

Stakeholder Submission
Universal Periodic Review (UPR) on the Federal Republic of Germany
September 2017

Submitted by:

Gesellschaft zum Schutz von Bürgerrecht und Menschenwürde e.V. (GBM), (Society for the Protection of Civil Rights and Human Dignity), Franz-Mehring-Platz 1, 10243 Berlin, Germany, gbmev@t-online.de, www.gbmev.de.

If you need further information, feel free to contact Helga Hörning, h.hoerning@t-online.de.

1. GBM participated in the two previous cycles of the UPR process. Our 2012 statements are included in items 34 and 35 of the Summary of non-governmental stakeholders' contributions, as prepared by the Office of the High Commissioner for Human Rights (Document A/HRC/WG.6/16/DEU/3 of 8 February 2013), which we do appreciate.
2. As in the past, this year's submission follows the guidelines contained in the annex to Human Rights Council resolution 16/21 of 12 April 2011, in that we will comment only
 - I. on the implementation of the recommendations issued by the Working Group on the Universal Periodic Review (UPR) (A/HCR/24/9 of 8 July 2013), as accepted by the Federal Republic of Germany, and
 - II. on developments in the FRG's human rights situation recorded since 2013, the year when our country was last reviewed.
3. Recommendation 124.60: "Adopt measures to recognise in practice the indivisibility, equality, interdependence and universality of all human rights so that legislation and judicial practice adequately ensure the enjoyment of economic, social and cultural rights and not just civil and political rights."

The Federal Republic of Germany has accepted this recommendation and claims that the indivisibility, universality and the interdependence of all human rights are guaranteed in its legislation and judicial practice.

It is important to note in this context that the UN Committee on Economic, Social and Cultural Rights arrived at a different result in its Concluding Observations published in 1998, 2001 and 2011 (documents E/C.12/1/Add.29 of 4 December 1998, E/C.12/1/Add.68 of 24 September 2001 and E/C12/DEU/CO/5 of 12 July 2011).

The above Committee complained, for example, about the status that the rights enshrined in the International Covenant on Economic, Social and Cultural (item 13 of the 1998 Concluding Observations) are accorded in Germany's legal system and has expressly called upon the State Party to take whatever measures are required to ensure that the Covenant provisions are applied in an effective way (item 7 of the 2011 Concluding Observations). What is more, the Committee demanded that German courts play a more active part in the implementation of Covenant rights (item 13 of the 1998 Concluding Observations and item 7 of the 2011 Concluding Observations). Also, the UN body referred to above expressed concern over differences existing between the new and the old federal *Länder*, notably with regard to the generally lower standard of living and the higher rate of unemployment in the new *Länder* (item 17 of the 2001 Concluding Observations).

Additional measures have also been demanded in the field of women's rights to ensure that women can enjoy full and equal participation in the labour market, especially when it comes to career opportunities and equal pay for equivalent work (item 37 of the 2001 Concluding Observations). The UN Committee repeatedly urged that the situation of asylum seekers be improved, particularly regarding the enjoyment of the economic, social and cultural rights laid down in the Covenant (items 16 and 34 of the 2001 Concluding Observations).

In its 2011 Concluding Observations, the UN body made it clear that past recommendations not yet implemented remain valid.

In view of the situation described, it is a welcome development that a bill aimed at the inclusion of basic social rights in the German constitution (*Grundgesetz*) has now been introduced in the Bundestag. See German Parliament Document No. 18/10860 of 17 January 2017. In fact, the text was not submitted by the parliamentary groups of the parties forming the Government, but by one of the opposition parties. In other words, Parliament has now the great chance to respond constructively to the UN's criticism outlined above and make decisive progress on the implementation of the rights set out in the social Covenant.

4. Recommendations 124.11, 124.12, 124.13, 124.18-21 relating to the signing and ratification of the optional protocol to the International Covenant on Economic, Social and Cultural Rights

The Federal Government has accepted those recommendations, but it has done so with the caveat that no concrete date could be given.

Civil society does not approve of the Government's dragging its feet on making a positive decision and demands quick signing and ratification. This was the case, for instance, in connection with the Red-Green motion brought before the Bundestag to that effect (German Parliament Document No. 18/4332 of 18 March 2015). What was disconcerting, however, was the manner in which the parliamentary groups of the parties forming the Government dealt with the parliamentary initiative. They did not allow a debate on the substance of the matter in an effort to continue to conceal their true motives. It is all too obvious that the Government is eager to prevent a relatively large group of pensioners from possibly using the Protocol to assert – in line with their right to social security – their demand that their pensions not be arbitrarily capped.

II.

5. Taking into account the limit applicable to the length of contributions from non-governmental stakeholders, we will confine ourselves to addressing just a few issues, while keeping our comments fairly brief at the same time.
6. In our submission transmitted under the second cycle of the UPR process, we addressed positions which the UN Committee on Economic, Social and Cultural Rights had expressed in its Concluding Observations of 12 July 2011 on the situation of those rights in our country. We need to revert to this matter once again because the criticism voiced at the time has still gone unanswered. The above UN Committee had pressed for overcoming existing forms of discrimination, for example, when it comes to the adoption of political criteria for decisions on the granting of earned old-age pension entitlements. The concern expressed about discrimination in the exercise of social security rights, as in the case of the pension entitlements of former GDR ministers and deputy ministers, has not seen a positive response from the Government, as have the demands to stop any further discrimination regarding the amount of social security benefits. On 7 November 2016, the Federal Constitutional Court decided, after four years of examination,

not to accept for adjudication seven constitutional complaints relating to Section 7 of the Claims and Entitlements Transfer Act (AAÜG), so that pension law discrimination continues to persist.

In our October 2012 submission, we also advocated that the current pension values in the East be gradually adjusted to those in the West within a reasonable time frame. There has been progress on that matter now. On 1 June 2017, the Bundestag decided to raise the pension value in the East to that of the West in seven stages. The Bundesrat has since joined this vote. Starting in 2025, pensions throughout Germany will be calculated in the same way, provided the proposed time schedule will be adhered to. The pensioners affected in the East do not understand why they should have had to wait for 35 years after the establishment of national unity for their lifetime achievements to be fully recognised. Add to this the fact that the upvaluation and/or conversion of East wages and salaries are intended to be abolished without any compensation. The reason why this will be problematic is that earned income in the East is not likely to reach the level in the West by 2025. (See the study entitled "Der Stand der Lohnkonvergenz zwischen Ost- und Westdeutschland und damit einhergehende Konsequenzen für die Angleichung des Rentenrechts," published by Institut für Arbeit und Qualifikation der Universität Duisburg-Essen on 14 June 2016 - www.iaq.uni-due.de.)

7. Process to ban the National Democratic Party of Germany (NPD)

In their reviews of the reports submitted by the Federal Republic of Germany, several UN bodies emphasized to the reporting side in recent years that right-wing extremist trends, the racist and xenophobic activities as well as the attacks and criminal acts associated with them had intensified. As in the German society itself, calls were made for the Government of the Federal Republic to put a stop to the neo-Nazi scene's pernicious activities, among other things, by banning the NPD, a particularly influential and organised force in the political landscape of the FRG. As a result of fierce arguments on the expediency and chances of a second attempt at getting the Federal Constitutional Court to decree a ban, the prohibition proceedings conducted before the Federal Constitutional Court, which the public followed with great interest, were finally brought to their conclusion on 17 January 2017, when the Second Senate pronounced a verdict. In its verdict, the Court noted, *inter alia*, the following:

"The affinity of a party with National Socialism on its own does not justify issuing a ban on the party. Considerable indicative importance must be attached, however, to the party's pursuit of anti-constitutional objectives.

...

"The described standards that need to be met in order for a party to be judged unconstitutional are compatible with the requirements which the European Human Rights Court has, in its case-law relating to party bans, inferred from the Convention for the Protection of Human Rights and Basic Freedoms.

"By these standards, the request to ban the party is unfounded.

...

"Judging by its goals and the conduct of its followers, the respondent is striving for the elimination of the free and democratic constitutional system. It aims to replace the existing constitutional system with an authoritarian "national state" inspired by the notion of "Volksgemeinschaft" (ethnic community). This political concept flouts the dignity of all those people who do not belong to that *Volksgemeinschaft* and is incompatible with the constitutional principle of democracy.

"The respondent is working systematically and in a goal-oriented manner towards achieving its objectives, which are directed against the free and democratic constitutional system. What is

lacking, though, is concrete material evidence making it at least appear possible that those efforts may be successful.”

The Court’s view rendered public with this verdict that “the affinity of a party with National Socialism” is apparently reconcilable with the free and democratic constitutional system to be protected has, of course, triggered vehement opposition in large parts of civil society in Germany and is also apt to belittle the sinister doings and dangerous nature of the right-wing extremist scene’s intensifying activities in the Federal Republic. This can only be interpreted as retroactive exculpation of the criminal “National Socialism” ideology.

At the same time, the Court’s contradictory decision that the NPD’s unconstitutionality for one is not to be called into question and that, regardless of it, the efforts by that unconstitutional party to achieve its objectives cannot, however, be considered a real danger at this stage and that a ban is, therefore, not required is a blatant affront to all anti-fascist forces at home and abroad opposed to anti-democratic, racist and xenophobic hate propaganda and to the acts of violence associated with it.

8. Racism / right-wing extremism

It is not by accident that the suggestions and recommendations aimed at the need to fight against and deal with right-wing extremism, racism and xenophobia in the Federal Republic of Germany are accorded particular prominence in the UPR Working Group’s report on Germany (A/HRC/24/9). The issues described in the report continued to play an alarming role in the FRG in the period reviewed under the third UPR cycle. As chronicled by the Amadeo Antonio Foundation and by Pro Asyl, the data for the sole period from January 2015 to April 2017 bear evidence of 5,025 attacks on asylum seekers and their shelters ([http://www.mut-gegen-rechtengewalt.de/service/chronik-vorfälle?&&field_value\[value\]=&page=556](http://www.mut-gegen-rechtengewalt.de/service/chronik-vorfälle?&&field_value[value]=&page=556)). The number of unreported cases is assumed to be much higher. The facts widely known to the general public in the FRG not only require that all the forms of virulent right-wing extremism be vigorously combatted, but that the root causes leading to overt and institutional racism and xenophobia in the FRG and threatening to worsen in the near future be analysed as well. It is in this context that GBM would like to stress the importance of the need to strengthen social cohesion among all citizens, as reflected in the report of the UPR Working Group and expressed, for example, in recommendations 124.57, 124.83 and 124.132. As numerous studies prove, society’s growing disintegration due to an increasingly widening gulf between the poor and the rich, the more and more visible connection between private property and educational opportunities, as well as an identical connection between individual wealth and possibilities to influence political decisions of the State result in political resignation and receptiveness to right-wing extremist, racist and xenophobic views in considerable parts of society, who are severely threatened by poverty, notably poverty in old age. So far, all the attempts at developing a viable strategy to lower the risk of poverty have proved ineffective.

9. Evaluation in the FRG of critical observations and comments made by UN bodies

The GBM strongly supports the observation contained in Item 124.49 of the Report of the Working Group on the Universal Periodic Review (A/HCR/24/9) and accepted by the FRG Government that a proper follow-up to the recommendations put forward in the course of the UPR process needs to be ensured. As we and other stakeholders have repeatedly and critically pointed out with regard to the attitude of the Government and of other constitutional bodies of the Federal Republic of Germany towards Concluding Observations and recommendations of various United Nations bodies, we deem it urgently necessary for the constitutional bodies of the FRG to follow their statements up with

practical action. To this day, the critical observations and the recommendations of UN bodies have not been adequately brought before Parliament, however. The same can be said of information to the general public. It is for this reason that GBM approached the President of the German Bundestag as early as 2011 with the urgent request to advise the parliamentary groups represented in the Bundestag of the critical recommendations made and to have Parliament conduct a debate on them. The President of the German Bundestag classed this request as an individual's "petition" and referred the matter to the Petitions Committee of the Bundestag, which eventually decided to "close" the petition proceedings. In other words, any in-depth debate and evaluation of the Concluding Observations on Germany's fifth report concerning the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/DEU/5) by Germany's constitutional bodies and the general public have, in effect, been refused as a consequence of that decision by the President of the German Bundestag – a decision that was in no way appropriate, given the importance of the matter.