Auswärtiges Amt

Referat OR06 Berlin, 29 Oktober 2015

 Durchwahl: 3696

RefL.: VLRin I Karin Goebel

Ref: RDin Sach

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**VN-Sonderberichterstatterin für das Recht auf angemessenes Wohnen**

Fragebogen zu Obdachlosigkeit

Mit Schreiben vom 21. September 2015 hat die VN-Sonderberichterstatterin für das Recht auf angemessenes Wohnen als Bestandteil des Rechts auf angemessenes Leben, Frau Leilani Farha, einen Fragebogen versandt, der wie folgt von der Bundesregierung beantwortet wird.

**Anlagen**

1

**2)** Nach Billigung Versand an AA, Referat OR 03

**3)** Umlauf

**4)** z.d.A.

1. **Please explain how your government defines homelessness in various contexts, for example, when measuring the extent of homelessness or determining eligibility for programmes and services. Please explain why the definition was chosen, and whether it is formally referred to in laws, policies or programmes.**

Housing Law:

Preliminary remark: In the course of the reform of the federal system in 2006, the exclusive competence for housing law was transferred to the federal states. Yet, the federal Law on social housing (*Gesetz über die Wohnraumförderung*) is still in force, but is not applicable in federal states which have passed new federal state laws on social housing. The federal government does not have information on the question whether and if so, how federal states’ regulations define homelessness.

Section 1 of the federal Law on social housing mentions homeless persons as forming part of the target group of social housing. Yet, the regulations do not contain a definition of homelessness.

1. **How is homelessness measured in your country? What criteria and indicators are used and how is data collected and systematically updated for this purpose? Please provide available data over a period of time on the extent of homelessness in general and among particular groups (for example: children and youth, women, indigenous peoples, persons with disabilities, and others).**

There is no statistics on homelessness at federal level. However, the *National Federation for the Homeless in Germany* (Bundesarbeitsgemeinschaft Wohnungslosenhilfe, BAG W), a national NGO umbrella for the homeless, has published estimations on a regular basis.[[1]](#footnote-1) The Federal Ministry of Labour and Social Affairs refers to this estimations in the German Federal Government’s Report on Poverty and Wealth. According to BAG W, 335.000 persons were homeless in 2014.

1. **What population groups are most affected by homelessness in your country? How have their experiences been documented and by whom (whether officially by national or subnational governments, National Human Rights Institutions, or by non-governmental or other organisations, charities, etc.)? If studies exist, please indicate or share a link, a reference or a copy.**

Reference is made to our answer to question 2.

1. **Please provide information and details on the primary systemic and structural causes of homelessness in your country and explain how these are being addressed.**

In the view of the Federal Government, homelessness in Germany is caused by multiple factors such as financial, domestic, and individual psychosocial reasons; it is not merely rooted in the lack of affordable accommodation: In 2014, the number of households amounted to 40.2 million. At the same time, the number of dwellings accounted for 41.2 million.

Social housing policy aims at providing affordable dwellings for persons who face difficulties to find an accommodation on the private housing markets. Persons whose income does not exceed a defined income limit may apply for a *Wohnberechtigungsschein*. This document certifies the eligibility to rent subsidized rental units.

Moreover, the federal Government, the federal states and the municipalities spend approximately € 16 billion p.a. in support of 5 million households: The expenses cover housing subsidies for low income households and accommodation costs for persons living on social welfare.

1. **Please provide any information available about discrimination and stigmatization of people who are homeless, including laws or policies that may be used to remove homeless persons from public spaces or to prohibit activities in public spaces such as sleeping, camping, eating, sitting, or asking for money. Please explain whether such discrimination is prohibited by law at national and/or local levels.**
2. **Has homelessness been recognized as a human rights violation by courts or by national human rights institutions in your country, and if so, on the basis of which human rights (for example: right to adequate housing, right to life, etc.)?**

The Grundgesetz (Basic Law), the Constitution of the Federal Republic of Germany, guarantees as a basic right the protection of persons who cannot afford housing. The Bundesverfassungsgericht (Federal Constitutional Court) has stated that Article 1, paragraph 1, in conjunction with Article 20, paragraph 1, provides for a basic right to a minimum standard of living in line with human dignity. This basic entitlement guarantees the means necessary in order to lead a humane and dignified life. The minimum standard of living thus accorded encompasses adequate and humane housing of persons in need. The legislature is responsible for specifying what exactly this basic entitlement includes and has some legislative leeway in that regard (see BVerfGE 125, 175 (222 et seq.)).

The Grundgesetz does not contain a „fundamental right to a home” that would go beyond the minimum standard of living. According to the traditional basic rights doctrine in Germany, fundamental rights are essentially meant as a defence against the State and are enforceable as public rights before the courts. The possibility of judicial enforcement arises because the authority of the State is bound by the fundamental rights and because the latter apply directly. These principles are stipulated by Article 1, paragraph 3, of the Grundgesetz. However, a legal claim may be justified only if the State is actually capable of fulfilling the right in question. States based on a free constitutional order such as the Federal Republic of Germany do not have at their disposal all the resources necessary for the fulfillment of a „fundamental right to a home“. It follows that such a right could not provide for judicially enforceable claims.

Involuntary homelessness is considered as an interference with public safety under German police and regulatory law. The protection of public safety as the legal objective of police and regulatory law also includes the protection of the subjective rights and legal interests of the individual. Homelessness and impending homelessness interfere with public safety because they threaten the rights of those affected to life and physical integrity, which are contained in Grundgesetz Article 2, paragraph 2, sentence 1. This in turn makes it necessary to prevent and eliminate homelessness. In order to protect the aforementioned rights, the police and regulatory authorities are empowered to commit affected persons to an adequate shelter that conforms to human dignity. The authorities are accorded a margin of discretion in deciding how to carry out this task.

1. **What legal or administrative procedures are available to challenge actions or inaction by governments or private actors on the grounds that they lead to or fail to address homelessness?**

Every person who claims to be violated in his/ her rights by an administrative decision has the right to take legal action against the administration. This is guaranteed by Article 19 sect. 4 Basic Law. Every person who claims a violation of his/ her rights by another person has the right to file a claim before civil courts.

1. **Please provide information about any strategies or legislation in place at the national, sub-national or local levels to reduce or eliminate homelessness, explain any goals or timelines that have been adopted for this purpose, describe how progress is monitored and provide information on results to date.**

With regard to social housing law, reference is made to our answer to question 4.

1. http://www.bagw.de/de/themen/zahl\_der\_wohnungslosen/ [↑](#footnote-ref-1)