

**2023 REPORT ON THE APPLICATION OF THE EU CHARTER OF FUNDAMENTAL RIGHTS:  
EFFECTIVE LEGAL PROTECTION AS A PRECONDITION FOR THE FULL APPLICATION OF  
FUNDAMENTAL RIGHTS**

**CONSULTATION OF CHARTER FOCAL POINTS**

**Responses by GERMANY**

**27.07.2023**

## **1. Which judicial and non-judicial remedies are available in your Member State**

### **a. In criminal, civil and administrative cases;**

#### In criminal cases:

Non-judicial remedies are not provided for in the German Code of Criminal Procedure (for a wider understanding, see below). But the following remedies are available according to the German Code of Criminal Procedure:

- Appeal on points of fact and law (Berufung; Section 312 seqq. of the German Code of Criminal Procedure) against judgments of a criminal court judge and of a court with lay judges;
- Appeal on points of law (Revision; Section 333 seqq. of the German Code of Criminal Procedure) against judgments of the criminal divisions, of the criminal divisions with lay judges and against judgments of the higher regional courts pronounced at first instance;
- Objection against summary penalty orders (Section 410 seqq. of the German Code of Criminal Procedure)
- Complaint and immediate complaint (Section 304 seqq. of the German Code of Criminal Procedure) against other decisions of the court (for example, warrants of arrest, decision not to decide on the application for the assertion of a pecuniary claim arising from the offence);
- Application to court decision (Section 98 (2) of the German Code of Criminal Procedure, if not directly applicable analogously) against measures taken by the investigating authorities; and
- Review of detention (Section 117 seqq. of the German Code of Criminal Procedure): right to apply for a court hearing as to whether the warrant of arrest is to be revoked or its enforcement suspended in accordance with section 116 of the German Code of Criminal Procedure (alternative to the complaint).

In a wider understanding of “remedy”:

Victims and perpetrators/accused persons can seek reconciliation and settling of damages by an instrument of restorative justice called “victim-offender mediation”. This is not part of the criminal proceedings themselves but generally interlinked with them. At every stage of the proceedings the public prosecution office and the court are, as a rule, to examine whether it is possible to reach a mediated agreement between the accused and the aggrieved person (Section 155a of the German Code of Criminal Procedure). In appropriate cases, they are to work towards such mediation. A case may not be assumed to be appropriate against the express will of the aggrieved person. The initiative towards victim-offender mediation may come from the victim or the perpetrator. Victim-offender mediation and its outcome have to be taken into account within the criminal proceedings and when sentencing (Section 46a of the German Criminal Code et. al.).

In civil cases:

If a party of civil proceedings disagrees with the judgment, he or she may contest the judgement by the remedies provided by law. Pursuant to Section 511 of the Code of Civil Procedure, an appeal is admissible against the final judgments issued by the Court of First Instance and if the value of the subject of the appeal exceeds 600 euros or if the court of first instance has allowed the appeal in its judgment.

Pursuant to Section 543 (1) of the Code of Civil Procedure, an appeal on points of law ("revision") shall be admissible against the final judgments of the Court of Appeal in appeal proceedings and shall only take place if the Court of Appeal has admitted it in the judgment or the Federal High Court of Justice has admitted it on appeal against non-admission. Pursuant to Section 543 (2) of the German Code of Civil Procedure, a revision must be allowed if the case is of fundamental importance or if the further development of the law or the safeguarding of uniform case law requires a decision by the Federal High Court of Justice. The non-admission of an appeal on points of law by the Court of Appeal is itself subject to appeal pursuant to Section 544 (1) sentence 1 of the German Code of Civil Procedure (non-admission appeal).

An appeal is admissible against decisions of the Courts of First Instance, which are not judgments. The so-called immediate appeal shall take place if this is expressly provided for in the law or if it concerns decisions which do not require an oral hearing and by which a petition relating to the proceedings has been rejected (Section 567 of the Code of Civil Procedure).

Pursuant to Section 574 of the Code of Civil Procedure, an appeal on a point of law is admissible against an order if this is expressly stipulated in the law or if the Court of Appeal or the Court of First Instance has allowed it in its decision. The prerequisite is that the case is of fundamental importance or the further development of the law or the safeguarding of uniform case law requires a decision by the Court of Appeal on a point of law. Moreover, a complaint pursuant to Section 321a of the German Code of Civil Procedure may be filed to assert violations of the right to be heard in a decision. It is admissible if there is no appeal or other legal remedy for a decision available.

#### In administrative cases:

For administrative court proceedings, the regulations are laid down in the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung – VwGO):

With regard to non-judicial remedies, the preliminary proceedings according to section 68 of the Code of Administrative Court Procedure can be mentioned. Here, the lawfulness and expedience of the administrative act shall be reviewed in principle.

With regard to judicial remedies, the following remedies can be mentioned:

- rescission action (section 42 paragraph 1 Code of Administrative Court Procedure)
- enforcement action (section 42 paragraph 1 Code of Administrative Court Procedure)
- action for a declaratory judgment (section 43 paragraph 1 Code of Administrative Court Procedure)
- reformatory action or application (section 43 paragraph 2 Code of Administrative Court Procedure)
- norm control action (section 47 Code of Administrative Court Procedure)
- action for a declaration of continuation (section 113 paragraph 1 Code of Administrative Court Procedure)
- preliminary legal protection (sections 80, 80a, 123 Code of Administrative Court Procedure)

If a party of an administrative proceeding disagrees with a judgment or a decision, it may contest the judgement with the remedies provided by the Code of Administrative Court Procedure (e.g. appeal on points of fact and law pursuant to sections 124 seqq.; appeal on points of law pursuant to sections 132 seqq.; complaint and complaint regarding a hearing pursuant to sections 146 seqq.).

As far as **administrative legal cases related to the environment** are concerned, on the federal level two pieces of legislation can be listed: the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG), and the Federal Nature Conservation Act (Bundesnaturschutzgesetz, BNatSchG).

The Environmental Appeals Act (UmwRG) especially contains rules in order to grant certain formally recognised environmental organisations legal standing in all cases explicitly specified in § 1 UmwRG.<sup>1</sup>

The Federal Nature Conservation Act (BNatSchG) contains rules in order to grant legal standing to recognised nature conservation organisations in specified areas of nature conservation (see § 64 in conjunction with § 63 BNatSchG). In these cases, recognised NGOs can challenge, for example, decisions to grant an exemption from certain nature conservation provisions.<sup>2</sup>

Further, a number of Federal States (Länder) have included complementary provisions on access to justice in their respective nature conservation legislation<sup>3</sup>.

#### Constitutional complaint (Article 93 (1) No. 4 of the Basic Law):

In addition to the above-mentioned remedies before the ordinary courts, Article 93 (1) No. 4 of the Basic Law guarantees the right to file a constitutional complaint with the Federal Constitutional Court. A constitutional complaint may be lodged by any person who claims that one of his / her **fundamental rights** or one of his / her rights under Articles 20 (4), 33, 38, 101, 103 and 104 has been violated by a public authority. The procedure for lodging a constitutional complaint is regulated in more detail in Sections 90 et seq. of the Federal Constitutional Court Act. As a general rule, a constitutional complaint may only be lodged against state measures that can be challenged before a specialised court after all legal remedies have been exhausted.

#### **b. in cases of discrimination;**

The General Equal Treatment Act was introduced to prevent or stop discrimination on the grounds of “race” or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The General Act on Equal Treatment governs the claims and legal consequences in the case of discrimination, both in the field of work as well as for parts of civil law. Individual complainants can take their cases to court and sue for damages or compensation.

As Germany’s national equality body, the Federal Anti-Discrimination Agency (FADA) offers free-of-charge initial legal advice to victims of discrimination (as defined by the General Equal Treatment Act, i.e. in the fields of employment and access to goods and services). FADA can offer to mediate amiable settlements. FADA has no possibility, however, to act in court on behalf or in support of victims of discrimination.

In the federal state (Land) of Berlin, a federal state anti-discrimination act (Landesantidiskriminierungsgesetz, LADG) has been in force since 2020. It applies to public-law actions by state-Land-level public administration and public entities (including police and schools) and includes a complaints mechanism (Ombuds Office) for disadvantaged persons. The federal state of Berlin is obliged to compensate the discriminated person for any resulting damage including compensation for non-pecuniary damages. Those claims are subject to recourse to civil courts. Furthermore, recognized anti –discrimination associations may file for a ruling by the administrative court declaring an administrative act or practice discriminatory under the state anti-discrimination act, if there is a significance beyond individual concern.

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<sup>1</sup> This includes, for example, permit procedures for projects requiring an environmental impact assessment (EIA) or for industrial sites covered by the Industrial Emissions Directive.

<sup>2</sup> Further provisions in the field of environmental law: The Environmental Appeals Act (UmwRG) covers legal remedies in general, i.a. every means granted by the legal system for granting a right. The law is thus not only applicable to legal remedies against a court decision. It is applicable to formal legal remedies, e.g. objection, lawsuit, correction of judgment, supplement to judgment, and also to other forms of appeal, e.g. appeal, revision, complaint.

<sup>3</sup> Please see [https://e-justice.europa.eu/300/EN/access\\_to\\_justice\\_in\\_environmental\\_matters?GERMANY&action=maximizeMS&clang=en&idS\\_uibase=1&member=1 - tocHeader2](https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters?GERMANY&action=maximizeMS&clang=en&idS_uibase=1&member=1 - tocHeader2) for further information.

**c. in the field of consumer legislation;**In civil cases:

See above (answer to 1.a. “in civil cases”), there are no special remedies in the field of consumer legislation except for the possibilities laid out under question No. 7 (see below).

**d. in the field of employment legislation;**

As indicated on the relevant pages of the [European e-Justice portal](#), specialized labour courts are in charge of judicial jurisdiction in the field of employment legislation including discrimination in working life in Germany. (also holds for question 1 b).

Civil servants can make complaints. The service path must be followed in this context. In addition, they are entitled to pursue administrative remedies in actions arising out of the civil servant status.

**e. in other fields, including as regards non-judicial remedies.**In the field of sexual child abuse:

The Independent Commissioner for Child Sexual Abuse Issues offers a website, the “Sexual Abuse Help Portal” with an extensive nationwide database, which includes counselling centres, emergency services as well as therapeutic, medical and legal help services

The Independent Commissioner for Child and Sexual Abuse Issues also funds the nationwide “Sexual Abuse Help Line”, where professionals offer help and advice via phone as well as in writing.

In financial cases (other fields):

Judicial and non-judicial remedies for financial cases are laid down in the Fiscal Court Code (Finanzgerichtsordnung - FGO):

With regard to non-judicial remedies, the preliminary proceedings (section 44 Fiscal Court Code) can be mentioned.

With regard to judicial remedies, the following remedies can be mentioned:

- rescissory action (section 40 paragraph 1 Fiscal Court Code)
- enforcement action (section 40 paragraph 1 Fiscal Court Code)
- action for a declaratory judgment (section 41 paragraph 1 Fiscal Court Code)
- reformatory action or application (section 41 paragraph 2 Fiscal Court Code)
- Action for a declaration of continuation (section 100 paragraph 1 Fiscal Court Code)
- preliminary legal protection (sections 69, 114 Fiscal Court Code)

If a party of financial court proceedings disagrees with the judgment or a decision, it may contest the judgement by the remedies provided by the Fiscal Court Code (e.g. appeal on points of law pursuant to sections 115 seqq.; complaint and complaint regarding a hearing pursuant to sections 128 seqq.).

Non-judicial remedies:

Furthermore, there are different non-judicial remedies available in Germany:

a.) Consumer Conciliation Bodies

28 Consumer Conciliation Bodies and the Federal General Conciliation Body offer a quick, impartial and effective dispute resolution between consumers and businesses. The dispute resolution is free of charge for consumers where there is a legitimate reason for bringing a case before the Consumer Conciliation Body.

### b.) Out-of Court-Mediation

Out of Court Mediation is widely available. The services are generally provided by private mediators whose services are to be paid for by the parties.

### c.) In-Court Mediation

Upon agreement with the parties, courts may refer proceedings to an in-court mediator if they consider consensual dispute resolution to be appropriate. The costs of this mediation are then included in the court costs.

### d) Arbitration

There are numerous providers for arbitration competing on the free market. Ad hoc arbitration without the support of an institution is equally possible.

### In the field of ecclesiastical law:

The churches' right to self-determination is guaranteed by the constitution in Article 140 of Germany's Basic Law (*Grundgesetz*, GG) in conjunction with Article 137 of the German Constitution of 11 August 1919 (*Weimarer Reichsverfassung*, WRV). These articles grant churches the right to organise their own affairs through internal law. In order to guarantee legal certainty in the area of internal ecclesiastical law, the Protestant and Catholic churches in Germany, among others, have established their own jurisdictions. Examples for jurisdictions of religious communities: The Evangelical Church in Germany (EKD) has its own constitutional court (*Verfassungsgerichtshof der EKD*) as well as a court of first instance (*Kirchengericht*) and a court of appeal (*Kirchengerichtshof*). Within the Roman Catholic Church there is, among other things, jurisdiction in marital matters ~~as well as the church labour court (*Kirchlicher Arbeitsgerichtshof*)~~. The Central Council of Jews in Germany has established a court of first instance (*Gericht*) and a court of appeal (*Gerichtshof*) as internal jurisdiction for the Jewish community.

### In the field of sports:

The following remedies are available for doping violations:

For disciplinary proceedings in anti-doping disputes that are pending before the disciplinary bodies of the sports associations (association jurisdiction), an appeal to the German Sports Arbitration Court of the German institution for arbitration (DIS) is possible. This is always the case if the sports association has not transferred the result management to the National Anti-Doping Agency (NADA)<sup>4</sup>.

It depends on the legal and procedural rules of the respective sports association whether another internal disciplinary body within the association or the German Sports Arbitration Court at the DIS is set as the appellate instance (e.g. German Football Association (DFB) Sports Court in the first instance and DFB Federal Court as the appellate instance).

If ~~NADA~~ carries out the results management/disciplinary proceedings for the sports associations, the first instance disciplinary proceedings in anti-doping disputes are usually pending directly with the German Sports Arbitration Court. Appeals against the decision of the German Sports Arbitration Court can be lodged with the Court of Arbitration for Sport (CAS) in Lausanne. However, this is dependent on the conclusion of a corresponding arbitration agreement.

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<sup>4</sup> In the reference period of the Anti-Doping Report 2022/2023, 51 of the 56 sponsored German sports associations (not counting 5 associations with special tasks) transferred the implementation of the results management and disciplinary procedure to NADA. 5 associations have not done this so far.

## **2. In your view, does your Member State provide information on the available remedies, and the steps to be taken during a judicial process / when accessing non-judicial remedies**

### **a. To parties of criminal proceedings;**

The German Federal Ministry of Justice provides information to parties on the available remedies. For example, it provides information for persons detained in criminal proceedings in almost 50 languages to the criminal prosecution authorities of the federal states (police and public prosecutors).

Furthermore, the leaflet "Opfermerkblatt" ("I am the victim of a crime. What are my rights?"), published by the Federal Ministry of Justice, gives a short overview of victims' rights. It is available online barrier-free, in 29 foreign languages and in Simple Language. More detailed information for crime victims in criminal procedures can be found in the brochure "Opferfibel" (Victim Primer), which is covering all stages of the procedure and the different roles a victim may have in the procedure (e.g. witness, joint plaintiff). Furthermore, it gives information on victim compensation and offers samples for letters in different situations (e.g. a written criminal complaint, a complaint against discontinuation of proceedings, etc.) Finally, it lists contact addresses and phone numbers for victims both on a federal level and in the Federal States ("Länder").

The central victim protection platform of the Federal Ministry of Justice ([www.hilfe-info.de](http://www.hilfe-info.de)) contains information on all victim-related issues after a crime, including assistance and counselling options, financial, practical, psychological and forensic medical support services, and the course of criminal proceedings. Victims can use a search engine finder to find a victim support organisation in their area. The victim protection platform also contains numerous video and audio interviews as well as explanatory videos to make the information easily accessible for victims. The victim protection platform is available in German and English.

The Ministry of Justice provides a pamphlet outlining information about these services on its website. The brochure "Ich habe Rechte" (I have rights) is a detailed guide for young witnesses that offers them information on criminal proceedings and their role as a witness.

In general, it should be noted that, because the steps to be taken during a judicial process depend on the individual case, the information on what legal remedies should be sought is to be assessed by a lawyer advising the person concerned.

Pursuant to Section 35a of the Code of Criminal Procedure, upon notification of a decision, which is contestable by way of appellate remedy within a given time limit, the person concerned is to be informed of the options for contesting such a decision and of the relevant time limits and the procedures prescribed. Therefore, criminal courts issue information on appeals or legal remedies to the persons concerned. However, the individual courts or the Federal States are responsible for the form of this information. Section 406i of the Code of Criminal Procedure (CCP) stipulates that victims must be informed of their rights under Sections 406d to 406h CCP. This includes the right under § 406e paragraph 5 CCP to apply for a court decision if the public prosecutor's office has refused to view the files.

When juvenile criminal law is applied, the general provisions of the Code of Criminal Procedure are complemented by Sections 67a, 70a and 70b of the Youth Courts Act. These demand additional detailed information addressed - in a manner which corresponds to the person's age and state of development and education - to the young defendant and his or her parents, guardians and legal representatives.

### **b. To parties of civil proceedings;**

Pursuant to Section 232 of the Code of Civil Procedure, basically every contestable court decision must contain information on the legal remedy available and on the court before which the remedy is to be filed, as well as on the time limit and form to be observed.

**c. To parties of administrative proceedings;**

For administrative court proceedings, the information is laid down in section 58 Code of Administrative Court Procedure and for financial court proceedings in section 55 Fiscal Court Code. The deadline period for an appeal or another legal remedy shall be initiated only when the party concerned has been informed in writing or in electronic form of the appeal, the administrative authority or the court at which the appeal is to be lodged, the seat and the deadline to be adhered to. Pursuant to section 117 paragraph 2 no. 6 Code of Administrative Court Procedure und section 105 paragraph 2 no. 6 Fiscal Court Code the judgment shall contain the notification of appeals.

For administrative proceedings concerning the environment, information can be found for example [here](#) or [here](#).

On a Federal State level, especially the websites of the administrative courts, the social courts and the financial courts in some federal states like Baden-Württemberg provide information on available remedies and the steps to be taken during a judicial process.

**d. Persons accessing non-judicial remedies.**

The German Consumer Conciliation Bodies as well as the Federal General Conciliation Body maintain websites on which consumers and companies can inform themselves about the procedure and any costs incurred. In addition, the Federal Ministry of Justice has published information brochures for companies and consumers on the conciliation procedure. The brochures are accessible online and barrier-free.

**Please provide more information, including examples of good practice you consider effective.**

The Independent Commissioner for Child Sexual Abuse offers a website, the “Sexual Abuse Help Portal”, which provides extensive information regarding the topic of child sexual abuse. It includes information on legal options and proceedings such as civil and criminal proceedings as well as information on how to receive final aid.

In 2023, the Federal Anti-Discrimination Agency (FADA) was allocated a dedicated budget of 5 million Euros to set up a new funding program for civil society support of victims of discrimination. The aim is to establish civil society-based legal advice centres across Germany, particularly in underserved regions. With co-funding from the Federal States (“Länder”), FADA was able to grant funding to 35 projects. The budget committee of the German Parliament (Bundestag) has asked the Federal Government to work towards an agreement between the Federal level and the Federal States to ensure a sustainable infrastructure for CSO-based legal advice centres.

A recent survey has shown that only a minority of people in Germany are aware of the General Equal Treatment Act and of the existence of an equality body. In response, FADA plans a publicity campaign for the autumn of 2023 to raise awareness of the legal protection that the General Equal Treatment Act offers and of the remedies that exist for individuals, who experience discrimination.

### 3. In your view, does your Member State use digital tools to facilitate access to justice?

a. Yes

b. No

**If yes, please provide more information on the tools available and your experience on their relevance. Please provide examples of good practice you consider effective.**

Electronic communication has become an integral part in German justice. Electronic transmission of documents is mandatory for lawyers, authorities and legal entities under public law. Everyone else may use electronic legal transactions voluntarily. However, only certain transmission channels are legally permitted. In particular, electronic documents cannot be submitted simply via email. To ensure the integrity and confidentiality of the transmission and to identify the communication partner securely, more legal regulations are necessary. Pleadings, applications and other documents may only be submitted digitally via so-called electronic legal transactions (in short: ERV), which also includes technical requirements on electronic documents and digital filing. The specific technical standards are specified and kept updated regularly on [www.justiz.de](http://www.justiz.de).

A formally effective transmission is possible for citizens and organizations in the following ways:

- a) The special electronic mailbox for citizens and organizations (in short: eBO) enables sending and receiving of electronic documents. This tool is available as a software product and can be downloaded and installed locally on a client computer device. After completion of the registration process, the user is able to communicate digitally with the judiciary, authorities, lawyers, tax consultants and notaries. Currently, eBO is the most widely used communication tool for the digital access to German justice for citizens and organizations.
- b) The so-called "De-Mail" with confirmation of the secure registration or with a qualified electronic signature is currently the second permitted way to digitally access the courts and public prosecutor's offices. However, De-Mail mailbox must be able to send a sender-confirmed De-Mail. The De-Mail addresses of the courts and public prosecutor's offices are stored in the public directory service and on the websites of the judicial authorities.
- c) Later in 2023, a new approach to further facilitate access to justice will be provided via a web-based tool called "Mein Justizpostfach" (my judicial mailbox, in short: MJP). As a part of the central tool for online administrative services of public bodies (BundID), MJP will provide user-friendly access to secure digital communication between citizens and the judiciary. Moreover, the Ministry of Justice is pursuing a project for electronic assistance and electronic submission of applications to courts ("Digitale Rechtsantragstelle"); the pilot stage with a single type of application is scheduled for 2023, as well. Additionally, another project by the Ministry of Justice is aiming at introducing online civil court proceedings, i.e. a procedure using digital tools to create a more citizen-friendly access to the civil courts for the assertion of small claims.



#### **4. In your view, which of the following measures are available in your Member State to remove language/ cultural/ physical/ financial/ other barriers for people accessing remedies:**

##### **a. Interpretation and translation services;**

According to section 185 (1) German Courts Constitution Act an interpreter shall be called in, if persons are participating in the hearing who do not have a command of the German language. For communication with a hearing-impaired or speech-impaired person during the hearing, see below. In criminal proceedings, according to section 187 (1) German Courts Constitution Act, the court shall call in an interpreter or a translator for an accused or convicted person who does not have a command of the German language or is hearing impaired or speech impaired, insofar as this is necessary for the exercise of his rights under the law of criminal procedure.

##### **b. Measures to facilitate access by persons with disabilities, such as measures relating to accessibility of court houses and other resources for people with disabilities;**

In the Federal Republic of Germany the equal participation in judicial proceedings for persons with disabilities is safeguarded by the German Constitution (Grundgesetz - GG). This right of equal participation arises from the prohibition of discrimination under Article 3(3) sentence 2 GG, the right to be heard before a court (Article 103(1) GG), the right to effective legal protection (Article 19(4) GG) and the right of a fair and constitutional trial (Article 2(1) and Article 20(3) GG).

For persons with hearing or speech impairments, section 186(1) sentence 1 of the Courts Constitution Act (Gerichtsverfassungsgesetz - GVG) provides that with regard to the communication of the court, persons with disabilities can choose the suitable way of communication. Therefore, the communication can take place in oral or written form or with the assistance of a person enabling communication. In addition to that, it is stipulated that the court must provide suitable technical aids for oral and written communication (section 186 (1) sentence 2 GVG). For example, the use of a software that automatically creates subtitles for persons with hearing or speech impairments can be considered such a suitable technical aid. The hearing-impaired or speech-impaired person shall be advised of his or her right to choose.

Pursuant to section 191a GVG, persons with a complete loss of sight or low vision may submit pleadings and other documents to the court in a form that is perceptible to them. They can also request that pleadings and other documents of court proceedings be provided in an accessible form. In addition, electronic documents must also be made accessible to blind or visually impaired persons.

Some German Federal States have enacted additional regulations on barrier-free access to justice:

Improving the participation of people with disabilities is a long-term and ongoing process and the accessibility of judicial buildings plays an important role in ensuring citizen-friendliness and public access to court hearings, as well as the best possible working conditions for employees and the participation of members of the judiciary with disabilities. This is a fundamental task for the administration on federal state level.

In the Federal State Baden-Württemberg, for example, in all new public buildings, conversions and extensions, the State Property and Building Administration is obliged to take into account the needs and legal requirements of accessibility. In the same way, the interests of persons with disabilities must be duly taken into account in the renovation and modernization of public buildings.

The Ministry of Justice of the Federal State of Lower Saxony has trained 19 contact persons for inclusion (AP Inklusion) for its division. With a few exceptions, mostly due to renovation work, all 144 offices have been inspected by "AP Inklusion" and checked for their accessibility. In some cases where barriers were found, a

report has been prepared and made available to the offices. The offices were then required to eliminate the deficiencies within the available budget and to implement improvement suggestions by "AP Inklusion". The Ministry of Justice of Lower Saxony receives regular reports on the measures taken.

In the Federal State of Saxony, barrier-free accessibility and usability of public buildings are enshrined in both the Saxon Inclusion Act (SächsInklusG) and the Saxon Building Code (SächsBO), thus establishing the legal framework for the accessibility of public buildings. Measures to enhance accessibility can be both structural/technical and organizational in nature. The identification of appropriate measures for eliminating barriers in public buildings is done on a case-by-case basis, taking into account the protection objectives, needs, and contextual factors, often in conjunction with larger construction projects. The primary focus is on the areas publicly accessible for visitors and citizens.

In line with the general legal development of building requirements, accessibility is also subject to this progression. Consequently, with each substantial new, remodeling, or expansion construction project, the accessibility of public buildings is enhanced continuously. Examples of measures to improve structural accessibility include the installation of elevators, accessible toilets, multi-sensory intercom systems, high-contrast walking surfaces or step markings, tactile signage, and induction loop systems.

For the Federal State of North-Rhine-Westphalia, the "Guidelines for barrier-free construction in the courts and public prosecutor's offices in North Rhine-Westphalia" represent a set of rules for removing obstacles to access or enabling access to court buildings, especially for people with disabilities. It was signed on April 28, 2023. The guidelines constitute a binding concept for the implementation of legal requirements for barrier-free construction in the realization of construction projects for courthouses and public prosecutors' offices in North Rhine-Westphalia, coordinated between the staff committee of disabled persons and the judicial administration with the participation of experts for barrier-free construction. It mainly focuses on new buildings and extensions, but may also apply to measures in existing buildings. This is the case, for example, when it comes to significant changes that directly affect accessibility (entrance, parking, stairwell, elevators, signage, etc.). In the case of non-essential changes, the regulations of the guideline apply to the extent that measures for accessibility do not require disproportionate additional efforts. In the event of deviations from the guideline's regulations due to specific structural conditions, alternative solutions shall be examined and documented. For measures to improve accessibility in existing buildings, budget funds are provided for in the budget for the so-called "small building measures".

In the justice portal of North-Rhine-Westphalia (NRW), people with mental or cognitive impairments can get an overview in "simple language", for example of the structure of the [NRW justice website](#). The websites of the judicial institutions in North Rhine-Westphalia also contain basic content in "simple language" similar to a "dictionary" explaining terms and tasks of "courts" or "district courts"<sup>5</sup>. In addition, persons with hearing impairments are provided with the essential information by means of a video in German sign language in the [NRW justice portal](#). The video also serves as a support for navigating through the main sections of the justice portal<sup>6</sup>. In general, the websites of the judiciary of the state of North Rhine-Westphalia are designed according to the requirements of accessibility.

In the federal state of Bavaria, although the courthouses of the Bavarian Administrative Courts are mostly located in ancient, listed buildings, various renovations in the past, e.g. the installation of elevators and ramps, ensure that all courts now have at least one barrier-free courtroom for hearings and barrier-free access to the rest of the buildings and public areas. The access to state authorities and other institutions is regulated by the Bavarian Disability Equality Act (Bayerisches Behindertengleichstellungsgesetz). This law stipulates that state

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<sup>5</sup> For example: [http://www.ag-duesseldorf.nrw.de/beh\\_sprachen/beh\\_sprache\\_LS/index.php](http://www.ag-duesseldorf.nrw.de/beh_sprachen/beh_sprache_LS/index.php).

<sup>6</sup> A corresponding video can also be found on the websites of the judicial institutions, e.g. ([http://www.ag-duesseldorf.nrw.de/beh\\_sprachen/gebaerdenvideo/index.php](http://www.ag-duesseldorf.nrw.de/beh_sprachen/gebaerdenvideo/index.php).)

institutions must not discriminate against people in administrative procedures solely on the basis of their disability. Therefore, different measures and ordinances are implemented to facilitate access and communication with and for people with disabilities: Persons with hearing impairments are allowed to use various forms of communication assistance, to facilitate access to state authorities and the administrative process. This includes sign language interpreters. To this end, Bavaria has introduced legal ordinances (Bavarian Communication Assistance Ordinance; Bayerische Kommunikationshilfverordnung) to regulate the entitlement to compensation of the costs of these communication aids. For people with visual impairments, access to administrative documents as well as interaction with state prosecutors is made possible through various forms of written, electronic, acoustic or other types of communication. The right to use this form of accessible documents is regulated by the Bavarian Document Accessibility Ordinance (Bayerische Dokumentenzugänglichkeitsverordnung). To facilitate access to administrative processes and documents for people with cognitive disabilities, institutions should use a form of simple language.

With the program called "Bayern barrierefrei", the Bavarian Government is implementing its declared goal of making Bavaria barrier-free in all public spaces and in all local public transport, and is actively removing barriers in its own area of responsibility. To this end, the Bavarian Government is providing funding of 935.4 million euros from 2015 to 2022 and a budgeted 153.6 million euros for 2023.

The Bavarian Government has prioritized six fields of action that are of fundamental importance to people's everyday lives: Mobility, education, state buildings with public access, information and communication, further training for employees in the state sector, and health and care.

The field of action "State buildings that are open to the public" deals with the existing buildings of the Free State of Bavaria that are open to the public. This includes, among others, the courts. The focus is primarily on barrier-free access as well as on barrier-free parking spaces and a barrier-free sanitary rooms. In addition, concepts are drawn up, continuously updated and implemented for all publicly accessible state buildings in order to achieve the best possible barrier-free usability of the services offered in the building.

Another focus is barrier-free communication. The goal here is to support the departments in expanding and optimizing their offerings in German Sign Language and simple language. To this end, two framework agreements have been concluded for the entire Bavarian Government, which can also be accessed by the courts. With the framework agreement on German Sign Language, videos can be translated into German Sign Language. The framework agreement on simple language makes it possible to translate texts and forms as well as explanations of notices or general decrees into simple language without additional bureaucratic effort.

New buildings, conversions and extensions in the area of the courts and judicial authorities are to be designed to be barrier-free in accordance with the generally recognized rules of technology. In addition, any existing barriers in existing buildings are to be removed. The specific measures depend on the respective local conditions. The Bavarian Tax Courts have taken measures to ensure access to the courthouse for people with walking disabilities.

### **c. Legal aid;**

#### In civil, labor, administrative, finance, "social and family" cases:

Germany's provisions on legal aid, which are applicable before civil, labour, administrative, finance, social and family courts, are laid down in section 114 and following of the Code of Civil Procedure.

German law provides for a means and a merits test. If a party is unable to bear the costs of court proceedings and – if necessary – of a lawyer in full or in part due to his or her economic and personal circumstances, he or she can apply for legal aid to the court, if the party has a reasonable prospect of success in the proceedings and the proceedings are not wilful.<sup>7</sup>

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<sup>7</sup> The parties have to use their income. The term "income" comprises all earnings in money or in money's worth. Nevertheless, several positions are to be deducted in determining the parties' income. Moreover, the party has to use its assets to the extent this can reasonably be expected of it. The details are laid down in section 115 of the Code of Civil

Criminal proceedings:

An accused party is entitled to court-appointed defence counsel according to sections 140 et seq. of the German Code of Criminal Procedure. In Germany, the assignment of legal counsel does not depend on a person's financial situation. Rather, in a number of cases listed in section 140 of the German Code of Criminal Procedure, the law considers defence counsel to be generally mandatory. In those cases, defence counsel is appointed if the accused explicitly makes an application therefor after receiving instruction (section 141 para 1 of the German Code of Criminal Procedure). Moreover, regardless of whether or not an application is made, defence counsel is appointed under certain additional conditions (listed in section 141 para 2 of the German Code of Criminal Procedure), such as for example if it becomes apparent, in the course of a preliminary investigation, that the accused is unable to defend himself or herself.

All victims who are witnesses, can be assigned a lawyer as legal assistance for the duration of their testimony, if they are vulnerable and, therefore, unable to exercise their rights themselves (section 68b (2) Code of Criminal Procedure). Victims of certain crimes, especially severe violent or sexual crimes, who are entitled to be joint plaintiffs, have the right to be assigned a lawyer free of charge by the court already before they join the indictment of the prosecution (sections 397a (1), 406h (3) sentence 1 no. 1 Code of Criminal Procedure). In cases of other crimes, e.g. assault, there is the possibility to receive legal aid when victims are financially in need. Access to legal aid is then conditioned by a means test (section 397a (2) Code of Criminal Procedure). During criminal proceedings, victims of severe violent crimes, who are entitled to be joint plaintiffs and have the right to a lawyer free of charge, can also be assigned a psychosocial assistant without having to cover the expenses.

Outside of judicial proceedings:

Legal aid outside of judicial proceedings (legal consultation and presentation) is a relevant legal support service to remove financial barriers.

Legal aid outside of judicial proceedings is granted under the Act on Legal Advice and Representation for Citizens with Low Income (Beratungshilfegesetz – BerHG). The requirements are: (i) the applicant, based on his or her personal and economic circumstances, is unable to raise sufficient funds, (ii) there are no other possibilities for legal aid available which the applicant can be reasonably expected to use (iii) the use of legal aid does not seem frivolous (section 1 (1) BerHG). The application is to be filed with the local court at the place of general jurisdiction of the applicant (section 4 (1) sentence 1 BerHG).

If granted, the legal aid is provided by lawyers or other competent persons/authorities according to section 3 BerHG. Lawyers are under a legal obligation to provide legal aid. They may only decline it in individual cases if there is an important cause (section 49a of the Federal Lawyers' Act). The due and proper exercise of the profession by lawyers is monitored by the competent local bar association.

The cost of legal aid is paid for by the state. The recipient only has to pay a small fee of 15 Euros (section 44 in connection with number 2500 of annex 1 of the Lawyers' Compensation Act).

**d. Arrangements to refer vulnerable victims, such as victims of domestic or gender-based violence, to support services;**

The competence to establish referral mechanisms to refer vulnerable victims lies within the German Federal States (Länder). As to transnational (trafficking) cases, referral structures at federal level are in place. Law enforcement authorities or public prosecutor's offices inform victims of violent crimes about their rights and about public and civil society support services, for example, using the information sheet for crime victims published by the Federal Ministry of Justice. Assistance and a referral is also provided, for example, through the

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Procedure. For the purpose of examination of a party's application, the party is obligated to submit a declaration of its economic and personal circumstances, e. g. family background, job status, financial circumstances, earning capacity, financial burdens and potential legal expenses insurances. Therefore, a standard form is made available for applicants.

appointment of victim protection officers at police stations, the establishment of witness support centres, accommodation facilities for abused women and girls and the appointment of commissioners for victims' rights at State level.

With regard to victims of human trafficking, there is an extensive network of specialized counselling centres, comprised of NGOs that provide specialist support to victims and people with risk of being a victim. This support ranges from (digital) street work, to legal counselling and help with authorities and accommodation. They also inform potential victims during police investigations and help police with and after the identification of victims. In almost all Federal States, there are so-called cooperation agreements between authorities and the specialized counselling centres. These list inter alia procedures and notification chains and improve cooperation between authorities and civil society. They function as referral mechanisms. In some Federal States (Länder), the authorities call in the specialized counselling centres, when they are planning and conducting raids in order to promptly refer (potential) victims to the support services. The specialized counselling centres are usually (co-)funded by the respective Land or municipality.

On the federal level the German NGO "Network against Trafficking in Human Beings" (KOK) is the umbrella organization of the specialised counselling centres and it facilitates networking, the exchange of knowledge, (political) advocacy and research. In summer 2022 the KOK and the Federal Police (BPol) signed a cooperation agreement, that, inter alia, foresees the prompt information of (potential) victims about the specialized counselling centres' services as well as the swift inclusion of the local specialized counselling centres of identified victims through the Federal Police.

The Federal State of Saxony operates a counselling centre for victims of human trafficking for the purpose of sexual exploitation, forced prostitution and for victims of violence in the name of "honor". The Federal State of Saxony, in addition to two counselling centres in the cities of Leipzig and Dresden, also operates two shelters. "KOBRAnet" offers victims qualified psychosocial counselling and support as well as safe accommodation in the shelters. If necessary, victims are accompanied to criminal proceedings and, if required, offered assistance for a safe return to their country of origin. In addition to providing care in the shelters and staffing the counselling centres, "KOBRAnet" conducts outreach work in the five largest cities in Saxony. As is the case in most other Federal States, a cooperation agreement provides the basis for collaboration between the organization and the Federal Police (BPol). KOBRAnet receives annual funding of €311,831 from the Land Saxony through the Equal Opportunity Funding Directive of July 23, 2021 (SächsABl. p. 1027).

#### Women affected by violence

Women, who are affected by violence need fast, unbureaucratic help as well as qualified advice and support. As a low-threshold offer, the nationwide help hotline "Violence Against Women" is available for counselling women affected by violence. The "Violence Against Women" help hotline is a free, round-the-clock, 19-languages, anonymous counselling centre. With its barrier-free counselling services, it is also expressly aimed at women and girls with disabilities or impairments.

In Germany, assistance and support facilities, such as women's shelters, are in the responsibility of the Federal States and municipalities. Women affected by violence and their children have access to around 400 women's shelters and 40 women's refuges (sheltered houses) with more than 6.000 places, most of which are run by nongovernmental organisations (e.g. charities or registered organizations) or municipalities. In addition, there are around 750 specialized counselling centres for violence against women. In addition to these nationwide services, there are other offerings, such as special aftercare services following a stay in a women's shelter (second stage services). In specialised counselling centres and women's shelters, permanent qualified (female) professionals usually offer counselling, psychological care and other services, such as help with visits to authorities, sometimes supported by external (volunteer) staff. It is common for female volunteers to be involved in the work.

In all Federal States, there are special regulations and instructions for combating domestic violence and also for assessing the risk situation when the police is in charge. An initial assessment of the threat situation is inevitably carried out by the police officers as part of the initial police intervention. In addition to the documentation, this is the basis for police intervention and the subsequent targeted further care for the victim. External police authorities are involved in all Federal States. Examples include: Judiciary and Social Services of the Judiciary, Youth Welfare Office, Social Welfare Office, Foreign Authorities, Public Order Office, Psychosocial Counselling centers, Trauma Outpatient Clinics, Weapons Authorities, Child Protection Services, Probation Service, Job Centers. Victim Counselling, Offender Work Facilities. Through the well-functioning cooperation with the existing help systems, an effective measure was created to protect women and children from further violent assault in the domestic sphere.

#### **e. Fast-track proceedings available for certain vulnerable parties, such as in cases involving sexual violence or children;**

According to Section 48a of the German Code of Criminal Procedure account is to be taken at all times of the particular vulnerability of the witness if he or she is also the aggrieved person. The particular vulnerability is to be considered throughout hearings, examinations and other investigatory acts concerning the witness. Furthermore, hearings, examinations and other investigatory acts concerning acts to the detriment of a minor aggrieved person must be conducted in a particularly expedited manner insofar as this is necessary to protect the minor aggrieved person.

Furthermore, towards children with criminal liability ("juveniles", at least 14 but not yet 18 years old) as accused persons the German Youth Courts Act (ss 76-78) provides for a simplified procedure under certain conditions which allows a fast-track handling of the case. It shall not be applied if the matter is not suitable for this procedure, esp. if it is probable that youth penalty will be imposed or if the taking of comprehensive evidence is necessary. It is applicable only in other than grave cases with the expectation of minor sanctions or measures. Besides that, as a general principle, juvenile criminal proceedings have to be carried out fast-track as far as possible and adequate under the circumstances of the individual case.

#### **f. Other measures.**

In the field of family matters (such as parental custody, contact) and matters of Non-contentious Jurisdiction (such as matters of protection against violence, Custodianship Matters) there are measures available mentioned under a.), c.) and e.). The Courts Constitution Act (Gerichtsverfassungsgesetz) permits the use of an interpreter for all proceedings involving persons who do not speak German or the use of a person to communicate with a person with a hearing or speech impediment (cf. sections 185, 186 GVG). In principle, legal aid is also available for these proceedings (sections 76 et seq. of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in conjunction with sections 114 et seq. Code of Civil Procedure - ZPO). However, the granting of legal aid depends on the individual case, in particular on the prospects of success and the neediness of the applicant. The Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction also allows to take an Interlocutory Order in the form of a temporary injunction in urgent cases. In addition, all proceedings concerning the surrender, residence and contact of a child, as well as the endangerment of the child's well-being, shall have priority and the proceedings shall be handled in an expedited manner.

**Please provide more information on the measures available and your experience on their relevance. For instance, please provide examples of good practice you consider effective.**

In the field of the Act on Proceedings in Family Matters and in Matters of non-contentious Jurisdiction, the possibility of being able to take Interlocutory Order in an urgent situation represents a proven method for provisionally securing rights and assistance.

One example of a low-threshold service offered to victims of crime is the project “proactive” in Berlin (<https://www.proaktiv-berlin.org/>). The aim of the project is that those affected by crime receive an offer of support and do not have to seek help on their own. A service centre refers those affected to the appropriate counseling centre and/or victim support organisation, which then proactively contacts those affected.

To address language barriers, the Sexual Abuse Help Line is available in 19 languages.

**5. In your view, which measures has your Member State taken to ensure the justice system’s responsiveness to the needs of vulnerable and marginalised groups? Please provide examples of good practice you consider effective.**

In criminal cases:

As mentioned above (see answer to question 4e), all investigative measures relating to the affected person must always be carried out taking into account a possible special need for protection (section 48a Code of Criminal Procedure). This regulation applies to all stages of the criminal proceedings and affects the police, the public prosecutor's office and the court. In particular, the personal characteristics of the victim, the type of crime and the circumstances of the crime should be taken into account. According to section 406f (2) Code of Criminal Procedure a person whom the victim-witness trusts (this can be, inter alia, the spouse, a friend, a relative, an employee of a victim support organization, or a person who looks after the victim) and who has appeared to the interview, shall, at the request of the victim, be permitted to be present at the interview.

Section 406g of the Code of Criminal Procedure stipulates psychosocial assistance in court proceedings. Specially qualified and trained psychosocial assistants offer non-legal support, care for and accompany the victim before, during and after court proceedings and can give them general information e.g. about the course of the proceedings. Especially vulnerable grown-up victims of severe sexual or violent crimes can apply for an appointment of a psychosocial assistant free of charge. Minors under the age of 18, who have been victims of sexual crimes or certain violent crimes are entitled to apply for a psychosocial assistant, who is appointed free of charge by the court, without having to claim special vulnerability.

With respect to accused persons, it can be added that cases where defence counsel is mandatory (see above answer to question 4c) include a number of situations where an accused might have a mental illness (section 140 para 1 nos. 4, 5, 6 of the German Code of Criminal Procedure) or where an accused has a visual, hearing or speech impairment (section 140 para 1 no 11 of the German Code of Criminal Procedure) or, more generally, where it is evident that the accused is unable to defend himself or herself (section 140 para 2 of the German Code of Criminal Procedure). In the latter case, an application for defence counsel by the accused is not necessary.

As for children (who have reached the age of criminal liability = at least 14 years old) as accused persons in criminal proceedings:

Jurisdiction of special youth courts combined with special youth public prosecutors; the judges and prosecutors are to have appropriate education skills and training, as well as experience in the education and upbringing of juveniles, furthermore, knowledge of the areas criminology, education and social education, as well as youth psychology. The youth court assistance service (not part of the justice but of the child and youth welfare services) shall be involved at all stages of the proceedings against a juvenile. It shall highlight the supervisory, social and other aspects that are significant with regard to the goals and tasks of youth welfare in proceedings before the youth courts. For this purpose, they shall support the participating authorities by researching into the personality, the development and the family, social and economic background of the juvenile, and shall make a statement with regard to any potential particular vulnerability, as well as to the measures that are to be taken. And it shall support the young person throughout the proceedings. The application of juvenile criminal law is above all to counter renewed criminal offences on the part of a juvenile or young adult: In order to achieve this goal, the legal consequences, and with respect for the parental right of upbringing also the procedure, shall be orientated primarily in line with the educational concept. Juvenile criminal law provides for a differentiated set of sanctions and measures, esp. community based ones. Many special provisions on juvenile proceedings (for example concerning legal assistance, detailed information adequate to age and personal development about legal rights and the proceedings, involvement of the holders of parental responsibility, pre-trial detention), as also guaranteed by Dir (EU) 2016/800, pay respect to the vulnerability of young defendants.

In civil cases (see answer to question 4.c.):

If a party is unable to participate in civil court proceedings for personal reasons, there is the possibility for the party to transfer the power of attorney to someone else, according to Section 80-89 of the Code of Civil Procedure. The power of an attorney may be given to a lawyer. In civil court proceedings, where representation by a lawyer is not required by law, a party may also authorize certain other persons pursuant to Section 79 of the Code of Civil Procedure, who shall appear on behalf of the party and perform all procedural acts.

There is also the possibility for civil court proceedings that a party appears in the hearing with a counsel pursuant to Section 90 of the Code of Civil Procedure. Counsel may be anyone who is authorized to represent the party at the hearing in proceedings in which the party can conduct the legal dispute itself. Such counsel may also be admitted by the court if this appears relevant.

In family and custodianship court proceedings:

In family and custodianship court proceedings, a suitable guardian ad litem for minors or guardian ad litem is appointed to support children in certain proceedings concerning their person or affected adults in the proceedings as far as necessary (sections 158, 167, 174, 191, 276, 317 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). The guardian must identify the interests of the child or adult concerned and bring them to bear in the court proceedings and inform them in a suitable manner about the subject, the course and the potential result of the proceedings and shall accompany them during their hearing (sections 158b (1), 159 (4) sentence 3 and sections 276 (3), 278 (2) sentence 3 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). In addition, negotiations, discussions and hearings in family matters and in Custodianship Matters are generally not public (section 170 (1) GVG).

In addition, the Act on the Reform of Custodianship Law and Law of Legal Representation of Adults of 4 May 2021, which came into force on 1 January 2023, fundamentally modernised support law in implementation of the requirements of Art. 12 UNCRPD. In particular, the right to self-determination and the self-determined actions of adults in need of support are strengthened. On the one hand, the principle of necessity is better defined and judicial supervision is more strongly oriented towards determining the wishes of the person in need of care (sections 1814, 1821 German Civil Code-). Furthermore, more comprehensive and more addressee-related information of the person concerned is ensured right at the beginning of the proceedings (section 275 (2) Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). Finally, to ensure a



uniform quality of professional care, a registration procedure for professional court-appointed legal representatives as well as personal and professional minimum qualification requirements have been introduced.

Victims of domestic violence may apply for special measures of the court in accordance with the Violence Protection Act (Gewaltschutzgesetz), such as a ban on coming close and the sole allocation of the joint dwelling. These measures are also possible as restraining and protection orders. It is also possible to take into account a confidentiality requirement (such as the current address) when keeping the files or not to grant access to the files or only to a limited extent or to appoint a person authorised to receive service of process. Furthermore, it is possible to hear the parties separately.

In December 2019, the National Council against Sexual Violence against Children and Young People was constituted under the chairmanship of the Federal Ministry for Family Affairs and the Independent Commissioner for Questions relating to Sexual Abuse of Children (UBSKM). The National Council is the body in Germany whose members are committed to a partnership of responsibility for permanent and decisive action to protect children and young people from sexual violence and exploitation and for better support structures for those affected. Its task is to pool experience and energy in a long-term interdisciplinary dialogue and to develop concrete measures and implement them. Responsible persons from politics, science, professional practice, civil society and those affected are involved. The aim of the National Council is to further improve the framework conditions for a more child-friendly justice system. In July 2021, the National Council documented the results of its work to date in a joint agreement and agreed on important steps. The National Council's Child Friendly Justice Working Group has developed and published a "Practical Guide to applying child-friendly court proceedings".

Some institutions offer interdisciplinary case work in child matters. There are nongovernmental so called "childhood-houses" in different cities and children protection centres that support the interest of the child.

## **6. In your view, does your Member State have in place arrangements to facilitate access to justice by children? Please provide examples of good practice you consider effective.**

In general, access to justice by children is provided under the same terms as by adults. However, in some legal spheres, particular safeguards and arrangements are in place to overcome hurdles and barriers for minors. The Family Court is one example :it is competent to judicate, inter alia, about disputes between parents, parent and child or parents and other persons significant to the child with regard to issues of parental authority or contact. Under the Civil Code, the child him - or herself is entitled, as an individual right, to be in contact with a parent.

In Family Court proceedings, children are generally represented by their legal representatives (section 9 (2) Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). Once children have reached the age of 14, they are capable to act and to represent themselves in a proceeding (i.e. capable of acting without their parents) limited to cases about their civil law rights concerning their person – such as the child's right to contact with a parent. Furthermore, children over the age of fourteen have their own right of appeal, independent of substantive law, in all matters concerning their person (section 60 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). In general, the Family Court is also entitled to initiate a proceeding about the child's right to contact with a parent ex officio without a formal application. Furthermore, in child proceedings (e.g. parental custody, contact), the court must always hear the child in person, irrespective of his or her age, and obtain a personal impression of the child; this may only be dispensed

within strictly limited exceptional cases (sections 151, 159 (1), (2) Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). The hearing usually takes place without the presence of the legal representatives; however, if appointed, in the presence of the guardian ad litem of minor.

With regard to Childhood Houses of the World Childhood Foundation:

The Childhood Houses of the World Childhood Foundation are specifically oriented towards the needs of children and adolescents (under 18) who have been victims of physical assault or sexual violence. These are designed as child-friendly, multidisciplinary, outpatient drop-in centres for young victims of physical and sexual violence. Through close cooperation between doctors, psychologists, child and youth welfare services, police and the judiciary under one roof, repeated interviews or examinations of the young victims are to be avoided as far as possible. A Childhood House offers rooms for meetings and conferences, medical examinations, but also rooms equipped with the necessary technology for recording and transmission and therefore suitable for judicial interrogations. The first Childhood house in Germany opened in Leipzig in 2018, and there are currently houses amongst others in Berlin, Düsseldorf, Heidelberg, Ortenau, Flensburg, Hamburg, Schwerin and Munich. More houses are in the planning stage.

## **7. In your view, does the justice system provide the possibility for stakeholders to bring cases on behalf or in support of victims? If yes, in which areas of law is this possible? Please provide examples of good practice you consider effective.**

In criminal cases:

In Germany, the federal criminal prosecution authorities are responsible for the representation of the public in criminal proceedings. This includes the interests of stakeholders and victim support groups.

Victims of specific crimes can take an active role in criminal proceedings as joint plaintiffs (section 395 Code of Criminal Procedure). Joint plaintiffs have the right to be present during the trial, to ask questions, to request evidence and to appeal if the defendant is not convicted by the court. In cases of severe violent crimes, sexual crimes or crimes against life victims are entitled to be assigned a lawyer free of charge to represent them in court even before they have declared that they want to join the indictment (sections 397a, 406g (3) Code of Criminal Procedure). This right also applies to relatives of killed persons (i.e. children, parents, siblings, spouses or partners). The court may assign only one representative to several joint plaintiffs pursuing similar interests (multiple representation, section 397b Code of Criminal Procedure). This does not affect the rights of the joint plaintiffs and their representatives to be present and to participate.

In civil cases:

In the context of protection against violence under civil law, an application requirement of the (adult) victim is necessary, so that there is no possibility for stakeholders to bring cases on behalf of victims.

In the field of consumer legislation:

The justice system provides two possibilities for stakeholders to bring cases on behalf or in support of victims in the field of consumer legislation:

Since November, 1st, 2018 there is a model declaratory action for cases with large numbers of consumers that have been harmed by an infringement through an entrepreneur. Consumer protection organizations are authorized to file a model case proceeding against an entrepreneur aiming at clarification and determination of the core factual or legal issues, which are prerequisites for redress claims of several consumers. The filing of the lawsuit suspends the limitation period for consumer claims, once the consumers have entered their claims in a register (thus consumers do not have to bring their individual actions first). The registration is free of charge. The judgment (clarifying the key issues) will be equally binding for the entrepreneur and the registered

consumers. Hence, after a judgement in favor of the consumers, the entrepreneur will likely be ready to offer satisfaction of the consumers' claims. In case the entrepreneur is, however, reluctant to reimburse consumers for the damage, the consumers can assert their payment claims based on the findings of the declaratory judgement by appealing to a conciliation board, initiating a summary proceeding / default action or filing a payment action in order to obtain satisfaction of their individual claims.

The Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Official Journal of the European Union of 4 December 2020 L 409, p. 1 et seq., hereinafter: Directive) obliges the Member States of the EU to provide for two kinds of representative actions. Qualified entities must be entitled to bring actions for injunctive measures in their own name, through which infringements of consumer rights may be halted, and actions for redress measures, through which consumer rights may be enforced. The transposition of the Directive requires the creation of new rules on representative actions for redress measures, which as yet do not exist in German law. Rules on representative actions for injunctive measures, however, do already exist under the Injunctive Relief Act (Unterlassungsklagengesetz). The rules of the Injunctive Relief Act will be adapted in line with the Directive. The new rules will come into force later this year.

## **8. Which challenges or points of development have been identified in your Member State regarding effective legal protection?**

In 2016, the General Equal Treatment Act was evaluated. The evaluation of the Act recommended a number of changes to enhance the effectiveness of the law in protecting against discrimination. Thus, the current coalition agreement at the Federal Level says that the governing coalition will "ensure the independence of the Federal Anti-Discrimination Agency, adequately equip it with staff and budget and strengthen its competences". The coalition agreement also commits to a reform of the General Equal Treatment Act, aiming to "close gaps in protection, improve the access to justice and expand the scope" of the Act. In a first step, the position of the Independent Federal Commissioner for Anti-Discrimination Agency is directly elected by the bundestag for a five-year mandate, this strengthening the independence of the equality body's leadership from the Federal Government. The Federal Ministry for Justice intends to present outlines of the further reform of the Equal Treatment Act before the end of 2023.

According to a study, a decline in the number of cases in German civil courts can be observed. More citizens prefer to solve legal problems without the courts. The Federal Government is monitoring this trend closely. The authors of the study have also identified a lack of digitisation of the justice system as one of the possible reasons for the decline. In this regard, digital means of communication, services and proceedings shall be made broadly available in the justice area (cf. the answer to question 3 above).

## **9. Is there any significant, recent case-law from your Member States on ensuring effective legal protection, which you would like to mention?**

In the context of environmental law:

On cases regarding the environment: In its ruling of January 2023, the Federal Administrative Court decided that recognized environmental associations are entitled to take legal action against plans and programs in the event of possible infringements of European environmental law, even if the plan in question is not subject to an obligation to carry out a strategic environmental assessment (SEA) (as currently provided for in the UmwRG). The subject of the decision was an ordinance establishing a landscape conservation area, which reduced the

size of the area. As far as German procedural law links a right of action to the possibility of an SEA obligation, this restriction had to remain unapplied, since Art. 9 para. 3 of the Aarhus Convention requires that recognized environmental associations must have a right of action if European environmental law (here: the requirements of the Nature Conservation Protocol to the Alpine Convention) may be violated (BVerwG 10 CN 1.23 – ruling dated 26 January 2023).

As a result of the ECJ's ruling in the context of the Diesel proceedings (Case No. C-100/21), the German Federal Court of Justice (BGH) has revised its case law on the Diesel proceedings (judgments of June 26, 2023 - VIa ZR 335/21, VIa ZR 533/21 and VIa ZR 1031/22). The ECJ has ruled in its current judgment of March 21, 2023 that buyers may have a claim for damages even if manufacturers have only acted negligently in using an unauthorized defeat device installed in the vehicle, meaning that they are only slightly at fault. With this ruling, the ECJ contradicts the previous national case law and strengthens the rights of consumers.

**10. Are there any significant, recent decisions by equality bodies or other non-judicial remedies on ensuring effective legal protection, which you would like to mention?**

**No.**