

Development of the human rights situation in Germany July 2020 - June 2021: Report to the German Federal Parliament in accordance with section 2 (5) of the act on the legal status and mandate of the German Institute for Human Rights; Executive summary

Veröffentlichungsversion / Published Version

Kurzbericht / abridged report

Empfohlene Zitierung / Suggested Citation:

Deutsches Institut für Menschenrechte. (2021). *Development of the human rights situation in Germany July 2020 - June 2021: Report to the German Federal Parliament in accordance with section 2 (5) of the act on the legal status and mandate of the German Institute for Human Rights; Executive summary*. (Menschenrechtsbericht, 2020/2021). Berlin. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-78718-5>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-NC-ND Lizenz (Namensnennung-Nicht-kommerziell-Keine Bearbeitung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:

<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.de>

Terms of use:

This document is made available under a CC BY-NC-ND Licence (Attribution-Non Commercial-NoDerivatives). For more information see:

<https://creativecommons.org/licenses/by-nc-nd/4.0>



German Institute
for Human Rights

Executive Summary

Developments of the human rights situation in Germany July 2020 – June 2021

Report to the German Federal Parliament
in accordance with section 2 (5) of the
Act on the Legal Status and Mandate of
the German Institute for Human Rights

About the report

Each year, the German Institute for Human Rights submits a report on the developments in the human rights situation in Germany to the German Bundestag, in accordance with section 2 (5) of the Act on the Legal Status and Mandate of the German Institute for Human Rights (DIMRG: Gesetz über die Rechtsstellung und Aufgaben des Deutschen Instituts für Menschenrechte, of 16 July 2015). The report is presented on the occasion of International Human Rights Day on 10 December. The Act on the Legal Status and Mandate of the German Institute for Human Rights provides that the German Bundestag should respond to the report. The 2020/2021 report, the sixth such report to be issued, covers the period from 1 July 2020 through 30 June 2021.

By requesting an annual report on developments in the human rights situation in Germany, the Federal Parliament and the Federal Council have emphasised that respecting and realising the human rights of all persons in Germany is an ongoing responsibility for all public authorities, as new challenges continually arise. This is why the Basic Law (Grundgesetz), Germany's constitution, demands that the impacts of legislation on human rights be reviewed regularly and that adjustments be made when needed, through legislation or by changing administrative practices. Moreover, political and societal changes, international or domestic developments, and scientific and technological progress can give rise to new challenges to human rights. Recognising such challenges and developing human rights-based solutions to them is crucial. This report is intended to contribute to both: the assessment of the human rights impact of laws and the identification of new human rights challenges and the identification of areas where new human rights risks demand a political response.

www.institut-fuer-menschenrechte.de/menschenrechtsbericht2021

The Institute

The German Institute for Human Rights is the independent National Human Rights Institution of Germany (§ 1 GIHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute is mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

www.institut-fuer-menschenrechte.de

Content

Introduction	4
<hr/>	
1 Germany Within the System of International Human Rights Protection	4
<hr/>	
2 Combatting Racism and Right-wing Extremism – Consistent Implementation of Measures	5
<hr/>	
3 The Act on Corporate Due Diligence Obligations in Supply Chains – Germany and the EU See Regulation as the Way Forward	6
<hr/>	
4 Triage – The Bundestag Must Take Legislative Action to Prevent Discrimination	7
<hr/>	
5 Family Reunification for Persons Granted Protection – Legally Difficult and Practically Impossible	8
<hr/>	
6 Incorporating Children’s Rights into the Basic Law – A Missed Opportunity Amidst the Coronavirus Pandemic	9
<hr/>	
7 Persons with Disabilities – Will and Preferences as the Human Rights Basis for Guardianship	10
<hr/>	
8 Greater Global Vaccine Equity – A Human Rights Obligation of Germany	11
<hr/>	

Introduction

This year, the sixth year of its publication, the human rights report to the German Federal Parliament focuses on seven issues of great relevance for human rights in the period under report (01 July 2020–30 June 2021). It describes developments relating to these issues, assesses the major political and legislative measures in these areas through the lens of human rights and formulates recommendations. To inform this report, we evaluated publicly available statistics, documents and studies, including material from the German Bundestag, as well as media reports. The assessments and recommendations contained in the report are grounded in extensive research carried out by the German Institute for Human Rights.

The coronavirus pandemic exerted a powerful influence in the period under report, as it had in the previous period. The present report looks at some of the key human rights challenges associated with combatting the pandemic, such as the issue of triage, the situation of children and young people during the pandemic, and questions of global vaccine equity. It also addresses human rights concerns that are not new, but which grew more acute, in some respects, during the pandemic, such as the response to racism and to right-wing extremism in Germany, the situation of people placed under guardianship (*rechtliche Betreuung*), family reunification for persons who have fled their home country and been granted protection in Germany, and the issue of human rights due diligence in supply chains.

Human rights are a source of binding policy guidance, and they impose limits on the scope of state action – in order to safeguard liberty and self-determination. All of the issues examined in this year's report illustrate the necessity of a nuanced view for the design of good policies, as differentiation allows the identification of areas where human rights need to be strengthened and thus the development of well-targeted measures. Particularly important in this respect are the perspectives and the expertise of the people whom the policies will affect. Political prudence dictates and human rights demand that room be made for the affected groups in political discourse, especially in parliamentary discourse, and that

their input receive careful consideration. This applies particularly to the views of those who, having been pushed to the margins of our society, do not have the social resources, power, money, or standing necessary to make themselves heard. For this reason, this report focuses primarily on the situations of marginalised groups.

For a democracy, it is essential that state institutions and procedures are accepted by the population and that people trust that the state's actions are governed by the rule of law. Increasing participation by population groups who have lacked visibility and the ability to be heard, a task in which new formats and forms can be particularly effective, creates an opportunity for more people to see and experience the compromise-oriented search for evidence-based solutions – and hence to witness democracy in action. This approach offers a way of overcoming dissatisfaction and alienation that may accompany it.

We hope that the content of this report will provide impetus to the newly elected Bundestag and the new Federal Government as well as by the Länder that will help them to ensure that Germany protects and promotes human rights both domestically and in its external policy.

1 Germany Within the System of International Human Rights Protection

Germany has committed to upholding fundamental and human rights, both in its constitution, the Basic Law (*Grundgesetz*), and by ratifying numerous international and European human rights treaties. Section 1 of the report presents Germany's key reporting obligations (*vis-à-vis* international human rights bodies) in the period from 1 July 2020 through 30 June 2021.

As 2021 marks the 70th anniversary of the adoption of the Refugee Convention, this section also contains a timeline highlighting the milestones of this instrument. Another development in 2021 was Germany's ratification of the Revised European Social Charter in March.

2 Combatting Racism and Right-wing Extremism – Consistent Implementation of Measures

Again and again, there are reports of criminal offenses motivated by extreme-right and racist hatred in Germany. Although the picture is incomplete due to the high degree of underreporting, the statistics of the BKA (Federal Criminal Police Office) and reports from the media and civil society all concur on one point: the numbers have been rising for years.

Moreover, **the increasing incidence of violence is not the only alarming trend, for the blatancy with which racist, antisemitic and extreme-right positions are being expressed in the public and political arenas is also increasing.** Content of this kind has become a regular feature on the Internet and at demonstrations organised by the “Querdenker” (“lateral thinkers”) movement protesting COVID-19 policies. The Federal Office for the Protection of the Constitution has placed several individuals and parts of this movement under observation. Meanwhile, the public keeps hearing about racist activities within the military, police and security agencies – in racist police-internal chat-groups, for instance – and about links between them and groups considered to be extreme-right.

Germany has a duty under human and fundamental rights to protect everybody against racist discrimination both in law and in fact. This obligation arises from the United Nations’ International Convention on the Elimination of All Forms of Racial Discrimination (Articles 2, 5(a) and 5(b)), the European Convention on Human Rights (Article 14) and the Basic Law (Article 3, Paragraph 3, Sentence 1).

European and international human rights bodies have repeatedly urged Germany to ensure the effective prosecution of crimes motivated by racism and antisemitism and to take measures to prevent them. The most recent body to do so was the European Commission against Racism and Intolerance (ECRI), which, in March 2020, found that the

question of racist or antisemitic motives does not receive due consideration in the investigation and sentencing of crimes and which noted with dismay that the police do not enjoy the trust of persons affected by far-right violence and that there are not enough counselling services for victims.

In reaction to the shootings in Halle (October 2019) and Hanau (February 2020) and the murder of CDU politician Walter Lübcke (June 2019), the Federal Government signalled its resolve to fight back against racism, antisemitism and right-wing extremism. **The Act to Combat Right-Wing Extremism and Hate Crime** (Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität) **entered into force on 1 July 2021.** This legislation is aimed at strengthening protection, inter alia by toughening sanctions for offenses and enabling additional bars on public access to information held in the official registry. **The Federal Government had already decided, on 25 November 2020, on an extensive package of 89 measures to fight right-wing extremism and hate crime involving several ministries.** The objectives: increased awareness of racism and antisemitism, greater cooperation between civil society and police and prosecutorial authorities, better state structures for combatting racism and the development of effective protections for victims.

One of the measures in the package is a study on day-to-day police activity to be commissioned by the federal interior ministry. **In the discussion about this study, the federal interior minister repeatedly denied that the police conducted discriminatory identity checks and insisted that there was no institutional racism in the police** – contrary to the reports of persons affected and migrant organisations.

Although the federal government took a number of steps to combat racism and right-wing extremism in 2020/2021, there is still a great deal that needs to be done. **The Institute therefore recommends, inter alia, that the federal and Länder governments**

- eliminate legal provisions conducive to racist identity checks by police, such as section 22, subsection 1a, of the Federal Police Act (Bundespolizeigesetz),

- set up bodies to receive complaints from and assist persons affected by racist police practices,
- follow through on the recommendations of the independent Commission on Antiziganism (June 2021),
- replace the term “race” in the Basic Law with “racist discrimination”,
- incorporate human rights education across all subject areas in the initial and advanced training and professional development for all police officers, and the personnel of other law enforcement, prosecutorial and judicial authorities.

3 The Act on Corporate Due Diligence Obligations in Supply Chains – Germany and the EU See Regulation as the Way Forward

Slavery is supposed to have been abolished and forced labour is forbidden, yet there are still adults and children working under hazardous and exploitative conditions in the modern business world – some of them in the production of goods for the German market. **Companies, their subsidiaries and their suppliers and investors, too, harm human rights in the global supply and value chains over and over again.** Frequently, the rights abused are social rights set out in the United Nations’ International Covenant on Economic, Social and Cultural Rights, such as the right to a decent wage (Article 7(a)), the right to safe and healthy working conditions (Article 7(a)), or the right to physical and mental health (Article 12). The issue of child labour (ILO Convention no. 182) also comes into play.

Who is responsible for ensuring human rights in the business world? Both states and companies, according to the UN Guiding Principles on Business and Human Rights. Companies have a responsibility to respect human rights: Guiding Principle 11 says that business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts. The Guiding

Principles call on states – in production countries and in customer countries – to attend to their obligations as well. For Germany, this means: **The state must ensure that German companies respect human rights and that when abuses occur, the people affected have access to remedy.**

What the responsibilities of companies mean in terms of concrete action, how far these responsibilities go, what can and must be done by even small and medium-sized enterprises – these questions have been debated in Germany for years. **The National Action Plan for Business and Human Rights (NAP), adopted in 2016, put the initial focus on voluntary human rights due diligence by companies.** However, the report on the NAP monitoring process released in February 2021 revealed that less than 20 percent of the companies based in Germany under review had implemented human rights due diligence. Thus, on 11 June 2021, after long and contentious debates, **the Bundestag passed the Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz: LkSG) – a political compromise.**

Parts of the LkSG are well-crafted, such as the procedure for enforcement, the provision for the imposition of fines, and the inclusion of foreign companies that have a branch office in Germany within the legislation’s scope. **The legislation falls short of the standard established by the UN Guiding Principles in some other respects, though:** It applies only to large companies and thus not to enough companies. Not all due diligence obligations reach down consistently into the depths of the supply and value chains. The statute does not establish additional civil liability, nor does it create greater access to justice for persons affected by human rights abuses, and thus it does not improve their chances of obtaining compensation.

Bottom line: there are signs of a paradigm shift – and not just in Germany. The European Union is also working on the legal regulation of corporate human rights due diligence. The European Parliament has come up with a progressive set of proposals: in the future, companies that fail to perform due diligence may face civil liability claims.

Criminal sanctions have not been ruled out as yet either.

Germany's new legislation on corporate due diligence will enter into force for companies on 1 January 2023. **Once it does, much will depend on how companies implement it. How effectively the Federal Office for Economic Affairs and Export Control monitors and enforces the legislation will also be decisive, though.**

The Institute recommends that the Federal Government

- closely monitor and independently evaluate the implementation of the LkGS,
- examine the possibility of expanding the due diligence requirements in line with the UN Guiding Principles,
- actively pursue the EU-wide regulation of corporate due diligence that is not limited to large enterprises and reduce barriers to access to justice for persons adversely affected by corporate activities.

4 Triage – The Bundestag Must Take Legislative Action to Prevent Discrimination

Germany's intensive care units (ICUs) were stretched to the limit on multiple occasions during the coronavirus pandemic. On 16 April 2021, for instance, only twelve percent of ICU beds were unoccupied. Who should receive what treatment if the ICUs are overwhelmed? Against which criteria should decisions be taken if there is not enough time, personnel or equipment, such as lung ventilators, to treat all patients? Doctors have faced these kinds of questions with only the non-binding recommendations of professional associations to guide them. **Although the issue of triage has been raised in the Bundestag more than once, the Federal Parliament has declined to initiate a legislative procedure on the subject.**

Even before the coronavirus pandemic, persons with disabilities faced structural obstacles to accessing healthcare services

and institutions, such as equipment or premises that are not accessible – this despite the fact that Germany, as a State party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD), has an obligation to ensure that persons with disabilities have access to medical care on an equal basis with others. During the pandemic, the short supply of resources exacerbated the barriers and disadvantages faced by persons with disabilities. **For this reason, international human rights bodies have strongly urged states to ensure that persons with disabilities and older persons have access to life-saving interventions.**

Doctors in Germany look to non-binding recommendations when taking decisions in triage situations. **However, the triage recommendations issued by associations of medical specialists are not consistent with fundamental and human rights** – specifically, with Articles 5 (Equality and non-discrimination), 10 (Right to life), 11 (Situations of risk and humanitarian emergencies) or 25 (Right to health) of the UNCRPD. In particular, the application of the criteria put forth by the German Interdisciplinary Association for Intensive Care and Emergency Medicine (DIVI) would constitute indirect discrimination against persons with disabilities and older persons, because these groups are substantially more likely to be assigned lower priority if the criteria relating to life expectancy and frailty are applied.

Triage decisions are based on the chances of recovery which, ostensibly, can be determined objectively; ultimately, though, the idea of measuring the worth of a life is never far away. **Balancing the value of one human life against that of another is incompatible with human dignity within the meaning of Article 1, Paragraph 1 of the Basic Law (Grundgesetz: GG) and is therefore unconstitutional.** Even foreseeable death or a short life expectancy cannot justify the sacrifice of one human being to save another.

This same notion is at the heart of a constitutional complaint currently pending (as of October 2021) at the Federal Constitutional Court. The complainants fear that they might receive a lower standard of medical care or might even fail to qualify for a life-

saving treatment on the grounds of an impairment or advanced age, because statistics indicate that their chances of recovery after treatment in intensive care are lower. Their complaint is directed against the legislature, for its failure to enact legislation governing triage situations. At the Court's invitation, the Institute has submitted a human rights brief to the proceedings.

The federal legislature has a duty to regulate this issue: Germany needs precepts grounded in human rights and constitutional law to serve as the basis for prioritisation decisions taken by doctors.

The Institute recommends the following:

- the clear identification of considerations that must not play a role in patient prioritisation, for instance, the number of years the person can be expected to live, quality of life, service to society or age,
- the formulation of decision-making criteria that respect the fundamental values enshrined in the Basic Law and which are consistent with the UNCRPD principle of non-discrimination,
- the involvement of representatives of the relevant professional disciplines and interest groups of all relevant population groups, including persons with disabilities and older persons, in the development of all rules governing triage.

5 Family Reunification for Persons Granted Protection – Legally Difficult and Practically Impossible

People forced to flee their home countries often have to leave their minor children or spouses behind for the time being. Those granted protection in Germany face large legal and practical obstacles to family reunification though. This has far-reaching consequences: **The separation and what can turn out to be years of waiting for their families engender feelings of hopelessness and**

despair in persons who have fled to Germany, particularly in the case of minors.

Although official statistics do not record the number of family reunification requests that are denied, reports from lawyers and professional associations make it clear that this is often the case. **Yet, the right to family life is anchored in the Basic Law and in fundamental and human rights (Article 6 of the Basic Law and Article 8 of the European Convention on Human Rights). If minors are involved, the UN Convention on the Rights of the Child requires that the child's wellbeing be a primary consideration (Article 3(1)), and the family unit must be respected.** The Federal Administrative Court affirmed this in a ruling in December 2020. The case was about the rejected application for family reunification by the wife and a four-year-old child of a man who had received subsidiary protection in Germany. The Court ruled in favour of the family.

Parents' efforts to reunite with children granted protection in Germany are often thwarted by the lengthy and complicated visa procedures. Under the current practice, persons who were children when granted protection cease to be entitled to family reunification if they reach the age of majority before visas have been issued to their parents. The Institute emphasises that the length of the procedure must not be allowed to determine the entitlement to family unification. A case relating to parents reuniting with children is currently (as of October 2021) pending at the European Court of Justice (CJEU). The CJEU must now determine the extent to which the German rules are in line with the European legal requirements.

It is practically impossible for minor siblings to be reunited with someone who was granted protection after arriving in Germany as an unaccompanied minor. **Under German law, the minor siblings of a person granted protection in Germany are not entitled to accompany their parents if the latter move to Germany to be reunited with the child who received protection there.** Only in cases of "exceptional hardship" will the authorities allow sibling reunification in Germany; in such cases, the minors with protection status in Germany must prove that they have sufficient

housing for the family and secure “means of subsistence” (financial resources sufficient to maintain them) – requirements that are normally impossible to meet. The result: parents are forced to decide whether to leave a child or children behind in their country of origin or country of first reception, to leave the child in Germany to live without a parent or to split up so one spouse can live with the child in Germany while the other remains behind with their other child(ren).

A feature specific to German law is the statutory cap on the number of family reunification visas that can be issued per month to family members of persons with subsidiary protection status. The authorities have rarely used up the full quota's worth of visas (since the rule came into force in August 2018), but there is no provision for carrying an unused portion of a quota forward to the following month. Lawyers report that the family unification visa procedure, too, is non-transparent, lengthy and bureaucratic, and this is one of the reasons for the low numbers. The Institute takes issue with the fact that persons with subsidiary-protection status are treated differently than those with refugee status. A return to their country of origin in the foreseeable future to live together with their family there would not be reasonable in the case of persons in the former group either.

To ensure that Germany meets its fundamental and human rights obligations, the Institute recommends

- that the Bundestag remove the cap on the number of family reunification visas for family members of beneficiaries of subsidiary protection and that it establish rules explicitly governing reunification with siblings that are comparable to those for reunification with parents.
- that the Länder issue a decree instructing the immigration authorities to disregard the requirements concerning housing and subsistence until such time as federal law provisions governing sibling reunification are enacted. In the absence of such a decree from the relevant Land, the immigration authorities should exercise their discretionary powers to disregard said requirements.

6 Incorporating Children's Rights into the Basic Law – A Missed Opportunity Amidst the Coronavirus Pandemic

Schools and day-care centres closed, no contacts with other children of the same age, let alone the chance to play with them, no sports and no participation in the life of their community, (too) little support in digital learning, (too) little protection against domestic violence: we do not yet know what long term effects the measures to curb the coronavirus pandemic will have on children and young people. One thing we do know for certain, though, is that **children and adolescents played almost no role in political decision-making processes during the coronavirus pandemic.** Their views were not considered – they were not even heard, of participation in decision-making there can be no thought. **Yet discussions about enshrining children's rights in the Basic Law and implementing them in accordance with the UN Convention on the Rights of the Child (UNCRC) have been going on for years.**

Germany has been under an obligation to implement the UNCRC since 1992. This Convention establishes rights of protection, provision and participation, such as the right to protection from violence, the right to education and the right to participate in recreational activities, cultural life and the arts. The UNCRC is applicable law in Germany, where it has the status of federal law. **The UN Committee for the Rights of the Child has recommended that Germany take steps to ensure that the UNCRC takes precedence over ordinary federal laws and to incorporate children's rights into the Basic Law.** This would lend more weight to the concerns of children and adolescents and substantially increase awareness of them, and the views of persons under the age of 18 would be heard in political decision-making processes.

The coronavirus pandemic made it plain, however, that the State has not and does not adequately recognise children and adolescents as persons with rights of their own. Politicians and

policymakers saw children and adolescents more as “drivers of the pandemic” than as persons with rights – human beings whose views they had a duty to hear. **Voices of children’s and adolescents’ representatives were not heard by the Federal Government’s crisis unit until several months into the pandemic.** It is hardly surprising, then, that a national survey carried out by researchers at Goethe University Frankfurt and the University of Hildesheim, in cooperation with the Bertelsmann Stiftung, found that many young people surveyed felt ignored by political decision-makers and that their interests were not represented in political processes.

The measures taken to curb the pandemic hit some groups of children particularly hard, such as children at risk of poverty and children in accommodation centres for asylum-seekers and refugees. The right to education on an equal basis with others was severely restricted for some children. Some families had resort to legal action to establish that computers were a necessary purchase. Children in accommodation facilities for asylum-seekers and refugees were left without the support normally provided by volunteers, there were no quiet rooms where they could do schoolwork or study, and a lack of digital infrastructure sometimes prevented their use of online offerings.

The coalition Government presented a legislative proposal to incorporate children’s rights into the Basic Law in early 2021 for the first time – almost thirty years after the UNCRC entered into force in Germany. The draft legislation met with widespread criticism: from politicians from other parties, from children’s rights experts and legal scholars and from civil society organisations, such as the German Children’s Fund (Deutsches Kinderhilfswerk), the non-governmental child protection agency DKSB (Deutscher Kinderschutzbund) and UNICEF Deutschland. Although they objected to the draft for different reasons, the critics all agreed that it represented a step backwards relative to the current legal situation. After a long and arduous process, it became clear that the necessary two-thirds majority was not going to be found in the Bundestag.

The Institute continues to see a great need for improvement with regard to the establishment and realisation of children’s rights in Germany and therefore recommends the following:

- the submission in the near future of new draft legislation incorporating children’s rights into the Basic Law that does not fall short of the European and international standards and that significantly strengthens the legal position of children,
- that the participation of children and adolescents in the development of the legislation be ensured.

7 Persons with Disabilities – Will and Preferences as the Human Rights Basis for Guardianship

There was a major reform of German law governing guardianship in 2021. The legal instrument of guardianship (rechtliche Betreuung; also translated as custodianship) applies when a person requires support in order to attend to their legal affairs. Under German law, the appointment of a guardian is permissible only if the person in question has a need for support that cannot be met through another form of assistance. **The reform seeks to strengthen the right to self-determination by ensuring due consideration of the will and preferences of the person affected.**

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) endorses a system of supported decision-making. All government bodies have a duty to implement the UNCRPD, which has been applicable law in Germany since 2009. This includes the implementation of the right to have medical care provided on the basis of free and informed consent (UNCRPD Article 25: Right to health), the right to be protected against the deprivation of liberty due to the existence of a disability (UNCRPD Article 14: Liberty and security of person) and the right to choose where and with whom one lives (UNCRPD Article 19:

Living independently and being included in the community).

The restrictions on interpersonal contact imposed during the coronavirus pandemic placed severe strain on many guardianship relationships. Personal contacts are essential in order for guardians to meet their statutory responsibilities, but maintaining the contacts was difficult during the pandemic and in some cases impossible. **It was not until the pandemic was well underway – specifically, with the amendment of the Act on the Prevention and Control of Infectious Diseases (Infektionsschutzgesetz) in November 2020 – that the legislature recognised the necessity of allowing a minimum of social contact.** The issue of personal hearing in proceedings at guardianship courts was seen as particularly problematic. In October 2020, the Federal Court of Justice reaffirmed that, even during a pandemic, guardianship courts may only dispense with a personal hearing in proceedings when very strict conditions are met.

Under the UNCRPD, actions taken to provide necessary support must respect the will and preferences of the person concerned. This has direct relevance for the principles laid down to govern decision-making by guardians. With the reform of guardianship law, the concept of welfare/well-being (Wohl) – which was the guiding principle before the reform – is no longer applied. The reform seeks to ensure that persons placed under guardianship are better informed and more involved, while improving the detection and sanctioning of breaches of duty by guardians.

The new legislation is an attempt to lay the legal groundwork ensuring that courts order guardianships only to the extent absolutely necessary (necessity principle). In order to do so, it strengthens the principle favouring supported decision-making over substituted decision-making (“Unterstützen vor Vertreten”). The “will and preferences” precept does not apply across the board in the new legislation, though. A case in point: a person can still be placed under guardianship against their “natural will” under certain circumstances. **Moreover, the provisions creating the legal bases for coercive measures, such as placement in an institution or medical**

treatment against the will of the subject, still stand.

On the whole, the reform of guardianship law (Betreuungsrecht) is a step towards more self-determination. As further steps, the Institute recommends, inter alia,

- that the federal and Länder governments – in order to obviate a need for guardianship – expand the “other assistance” (“andere Hilfen”: § 1814 subsect. 3 no. 2 of the Civil Code (BGB) as amended, § 5 and § 8 of the Guardianship Organisation Act (BtOG)) and services such as debt counselling and those facilitating assisted living in private homes (ambulantes betreutes Wohnen)),
- that the federal and Länder governments take steps to eliminate involuntary placement and use of deprivation-of-liberty measures, such as physical restraints or medical sedation, on the grounds of an impairment,
- that information and empowerment training be provided at the local level both for persons with support needs and for individuals, organisations and institutions involved in guardianship,
- that federal and Länder justice ministries take the action necessary to ensure the availability of comprehensive statistical data, as must guardianship authorities and clinics.
- that the Federal Government set up a national research/resource centre for supported decision-making.

8 Greater Global Vaccine Equity – A Human Rights Obligation of Germany

The development, production and approval of vaccines against COVID-19 are crucial for overcoming the coronavirus pandemic. **Vaccine supplies are insufficient in too many countries, however.** As of August 2021, nearly 75 percent of the vaccine doses produced worldwide had been administered in the world’s wealthiest countries, compared to only 2.7 percent in the world’s poorest countries. In addition to the health,

economic and social risks that this creates for the populations in poorer countries, the inequitable distribution of vaccines is putting the whole world at risk, because large percentages of populations worldwide will have to be vaccinated in order to curb the pandemic.

In addition to being advisable from a public health perspective, promoting global vaccine equity is a human rights obligation on the part of all States parties to the UN's International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 12). **The ICESCR also places an obligation on countries like Germany to support other states to realise the right to health (the "principle of cooperation"), here: to promote access to vaccines on an equitable basis in other countries.** Last but not least, pharmaceutical companies bear a human rights responsibility to manufacture vaccines that are accessible for everybody.

Yet instead of helping lower-income countries to acquire vaccines or the technology to produce them themselves, high-income countries rushed to conclude advance purchase agreements with pharmaceuticals companies. By late summer 2020, the EU, the UK, Canada and some other countries had ordered more doses of vaccine than they needed to vaccinate their populations. Middle- and low-income countries were not in a position to place advance orders on this scale.

To ensure the global access to vaccines that sound health policy dictates and human rights demand, the World Health Organisation (WHO) initiated the COVAX scheme (COVID-19 Vaccines Global Access). COVAX was supposed to operate as a global platform for the pooled procurement and equitable distribution of vaccine doses. **Germany and other EU countries voiced support for COVAX and provided funding, while continuing to place advance orders for vaccines for their own populations directly**

from pharmaceutical companies. Bypassed in this way, COVAX was reduced to being merely a platform that arranged vaccines in the Global South with financial contributions and donations of vaccine doses from the Global North.

In addition, there were WHO-supported programmes for technology transfer and proposals for granting licenses and suspending patents. The states that had secured vaccine donations through advance orders would certainly have had the leverage to get the pharma companies to commit to such arrangements. The USA, previously an unabashed proponent of patent protection, endorsed a proposal along these lines from India and South Africa; **the EU Commission remained lukewarm on questions of patent waivers, as did the German Government.**

Global vaccine equity means ensuring global access to vaccines. This is not something that can be achieved through acts of charity in the form of donations of extra supplies or development aid. **Access to vaccines against a fatal disease comes under the internationally recognised universal right to health.**

The Institute therefore recommends, inter alia, that the Federal Government

- not procure vaccines without also stipulating rules for the voluntary transfer of patents,
- use all means available at the EU level to achieve an increase in vaccine production in the short, middle and long terms, including mandatory licensing and patent waivers,
- donate "surplus" orders of vaccine doses to COVAX rather than, as has occurred, bypassing COVAX to distribute them in the Global South on the basis of geopolitical calculations,
- strengthen the healthcare systems in low-income countries independently of the coronavirus pandemic.

Imprint

PUBLISHER

German Institute for Human Rights
Zimmerstraße 26/27 | 10969 Berlin
Tel.: 030 259 359-0 | Fax: 030 259 359-59
info@institut-fuer-menschenrechte.de
www.institut-fuer-menschenrechte.de
Twitter: @DIMR_Berlin

HUMAN RIGHTS REPORT TO THE GERMAN
FEDERAL PARLIAMENT | DECEMBER 2021

TRANSLATION

Alison Borrowman

LAYOUT

MedienMélange: Kommunikation!

LICENSE

<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.de>



The long version of this report (German) is available at:

www.institut-fuer-menschenrechte.de/menschenrechtsbericht2021

An executive summary of the report is also available in English and German:

www.institut-fuer-menschenrechte.de/menschenrechtsbericht2021

German Institute for Human Rights

Zimmerstrasse 26/27
10969 Berlin

www.institut-fuer-menschenrechte.de