

NGO Submission
- UPR on the Federal Republic of Germany -
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FIAN Deutschland e.V. (FIAN Germany) is the German section of the international human rights organisation FoodFirst Information & Action Network - FIAN International. FIAN Germany currently has about 1.100 individual members and is a member of the national human rights network FORUM MENSCHENRECHTE. FIAN Germany is focusing its submission on the implementation of the right to food as part of the right to an adequate standard of living of people living in Germany.

I. Promotion and protection of human rights on the ground

1. The status of the right to food and nutrition in Germany

FIAN Germany claims that the Federal Republic of Germany is not fulfilling its obligations related to the right to food. Despite the fact that the situation in Germany can certainly not be compared to many countries in the global South, it is by no means self-evident that the right to food is fully realised in Germany. As the Committee on Economic, Social and Cultural Rights (CESCR) already claimed in its General Comment No. 11 in 1999, the right to food contains much more than the obligation of the states to ensure the mere survival of its residents. It also means that everybody must have access to adequate food without having to choose between existing rights and that states are obliged to guarantee that no one is discriminated against because of her or his national origin, residential or economic status. The problem of food security and related human rights issues in Germany were not discussed during the last UPR review of Germany and are therefore not included in the recommendations that emerged from the first session in May 2009. However, it has become an issue on the public agenda as well as at the Constitutional Court level during the last years and therefore deserves the attention of the Human Rights Council. The aim of our submission is to show what signs of the deterioration of the most vulnerable groups in terms of food security and the right to food can be found and what action should be taken by the government.

Evidence of the return of food insecurity in Germany is provided by a considerable increase of food banks in all parts of Germany. The most well-known organisation running food

banks is called “Tafeln”. The number of food banks run by the “Tafeln” has skyrocketed lately. About 10 years ago these food banks were only present in bigger cities, nowadays they can also be found in smaller cities and communities. The number has risen up to nearly 900 and, as the organisation claims itself, these banks provide 1.5 million people with food and drinks. Among these people 30 % are children and youth, 53 % adults and 17 % older people, also receiving pensions. The distributed food is collected from the left-overs of several supermarket chains and restaurants. In this way the “Tafeln” and other food supply organisations took over big parts of the state responsibility to guarantee food security for all residents. The right to food is no longer seen as a basic and human right that the state has to guarantee, but became more a question of the voluntary relief system. FIAN Germany challenges this view - the right to adequate food should never be a question of the best position in a food banks’ queue.

2. Inadequate level of social security benefits to guarantee the right to food and nutrition

In 2007 the Research Institute of Child Nutrition in Dortmund (Forschungsinstitut für Kinderernaehrung) found that the social security benefits for children and youth - as specified in Hartz IV, the Second Book of the Social Code - are insufficient for well-balanced nutrition. Although the results of the study generated debate in media and politics there was little action.

Even a well-accepted court ruling of the Federal Constitutional Court (BVerfG) in February 2010 about the social benefits of children did not lead to better conditions for children and youth. With its ruling on the calculation of the standard Hartz IV benefits (German unemployment benefit paid after the first 12-18 months of unemployment) from 9 February 2012, the Federal Constitutional Court has “created” a new fundamental right - the fundamental right to the guarantee of a dignified minimum existence. This right is deduced from Article 1, sec. 1 (human dignity) in conjunction with Article 20, sec. 1 (social state principle) of the German Basic Law. It guarantees all people in need the material conditions necessary for their physical existence and minimum participation in social, cultural and political life. The judges stated that “children are not small adults” and therefore, the calculation of their benefits must be made separately to address their specific needs. The determination of these needs falls on the government, which has to implement a transparent, appropriate and objective procedure of needs assessment in order to comply with the constitutional requirements. As a result, the Federal Ministry of Labour and Social Affairs seemingly acted upon the ruling: They calculated the need of children in certain age groups and the rules of this procedure became part of the Social Code. But in fact, the benefit rates did not rise at all. For older children the amount of money for food and drinks was even diminished. This only became possible by changing the statistical calculation model.

In its Concluding Observations of 2011, the Committee on Social, Cultural and Economic Rights referred to the Federal Constitutional Court ruling as well as the policy response of the German government. The Committee showed its concern that the new method of calculation of the subsistence level “does not ensure an adequate standard of living for the beneficiaries”. The international experts therefore urged the State party “to review the method and criteria applied to determine the level of benefits and to monitor the adequacy criteria regularly (...)”.

3. Asylum Seekers Benefits Act

In 2009, roughly 122,000 people received benefits under the Asylum Seekers Benefits Act including asylum seekers, war refugees, victims of human trafficking, foreigners who have been granted a suspension of deportation (so-called tolerated foreigners) or those who are obliged to leave the country as well as spouses, partners and underage children. On 18 July 2012, the German Federal Constitutional Court declared the amount of payments specified under Article 3 of the Asylum Seekers Benefits Act as evidently insufficient and thus unconstitutional. The ruling specifies that the fundamental right to guarantee a dignified minimum existence applies equally to German and foreign nationals living in the Federal Republic of Germany. It obliges the legislator to immediately introduce a revision of the Act, ensuring a dignified minimum existence. For the interim period, the Federal Constitutional Court has ordered payments to be increased to the level of Hartz IV or the standard rate according to SGB II/XII (Social Act, book II, section XII).

Under the Asylum Seekers Benefits Act, in kind benefits have precedence. However, these can also be cash payments. The ruling of the Federal Constitutional Court refers only to the amounts of cash payments, which were determined in 1993 and which have not been adjusted since then despite it being required by law. In January 2012, the level of entitlement was 35% below the level of entitlement of local social welfare recipients. The Federal Constitutional Court deems this unconstitutional since the Federal Government could not show that the affected groups of people had indeed lower personal needs.

The provision of benefits according to the Asylum Seekers Benefits Act is the responsibility of the federal states and the administrative districts. They can decide whether in kind or cash benefits are appropriate. According to the Federal Constitutional Court, it is up to the legislative authority to decide whether the dignified minimum existence is guaranteed by cash or by in kind benefits or other services as long as the benefits meet the actual requirements of the people in need. The fact that the principle of in kind benefits was not called into question in the ruling must be criticised. This is possibly due to the fact that the cases presented to the court for its ruling concerned persons who do not receive in kind benefits. However, based on the experience of refugee councils, it must be stated that the practice of in kind benefits violates several human rights principles.

Regarding the human right to food, violations include the following examples:

- Food parcels violate the freedom to be able to feed one self in a self-determined fashion. In cases of deficient quality or food intolerances, the right to health is put at risk. Also, food parcels can contain food items which do not meet the needs and customs of the recipients.
- Value coupons can only be exchanged in specified shops. This also restricts freedom of choice regarding nutrition according to needs and customs. Also, the amounts marked on these value coupons vary considerably from district to district.
- Currently the authorities responsible are under no legal obligation to prove that the in kind benefits are adequate and thus enable self-determined nutrition in dignity. Furthermore, legal means are lacking to remedy the situation when in kind benefits fail to provide healthy nutrition and one which is also in accordance with needs and customs.

Violations of the human right to food may not only result from the principle of in kind benefits but also from insufficient health care. Thus, the Asylum Seekers Benefits Act initially only recognises acute illnesses and pain, whereas additional treatments are subject to the discretion of the authorities. Regarding the human right to food, this implies the following:

- Chronic diseases which are closely related to diet (e.g. diabetes, high blood pressure) are excluded. This influences the quality of life and the expected lifetime and thus the right to life.
- Children are especially at risk of malnutrition and undernourishment. Therefore, intensive monitoring of the development of their nutritional status is a precondition in preventing permanent development defects.
- The act includes no entitlements for dental treatment beyond treatment for acute pain. This can limit food intake as well as nutrient utilization.
- People with disabilities are not entitled to participation and rehabilitation, which may negatively affect preparation and intake of food as well as nutrient utilization.
- In underage women, pregnancy has a direct impact on their nutritional status and that of their children. Therefore, entitlements for reproductive health care, sex education and access to contraception must be guaranteed.
- Immigrants urgently require information and education regarding food due to the changes in eating habits enforced by migration. However, this requirement is currently not addressed.
- The current system, whereby the social welfare offices carry out an individual assessment every time a referral for medical treatment is required, contravenes the right to non-discriminating access to health care.

II. Recommendations

In order to comply with its international obligations under the human right to food, FIAN Germany calls on the German government to

- implement a comprehensive anti-poverty programme, which should be based on all human rights. A recommendation in this line was made by the CESCR in response to the fifth report of Germany on the implementation of the ICESCR. Taking into account the dramatic increase in food banks, the programme should specifically address Germany's obligations related to the right to food, based on a thorough analysis of causes for malnutrition, undernutrition and obesity in the country. The design and implementation of the programme should be gender sensitive, taking into account that women are by far more affected by poverty than men and that single mothers are one of the biggest groups living in poverty in Germany.
- reorganise the calculation of the basic income benefits. It is highly questionable that the current calculation is according constitutional and human rights provisions. Human dignity and the respect and safeguarding of human rights need to be the main focus when determining the subsistence level.

- abolish the Asylum Seekers Benefit Act. The fundamental right to a guarantee of a dignified minimum existence is a human right, as are the right to food, the right to an adequate standard of living and the right to health, which are all protected by the ICESCR. The Federal Constitutional Court stressed that human dignity must not be modified by immigration policy. The exclusion from our society of asylum seekers, war refugees, victims of human trafficking, tolerated foreigners or foreigners who are obliged to leave the country, as enforced by lower benefits, prohibition of employment or training, and residency obligations, violates the dignity of these people. Food parcels and value coupons violate the right to food since the associated restrictions are not proportionate to the intended aims. Also, there are no constitutional guarantees safeguarding an appropriate supply of food and self-determined nutrition. The right to health is a human right and must thus be guaranteed. In many cases, the special treatment within the Asylum Seekers Benefits Act leads to discrimination in the access to health care. This potentially violates other human rights, such as the right to food.

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