche zweiter Klasse? Eine verfassungs-, europa- und völkerrechtliche Analyse der Optionsregelung nach §§ 29/40b Staatsangehörigkeitsgesetz*. Berlin: Deutsches Institut für Menschenrechte [German Institute for Human Rights].

<sup>17</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.45.

<sup>18</sup> Büro für Recht und Wissenschaft GbR under the supervision of Prof. Dr. Christiane Brors (2016): *Evaluation des Allgemeinen Gleichbehandlungsgesetzes*; [http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/AGG\\_Evaluation.pdf?\\_\\_blob=publicationFile&v=14](http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/AGG/AGG_Evaluation.pdf?__blob=publicationFile&v=14).

<sup>19</sup> UN Committee on the Elimination of Discrimination against Women (2017), *Concluding observations on the combined seventh and eighth periodic reports of Germany*, UN Doc. CEDAW/C/DEU/CO/7-8, para. 14.

<sup>20</sup> UN Human Rights Committee (2012), *Concluding observations on the sixth periodic report of Germany*, UN Doc. CCPR/DEU/CO/6, para. 6.

<sup>21</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.33 and 124.41.

<sup>22</sup> Section 46 of the Penal Code pursuant to the Act on Implementation of Recommendations of the Committee of Inquiry into the NSU of the German Bundestag of 12.06.2015, *Federal Law Gazette 2015 Part I*, p. 925.

<sup>23</sup> For more details, see Deutsches Institut für Menschenrechte (2017): *Werden die Empfehlungen des NSU-Untersuchungsausschusses des Bundestags tatsächlich umgesetzt? Künftige Bundesregierung sollte unabhängige Untersuchung initiieren*, <http://www.institut-fuer-menschenrechte.de/publikationen/show/werden-die-empfehlungen-des-nsu-untersuchungsausschusses-des-bundestags-tatsaechlich-umgesetzt/>.

<sup>24</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.77, 124.110 and 124.111.

<sup>25</sup> Deutscher Anwaltverein (2013): *Racial Profiling, DAV: Polizeikontrollen wegen Hautfarbe abschaffen*, *Anwaltauskunft, Magazin*, 1.12.2013, <https://anwaltauskunft.de/magazin/gesellschaft/migration/183/dav-polizeikontrollen-wegen-hautfarbe-abschaffen/>; Amnesty International (2014): *Racial/Ethnic Profiling: Positionspapier zu menschenrechtswidrigen Personenkontrollen*, S. 11, *Link setzen (ging bei mir nicht/ geht aber grundsätzlich)*; Cremer Hendrik (2013): *"Racial Profiling" – Menschenrechtswidrige Personenkontrollen nach § 22 Abs. 1 a Bundespolizeigesetz. Empfehlungen an den Gesetzgeber, Gerichte und Polizei*, Deutsches Institut für Menschenrechte, <http://www.institut-fuer-menschenrechte.de/publikationen/show/racial-profiling-menschenrechtswidrige-personenkontrollen-nach-22-abs-1-a-bundespolizeigesetz/>.

<sup>26</sup> See, for example, Committee on the Elimination of Racial Discrimination (CERD) (2015), *United Nations, CERD/C/DEU/CO/19-22*, para. 11 and European Commission against Racism and Intolerance (ECRI), *ECRI Report on Germany (Fifth Monitoring Cycle) (2014)*, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Germany/DEU-CbC-V-2014-002-ENG.pdf>; also, Working Group of Experts on People of African Descent (2017): *Report of the Working Group of Experts on People of African Descent on its mission to Germany*, UN-Document A/HRC/36/60/Add.2, 15 August 2017, para. 26, 78, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/36/60/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/60/Add.2).

<sup>27</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para.124.52 (recommendation to implement the NAP).

<sup>28</sup> [http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Pressemitteilungen/2017/06/nap.pdf?\\_\\_blob=publicationFile](http://www.bmi.bund.de/SharedDocs/Downloads/DE/Nachrichten/Pressemitteilungen/2017/06/nap.pdf?__blob=publicationFile).

<sup>29</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.39, 124.40, 124.109 and 124.172.

<sup>30</sup> Federal Constitutional Court, decision of 27.01.2015, case nos. 1 BvR 471/10, 1 BvR 1181/10, [http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2015/01/rs20150127\\_1bvr047110.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2015/01/rs20150127_1bvr047110.html). The Court held that a ban is possible only as a last resort if a concrete risk of jeopardizing school peace or of interference with state neutrality is established.

<sup>31</sup> At the time of the Federal Constitutional Court's decision, the school laws of Baden-Wuerttemberg, Bavaria, Berlin, Bremen, Hesse, Lower Saxony, North Rhine Westphalia and Saarland contained provisions incompatible with the Court's legal opinion. As of now, the federal states of North Rhine Westphalia and Hesse have partly amended their laws in reaction to the Court's decision. Bremen and Lower Saxony have opted for ministerial directives in order to meet the constitutional requirements set forth by the Court (by ordering the application of school laws in conformity with the Federal constitution). The Federal states of Baden-Wuerttemberg, Bavaria, Berlin and Saarland have yet to react to the Court's decision.

<sup>32</sup> Federal Constitutional Court, decision of 18.10.2016, case no. 1 BvR 354/11, [http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/10/rk20161018\\_1bvr035411.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2016/10/rk20161018_1bvr035411.html).

<sup>33</sup> Act on Sector-Specific Regulations on Face Coverings and on Amendment of Other Public Services Regulations, Federal Law Gazette 2017 Part I, p. 1570.

<sup>34</sup> Reply of the Federal Government to a Minor Inquiry of the Alliance 90/The Greens parliamentary group, quoted from Spiegel online dated 18.12.2015, <http://www.spiegel.de/politik/deutschland/burka-verbot-bundesregierung-hat-keine-zahlen-und-keine-hinweise-auf-gefahr-a-1068482.html>.

<sup>35</sup> See <https://beck-online.beck.de/Dokument?vpath=bibdata%2Freddok%2Fbecklink%2F2004169.htm>.

<sup>36</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.127, 124.128 and 124.130.

<sup>37</sup> On recent developments see Töpfer, Eric / Peter, Tobias (2017): Unabhängige Polizeibeschwerdestellen: Was kann Deutschland von anderen europäischen Ländern lernen? Berlin: Deutsches Institut für Menschenrechte, pp. 29-31, [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/ANALYSE/Analyse\\_Unabhaengige\\_Polizeibeswerdestellen.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/ANALYSE/Analyse_Unabhaengige_Polizeibeswerdestellen.pdf)

<sup>38</sup> See also Große Strafrechtskommission des Deutschen Richterbundes [Grand Commission on Penal Law of the German Association of Judges] (2008): Das Verhältnis von Gericht, Staatsanwaltschaft und Polizei im Ermittlungsverfahren. Strafprozessuale Regeln und faktische (Fehl-?)Entwicklungen. Expert opinion commissioned by the Federal Ministry of Justice, pp. 12–13. [http://www.bmju.de/SharedDocs/Downloads/DE/Fachinformationen/Das\\_Verhaeltnis\\_von\\_Gericht\\_Staatsanwaltschaft\\_und\\_Polizei\\_im\\_Ermittlungsverfahren.pdf?\\_\\_blob=publicationFile](http://www.bmju.de/SharedDocs/Downloads/DE/Fachinformationen/Das_Verhaeltnis_von_Gericht_Staatsanwaltschaft_und_Polizei_im_Ermittlungsverfahren.pdf?__blob=publicationFile) (Dated: 04.12.2014).

<sup>39</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.198 and 124.199.

<sup>40</sup> See the Act on Restructuring of the Federal Criminal Police Act of 01.06.2017, Federal Law Gazette 2017 Part I, p. 1354, Act on Amendment of the Penal Code – Extension of the Law of Preventive measures for Extremist Offenders of 11.06.2017, Federal Law Gazette 2017 Part I, p. 1612, and the Act on Improved Implementation of Compulsory Departure from Germany of 20.07.2017, Federal Law Gazette 2017 Part I, p. 2780. There is no statutory definition of *Gefährder* (a person who is a potential threat). Instead the term has been defined nationally as follows by decision of the Conference of Interior Ministers: "A person is described as a potential threat if certain facts justify the assumption that he or she will commit politically motivated criminal offences of major significance, in particular criminal offences pursuant to Section 100a of the Criminal Procedure Code (StPO)."; see the reply of the Federal Government to a Minor Inquiry of the parliamentary group The Left (Die Linke), Bundestag document no. 18/11369, dated 03.03.2017, p. 2, <http://dip21.bundestag.de/dip21/btd/18/113/1811369.pdf>.

<sup>41</sup> Sections 62 and 62a of the Residence Act pursuant to the Act on Improved Implementation of Compulsory Departure from Germany of 20.07.2017, Federal Law Gazette 2017 Part I, p. 2780. Pursuant to Section 62 (3) 1a) a foreign national shall be detained to ensure deportation by judicial order "if a deportation order has been passed pursuant to Section 58a, but cannot be immediately enforced". Pursuant to Section 58a "a deportation order can be passed against a foreign national on the grounds of

a fact-based prognosis to avert a specific threat to the security of the Federal Republic of Germany or a terrorist threat without a prior order to leave Germany”.

<sup>42</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.198 and 124.199.

<sup>43</sup> For a (non-exhaustive) overview of domestic surveillance legislation see <http://www.datenspeicherung.de/index.php/ueberwachungsgesetze>. See also the Annual Report 2015/2016 by the Federal Government of Germany, “Den Wandel gestalten – gezielt investieren”, pp. 13-15.

<sup>44</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.169.

<sup>45</sup> See also Niendorf, Mareike / Reitz, Sandra (2016): Das Menschenrecht auf Bildung im deutschen Schulsystem. Was zum Abbau von Diskriminierung notwendig ist. Berlin: Deutsches Institut für Menschenrechte [German Institute for Human Rights], p. 47.

<sup>46</sup> See also Reitz, Sandra / Rudolf, Beate (2014): Menschenrechtsbildung für Kinder und Jugendliche. Befunde und Empfehlungen für die deutsche Bildungspolitik. Berlin: Deutsches Institut für Menschenrechte [German Institute for Human Rights], p. 33.

<sup>47</sup> See also the recommendations of the UN Committee on the Rights of the Child, 2014, CRC/C/DEU/CO/3-4, para. 20b; UN Committee on the Rights of Persons with Disabilities, 2015, CRPD/C/DEU/CO/1, para. 28c; UN Committee on the Elimination of Racial Discrimination, 2015, CERD/C/DEU/CO/19-22, paras. 10iv, 11c and 16.

<sup>48</sup> General psychiatry and forensic psychiatry, less so child and adolescent psychiatry.

<sup>49</sup> See, for example, the Committee on the Rights of Persons with Disabilities (2015): Concluding observations on the initial report of Germany, UN Doc. CRPD/C/DEU/CO/1, para. 37.

<sup>50</sup> see Kirsch, Sebastian / Hirsch, Rolf D. (2016): Freiheitsentziehung durch Medikamente nach § 1906 Abs. 4 BGB, in: PtPrax 1, pp.12-16, with further references.

<sup>51</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.174 and 124.175.

<sup>52</sup> In addition, the UN Committee on the Rights of Persons with Disabilities expressed concern in its review of the report of Germany on implementation of the UN Convention on the Rights of Persons with Disabilities and expressly urged the implementation of mandatory regulations, including effective enforcement and sanctioning mechanisms, see UN Committee on the Rights of Persons with Disabilities (2015): Concluding observations on the initial report of Germany, UN Doc. CRPD/C/DEU/CO/1, para. 21 et seq.

<sup>53</sup> Available online at: <https://www.gesetze-im-internet.de/bgg/>.

<sup>54</sup> Since January 2016, all newly licensed long-distance buses must be equipped with at least two spaces for wheelchair users. As of 2020, this rule will also apply to older models (Section 42b and Section 62 (3) of the Passenger Transport Act (PBefG), available online at: <https://www.gesetze-im-internet.de/pbefg/BJNR002410961.html>). This regulation is based on an EU directive, see Annex VII of Directive 2001/85/EC of the European Parliament and of the Council of 20 November 2001 (OJ L 42 of 13.2.2002, p. 1).

<sup>55</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.173 and 124.174.

<sup>56</sup> Aktion Mensch (ed.) (2016): Inklusionsbarometer Arbeit. Ein Instrument zur Messung von Fortschritten bei der Inklusion von Menschen mit Behinderung auf dem deutschen Arbeitsmarkt. 4. Jahrgang (2016). Bonn, p. 37.

<sup>57</sup> For details on the data, see Bundesministerium für Arbeit und Soziales [Federal Ministry of Labour and Social Affairs] (ed.) (2017): Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen, pp. 211–213.

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<sup>58</sup> Bundesteilhabegesetz, as amended by law of 17 July, 2017, Federal Law Gazette 2017 Part I, p. 2541.

<sup>59</sup> The UN Committee on the Rights of Persons with Disabilities expressed concern in its concluding observations in 2015 about general segregation on the German labour market, financial disincentives for persons with disabilities and a lack of mobility between workshops for disabled people and the open labour market, and therefore recommended that Germany provide regulations that effectively create an inclusive labour market in accordance, see Committee on the Rights of Persons with Disabilities (2015): Concluding observations on the initial report of Germany, UN Doc. CRPD/C/DEU/CO/1, para. 49 et seq.

<sup>60</sup> [http://www.csr-in-deutschland.de/SharedDocs/Downloads/DE/NAP/nap-im-original.pdf?\\_\\_blob=publicationFile&v=2](http://www.csr-in-deutschland.de/SharedDocs/Downloads/DE/NAP/nap-im-original.pdf?__blob=publicationFile&v=2).

<sup>61</sup> See <https://www.bmfsfj.de/blob/93348/a41675e1f53ec6f743359b6b75fec3e2/bericht-der-bundesregierung-evaluation-des-bundeskinderschutzgesetzes-data.pdf>.

<sup>62</sup> See Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, para. 124.13.

<sup>63</sup> See also Recommendation following the Second Review of Germany in 2013, UN Doc. A/HRC/24/9, paras. 124.176 and 124.177.

<sup>64</sup> See also Schröttle, Monika et al. (2012): Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland - Kurzfassung. Berlin: Bundesministerium für Familie, Senioren, Frauen und Jugend [Federal Ministry for Family Affairs, Senior Citizens, Women and Youth].

<sup>65</sup> Con\_sens (2017): Kennzahlenvergleich Eingliederungshilfe der überörtlichen Träger der Sozialhilfe 2015, Münster: Bundesarbeitsgemeinschaft der überörtlichen Träger der Sozialhilfe [Federal Association of Supra-Local Social Welfare Agencies].

<sup>66</sup> Committee on the Rights of Persons with Disabilities (2015): Concluding observations on the initial report of Germany, UN Doc. CRPD/C/DEU/CO/1, para. 35 et seq.

<sup>67</sup> Federal Government, German Sustainability Strategy, 2016 edition, [https://www.bundesregierung.de/Content/DE/\\_Anlagen/Nachhaltigkeit-wiederhergestellt/2017-01-11-nachhaltigkeitsstrategie.pdf;jsessionid=AC5C7F9E6421DC290D61B695243FE405.s16t1?\\_\\_blob=publicationFile&v=20](https://www.bundesregierung.de/Content/DE/_Anlagen/Nachhaltigkeit-wiederhergestellt/2017-01-11-nachhaltigkeitsstrategie.pdf;jsessionid=AC5C7F9E6421DC290D61B695243FE405.s16t1?__blob=publicationFile&v=20).

<sup>68</sup> That indicator is “material deprivation”, *ibid.* (end note 78), p. 57.