

Update for the 2nd Federal review of Germany for the UN committee for the UN Convention on the Rights of Persons with Disabilities

presented by representatives from the alliance of associations of the

German Disability Council

Federal Association of Non-statutory Welfare

Professional associations for people with disabilities

German league of disabled person's organisations

Berlin, June 2018

Art. 1 – 4 Purpose, Definition, Principles, general Obligations

Lawmakers at the Federal level have amended the definition of disability and aligned it with the UN-CRPD in two new laws with the amendments to the German equal opportunities for persons with disabilities act (BGG) and the Federal participation act (BTHG). This has not happened with other federal laws.

At the Länder level some Länder have made the appropriate adjustments in their amendments of their Länder equal opportunities laws. A systematic approach to amend all definitions is not apparent.

In 2016 a new action plan was developed and adopted at the Federal level. However this was lacking a human rights focus and neither targets nor interim targets were defined. Some measures are in conflict with the UN-CRPD or the concluding remarks: for example, mandates for sheltered workshops for persons with disabilities (WfbM) are guaranteed, whilst strategies to exit the sheltered workshop system are lacking.

In the meantime, all Länder have action plans with varying quality. Some Länder have already updated their action plans. An overview in English is available [here](#).

A systematic review of all existing and future legal regulations for their compliance with the UN-CRPD requirements (as required by the UN-CRPD Committee and civil society)¹ has neither begun nor been planned.

In the amendments to the German equal opportunities for persons with disabilities act (BGG) a special fund was established which should primarily make the participation of self-representation organisations easier through financial funding; likewise plain language and “reasonable accommodation” were embedded. But it neglected to obligate private providers of goods and services to provide barrier-free accessibility or reasonable accommodation. Equally unmet, is the demand of civil society for the participatory development of binding participation standards.

A product of the inadequate participation, the incorrect official translation of the UN-CRPD into German, still hasn't been corrected, despite Austria making exemplary progress and presenting a corrected German translation, see [here](#). The Federal Republic of Germany did not join this initiative.

¹ Cf. Für Selbstbestimmung, gleiche Rechte, Barrierefreiheit, Inklusion! Eds. BRK-Allianz, February 2013.

Art. 5 Non-discrimination

The state of affairs and demands of the BRK-Allianz continue to exist to a large extent.

The German equal opportunities for persons with disabilities act (BGG) was reformed in 2016: here reasonable accommodation was defined for the Federal administration and the withholding of this was standardised as discrimination. But there continues to be no systematic concept for implementation of Art. 5. There is no “directly enforceable right in all political areas”, no systematic data collection, no education, barely recognisable implementation by courts. The implementation in Länder is not uniform.

Reasonable accommodation continues to be lacking in private law (German general act on equal treatment - AGG), the withholding of this is not included as discrimination; it is still only compulsory to adopt these measures in the area of employment (SGB IX). The right for associations to take legal action is lacking, the penalties in the AGG are minimal, there is no fund for legal action. A systematic concept for implementation is lacking for civil law. Since the last concluding remarks in May 2015 (i.e. in three years) only one new civil convention obligating a company to have more barrier-free accessibility was agreed upon nationwide.

What is new, is the vague announcement in the Coalition Agreement 2018: “Within the further development of the AGG we will review how private providers of services for the general public can implement reasonable accommodation. A first step will affect the health sector.”

The Federal Government does not indicate a strategy to ensure the full, effective and equal participation in political, social and cultural life for persons with disabilities. The BTHG has in fact standardised additional disability-related needs e.g. in the leisure area and for volunteering. However, the latter (standardised additional disability-related needs for volunteering) is granted only under the discriminatory restriction that the support/assistance can not reasonably be provided free of charge.

It is of great concern to see that the restrictions to access to participation services discussed in the BTHG, which the association has vehemently criticised, continue to be pursued politically. According to § 99 SGB IX-new, only persons who can prove the need for support in several of the nine life areas shall be eligible for benefit. This raises the risk that many persons with disabilities will no longer receive their necessary support in the future and, in this respect, will be discriminated against.

Art. 6 Women

Now with the amendments to the BGG, the interests of people with disabilities who are exposed to multidimensional discrimination will be taken into account. Women's representatives were introduced into the sheltered workshops (WfbM) as part of the BTHG.

At the same time, the gender specific assessment of available statistics shows the extremely low employment rate of disabled women and that they are particularly affected by poverty². So far the Federal Government has not taken steps on this issue nor on other gender specific discrimination.

Art. 7 Children

The regulations regarding early intervention for disabled children have been more clearly formulated in the Federal participation act (BTHG). This is positive, but doubts remain as to whether this will be implemented at the Länder level. In the last legislature period (2013-2017) efforts for an "inclusive solution" regarding legislation concerning children and young people with disabilities have failed. So far the services for children with and without disabilities have been standardised in various codes of law and thus been spread over various agencies.

As a result there are often multiple diagnostics, which is onerous for the person involved. Likewise there are disputes between agencies over responsibilities which is also to the detriment of the person affected. The goal is to collate the services in a service law with a single service provider without a decline in the current services offered.

But in 2017 during the reform of the child and youth social welfare law it was not possible to embed inclusion as a guiding principle even once. Also the current Coalition Agreement between CDU, CSU und SPD on 7.2.18 only included unspecific statements on the inclusive development of the child and youth social welfare law.

² Ulrike Schildmann, Astrid Libuda-Köster: Zusammenhänge zwischen Behinderung, Geschlecht und sozialer Lage: Wie bestreiten behinderte und nicht behinderte Frauen und Männer ihren Lebensunterhalt? Eine vergleichende Analyse auf der Basis der Mikrozensus-Daten der Jahre 2005, 2009, 2013. In: Journal Netzwerk Frauen- und Geschlechterforschung NRW Nr. 37/2015, P. 40-54

Art. 8 Awareness Raising

In 2011 the Federal Ministry for Labour and Social Affairs started the media campaign “Behindern ist heilbar” (“barriers are curable”) to raise awareness for the UN-CRPD. Currently the work of the Federal Government has the slogan “gemeinsam einfach machen” (“simply do it together”).

With the legislative proposals such as the Federal participation act (BTHG) and a reform of the BGG the Federal Government claims to have introduced key demands of the UN committee for a sustainable strategy for awareness raising with participation. This strategy is invisible from the point of view of civil society. The overall policy including verifiable criteria for monitoring must be presented and agreed upon fully. The disability organisations are to be involved in the development of the strategy. Tailored strategies must be designed for all state-run facilities/services. Particularly in the area of education, a human rights based pedagogy must be anchored in syllabus and curricula modules to serve to eliminate prejudice and discrimination.

Already the deliberate omission of “reasonable accommodation” for the implementation of Art. 8 should be recognised as discrimination.

Art. 9 Accessibility

The AGG has so far not been adapted — private providers of goods and services continue not to be obliged to ensure accessibility. However, a reform has been announced.

Building Codes (LBO) have not yet been aligned. The larger space necessary for a wheelchair user (R-Standard) to move is not recognised in the Building Codes. There is still a widespread lack of the 1.6 million barrier-free accessible dwellings and there is not sufficient legal obligation for accessibility. Persons with disabilities have even more difficulty getting an apartment in the tense housing market. The Building Codes (LBOs) remain inadequate, in part the regulations have even been loosened (e.g. NRW). The R-Standard is not obligatory in the Building Codes in Saarland, Saxony–Anhalt, North Rhine-Westphalia, Brandenburg and Berlin. There is a quota regulation for R-Standard dwellings e.g. in Rhineland-Palatinate.

Provisions in the public transportation act are only inadequately implemented. The regulations are not comprehensive for all disabilities. From 2020 it must be obligatory for two wheelchair places to be available on long-distance bus services. From 2020 the whole of the local public transport service must be barrier-free. There are no efficient controls and also no national enforcement body for the rights of passengers with disabilities. There are no sanc-

tion measures if the wheelchair places are not available. The transportation of recognised aids (e.g. a mobility scooter) is in part refused.

Revised versions or changes to legal regulations pertaining to transportation concepts took place without the participation of those affected. The Deutsche Bahn wants to change the train platform height so that the current completed conversion of the platforms for local transport would partially lead to an uneven level for getting on and off the train. Apart from that a new train operator (Flixtrain) has been authorised, which does not fulfil the barrier-free accessibility requirements. In its approval of the wagon material and the platform height concept the Deutsche Bahn does not sufficiently integrate persons with disabilities.

A positive highlight is that bus drivers will be educated about engaging with people with disabilities. However, people with disabilities and their organisations are barely involved in this.

Currently, a law for digital barrier-free accessibility is being discussed. Exceptions (“unacceptability clauses”) are included for Federal agencies. Private providers of goods and services remain for the most part excluded.

Art. 10 Right to Life

The protection of the unborn child is anchored in German law. However, legislative decisions and discussions on the topic of prenatal diagnostics and preimplantation diagnostics contribute to pregnancies being terminated due to the possibility of the unborn child having a disability. These developments are difficult to reconcile with the goals of Art.10.

Art. 11 Situations of Risk and Humanitarian Emergencies

The nationwide exemplary implementation of the barrier-free emergency-app was started on the 22.9.2017. However, a 24-hour nationwide coverage can still not be guaranteed at this time. The foundation for the emergency-app was a change to § 45 in the telecommunications act in July 2017.

The human rights based strategies for supporting disaster risk reduction and humanitarian aid required by the UN committee have not been realised. The German Federal Foreign Office, responsible for humanitarian aid, has neither passed an action plan nor a strategy for “inclusive humanitarian aid”. Verifiable data is needed to ensure and make verifiable that people with disabilities are included in disaster preparedness as well as in humanitarian aid. Specific inclusive evacuation plans and protection concepts are to be developed nationally and internationally.

Art. 12 Equal Recognition before the Law

The study by the Federal Ministry of Justice from April 2017 “Qualität der rechtlichen Betreuung” (“quality of legal guardianship”) will form an important foundation for a reform of the guardianship law, which the coalition partners have agreed upon for the 19th legislation period. There is a lot of important information in the study, however there was too little consideration from the perspective of those affected.

It will be critical to discuss whether all the associations in Germany will agree to a full removal of all forms of the substituted decision-making, as was called for by the UN committee . But consensus does exist with a view to the call to finally establish a system of supported decision-making / to agree on a nationwide and binding strategy to strengthen supported decision-making, as well as tight controls and transparency in case of the use of legal guardianship, which should only be permitted in very exceptional cases.

Art. 13 Access to Justice

A reform of the German equal opportunities for persons with disabilities act in 2016 also brought an improvement in the area of Justice. In the future, people with disabilities in disputes can go to a conciliation body set up by the Federal Government Commissioner for the Interests of the Disabled. With this the BGG will enable extra-judicial and swift dispute resolution for people with disabilities and organisations recognised by the BGG.

However, calling the conciliation body regarding the possibility of initiating legal proceedings is now mandatory, which makes the process more complicated.

Since 2018 government agencies are also obligated by the BGG reform to explain notifications “in plain language” upon request.

If people with a physical, sensory, intellectual or mental disability take legal action they must receive equal opportunity to access the facilities and services of the justice system, barrier-free access to information and needs-based communication and effective legal protection in the procedural sense. To that effect the judicial system act and code of criminal procedure are to be mandatorily developed further.

It is also important to take into consideration the decision of the German federal constitutional court for the implementation of the “directive for the application of law at the European Convention on Human Rights” which also applies to the UN-CRPD for the jurisdiction. However, statistics of the monitoring body prove that so far there are very few courts which explicitly refer to the UN-CRPD in their decision-making.

The necessary initial and further training of employees in justice, police and the penal system with regard to the rights of people with disabilities is shown to be completely insufficient. There is a lack of verifiable programs for awareness raising.

Art. 14 and 15 Liberty and security of person and freedom from torture

The law pertaining to institutionalisation according to the guardianship law and public law is still not well enough revised so that the existence of a disability shall in no case justify a deprivation of liberty. Apart from that, the requirements of Art.14 must be taken into consideration. The same applies to the so-called Länder law pertaining to institutionalisation. There is a continuing lack of a support system based on a voluntary nature.

The daily practice in psychiatric wards in Germany continues to include disciplinary punishments, measures involving deprivation of liberty and enforced medication. Furthermore, documentation is lacking to be able to make a statement in a summarised and anonymous form, which covers the whole of Germany regarding the personalised frequency of institutionalisation, the legal grounds for this and the length decided for the institutionalisation.

Data on the figures of compulsory treatment is only collected in individual Länder. Bavaria does not collect such figures so far. Partly backward steps were even planned: In Bavaria for instance public law institutionalisation were planned to be put on par with involuntary institutionalisation, data was planned to be saved for 5 years in a non-anonymised form and public agencies were planned to be given access to this data. Only with a lot of protest and publicity was it possible for the draft to be temporarily withdrawn from the Bavarian government.

In January 2018 the German federal constitutional court negotiated a proceeding on measures involving deprivation of liberty which were applied without the court's approval. It remains to be seen whether the court will formulate standards on the fundamental question of the legitimacy of measures involving deprivation of liberty. A verdict has not yet been made.

Newly effective since 2017 is § 1631 b German Civil Code (BGB), according to which it is no longer just the parents but also a court that must approve measures involving deprivation of liberty in facilities for children and youth.

Art. 16 Protection from Violence and Abuse

There continues to be a lack of a strategy for the protection from violence for women and girls with disabilities as called for by the UN committee. So far, the Federal Government only lists individual measures to comply with the demands of the UN committee . An independent complaints office is still lacking.

The ratification of the Istanbul Convention by Germany is positive. However it must now be implemented domestically; this convention also calls for a comprehensive strategy for protection against violence.

The reform of the law governing sexual offences in 2016 is to be considered as positive for policy pertaining to people with disabilities and policy pertaining to women.

The victims of sexual violence, who are, so-called, unable to resist, are finally put on equal footing as other victims. Furthermore, sexual violence can be more easily prosecuted: in the future a person will be liable for prosecution if they ignore the recognisable will of the victim (“no means no”). If the victim can only form or express their will with difficulty, due to their physical or mental condition, then the law requires that the person concerned must actually give consent to the sexual act (“only YES means yes”).

Art. 17 Integrity of the Person

The Federal Ministry for Health (BMG) will assign a research project for the “prevention of compulsory treatment in psychiatric support system”. With this project new insights should be gained for the use of compulsory treatment in Germany and about the possibilities to avoid force through alternative voluntary treatment options.

Unfortunately, there are no figures on this for the period 2016 to 2018. Overall it all seems very sluggish.

Compulsory treatments are still on the agenda in Germany. A physical restraining order is preventatively requested by care staff. Those affected see themselves further exposed to the attack on their human dignity, they are addressed informally and are disciplined. There is no possibility for personal privacy in three-bed and multi-bed rooms. There is no possibility for refuge when under video surveillance whilst being physically restrained.

So far none of the UN committee recommendations have been implemented.

Art. 18 Freedom of Movement

According to the §100 of the Federal participation act (BTHG) persons who receive services according to the asylum seekers benefit act are excluded from being eligible for integration assistance services.

The German equal opportunities for persons with disabilities act (BGG) does not distinguish those people with a disability according to whether or not they have experience of migration. It clarifies that the characteristics of race, ethnic background, gender, religion, ideology, age and sexual identity which are named in the German general act on equal treatment (AGG) can be further grounds for discrimination. To compensate for a disadvantage on the grounds of a hearing impairment there is an entitlement to German sign language, but not for sign language in another language from the person's country of origin.

The EU Guidelines 2013/33/EU for particularly vulnerable groups are not actively and comprehensively implemented.

Art. 19 Independent living, habitation

Despite clear recommendations from the UN-CRPD committee there has also not been any changes in the Federal participation act (BTHG) to the clause on additional costs [*Mehrkostenvorbehalt*]: if the life costs of a person with a disability in a facility are less expensive than the life costs in their own domesticity with assistance, the affected person can only realise their legal right to their free choice of place of residence and type of housing as standardised in the UN-CRPD, if the affected person proves that life in a facility is unreasonable for them.

With the Federal participation act (BTHG) there was a significant restriction in independent living through so-called "forced pooling" in the out-patient area. Disabled people who are dependent on assistance were pressured to share an assistant in certain life areas. This contradicts the General Comment Nr. 5 to Art. 19, according to which a joint provision of services is only permissible with the agreement of the person affected.

Further clauses in BTHG regarding benefits laws (e.g. § 125, Para. 3) will make individual, self-determined living and thus, an individual-centred approach more difficult, because the benefit allowances will be calculated based on the accommodation being shared rather than the needs of those living there.

There is also a risk that the financially disadvantaged position of residents living in in-patient residential facilities will be transferred to sheltered housing, such as supervised flat sharing,

by the cap on benefits for nursing care insurance (§ 43a SGB XI) thus removing the incentive to not live in in-patient residential facilities.

A further crucial obstacle to realising the free choice of place of residence and type of housing, is the blatant shortage of affordable barrier-free housing.

Also, the recommendation of the committee to cover disability related expenses has only been half-heartedly implemented by the BTHG: more capital is now allowed to be saved and the income deductions have been simplified, which will bring an improvement to many of those affected. In some cases it has been a change for the worse and there can be no talk of equal opportunities with people without disabilities.

Art. 23 Respect of Home and Family

With the Federal participation act (BTHG) the service of parental assistance has been legally anchored to support disabled parents care for their children.

Against the explicit recommendations of the committee, it has not been anchored anywhere in law that children mustn't be separated from their parents on the sole basis of the parent's disability. On the contrary, a passage in § 1905 German Civil Code suggests the sterilisation of people "unable to give their consent", that children typically have to be separated from mothers who are considered to be "unable to give their consent" and therefore sterilisations are enabled more easily.

§ 1905 German Civil Code regarding the sterilisation of "people unable to give their consent", by which sterilisations are made possible even without informed consent of the person affected, remains unchanged and must be abolished.

Art. 24 Education

The political tone against inclusion in the school system is getting worse in Germany.

There continues to be a lack of a nationwide overall policy, a Federal action plan, schedules and goals, as well as financial and human resources in the area of education. A critique is also on the completely inconsistent nationwide implementation and financing of the schooling assistance. The long standing calls by the organisations for quality standards for inclusive education continue to be ignored.

There is also no strategy for the dismantling of the special needs school system and there is no actual reduction in the special needs school system. A conditional legal right to inclusive

mainstream school only applies in Hamburg. Reasonable accommodation was not made available systematically, those people affected have to make legal claims.

The poor inclusion at mainstream schools makes the tone against inclusion worse. Bad facilities “produce inclusion breakdowns” - on which the press reports widely. A secondary school in Bremen is currently taking legal action against its obligation to be inclusive.

The Coalition Agreement 2018 opens up chances of Federal political support for inclusion by softening the prohibition of the Federal and Länder governments to cooperate in regard to educational policies, however the agreement still has to be implemented.

Indeed inclusion quotas are increasing (total 34%) - but there are continued large disparities in levels of education, types of schools, Länder (Bremen: 77 %, Hessen 23 %), as well as funding priorities (particularly low inclusion of people with an intellectual disability: only 9%).

Particularly problematic is that although more and more children with disabilities attend mainstream schools (34 %), the exclusion quota (e.g. the proportion of students at special needs schools) remains constantly high (2005: 4.8%, 2014: 4.6 %, i.e. 335,000 children). That means that the inclusion debate largely ignores the special needs school system. In some Länder the exclusion quota is actually increasing (e.g. Saarland, Barvaria, Rhineland-Palatinate).

The reason for the increase in inclusion figures, but for the stagnation of the special needs school figures: more and more school children are certified as having a disability/special need (funding quota 2005: 5.7%, 2014: 7.0%)

It remains unchanged that 71% of the persons leaving special needs schools have no school-leaving qualifications.

The financial resources in the education system for people with disabilities are unknown and a systemic teacher training is lacking. Whereas 68% of teachers registered a need for further training, only 9.5% of primary school teachers and 1.7% of secondary school teachers received this training.³

There remains a widespread absence of individual-centred, barrier-free offers in the area of vocational training. This prevents young people from receiving the same chances of participation in work life.

³ Concrete data and facts regarding inclusive education in Germany (Source: Participation report 2016, Study by F.-Ebert-Foundation “Inklusive Bildung in Zahlen 2017, Bundesbildungsbericht 2014”)

Art. 25 Health

There remain significant barriers to the access of health care services as well as physical and communication barriers to health care services. Although people with disabilities are clearly more dependant on health care services, the access is significantly limited for them and their free choice of doctors is not guaranteed: only 11 per cent of doctors' practices assess themselves as being barrier-free.

Access to health care provisions is also made difficult for asylum seekers and groups of persons who are on equal terms with them according to the asylum seekers benefits act. This is also the case for certain groups of EU citizens cf. §§ 1, 4 AsylbLG, § 23 Para. 2, 3 SGB XII and § 7 Para. 1 S. 2 SGB II.

The former only receive acute treatment in case of illness and pain relief. Further services are only received as discretionary services, which are barely able to be implemented in practice. EU Citizens who come under the exclusion of benefits in § 23 Para. 3 SGB XII and § 7 SGB II have no access at all to health care provisions if their claim is exhausted. As these provisions do not have any separate regulations for people with disabilities, it makes access to health care more difficult or may even completely prevent it, based on the person's respective residency status in the FRG.

For that matter, the deficits described in the first BRK-Allianz report continue to exist.

According to the regulation of the current § 55 SGB XII, or from 2020, the § 103 SGB IX in association with § 43a SGB XI the fixed amount refunded for care needs in integration assistance institutions is 266 Euros irrespective of the level of care needed. Based on this, there is a risk that people with disabilities and high care needs will have to move out of integration assistance institutions and into care facilities. Because the care facilities and the integration assistance institutions are essentially different in their goal setting, it is then no longer guaranteed that the participation needs can be individually comprehensively covered.

There is no recognisable rights based strategy for education and further training regarding the UN-CRPD and appropriate awareness raising for professionals in the health sector.

Art. 26 Habilitation und Rehabilitation

Increasingly more people gain their professional qualifications at universities. However, the services of vocational rehabilitation does not sufficiently represent these social changes in favour of academia. The Federal participation act (BTHG) did not tackle the problem, that in general, only dual training is financed as a rehabilitation measure. This no longer sufficiently

finances modern educational pathways and puts people with disabilities, who would like to begin academic studies rather than vocational training, in a worse position. Study as rehabilitation is still not embedded in Germany whether it is for young people or older people after an accident in the workplace.

Art. 27 Employment

The exclusion of people with disabilities from the employment market continues to be strong in Germany. Many of the deficits listed in the BRK-Allianz report continue to exist.⁴

The Federal Government emphasises the “good employment market” in Germany and saves on funding — but this disadvantages people with disabilities.

Indeed the Federation and Länder have launched several actions and programs, but little has been substantially improved. The unemployment level for people with a serious disability continues to be significantly above average. Overall in 2016 it was at 7.8%, contrastingly it was 12.4% for people with a serious disability, the difference between both groups has almost not changed at all since 2009 (4.6% in 2016). Also, the length of time spent unemployed for people with disabilities is significantly longer. But at the same time and to their detriment of people with disabilities, labour market policies and funding were cut: so in 2016 35% less people with a serious disability could use labour market policy measures than in 2009 (source: DGB 2018)

Germany is ageing, thus the number of elderly people with a serious disability is also increasing; this also explains that the number of employees with a serious disability increases (1.2 million). However, the employment quota stagnates: instead of 5%, the companies only fulfil 4.7%; employers in the private sector only have 4.1%. Increasingly more companies don't employ any people with a serious disability at all (41,000 in 2016).

These companies don't have to fear any sanctions: Warnings and financial penalties are practically never imposed. The maximum compensatory levy is 320€.

Only 49% of people with disabilities were employed in 2013, overall it was 80%. People with disabilities are significantly more likely to work part-time and in mini-jobs. Women are particu-

⁴ Cf. Für Selbstbestimmung, gleiche Rechte, Barrierefreiheit, Inklusion! Eds. BRK-Allianz, February 2013.

larly disadvantaged. The 2016 participation report shows that people with disabilities are less satisfied with their work life as people without disabilities.

The new Federal participation act (BTHG) in 2017 brought some changes for the 310,000 people who worked in sheltered workshops; their participation rights were somewhat improved (sheltered workshop councils were not on equal terms with participation committees in companies), they can now use a budget for employment and with that transition from the workshop to the general employment market. In addition to the workshops, “other providers” were created in the BTHG. Those people affected have a right to return to the workshops, their pension-related entitlements from the workshop are protected. Money to promote employment was increased from 28€ to 52€.

However, there is still no overall strategy for the transition from the workshops to the employment market.

At this time it is still not foreseeable whether more people will actually transition from the workshop to the employment market through the BTHG. People with a high need for support remain excluded from participation in work.

With the BTHG the representation of people with serious disabilities is slightly strengthened.

For barrier-free accessibility of workplaces, there is still no systematic data collection and also no legal improvement; workplaces must only become barrier-free when an actual person with a serious disability is working there.

The BTHG has largely committed the general labour market policy: the obligation of employers to hire people with disabilities has not been intensified, the compensatory levy remains low, there continues to be deficits in the consolation and arrangement of employment at job centres, deficits in education, problems with access to rehabilitation in SGB II. The BTHG has not been successful in strengthening the responsibility of the agency for rehabilitation, instead a Federal program (Reha-Pro) should “heal” the deficits, however it is not binding.

Art. 28 Standard of Living/Poverty

The 2016 participation report shows that poverty and disability are closely linked to each other in Germany.

People with disabilities are rarely employed, they work more often in part-time or in mini jobs than people without disabilities; they are unemployed more often and for longer periods of time (v.s.). On average people with disabilities only have access to 79% of the amount of income of those people without disabilities, for chronically ill people this is only 74%

Ever more people in Germany receive a benefit to cover basic living costs, because the disability pension is not sufficient: the figures increased an enormous 43% from 2007 to 2014. The reason for this is that people continued to have to accept legal deductions of up to 10.8% on their benefits. Indeed, improvements regarding the supplementary period were agreed upon, but the deductions continue and the existing pensioners are excluded from the improvements.

People with disabilities have a significantly higher risk of poverty, women are particularly affected. According to the 2016 participation report, in 2016 their risk was 20% (overall: 13%) and significantly rose compared to 2005 (13% at that time). The situation for the sub-group of chronically ill people is even more problematic: their risk of poverty rate rose to an enormous 26% in 2013!

There are no recognisable steps by the Federal Government to take action against the increasing poverty of the almost 13 million disabled and chronically ill people in Germany.

With the Federal participation act (BTHG) gradual improvements were indeed achieved for income and assets for those 895,000 people with disabilities, who receive integration assistance benefits.

For income deductions the following applies: From 2017 those persons who receive integration assistance have an extra exemption amount of approximately 260 Euros- this sum of income is kept by the person and no further deductions can be made from it.

From 2017 the same goes for those who receive social assistance for care, however the exemption amount is for income from employment only.

For asset deductions the following applies: From 2018 instead of the 2,600€ that was allowed until now, in the future the person affected can retain assets of 27,600€. Provided this sum comes from gainful employment, this exempt amount is also applies to assistance for care.

For other welfare benefit recipients, in the future 5,000€ of assets will remain untouched instead of 2,600€ according to the SGB-XII (social welfare).

From 2020 further improvements will be made regarding income and asset deductions as the income and assets of partners will no longer be taken into account.

The amount of the basic benefit remains a problem for people with disabilities: The basic benefit does not sufficiently cover basic requirements; many chronically ill and disabled people have additional costs, e.g. for dietary needs or aids. Parents of children under 15 years

are particularly disadvantaged — they do not receive a disability related supplement and must pay the disability related extra costs themselves e.g. therapies.

It is positive that in 2016 the regulations were overturned, according to which disabled people over 25 years old who are living with their parents generally only received 80% of the standard benefit. But now, since 2017, this 80%- regulation applies to disabled people living at inpatient residential facilities — these people will be treated as partners living and keeping house together.

A concern is that people with disabilities, who are poor, are also increasingly excluded from the “mega-trend of digitalisation” in Germany. So far the Federal Government has not indicated a strategy to systemically counteract this.

Art. 29 Political Participation

The exclusion from the right to vote continues to exist in European election law, Federal electoral act (BWahlG) as well as in the laws for Länder and regional elections with the exception of the Länder of Schleswig-Holstein, North Rhine-Westphalia and Bremen.

Regarding the Federal electoral act (BWahlG), it is planned in the Coalition Agreement for the repeal of the exclusion from the right to vote for those people mentioned in § 13 Nr. 2 BWahlG, for whom legal support exists permanently and in all fields of activity.

However, the Coalition Agreement does not make a statement regarding the group of people who are excluded from the right to vote in § 13 Nr. 3 BWahlG because of an adjustment according to § 63 in connection with § 20 of the criminal code (psychiatric involuntary institutionalisation). It is unclear whether the group of people were forgotten in the Coalition Agreement or if a - necessary - repeal of the exclusion from the right to vote is not intended.

Currently those affected, who remained excluded from the parliamentary elections in 2013 and 2017 according to § 13 Nr. 2 and 3 BWahlG are taking their claim to the German federal constitutional court.

Art. 30 Participation in Culture

In 2017 the European Union ratified the Marrakesh Treaty and introduced the guidelines (EU) 2017/1564 as appropriate legal standards. A law for the amendment to the regulation in copyright law, with which the guidelines in Germany should be replaced, is currently in the legislative process. It is critical that Germany makes an option for compulsory payment to be made to the author for the production and distribution of barrier-free works through authori-

sed agencies. But at the same time, there are no concrete measures foreseen for future tangible improvement to actively support the availability of barrier-free accessible works for blind, sight impaired and otherwise reading impaired persons (e.g. through financial support for libraries for the blind and other authorised agencies) and thus to end the “book famine”. The continued legislative process remains to be seen.

Art. 31 Statistics and Data Collection

More verifiable and systematic participation research is needed. This must also be quantifiable. The action group for participation research, established from civil society, name a large data and knowledge deficit regarding the situation and quality of life of people with disabilities, especially, the so called “difficult to interview groups”. Likewise this was also stated in the last participation report of the Federal Government.

It can be positively mentioned that the green light was given in January 2017 for the first representative survey of people with disabilities in Germany. The project is ambitious. The following should be interviewed:

- 16,000 people with disabilities in private households
- 5,000 people with disabilities who live in facilities
- 1,000 people with special communication requirements and
- 5,000 people without disabilities as a control group

The assessment of the data gathered should be analysed by 2021. There shall be annual reporting on the progress of the work and on the initial results.

The data collection through micro-census is insufficient from the point of view of the civil society, because it does not include some groups of people enough or at all. In particular, people with disabilities in facilities are almost never reached. Apart from that, the process to participate in micro-census was not barrier-free because the questionnaire did not exist in any of the appropriate formats.

Art. 32 International Cooperation

The calls for action of the UN committee have not been implemented by the Federal Government. The Federal Ministry for Economic Cooperation and Development and the German Federal Foreign Office are the responsible departments who must present binding

strategies and concepts. The deficits described in the first BRK-Allianz report continue to exist to a greater extent.

The implementation of the Agenda 2030 - the sustainable development goals - to which Germany is also committed, calls for the rights and needs of people with disabilities to be taken into consideration.

Art. 33 Domestic Monitoring

The Federal Ministry of Labour and Social Affairs (BMAS) is the Federal level focal point of the Federal Government, additionally in other Federal Ministries focal points are also being created for the UN-CRPD. This is positive.

In the National Action Plan 2.0 focal points in the Länder have been named, however they are organised in a variety of ways: sometimes it is a ministry, sometimes two ministries, sometimes just a department. What remains unclear is the financial resources, which are available to realise the function of the focal points.

The German Institute for Human Rights is now set up on a new legal basis ensuring more independence. The financial resources if the monitoring body are positive. Furthermore, it will also be commissioned by some Länder to do monitoring, however not consistently in all Länder; also at municipal level there is no monitoring at all.

The legal position of the federal commissioners for matters relating to disabled persons is unchanged.

Berlin, 20.6.2018

Representatives from the alliance of associations⁵

⁵ The content submitted in this document corresponds with the range of focus areas and aims of the individual civil society organisations that contributed. All of the organisations involved are united in the intention of presenting a joint civil society perspective. However, it should be noted, that not all of the passages formulated here can be shared by all of the civil society organisations involved.