

ACCESS TO (REPRODUCTIVE) HEALTH CARE FOR MIGRANT WOMEN IN GERMANY: LEGAL RESTRICTIONS FOR UNDOCUMENTED WOMEN AND EU MIGRANTS

PARALLEL REPORT ON THE NINTH STATE PARTY REPORT OF
THE FEDERAL GOVERNMENT OF GERMANY TO THE UNITED
NATIONS

Prepared for the Committee on the Elimination of Discrimination
against Women (CEDAW)

Submitted in June 2022

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Submitted by the following organizations



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1. INTRODUCTION

The Federal Republic of Germany has signed numerous international treaties that recognize the right to health and non-discriminatory access to healthcare for all. This includes the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which obliges State Parties in article 12 to take appropriate measures to eliminate discrimination in the field of health care and to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary.”¹

This Parallel Report aims to show that in Germany many women are excluded from accessing healthcare, including during pregnancy and after giving birth.

Overall, Germany has a highly developed healthcare system. Healthcare, however, is expensive and most people cannot afford to pay for the services out-of-pocket. The majority of the population is covered by statutory or private health insurance, which is – in theory – obligatory; some groups receive coverage through the social services department. Not to be covered by one of these mechanisms means in effect not to have access to affordable healthcare.

Several groups of people in Germany, nonetheless, are by law or in practice excluded from effective coverage mechanisms and, thus, do not have adequate and non-discriminatory access to health care. This parallel report focuses on two particular groups excluded by law from accessing healthcare:²

a) undocumented migrant women

b) unemployed migrant women from other EU Member States

The report focuses on the legal barriers to the reimbursement for medical care. Apart from the cost coverage, the lack of interpretation for non-German speaking patients in medical consultations is an important impediment to accessing healthcare which cannot be covered in full in this report.³

¹ CEDAW, Art. 12, para. 2

² There are also other groups of women who are excluded from accessing healthcare in general and from reproductive and antenatal care which are not covered by this report. This includes students from non-EU states who are legally staying in Germany as international students but are excluded from the statutory health insurance system and hence obliged to contract a private insurance. The private health insurance coverage for international students precludes antenatal care. As a result, pregnant students are unable to receive the necessary antenatal care and other medical services related to their pregnancy.

³ In 2019, 35,7% of the pregnant women that came to the medical consultations at Ärzte der Welt/Médecins du Monde Germany reported language barriers as a core reason inhibiting the access to health care system. See: Bader, C., Offe, J., (2020): Wie in Deutschland das Menschenrecht auf Gesundheit verletzt wird. Ärzte der Welt. Gesundheitsreport. München: Ärzte der Welt e. V.: 11. Retrieved from: <https://www.aerztederwelt.org/presse-und-publikationen/publikationen/2020/12/10/gesundheitsreport-2020>

See also: Mösko, M., Maggu, J., Buehrig, K., & Schulz, H. (2018). Multilingualism in the hospital in Germany-demands, resources and practices. In *European Journal of Public Health* (Vol. 28, pp. 58-58). <https://doi.org/10.1093/eurpub/cky047.116>

Borde, T. (2018). Kommunikation und Sprache. Herausforderungen und Chancen einer diversitätsgerechten Gesundheitsversorgung. *Gynäkologische Endokrinologie* (Vol.16, 3–9). <https://doi.org/10.1007/s10304-017-0167-6>

Timm, G., Saborowski, N., Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege e. V. (2020). Sprachmittlung: Voraussetzung für die Inanspruchnahme sozialer und gesundheitlicher Leistungen. Retrieved from:

https://www.bagfw.de/fileadmin/user_upload/Veroeffentlichungen/Stellungnahmen/2020/2020-06-04_Position_Sprachmittlung_2020-06-04.pdf

While these exclusions affect all genders, they are highly relevant also for the CEDAW, as for women and girls it precludes the right to appropriate services in connection with pregnancy, confinement, and the post-natal period.

2. PROBLEM DESCRIPTION

2.1. The legal status quo

- a) **Undocumented migrant women** de jure have the same entitlement to (limited) healthcare as asylum seekers (according to AsylBLG §§ 4,6 and § 1), including access to antenatal care. However, they cannot make use of this entitlement in practice: before they can see a doctor, they must request a proof of cost coverage at the Social Welfare Office, which covers the expenses of the treatment for non-emergency care (including antenatal care, vaccinations, cancer screenings, diagnostics and treatment associated with risk pregnancies). However, according to § 87 of the Residence Act, the Social Welfare Office is then obliged to immediately pass on the personal data of the applicant to the immigration authorities. Hereafter, the immigration authorities can prepare the detention and deportation of the person concerned. Undocumented migrant women thus risk immediate deportation when applying for the cost coverage they are entitled to. The duty to report under § 87 of the Residence Act, is a key barrier to accessing healthcare. Its deterrent effect is such that the affected persons prefer not to see a doctor at all; non-emergency care is avoided even in urgent cases.
- b) **Migrants from EU countries** which are not part of the European Convention on Social and Medical Assistance are since 2016 under certain conditions excluded from accessing healthcare in Germany. EU migrants without regular employment or a working family member are according to a law passed on 22.12.2016 (*Leistungsausschlussgesetz*) excluded from social protection services, including basic health care coverage, if they have been regular residents of Germany for less than five years. For them, only so-called “bridging benefits” are provided for a maximum of one month and only once within two years. These benefits include basic health services required for the treatment of acute illnesses and pain. After receiving these reduced benefits for one month, the affected groups of EU migrants have no entitlement to the coverage of any – even emergency or obstetric – health care services within the next 23 months in Germany. Hospitals and other providers are reluctant to offer care which is not refunded. Patients are sometimes rejected or sent home prematurely if they have no means to pay privately. The law presents a retrogression compared to the previous situation.

With these legal provisions, the State Party fails to ensure non-discriminatory access to health care to the women concerned. Women thus often forego medical treatment, even if they are in pain or suffering from serious disorders. Pregnant women lack access to antenatal care, which increases the risk to suffer from complications during pregnancy. Health and life of the mother and of the unborn child are hence at stake, the protection of the most fundamental rights is not guaranteed. Illnesses remain undetected and untreated, resulting in the potential dissemination of contagious diseases and the deterioration of the health status of the affected women and girls.

2.2. Scope of the problem: access to health care for migrant women in Germany

According to data published by the Federal Office for Migration and Refugees for the year 2014, an estimated 180,000 to 520,000 undocumented immigrants were staying in Germany.⁴ No estimates exist on the number of unemployed EU citizens excluded from social protection services.

While official figures on the scope of the problem are missing, some numbers can be retrieved from civil society organizations, public health offices and welfare organizations which, due to the high need, provide basic healthcare services for those excluded from regular healthcare coverage in Germany.⁵ These services only exist in a number of cities or regions, they are limited in scope and often volatile and are thus no substitute for an inclusion in the regular healthcare system.

2.3. Exemplary data of civil society organizations

2.3.1. Data Médecins du Monde Germany

Médecins du Monde (MdM) Germany in cooperation with partners runs clinics with voluntary healthcare staff in three cities in Germany (Berlin, Hamburg, Munich), providing free and anonymous medical care and social support for people with no or limited access to health care.⁶ If clients give their informed consent, social and medical data is collected at their first visit and analyzed together with the Division of Infectious Diseases and Tropical Medicine, Medical Faculty, Ludwig-Maximilians University Munich.⁷ The following chart shows the

⁴ Vogel, D. (2015): Update report Germany: Estimated number of irregular foreign residents in Germany (2014), Database on Irregular Migration, Update report. Retrieved from: https://irregular-migration.net/wp-content/uploads/2021/06/Vogel_2015_Update_report_Germany_2014_fin-.pdf

⁵ Civil society organizations that provide support and/or health services for people without or with limited access to health care include: Ärzte der Welt e.V./ Médecins du Monde Germany (in Berlin, Hamburg, Stuttgart and Munich), Malteser Medizin für Menschen ohne Krankenversicherung (in Arnstadt, Augsburg, Berlin, Darmstadt, Duisburg, Erfurt, Euskirchen, Frankfurt, Fulda, Hamburg, Hannover, Köln, Mannheim, München, Münster, Oldenburg, Osnabrück, Siegen, Stuttgart), Medibüros/Medinetze (inter alia in Berlin, Bielefeld, Bonn, Dresden, Essen, Heidelberg, Koblenz, Lübeck, Mainz, Ulm, Würzburg), Armut und Gesundheit e.V. (Mainz).

Furthermore, so called *Clearingstellen* advise and support people without health insurance or limited access to health care on how to obtain health insurance coverage and medical services in order to open up access to the health care system for them. Often, this involves securing coverage through health insurance or clarifying whether their treatment can be covered elsewhere. A complete list (as of May 2021) of the *Clearingstellen* can be retrieved from: <https://www.eu-gleichbehandlungsstelle.de/resource/blob/203274/1594458/49cd7b962c4bd4701c329ed50025dad2/verzeichnis-clearingstellen-2020-data.pdf>

⁶ MdM Germany runs these clinics together with cooperating partners in Hamburg with *hoffnungsorte hamburg/Verein Stadtmission Hamburg* and in Berlin with *Medizin Hilft e. V.* which has taken over the clinic in March 2022

⁷ For further information on the data, please refer to:

Bader, C., Offe, J., McMeekin, K. (2018): Deprived of the right to health. Sick and without medical care in Germany. Munich: Ärzte der Welt e.V. Retrieved from: <https://www.aerztederwelt.org/presse-und-publikationen/publikationen/2018/12/12/deprived-right-health-sick-and-without-medical-care-germany>

Bader, C., Offe, J., (2019): Zurückgelassen — wen unser Gesundheitssystem ausschließt, Ärzte der Welt Gesundheitsreport. München: Ärzte der Welt e.V. Retrieved from: <https://www.aerztederwelt.org/presse-und-publikationen/publikationen/2019/12/11/gesundheitsreport-2019>

figures from 2017-2020, focusing on data of the groups that fall under the protection of the CEDAW. As the data is gathered during their first visit at the clinic, the table below (Table 1) indicates only information of a part of the total number of women treated.

The following data of 83 pregnant clients that reached the MdM clinics in 2019 can illustrate their living situation.⁸

Age: The median age of the pregnant patients in 2019 was 27 years. The youngest was 16 years old, the oldest 42 years.

Socioeconomic status and housing conditions: Most of the pregnant women lived in very precarious circumstances; 94.4% (68/72) reported an income below the poverty line and could thus not pay for services out of pocket. 80.9% were homeless: 8.8% (6/68) were roofless, 8.8% (6/68) lived in a hostel or shelter for the homeless. 2.9% (2/68) camped or lived in a squat, 58.8% (40/68) lived with friends or family or slept at their workplace. Only 19.1% (13/68) reported living as owner or tenant in their own housing.

Social support: Many of the pregnant women lived in social isolation. 53.1% (34/64) of them reported that they never or only irregularly had a contact person to whom they could turn with problems.

Table 1: Data Médecins du Monde Germany

Year	2017	2018	2019	2020 ⁹
Number of patients newly coming to MdM and willing to provide data	1096	1099	1155	967
Number EU citizens (without Germans)	619	627	520	354
Number third-country nationals	390	384	509	389
Number female	393	591	520	414

Bader, C., Offe, J., (2020): Wie in Deutschland das Menschenrecht auf Gesundheit verletzt wird. Ärzte der Welt Gesundheitsreport. München: Ärzte der Welt e. V. Retrieved from: <https://www.aerztederwelt.org/presse-und-publikationen/publikationen/2020/12/10/gesundheitsreport-2020>

Gach, J., Offe, J., (2021): Ungesehen, ungeschützt, unversichert in der Pandemie: Krank und ohne Zugang zu Gesundheitsversorgung in Deutschland. Ärzte der Welt Gesundheitsreport. München: Ärzte der Welt e. V. Retrieved from: <https://www.aerztederwelt.org/gesundheitsreport-2021>

⁸ Bader, C., Offe, J., (2020): Wie in Deutschland das Menschenrecht auf Gesundheit verletzt wird. Ärzte der Welt Gesundheitsreport. München: Ärzte der Welt e. V.: p. 11. Retrieved from: <https://www.aerztederwelt.org/presse-und-publikationen/publikationen/2020/12/10/gesundheitsreport-2020>

⁹ Numbers for the year 2020 are affected by the Covid-19 pandemic. While MdM managed to keep the projects open, except for short interruptions, hygiene measures required more time, and as a result, less resources were available to keep up with the data collection. The amount of data generated decreased generally, and in certain categories notably, compared to the previous years.

Percentage pregnant (of female patients)	22.4%	21.5%	16%	13.5%
Pregnant women in numbers	88/393 ¹⁰	102/474	83/520	49/362
Median week of pregnancy at first antenatal care visit	*	17	13	20
Percentage of pregnant women not receiving antenatal care before coming to MdM	64.8%	72.9%	62.2%	*

State of origin and residence status: The majority (57.3%; 47/82) of the pregnant women were EU citizens. The remaining respondents (42.7%; 35/82) were from countries outside the European Union. 14.9% (10/67) of the pregnant women had no regular residence status in Germany at the time of the survey.

Health status and antenatal care: 62.2% (23/37) of the women who provided information on the topic had not been to an antenatal care examination prior to their visit to one of the MdM contact points. They were, on average, in the 13th week (between the third and the 26th week) of pregnancy at the time of their first visit.

Access to healthcare: 56.6% (47/83) of pregnant women reported having no health insurance coverage neither in Germany nor in their home country. Another 20.5% (17/83) had only access to limited benefits, such as travel insurance, which often excludes the costs of antenatal care and delivery from its range of benefits.

2.3.2. Data AKST: pregnant clients without access to healthcare in Thuringia

AKST is the acronym for „Anonymer Krankenschein Thüringen“, which translates as „anonymous health-care form in Thuringia“. The AKST provides medical treatment for people living in the federal state of Thuringia who do not have access to the regular healthcare or health insurance system by issuing an anonymized treatment voucher for the cost coverage. AKST is a non-profit organization founded in 2016 and is funded by the health ministry of Thuringia with 350.000 € as for 2022. The AKST does not distinguish their clients by residency-status, however it can be assumed that all of them are either citizens from an EU member state or from a third country outside of the EU. They do not have access to a regular health insurance or to the healthcare system.

Year	Patients in total	Women	Pregnant women¹¹
2017	37	20	14
2018	69	42	21

¹⁰ To be transparent on missing data to some questions, the first number indicates the amount of people to whom the statement applies, while the second shows the number of women replying to the question.

¹¹ The numbers of pregnant clients of the AKST includes all cases with the label „obstetrics“; including check-ups, screenings, prenatal diagnostics, births (stationary and outpatient), and aftercare.

2019	87	44	21
2020	130	77	36

2.3.3. Data Medibüro Chemnitz

Medibüro Chemnitz e.V. is a small group of volunteers in Chemnitz, Germany, who aim to help people with no or insufficient health insurance to get medical help. A team of cooperating doctors treats patients (if needed: anonymously) who otherwise could not access healthcare for several reasons (some of which are fear of being deported, massive debts or the current legal framework).

From January 2021 to January 2022, 56 persons were treated, including 24 women, six of whom were pregnant. Eight women were originally from the EU (incl. one pregnancy). Eight were from states outside the EU (incl. four pregnancies).

2.3.4. Data MediNetz Bielefeld

The MediNetz Bielefeld was founded in 2008 and is one of 30 organizations in Germany that aim to help people without or with limited access to health care to realize their right to health. For this purpose, the MediNetz refers (undocumented) people to physicians, supports them in the search for medical support and consults clients to clarify the further perspectives and possibilities. The most frequent medical reasons for clients to contact MediNetz were gynaecological issues (31.3%). In 49 cases (27.4%) a pregnancy or a pregnancy-related request (e.g., birth, miscarriage or gynaecological examination after pregnancy/birth) was the reason for a request.

Statistics of all clients with a migration background were collected in 2021, including the years from 2017 to 2021. A selection of 179 cases were included in the descriptive evaluation below.¹²

Table 2: Characteristics of the clients of MediNetz Bielefeld from 2017 to 2021

Characteristics	Frequency (percentage)	
Gender (n = 179)	Female	112 (62.6)
	Male	67 (36.4)
Age groups (n=139)	≤ 17 years	16 (8.8)
	18 - 30 years	68 (37.6)
	31 - 45 years	42 (23.2)
	46 - 60 years	9 (5.0)
	≥ 61 years	4 (2.2)
Residence legal status / residence legal information (n = 171)	Unclear	98 (54.7)
	(Tourist) Visa	15 (8.4)
	Status clarified, but no health insurance	17 (9.5)
	Church asylum	14 (7.8)
	Dublin procedure	11 (6.1)

¹² After 104 cases were excluded because no further referral was made by the MediNetz but, for example, only a telephone consultation took place, 215 cases were checked for their characteristics. Of these cases, a further 36 were excluded because there was no migration background, more than three characteristics were not recorded, or the case was listed twice in the database.

Applying for asylum	9 (5.0)
Detention pending deportation	4 (2.2)
Toleration	2 (1.1)
Eligible for asylum/protection	1 (0.6)

2.4. Exemplary data from public sector: the Examination and Counselling Center for sexual and reproductive Health (STI) Frankfurt

The Examination and Counselling Center for sexual and reproductive Health (STI) run by the Public Health Department (*Gesundheitsamt*) in Frankfurt am Main provides basic health care for women and antenatal care for pregnant women without health insurance or access to health care.

From November 2018 until February 2022, 249 pregnant women were seeking medical help in the center.¹³ 44% of the pregnant women were citizens from other EU countries and 54% were migrants from non-EU states, the remaining 2% were German citizens. None of them had a health insurance at the time of their visit.

2.5. Testimonies

C. T.: a pregnant EU citizen without access to health care*

The 18-year-old pregnant C.T. visited the general consultation of MdM Germany in January 2021 because she had no health insurance and could no longer afford to pay for antenatal care. C.T. is a Bulgarian citizen and arrived in Germany in December 2020 to join her boyfriend G. D. during pregnancy. At that time, G., who was already in Germany, had been unemployed for two months but was about to start another job. He had applied for social benefits at the employment office but was rejected. C.T. was 19 weeks pregnant, and they could not afford food or basic equipment for their child. They were afraid to lose their place at the homeless shelter as, according to the *Leistungsausschlussgesetz*, EU-citizen are only allowed to stay in a homeless shelter if they are entitled to social benefits. After a notice of opposition, only G. received social benefits. The employment office claimed that C. was not entitled to social benefits, including health insurance, because she was unemployed, and they were not married.

M. B.: pregnant with twins and about to lose them*

M. B., a Bulgarian citizen with no health insurance and 16 weeks pregnant with twins, was referred to the *Clearingstelle* of the Berliner Stadtmission centre for family planning and sexual health of the local authorities. A check-up had indicated that she was in urgent need for medical treatment in an hospital in order not to lose the babies.

¹³ The data was collected between 11/1/2018 until 2/9/2022.

M. had been living in Berlin for a year with her husband. She had not worked since arriving in Germany. Her husband (also a Bulgarian citizen) had previously worked in Germany and had had health insurance. He had also received unemployment benefits, which covered his health insurance costs, for a short time. According to German law, she would have been able to gain family insurance at no extra cost through his insurance coverage. However, he had not worked long enough in Germany to qualify for long-term residency and therefore had no access to basic unemployment benefits and was then unemployed with no income or health insurance.¹⁴ The family was supported financially by relatives, most of whom received social benefits. There was no possibility for M. to get insured and not enough money available within the family to pay for the necessary treatment.

G. S.*: "I want to know if my child is doing well"

G.S., 19 years old, came from Bulgaria with her child to join her partner in Germany in September 2021. At that time, she already assumed that she was pregnant, however unable to afford an antenatal examination. G. and her partner were living in a municipal shelter in Munich, looking for work, and relying on financial support from her parents-in-law. "We are constantly looking for work, but we can't find a job."

In October, G. had an accident and was taken to the hospital as an emergency case. As she was uninsured, she had to bear the costs of almost one thousand euros herself. In November, G. came to the gynaecologist at the clinic of MdM Germany Munich for an antenatal check-up; "I want to know if my child is doing well." Her pregnancy was already advanced and without health insurance coverage, she could not afford to visit a doctor in Germany.

G. L.*: an EU citizen with no access to health insurance

G. L. from Lithuania works unofficially in the domestic help sector in Germany. She got pregnant, but the father does not live in Germany. She has no health insurance in Lithuania and thus no access to the health insurance system in Germany, as she cannot prove that she has been in the public health system in Germany or Lithuania before. Apart from that, she cannot afford a private health insurance. She is not entitled to social services that would give her access to the public health insurance to cover the costs of the antenatal care. After the birth, there is also no way for the child to get a health insurance.

M. B.*: undocumented and in fear of deportation

M. B., a woman from a West-African country, lives in Germany. Her asylum application was rejected, and she is obliged to leave the country. To prevent deportation, she hides from the authorities. According to German law, she is entitled to social services and thereby to the

¹⁴ According to the law, EU citizens who leave employment after less than a year are legally entitled to remain in the country to seek work for a period of six months (§ 2 Abs. 3 Satz 2 FreizügG/EU, ECJ from 4/6/2009 — C-22/08 Vatsouras/Koupatantze). They are also entitled to the unemployment benefits they have paid into through social insurance. If they have not found employment after six months, they lose their right to freedom of movement and, once their unemployment insurance payments end, are legally not entitled to basic unemployment benefits German citizens are entitled to (§ 7 Abs. 1 S. 2 SGB II). In addition, without a residence permit, they cannot access state health insurance. A prerequisite for state health insurance is a legal residency permit valid for at least twelve months and one day.

healthcare system. Due to the transmission obligation, she cannot go to the social welfare office because she knows that they are obliged to inform the immigration authorities. Accordingly, she has no access to healthcare and social service.

* Names changed

3. PREVIOUS SOLICITATIONS BY UN COMMITTEES

The former German government was urged by different UN Committees to abolish the legal barriers and mechanisms that preclude access to health care for all women.¹⁵

3.1. CEDAW

The implementation of Article 12 of the Convention was repeatedly raised in the preceding CEDAW reporting cycles. In its Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Germany in 2017, the Committee stressed the need to improve on measures taken to guarantee the access to health care for migrant women.¹⁶ The Committee highlighted:

"the difficulty that undocumented migrants have in gaining access to non-emergency health care, while attempts to obtain the documentation necessary for non-emergency health services often lead to the claimant being reported to the authorities and subsequently deported."¹⁷

In consequence, the Committee recommended Germany to:

"consider the repeal or amendment of section 87 of the Residence Act, and ensure that undocumented migrants are given the same rights to gain access to the documentation necessary for non-emergency health services without the risk of being reported to the authorities and subsequently deported."¹⁸

For the current reporting cycle, MdM Germany submitted a short statement for the List of Issues Prior to Reporting regarding the access to (reproductive) health care for migrant women in Germany.¹⁹ Thereafter, in the List of Issues prior to the Submission of the Ninth

¹⁵ Gesellschaft für Freiheitsrechte/Ärzte der Welt. (2021). Ohne Angst zum Arzt – Das Recht auf Gesundheit von Menschen ohne geregelten Aufenthaltsstatus in Deutschland. Eine grund- und menschenrechtliche Bewertung der Übermittlungspflicht im Aufenthaltsgesetz. p.26. Retrieved from: <https://www.aerztederwelt.org/presse-und-publikationen/publikationen/2021/05/05/ohne-angst-zum-arzt>

¹⁶ Concluding observations on the Combined Seventh and Eighth Periodic Reports of Germany, CEDAW/C/DEU/CO/7-8. See inter alia: para. 30 and especially paras. 37, 38. Retrieved from: <https://undocs.org/Home/Mobile?FinalSymbol=CEDAW%2FC%2FDEU%2FCO%2F7-8&Language=E&DeviceType=Desktop>

¹⁷ UN Doc. CEDAW/C/DEU/CO/7-8, para. 37

¹⁸ UN Doc. CEDAW/C/DEU/CO/7-8, para. 38.

¹⁹ Ärzte der Welt (2020). "Access to (reproductive) health care for migrant women in Germany: the situation of undocumented women and EU migrants." Submission for the List of Issues Prior to Reporting by the Federal German Government to the UN Committee on the Elimination of Discrimination Against Women

77th Pre -Sessional Working Group (2 to 6 March 2020). Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fICS%2fDEU%2f41628

Periodic Report of Germany, the Committee resumed the issue and asked for information on what measures had been taken to:

“repeal or amend section 87 of the Residence Act with a view to ensuring that undocumented migrants are given the same rights of access to the documentation necessary for non-emergency health services without the risk of being reported to the authorities and subsequently deported.”²⁰

In the Ninth Periodic Report, received by the Committee on July 16th, 2021²¹, the former Federal Government of Germany refused to amend section 87 of the Residence Act, arguing that it would restrict “criminal prosecution and render meaningless the criminal offence of staying in the federal territory without the required permit.” It offered no prospect to repeal or amend the provision.²²

3.2. ICESCR

Access to health care for migrant populations in Germany was repeatedly addressed also in the reporting cycles on the International Covenant on Economic, Social and Cultural Rights. More than 30 civil society organizations submitted a list of issues to the CESCR in 2017 for the Sixth German State Report highlighting the barriers to healthcare for non-nationals in Germany. In its list of issues in relation to the Sixth Periodic Report of Germany, the CESCR asks to:

"provide information on the specific efforts made by the State party to ensure that the citizens of European Union member States who do not benefit from the European Convention on Social and Medical Assistance, asylum seekers and migrants without regular status have access to adequate and affordable health-care services. In particular, please indicate the measures taken or envisaged to ensure that migrants without regular status have access to health-care services without having their status reported to the immigration authorities in accordance with section 87 (2) of the Act on the residence, economic activity and integration of foreigners.”²³

In its replies to the list of issues, regarding the right to physical and mental health, the government of Germany lays out firstly, that “in the case of EU citizens who are not entitled to freedom of movement, for a period of up to one month the competent social assistance agency will, in principle, provide health services which are required to treat acute illnesses and pain”.²⁴ Regarding the inquiry about section 87(2) of the Resident Act, the reply aims at justifying the persistence of the provision in order to “put an end to illegal residency”, without

²⁰ UN Doc. CEDAW/C/DEU/QPR/9, para. 16. Retrieved from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/064/52/PDF/N2006452.pdf?OpenElement>

²¹ The report can be downloaded here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/274/04/PDF/N2127404.pdf?OpenElement>

²² Ninth Periodic Report submitted by Germany under article 18 of the Convention, due in 2021 (see footnote 16). Para. 209

²³ Committee on Economic, Social and Cultural Rights, List of issues in relation to the Sixth Periodic Report of Germany. E/C.12/DEU/Q/6, para. 22. Retrieved from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/323/11/PDF/G1732311.pdf?OpenElement>

²⁴ List of issues in relation to the Sixth Periodic Report of Germany. Addendum. Replies of Germany to the list of issues. E/C.12/DEU/Q/6/Add.1. Paras. 123, 124, 125. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fDEU%2fQ%2f6%2fAdd.1

reacting to the claim made that it would inhibit access to health care for migrants without regular status.²⁵

The Parallel Report to the CESCR on the right to health for non-nationals, prepared for the 64th session of the CESCR and submitted by Médecins du Monde Germany and 44 organizations and individual researchers/doctors in July 2018, emphasized that several groups of people in Germany are excluded from adequate and non-discriminatory access to health care.²⁶ Consequently, in its Concluding Observations, the CESCR stressed that

“under the Act on Benefits for Asylum Applicants, asylum-seekers’ access to health care is restricted to acute and painful conditions for the first 15 months of their stay in Germany and that their access to health care is further limited owing to the lack of a clear definition of or guidelines on ‘other essential health-care services’, which, under the Act, are provided in exceptional cases, or ‘acute and painful conditions’ (art. 12).”²⁷

Regarding the situation of migrants and the restrictions to the right to health, the Committee expressed its concerns, stating that

“section 87 (2) of the Residence Act (*Aufenthaltsgesetz*) obliges public authorities to report undocumented migrants to immigration authorities, which can deter irregular migrant workers from seeking services, such as health care, that are essential for the enjoyment of their rights and from reporting crimes, including domestic violence and sexual and gender-based violence (arts. 2 (2) and 12).”²⁸

The Committee thus recommended the State Party to

“establish a clear separation (“firewall”) between public service providers and immigration enforcement authorities, including through repealing section 87 (2) of the Residence Act, to ensure that irregular migrant workers can access basic services without fear.”²⁹

and to

“take all measures necessary to ensure that all persons in the State party, including asylum-seekers, have equal access to preventive, curative and palliative health services, regardless of their legal status and documentation, and review the Law on Basic Unemployment Benefits for Non-Nationals and the Act on Benefits for Asylum Applicants accordingly. The Committee draws the attention of the State party to its statement on the duties of States towards refugees and migrants under the Covenant (E/C.12/2017/1).”³⁰

²⁵ See footnote 19; E/C.12/DEU/Q/6/Add.1. Para. 127

²⁶ Ärzte der Welt (2018). Parallel Report to the CESCR on the right to health for non-nationals. On the 6th Periodic Report of the: Federal Republic of Germany on the implementation of the International Covenant on Economic, Social and Cultural Rights. Prepared for the Committee on Economic, Social and Cultural Rights, 64th session. Submitted July 2018. Retrieved from: https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/DEU/INT_CESCR_CSS_DEU_32476_E.pdf

²⁷ UN Doc. E/C.12/DEU/CO/6, para. 58

²⁸ UN Doc. E/C.12/DEU/CO/6, para. 26

²⁹ Ibid. para. 27

³⁰ Ibid. para. 59

4. STATE PARTY REPORT AND RECENT DEVELOPMENTS

4.1. Germany's Ninth State Party Report to the CEDAW

In its Ninth State Party Report to the CEDAW, the former Federal Government of Germany rejected the recommendation to amend section 87 of the Residence Act, arguing that it would restrict “criminal prosecution and render meaningless the criminal offence of staying in the federal territory without the required permit.” It offered no prospect to repeal or amend the provision.³¹

4.2. Engagement by Civil Society, Political Parties, German Welfare Institutions

In 2021, a consortium of more than 80 organizations (including Mdm Germany, Pro Asyl, Amnesty International Germany, Diakonie Deutschland, Arbeiterwohlfahrt AWO, and many smaller grassroots organizations) launched a joint campaign pursuing the goal of restricting § 87 of the Residence Act.³² At the center of the nationwide online and offline campaign a petition called on the German Bundestag to exempt the health sector from the duty to report. Until March 2022, more than 26.000 people signed the petition.

In addition, two oppositional parties took their stance regarding the issue of access to health care for undocumented migrants. The political party “Die Linke” brought forward two parliamentary requests on the issue. The first one in March 2020, questioning the availability of “good health care also for people without health insurance or with premium debts and refugees”.³³ The second one in September 2021, on “health care for refugees and undocumented people in the pandemic and beyond”, with explicit reference to the campaign and its specific demand to amend § 87 of the Residence Act.³⁴ In another request, submitted by “Bündnis 90/Die Grünen”, the former government was requested to temporarily repeal § 87 of the Residence Act in order to guarantee the access to health services for all during the pandemic.³⁵ Access to health care for all in the pandemic was the topic of a hearing of the

³¹ CEDAW/C/DEU/9. Ninth Periodic Report submitted by Germany under article 18 of the Convention, due in 2021. Para. 209. Retrieved from:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fDEU%2f9&Lang=en

³² Campaign: #GleichBeHandeln. See: <https://gleichbehandeln.de>

³³ Antrag der Abgeordneten Dr. Achim Kessler, Ulla Jelpke, Susanne Ferschl, weiterer Abgeordneter und der Fraktion DIE LINKE. Gute Gesundheitsversorgung auch für Menschen ohne Krankenversicherung oder mit Beitragsschulden und Geflüchtete. – Drucksache 19/17543 – Retrieved from: <https://dserver.bundestag.de/btd/19/175/1917543.pdf>

³⁴ Kleine Anfrage der Abgeordneten Dr. Achim Kessler, Susanne Ferschl, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. Gesundheitsversorgung für Menschen auf der Flucht und Menschen ohne Papiere in der Pandemie und darüber hinaus. – Drucksache 19/32333 – Retrieved from: <https://dserver.bundestag.de/btd/19/323/1932333.pdf>
See also: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Dr. Achim Kessler, Susanne Ferschl, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 19/32547– Gesundheitsversorgung für Menschen auf der Flucht und Menschen ohne Papiere in der Pandemie und darüber hinaus. Retrieved from:

<https://dserver.bundestag.de/btd/19/325/1932547.pdf>

³⁵ Antrag der Abgeordneten Maria Klein-Schmeink, Filiz Polat, Dr. Kirsten Kappert-Gonthier, weiterer Abgeordneter und der Fraktion Bündnis 90/Die Grünen. Drucksache – 19/19538– Zugang zur Gesundheitsversorgung für alle Menschen sicherstellen – Rechte marginalisierter Gruppen in Zeiten der COVID-19-Pandemie nachhaltig stärken. Retrieved from:

<https://dserver.bundestag.de/btd/19/195/1919538.pdf>

health committee of the German Bundestag following the parliamentary requests of the parties “Die Linke” and “Bündnis 90/Die Grünen”.³⁶

The German Federal Association of Non-statutory Welfare (BAGFW), the collective voice of the six non-statutory welfare umbrella organizations in Germany, integrated the issue in its joint recommendations for the 2021 federal election, where it demanded inter alia to remove

“barriers to access and gaps in care for people on the fringes of our society, such as the homeless, undocumented migrants, prisoners, the uninsured, asylum seekers and refugees.”

Concretely, it demanded to abolish the duty to report to the immigration offices in § 87 of the Residence Act if medical services are concerned.³⁷

4.3. The Coalition Agreement

The State Party Report was issued by the former government of Germany. According to the coalition agreement of the new government, which took office on 8th of December 2021, the coalition of the Social Democratic Party (SPD), the Green Party (Bündnis 90/Die Grünen) and the Free Democratic Party (FDP), will take a “human rights in all policies” approach, determining that “human rights politics encompass all aspects of state action at both the international and the domestic level.”³⁸ In its coalition contract, the governing parties agreed to advocate for intersectional gender equality policies in the EU and internationally and to comply with the CEDAW.³⁹

In this coalition agreement, a major step towards the right to health for undocumented migrants is announced: “We want to revise the reporting requirements for undocumented people so that sick people are not prevented from receiving treatment”⁴⁰ A revision of the reporting obligations for undocumented migrants to safeguard the access to medical care for all, would be a response to the issue the CEDAW raised in question 16b. When the aforementioned petition was submitted to members of parliament by civil society organisations, this endeavour was reaffirmed.

On the situation of citizens of EU Member States and their exclusion from access to social services, including antenatal, reproductive, and obstetric health care (see above), no comments or announced measures can be found, neither in the State Report nor the coalition agreement. Looking at the client structure of humanitarian health care in Germany, it becomes clear that a relevant part of the women depending on voluntary structures are EU

³⁶ See: <https://www.bundestag.de/dokumente/textarchiv/2021/kw04-pa-gesundheit-gesundheitsversorgung-813660>

For the requests see footnotes 29, 31, The full session can be watched here:

<https://www.bundestag.de/mediathek?videoId=7498141#url=L21lZGlhdGhla292ZXJsYXk/dmlkZW9pZD03NDk4MTQx&mod=mediathek>

³⁷ Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege (2021). *Wahlen zum Deutschen Bundestag 2021. Erwartungen der BAGFW an die Bundespolitik der 20. Legislaturperiode*. Retrieved from:

https://www.bagfw.de/fileadmin/user_upload/Veroeffentlichungen/Publikationen/Forderungspapiere_2021/BT-Wahl_Gesundheitswesen.pdf

³⁸ Koalitionsvertrag zwischen SPD, Bündnis 90/Die Grünen und FDP (2021). *Mehr Fortschritt wagen*. p.146 Retrieved from: <https://www.bundesregierung.de/resource/blob/974430/1990812/04221173eef9a6720059cc353d759a2b/2021-12-10-koav2021-data.pdf?download=1>

³⁹ Koalitionsvertrag p.114

⁴⁰ Koalitionsvertrag p.139

citizens. The concerns regarding the access to health and the realization of the right to health for non-nationals must hence be reaffirmed.⁴¹

5. RECOMMENDATIONS TO THE STATE PARTY TO BE INCLUDED IN THE CONCLUDING OBSERVATIONS

a. Undocumented migrants

- Realize the announced amendment of section 87 of the Residence Act, ensuring that the duty to report does not limit the right to access health services for undocumented migrants. The education sector, which has already been excluded from the duty to report, can serve as an example.

b. EU citizens

- Revise the current legislation in order to enable access to adequate health care coverage for all EU citizens without discrimination.

⁴¹ As set out in the Submission for the List of Issues Prior to Reporting by the Federal German Government to the UN Committee on the Elimination of Discrimination Against Women. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCS%2fDEU%2f41628&Lang=en
And in the Parallel Report to the CESCR on the Right to Health for Non-nationals. Retrieved from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fCSS%2fDEU%2f32476&Lang=en