Disability, Unemployment, Immigration: The Implicit Role of Solidarity in German Legislation

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Introduction

The recent crises had very different effects in the various European countries. Some countries were severely hit by the economic and financial crisis. Other countries had to cope with the unprecedented influx of refugees and migrants. In particular, southern European countries like Greece and Italy faced multiple crises. The different contextual conditions implied different repercussions for solidarity for the most vulnerable groups in society, including the unemployed, people with disabilities and refugees. Accordingly, the crises variously changed the environment for the legal entrenchment of solidarity with these target groups, thus affecting regulations on rights and entitlements and the implementation of the existing constitutional and legal entrenchment of solidarity for people in need. This chapter aims to shed light on the legal framework for solidarity with the unemployed, disabled people and refugees in Germany. It will show that the law and the implementation of rights and entitlements in the three fields were affected very differently by recent developments. In particular, it will argue that the disability law was not impacted by the recent crises. Instead, changes in the legal framework are mainly a reaction to the requirements defined by the UN Convention on the Rights of Persons with Disabilities. In contrast, rights and entitlements in the unemployment and asylum fields were influenced by recent economic developments and the challenges posed by the new transnational movement of migrants and refugees. Yet, those two fields witnessed a certain retrenchment and a growing conditionality in quite distinct ways. In fact, while the unemployment law and its implementation are characterised by a tightening of rights and entitlements – particularly for the long-term unemployed – despite the good overall socio-economic climate, the restrictions in asylum law are a direct reaction to the crisis experiences following the unprecedented arrival of refugees and asylum seekers since summer 2015.

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Before moving deeper into the legal framework in the three fields, the following section will elucidate the impact of the different crises in Germany. This will allow us to understand better the extent and the role of crisis experiences in this country. Overall, Germany was most notably hit by the global financial and economic crisis in 2009. But compared to other European countries, the impact of the crisis was dealt with punctually. In fact, after a slump in the financial and economic development at the beginning of the crisis, Germany recovered quickly and absorbed the economic shock rather well. This picture is consistent with many socio-economic and financial indicators. To start with, the government deficit witnessed a sharp increase in the years 2009 and 2010 (reaching a deficit -4.22% of GDP in 2010). But by 2011, these figures were already showing drastic reductions. The following years saw further improvements and a continuous trend towards balanced government accounts. What is more, in 2014, Germany even reached a government account surplus, which was further consolidated in the following years (+0.69 % of GDP in 2015) (OECD 2017a). The government's fiscal balance, i.e. the balance between government revenue and government spending, developed in similar fashion. At the beginning of the crisis, the German government had to increase its spending, which led to a negative fiscal balance. The negative trend was further reinforced due to a decrease in fiscal revenues in 2010 (resulting in a negative fiscal balance of -4.23% of GDP). Yet, after this drastic break, the German government's fiscal balance has recovered quickly since 2011, to the point where the country reached fiscal consolidation and a positive balance sheet in 2013. This positive development was further sustained the following year (with a positive fiscal balance of 0.55% of GDP in 2014) (OECD 2017b; c). Another economic impact was that German government debt increased since the outbreak of the crisis and reached a peak between 2010 and 2012. Overall, government debt stayed at about 85 percent of GDP during peak times. Hence, it remained comparably moderate in contrast to other EU countries. However, in contrast to a continuous average debt increase in the EU, German government debt started to recover after 2012. By 2015, government debt had decreased to 77.8 percent of GDP. Hence, it is approaching the pre-crisis level gradually (64.1% of GDP in 2007) (OECD 2017d).

In addition, the effects of the crisis can be observed with regard to economic indicators. In this respect, Germany witnessed a sharp decrease in the country's gross domestic product in 2009 and a quick and sustained recovery in the subsequent years (DESTATIS 2017a). Furthermore, domes-

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tic demand fell considerably in response to the economic crisis between 2007 and 2009. However, similar to the GDP, it quickly regained its strength in 2010 and 2011, eventually exceeding the pre-crisis demand during those two years, most probably as an effect of the government's stimulus measures. After this peak, demand witnessed a punctual drop-back in 2012, but has grown again since 2013, reaching the pre-crisis level by 2016 (OECD 2017e). Inflation followed a similar pattern. It declined markedly after the beginning of the crisis and approached almost the level of zero inflation in 2009, before it re-increased over the years 2010 and 2011. Once again, 2012 brought about a break in this development. Since then, inflation rates fell again, and by 2015, they almost reached zero inflation once again. Despite a marginal recovery, inflation also remained very low in 2016 (OECD 2010; 2012; 2015, 2017f). Going beyond inflation, other important indicators for Germany are the country's export figures. Given the importance of international exports, the German economy was affected considerably by the global economic crisis and the resulting weakening of global markets and external demand. Consequently, there was a steep drop in the foreign trade balance between 2008 and 2011, with a particularly sharp decline in 2009 (see Table 1). However, the country was prepared to return quickly to economic activity and strength when global markets and external demand started to recover. As a result, the foreign trade balance not only re-increased to its pre-crisis level, but it has also exceeded the pre-crisis export surplus since 2013 (DESTATIS 2017b). This trend was most likely facilitated by the weak Euro (IMF 2015, 4).

On the one hand, Germany's preparedness to return swiftly to production and its ability to respond to growing international demand was to a large degree buffered by government growth measures. These were geared to protect employment, maintain work force and know-how and, thus, stabilise businesses and industries during the crisis by means of short-term allowances for employees' reduced working hours (Giesen 2013; Schnitzler 2013). On the other hand, domestic demand was substantially supported by the two growth packages of the German government that introduced important stimulus measures mostly between 2009 and 2011. In part, domestic purchasing power and demand were supported by the aforementioned protection of employment by means of short-term allowances. Moreover, internal demand was triggered by various stimulus measures, including a car scrappage bonus, tax relief on income and corporation taxes for craftsmen and household services, higher child benefits and higher

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public spending on infrastructure (ibid.). In addition, the ongoing growth in demand and GPD of the most recent period might at least to some extent have been positively influenced by the 2014 pension reforms that introduced higher pensions for older mothers and earlier statutory pensions without reductions for workers who have worked a minimum of 45 years in regular employment (IMF 2015, 4).

When it comes to the socio-economic response to the crisis, it is remarkable that Germany experienced only a very modest increase in unemployment rates at the beginning of the crisis in 2009 (see Table 1). What is more, the punctual economic decline affected mostly male employees, while there was no negative impact on female and youth unemployment. Moreover, short-term work was implemented mostly in the manufacturing and building industries, thus affecting mostly male employees (Bundesagentur für Arbeit 2009). Subsequently, there was a relatively quick regrowth in employment figures and unemployment has declined steadily since 2010. This trend is even more remarkable because unemployment has now reached a long-term low since German reunification (IMF 2015, 19). Overall, the annual unemployment rate went down to 6.1 percent in 2016 (DESTATIS 2017c). Finally, it is striking that income inequality decreased during the economic crisis in Germany. In that period, it reached its lowest level in 2012 (Gini of 0.283), before it started to re-increase in 2013 (DESTATIS 2017d). In fact, in 2011 and 2012, Germany had less income inequality than the EURO-area average (excluding Cyprus and Malta). Hence, it seems that the growth packages of the German government (employment protection and economic stimuli, e.g. car scrappage bonus), together with redistributive policies have successfully counteracted and evaded the negative effects of the crisis on income distribution and social inequality (cf. also OECD 2011, 36).

While the economic crisis had only a temporary and limited impact and was absorbed quickly, the arrival of large numbers of migrants and refugees in 2015 and 2016 posed a more influential challenge on Germany. Estimates suggest that the country received about 1,000,000 migrants and refugees in 2015 alone. In the same year, almost 477,000 persons applied for asylum. This means that asylum applications suddenly more than doubled compared to 2014 (BMBF 2016). Compared to the entire European Union, asylum applications in Germany made up 35 percent of the total of asylum applications in all 28 EU countries (EUROSTAT 2017). What is more, in 2016, the number of persons applying for asylum in Germany rose to even more than 745,000 (BMBF 2017).

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*Table 1: Socio-economic indicators, Germany 2007-2016 (Sources: *=OECD; #=DESTATIS)*

	2007	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
general government deficit (% of GDP)*	0.19	-0.18	-3.23	-4.22	-0.96	-0.03	-0.19	0.29	0.69	/
fiscal balance (% of GDP)*	0.18	-0.17	-3.24	-4.23	-0.96	-0.13	0.09	0.55	/	/
government debt (% of GDP)*	64.1	67.9	75.3	84.5	83.9	86.6	81.6	82	77.8	/
GPD (chain index 2010 = 100) #	100.84	101.66	96	99.79	103.51	104.22	104.84	106.51	108.09	/
domestic demand growth rate (%)*	1.8	1	-3.1	2.9	3	-0.8	1	1.4	1.4	1.7
inflation (%)*	2.3	2.8	0.2	1.2	2.5	2.1	1.6	0.8	0.1	0.4
foreign trade balance (bn. Euro) #	195.4	178.3	138.7	154.9	158.7	193.2	197.6	213.6	244.3	/
total unemployment rates (%) #	9	7.8	8.1	7.7	7.1	6.8	6.9	6.7	6.4	6.1
unemployment rates – men (%) #	8.5	7.4	8.3	7.9	7.1	6.9	7	6.8	6.6	6.4
unemployment rates – women (%) #	9.6	8.2	7.9	7.5	7	6.7	6.7	6.6	6.2	5.8
youth unemployment rates (%) #	4.4	4.3	3.8	3.5	3.6	3.6	3.7	3.6	3.9	4.4
Gini coefficient #	/	0.302	0.291	0.293	0.29	0.283	0.297	0.307	0.301	0.302

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The unprecedented influx of refugees was largely the result of the government's decision of August 2015 to suspend the Dublin procedures and open the borders for refugees who had travelled the Balkan route via Greece and Hungary. What followed was perceived as an administrative crisis by many observers since public administration largely failed to cope with the newly arrived migrants and refugees. In many German cities, authorities were insufficiently prepared to register new asylum seekers, to provide for decent accommodation and supply with food and basic essentials such as sanitary/hygiene products and clothing during the first months of the new migration influx. On the one hand, civil society spontaneously stepped in to mitigate the situation and to provide for the most urgent needs and pressing problems in the initial reception centres and of people queuing for registration. Indeed, the initial "welcoming culture" during late summer and early autumn 2015 mobilised hundreds of thousands of Germans in solidarity with the refugees. On the other hand, the decision of the Merkel government to open the borders for refugees was strongly contested domestically. Already in late autumn of 2015, members of the governmental coalition started to raise concerns about Chancellor Merkel's liberal policy. What is more, public opinion took a quick turn over the New Year after alleged sexual assaults on women by immigrant men in Cologne. In the following, the initial enthusiasm of the German public decreased and gave way to a more critical climate of public concern. Moreover, support for extreme right-wing anti-immigration and Eurosceptic groups and parties (e.g., Pegida, AfD) gained momentum. The opening of the German borders in late summer of 2015 offered a "window of opportunity" for migrants and refugees, but the subsequent administrative dealings with registration, asylum applications and basic supply put a strain on both the asylum seekers and the whole system. Borders were mostly closed in March 2016 in response to the EU-Turkish deal and the closing of the Balkan routes. Not surprisingly, the number of new arrivals went down drastically. Nevertheless, the receiving and examining of asylum applications and the integration of accepted asylum seekers and refugees remained a major task. However, despite a certain envy expressed by members of other social groups (e.g. in regards to the public investments for German language classes, entitlements to basic health care and social benefits, accommodation or the fear of additional job competition), there was no major negative impact on the unemployed or disabled. Overall, entitlement to welfare benefits did not change due to the reception of refugees. Nonetheless, to a certain extent, unemployment and dis-

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ability organisations witnessed both a public and political shift away from their concerns towards the problems of refugees, together with a strong focus of private funding (e.g. of foundations or individual donors) on refugee issues.

Disability

Overall, solidarity with disabled persons is not expressly addressed in the German disability law. The main values and objectives directly targeted are equal treatment, equal participation, equal opportunities, inclusion and self-determination. Nevertheless, the principle of solidarity is indirectly enshrined in disability law in that it can be derived from the basic constitutional rights and principles. Here, the constitutional vision of humanity, the fundamental rights and the welfare state principle are of crucial importance. More specifically, the German disability law is determined by the following legal cornerstones: the Basic Constitutional Law, the Social Security Code and the German commitment to implement the UN Disability Rights Convention. Moreover, the Federal Law on Equal Opportunities for Disabled People and the General Equal Treatment Act are of key importance (BMAS 2015a, 620-622; Eissing 2007, 2-10; Welti 2010).

Constitutional Basic Rights

The Basic Constitutional Law (GG) comprises the following fundamental rights and principles that are of particular relevance for disabled people. To start with, the Basic Law guarantees the inviolable right to human dignity and obliges the state to respect, protect and promote it (Art. 1 para. 1 GG). In addition, it codifies the commitment to inviolable and unalienable human rights (Art. 1 para. 2 GG) and the right to free development of the personality (Art. 2 para. 1 GG). With respect to the latter, the Federal Constitutional Court has specified that this implies the obligation of the state to enable disabled people to make use of this fundamental right by providing material social welfare benefits that compensate for restrictions imposed by a disability (Eissing 2007, 4). Moreover, there is the constitutionally codified prohibition of discrimination (Art. 3 para. 3 GG) and the equal treatment requirement derived from it that entitles and obliges the state to grant particular support to disabled people (ibid., 5). Finally, the

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social welfare state principle (Art. 20 para. 1 GG) obliges the state to grant disabled people the possibility to participate in a social life despite disability-specific restrictions. Given the general openness of the social welfare principle, the material consequences of this requirement are, however, dependent on policymaking (Eissing 2007, 5). Similar to the national constitution, there are equality and protection norms for people with disabilities in the constitutions of the federal states (Welti 2010, 26).

Concretisation by Social Law

The Social Security Code codifies the social rights and entitlements of disabled people and people who are at risk of becoming disabled. Its provisions aim at social justice, social security and the effective exercise of the fundamental constitutional rights discussed above (Art 1 para. 1 SGB I). On the one hand, the Social Code comprises provisions in the various benefit sector-related parts (or Books) of the Social Code that are either relevant or specific to disabled people. On the other hand, there is Book IX of the Social Code regulating the "Rehabilitation and Integration of Disabled People". This special part of the Social Code, which came into force in July 2001, defines and consolidates the legal provisions in the various benefit sectors, thus establishing general principles for the application of social security law to the rights and entitlement of disabled people.

Basically, Book IX of the Social Code aims to shift the focus from care and provision to the self-determined participation of disabled people in society alongside the removal of barriers to equal opportunities (BMAS 2015b, 66). Book IX of the Social Code provides for three different types of integration assistance benefits, namely medical benefits for health rehabilitation, occupational benefits for the (re)integration into employment, and social benefits for the (re)integration into social life. Moreover, there are additional social assistance benefits (e.g., for travel expenses, household help, childcare) (BMAS 2015a, 624; BMAS 2015b, 66-67; Art. 5 SGB IX). Integration assistance benefits are geared to "empower […] [people who have a disability or are at risk of becoming disabled] to conduct their own affairs independently and on their own responsibility as far as possible" (BMAS 2015b, 66). Within the sectorally structured German welfare system, these benefits are provided by the different service providers (health care providers, Federal Labour Office, job centres, social welfare authorities, etc.), however, under the conditions of the sector-spe-

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cific legal frameworks. Hence, many of the sector specific regulations have been adjusted and unified by Book IX of the Social Code. On the other hand, the rights and entitlements of disabled people codified by Book IX are shaped and constrained by the sector-specific regulations and provisions (BMAS 2015a, 619).

By shifting the legal approach from care and provision to empowerment and participation, Book IX of the Social Code has introduced an important paradigm change in German disability law (BMAS 2015a, 621). This is also reflected in the definition of disabled persons, which is largely based on the approach proposed by the World Health Organisation. According to Book IX of the Social Code, a person is regarded disabled when his or her bodily functions, mental abilities or emotional health deviate, for more than six months, from the condition typical of a person of a given age so that his or her participation in society is impaired (Art. 2 para. 1 SGB IX). In this respect, individual impairments to participation in the various areas of society have gained an important role and became the point of reference in the legal framework.

Moreover, disabled people have access to all social security systems and benefits, provided that they comply with the respective requirements (health care insurance, unemploymentinsurance, basic security benefits for job-seekers, education and vocational training grants, social assistance, etc.). In addition to the general social security system, the social law foresees specific rights and entitlements to assistance for people who have or who are at risk of a physical, mental or psychological disability. Assistance is geared to either "avert, eliminate or reduce [a] disability [or to] prevent [a person's] condition from deteriorating or [to] alleviate its effects, regardless of the cause of [the] disability" (BMAS 2015b, 66). Furthermore, there are supplementary benefits. Since January 2008, disabled persons are entitled to a personal budget that allows them to choose and pay independently for services they need. Furthermore, special benefits are granted for people with severe disabilities. These include free public transport, reduced vehicle taxes, special parking facilities and tax concessions for disabled persons (standard allowance).

Typically, social integration assistance benefits were governed and provided by the social assistance system in terms of Book XII of the Social Code (Kuhn-Zuber and Bohnert 2014, 223). On the one hand, this implies that these benefits were dependent on the neediness of the claimant, i.e. income and property had a negative impact on entitlements. On the other hand, the provision of social integration assistance in welfare facilities was

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subject to economic efficiency and based on the avoidance of additional costs (Art. 13 Book XII Social Code). In December 2016, the German government reformed the law on Rehabilitation and Participation of Disabled People (Book IX) and adopted a new Federal Participation Act (Bundesteilhabegesetz), which is coming into force stepwise between January 2017 and January 2023. Basically, the new law aims to modernise the rehabilitation and participation law in line with the inclusion and self-determination objectives of the UN Convention and to further improve accessibility and the removal of barriers (BMAS 2017; cf. also DBR 2015). Moreover, social integration benefits will be separated from the means-tested social assistance system, thus creating an integration benefit scheme that is better oriented toward individual needs and requirements. In addition, the reform seeks to enhance the coordination and cooperation between the social benefit providers. Persons who are entitled to various rehabilitation services will no longer have to apply with different service providers separately (BMAS 2017a).

Federal Act on Equal Opportunities for Disabled People, General Equal Treatment Act and the UN Convention on the Rights of Persons with Disabilities

In addition to the social law, the German disability law is governed by the Federal Law on Equal Opportunities for Disabled People, the General Equal Treatment Act and the UN Disability Rights Convention. The Federal Act on Equal Opportunities for Disabled People (BGG) came into force in 2002. It pursues the aim to implement the ban on discrimination of persons with disabilities also in areas not governed by social law, to guarantee and enforce equal rights and to promote accessibility in various areas of public and private life, thus facilitating participation in society (Art. 7-13 BGG) (BMAS 2015c, 15; Eissing 2007, 6-7; Kuhn-Zuber and Bohnert 2014, 47-48). In addition to the federal law, equal opportunities for disabled people are enshrined at the level of the federal states. As with the national level, all federal state administrations are required to provide equal opportunities and accessibility and to operate in a non-discriminatory manner (Welti 2010, 26). Overall, the principle of accessibility and freedom from barriers is inspired by a revised understanding that perceives disabilities not only as an individual's health condition but also takes account of the contextual factors in society that cause impediments

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and impose limitations on people with disabilities (ibid.). Currently, a reform of the Federal Act on Equal Opportunities for Disabled People is being prepared with the aim of strengthening equal opportunities in line with the requirements defined by the UN Convention (BMAS 2016).

Going beyond this specific law for disabled people, equal opportunities and anti-discrimination are governed by the General Equal Treatment Act (AGG). This law was put into force in 2006 and served to transpose the first four EU anti-discrimination directives into national law. Besides banning discrimination on grounds of race, gender, age, ethnic origin, sexual orientation, religion and ideology, the law imposes a ban on disability-related discrimination in many parts of everyday life and at work. In particular, the General Equal Treatment Act protects people with disabilities from discrimination and/or arbitrary placement at a disadvantage in everyday business. Moreover, the ban on discrimination is imposed on all aspects of working life (BMAS 2015a, 620; 2015c, 18-19; Kuhn-Zuber and Bohnert 2014, 51-56).

Furthermore, German law is subject to the UN Convention on the Rights of Persons with Disabilities since its ratification by Germany in 2009 and by the EU in 2010. Building on the Universal Declaration of Human Rights and the UN Covenants on Human Rights, the Convention recognises disability as part of human diversity and seeks to advance, guarantee and protect the equal enjoyment of all human rights by people with disabilities. To this purpose, the Convention applies the general human rights to the specific situation of persons with disabilities, for instance, by specifying the right to education, the right to work or the right to participate in cultural life, together with concrete measures and targets for the realisation of equal opportunities (BMAS 2015c, 20-21). In order to implement the provisions of the Convention in Germany, a National Action Plan was launched in 2011. Its key principles are self-determination and the inclusion of disabled people in society (Art. 19).

Laws' Enforcement and the Crisis

Dissimilar to other European countries, there was no impact of the economic crisis on the disability field in Germany. Nevertheless, also under good economic conditions, the implementation of the existing laws is a main concern, while the laws themselves are largely supported (despite all scope for further improvements). In fact, the effective enforcement of

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guarantees and the rights of disabled persons is often a question of the quality of administrative practice at the levels of the national state, the single federal states, local authorities and benefit providers and the assertiveness of individual claimants (Kuhn-Zuber 2015; Welti 2010, 27). Differences in the recognition of entitlements, in the degree and quality of inclusion and participation, and in the claimant's freedom of choice may occur for several reasons. To start with, the German social system is heavily shaped by its fragmented character and the differentiation between distinct sector-specific benefit laws and providers. For the moment, it remains to be seen how the new Federal Participation Act will solve the problems in the coordination and cooperation between service providers. What is more, the provisions for disabled people defined by Book IX apply only in the framework and under the conditions of the sector-specific benefit laws (Welti 2014, 9). The different benefit laws are, however, rooted in distinct principles and logics. Hence, rules differ substantially in terms of access to the system (insurance membership or general access), requirements, benefit allowances and the concrete provision of benefits, thus hampering the establishment of a harmonised legal system for persons with disabilities (Welti 2014, 11). Furthermore, responsibilities are partly shared and interwoven within a complex system of regulations and competences, making it often difficult for claimants to know their rights (Welti 2014, 12). Finally, the granting of entitlements also depends on the interpretation of legislation and administrative practice. In this respect, local authorities with limited financial capacities or under economic pressure may tend towards a rigorous budgetary discipline and a restrictive interpretation of legal entitlements (Welti 2015). In consequence, rights and entitlements of disabled people often have to be legally enforced by complaint proceedings.

These implementation problems are also highlighted by civil society organisations active in the field of disabilities, while practitioners are less concerned with insufficiencies in the laws themselves. For instance, one representative states that:

> "*From their intention, the laws are in many parts very well meant. But their structural implementation is not thoroughly thought out. […] For instance, they adopted a law on integrative schooling, but the necessary structures were lacking. […] From municipality to municipality, there is a different handling. […] The mistake was: They had a good idea and good will, which we accept, but the actual implementation was not thought out. […] They should have paved the way for uniform structures, [for instance] how to finance [inclusive schooling]. These are things we are struggling with.*" (Interview 31, 26/10/2016)

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From another organisation we learnt:

> "*In our field, the difficulty is that receiving a benefit always implies making a request and fighting for it. […] This is always associated with a lot of justification, and also with legal actions. […] The implementation [is the problem]. And the interpretation of the single public offices and authorities is sometimes not transparent. Or they take the position 'in the first place we reject it and then we wait for the opposition procedure*'. *[…] And what we see is this thinking in terms of different offices. […] What happens in the practice is often quite gruesome; how they try to push the requests away from their own table*." (Interview 30, 24/08/2016)

Apart from problems related to the administrative practice, some criticism has been raised about the existing disability law itself in recent years. In particular, it is argued that the objectives and rights enshrined in the UN Convention on the Rights of Persons with Disabilities are not yet sufficiently applied and implemented in German disability law. Emphasis has been put on deficits regarding the comprehensive inclusion into society, social participation and integration assistance, full accessibility, self-determination and individual life planning (e.g. BAGFW 2015; DBR/BAGFW et al. 2014; FbJJ 2013; Pfahl 2014; Poser 2014). This position is also reflected in statements of civil society organisations. For instance, they highlight that:

> "*The UN Convention on the Rights of Persons with disabilities was ratified in Germany and is actually binding for the Federal Government. However, there are still a lot of deficits. And as regards the new Federal Participation Act, […] I heard a lot of criticism from people with disabilities. […] I believe, much more could be done. […] Overall, I would say that we are relatively advanced in Germany, but not as much as we could be. […] Because people with disabilities are still not on an equal basis with people without disabilities, and they cannot yet participate like people without disabilities.*" (Interview 27, 07/11/2016)

In more general terms, suitable instruments and implementation measures are requested that are able to overcome the ongoing segregation of people with disabilities (for instance, in state-protected employments, sheltered workshops, sheltered homes, stationary care, special school, separate education and vocational training), and to put into practice the right to equal opportunities, participation and inclusion into society (e.g. Berger 2015; Pfahl 2014; Welti 2014, 14).

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Migration and Asylum

As with disability law, German migration and asylum law does not make explicit reference to the principle of solidarity. Nevertheless, it could be argued that there is an indirect impact of the solidarity principle since it can be derived from the overriding validity of basic constitutional rights and principles, in particular the constitutional vision of humanity, the fundamental rights and the welfare state principle. For refugees and asylum seekers, rights and entitlements are based on three key legal pillars: the German Basic Law, the Residence Act and the Asylum Act. In addition, access to the welfare state is regulated under the Asylum Seeker Benefits Act and the Social Code.

The Three Pillars: German Basic Law, the Residence Act and the Asylum Act

German asylum law rests basically on three main pillars that define status and rights of refugees and asylum seekers: the German Basic Constitutional Law, the Residence Act and the Asylum Act. In addition, social rights and provisions are defined in the Asylum Seekers Benefits Act. First of all, the German Basic Law comprises the constitutional fundamental right to asylum already in place since 1949. Here, the right to asylum is granted to all persons persecuted on political grounds (Art. 16a, para. 1 GG). However, since 1993, the right to asylum has been restricted by limitations. Since that time, those asylum seekers who have entered the country from another EU member state or a secure third country (Art. 16a, para. 2 GG) or who come from – as such defined – safe countries of origin (Art. 16a, para. 3 GG) are excluded from legal entitlement to asylum in Germany.

Secondly, the German Residence Act defines a broad range of protection forms that may lead to a residence permit under international law or on humanitarian or political grounds (chap. 2, part 5). On the one hand, it entails circumstances of residence according to international and European standards. That is, refugee status according to the Geneva Refugee Convention and subsidiary protection according to the European Qualification Directive (Directive 2011/95/EU) (Art. 25, para. 2), the granting of residence for temporary protection (Art. 24) and the granting of protection for victims of human trafficking (Art. 25, para. 4 a). Refugee status and subsidiary protection are regarded as key circumstances of residence due to

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humanitarian reasons in Germany (Parusel 2010, 19). On the other hand, the German Residence Act comprises several protection forms based on national law which complement the Europeanised system of protection (Parusel 2010, 24). In addition, the German Residence Act defines a range of circumstances that prohibit deportation. First of all, there are prohibitions on deportation in compliance with the Geneva Refugee Convention (Residence Act Art. 60, para. 1 and 7). Secondly, the broader concept of "international protection" has been integrated into German law with the implementation of the European Qualification Directive (2011/95/EU) in December 2013. Thirdly, the German Residence Act includes forms of protection and prohibitions on deportation that go beyond the harmonised EU-law and can be seen as national rules, even if they largely draw on international agreements (Residence Act Art. 60 para. 5 and 7). Furthermore, the German national law foresees the possibility of a temporary suspension of removal (so-called "Duldung" – "toleration") (Residence Act Art. 60a).

While the Residence Act lays down the legal conditions for entering, residing in and leaving the country for all third-country nationals, the Asylum Act is a special law that governs the admission procedure for asylum seekers in Germany (before October 2015 it was called 'Asylum Procedure Act'). This includes both the circumstances and conditions under which a protection status is granted and the procedural rules for the conduct of the proceedings. The latter cover arrangements regarding application procedures, the rights and duties of applicants during the procedures, the right to a place of residence during the application process and rules in terms of distribution and accommodation (BAMF 2014). With the implementation of the European Qualification Directive in December 2013, the Asylum Act has been restructured fundamentally. It now involves a subchapter specifying the right to asylum and another subchapter about international protection. The latter integrates both the recognition of the refugee status and subsidiary protection.

Reception, Accommodation, Distribution and Access to the Social Welfare System

In Germany, the reception of asylum seekers is regulated both at the national level and at the level of the single federal states. Nevertheless, it is the administrative responsibility of the 16 federal states to accommodate

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asylum seekers in reception centres and accommodation facilities. Based on the country-wide system for initial allocation, asylum seekers are distributed throughout the different reception centres of the individual federal states according to a formula based on criteria such as population and tax income ("Königsteiner Schlüssel") (Art. 44 and 45 Asylum Act). After the stay at initial reception facilities, asylum seekers are typically housed in collective accommodations (Art. 53 para. 1 Asylum Act). While the accommodation in initial reception facilities is mainly regulated by national law, follow-up accommodation is governed in accordance with the provisions of the respective federal state (Müller 2013, 12).

Entitlements to social benefits are generally defined by the Social Security Code (SGB). Moreover, specific rules and provisions for non-EU, third-country nationals seeking asylum and international protection are made by the Asylum Seekers Benefits Act and the Asylum Act. As a general rule, the German social system and labour market are basically open to German nationals and EU citizens, provided that certain conditions are met. For non-EU third country nationals, however, these systems are generally closed, but special permits are possible. For asylum seekers and refugees a basic distinction can be made between the rights granted during the asylum procedure and those after the recognition of a protection status.

Applicants for asylum and international protection for whom the decision about a residence permit is still pending, as well as tolerated foreigners whose removal is temporarily suspended, fall under the regulations of the Asylum Seekers Benefits Act. For a long time, this Act was based on the assumption that its beneficiaries would stay in the country only for a restricted interim period of time and would thus not require resources for their integration (BAMF 2008). Consequently, the basic benefits granted were very low and considerably below the social assistance benefits. Benefits in terms of the Asylum Seekers Benefits Act used to be paid for a maximum duration of four years. After four years, asylum seekers were eligible for the higher social assistance benefits in terms of SGB XII. However, the benefit system so defined was declared unconstitutional by the Federal Constitutional Court in its verdict of 18 July 2012. The Court came to the conclusion that the benefits granted to asylum seekers were considerably low and insufficient to guarantee the constitutional right to a subsistence minimum that is in line with human dignity, as enshrined in the constitutional human rights catalogue of the Basic Law (Art. 1 para. 1 and Art. 20 para. 1 GG, so-called "welfare-state principle"). Moreover, the Court decided that the duration asylum seekers were kept within this resid-

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ual system of transitional assistance was too long and unjustified. Furthermore, it emphasised that migration policy considerations are inappropriate to justify benefit rates below the subsistence minimum because "human dignity cannot be relativised by migration policy". (BVerfG, Judgement of the First Senate of 18 July 2012 – 1 BvL 10/10). In the following, asylum seekers had to be granted higher benefits suitable to guarantee the subsistence minimum. Moreover, the reform has reduced the maximum duration of asylum seekers benefits from 48 to 15 months so that eligible beneficiaries can now claim social assistance benefits in terms of SGB XII after 15 months (Art. 2 Asylum Seekers Benefits Act).

Besides social assistance, the Asylum Seekers Benefits Act guarantees access to emergency health care for asylum seekers. This means that asylum seekers are entitled to health care in instances of "acute diseases or pain", in which "necessary medical or dental treatment has to be provided including medication, bandages and other benefits necessary for convalescence, recovery, or alleviation of disease or necessary services addressing consequences of illnesses." (AIDA 2015, 66; Art. 7 Asylum Seekers Benefits Act). Yet, asylum seekers have no legally enshrined entitlement to medical treatment of chronic diseases, disabilities and psychological sufferings, for instance due to torture, rape or other serious forms of psychological, physical or sexual violence. In this respect, asylum seekers are not fully integrated into the German health care system. The restricted access to health care remains a major point of criticism. Various political actors and NGOs operating in the sectors consider it insufficient and discriminatory, and claim that it violates the human right to health, the constitutional right to living a life in human dignity and the social welfare state principle of the Basic Constitutional Law (e.g. BAfF 2015, Classen 2013, 22f.; Der Paritätische 2015b, 15; Die Linke 2015; Bündnis 90/Die Grünen 2014; ProAsyl 2014).

Recognised asylum seekers and persons with an international protection status (i.e., recognised refugees and persons under subsidiary protection) are entitled to social benefits in terms of the Second and Twelfth Books of the Social Security Code under the same conditions as German nationals. Moreover, they can receive child benefit, parental benefit as well as educational or vocational grants. Asylum seekers in an open application process and foreigners required to leave the country whose removal is suspended due to an impossible departure by no fault of their own are entitled to basic social assistance in terms of the Twelfth Books of the Social Security Code after a period of 15 months of temporary residence or removal

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suspension (Art. 2 Asylum Seekers Benefits Act). This involves both access to social assistance benefits and an entitlement to the statutory health insurance benefits.

Laws' Enforcement and the Crisis

Overall, the development of legislation in the field of asylum has been very dynamic in recent years. To some degree, policy changes were indirectly triggered by the domestic impact of the global economic crisis because of the immense challenges Greece, Italy and other crisis-hit EU countries had and continue to face. However, the most radical change was spurred by the unprecedented arrival of large numbers of refugees and asylum seekers in late summer 2015, leading to various reforms (esp. Asylum Packages I of October 2015 and II of March 2016). In response to the new challenges, the recognition of an asylum or international protection status was subjected to stricter and tighter rules, together with stricter deportation rules and restrictions on family reunification. Moreover, stricter conditions for social benefits were implemented, following the principle of "demanding and supporting" and the requirement to cooperate, together with a stricter definition of target groups with entitlement to asylum seeker benefits. The reforms aimed to remove potential "disincentives" (Deutscher Bundestag 2015, 25-26) and to allocate resources and capacities more efficiently to the growing group of asylum seekers and refugees with humanitarian, political and international protection motives (cf. also Federal and State Decisions on Refuge and Asylum of 24 Sept. 2015). At the same time, access to the labour market was liberalised, transitioning Germany from a staunchly protectionist to one of the most liberal countries in this regard (Expert Council of German Foundations on Integration and Migration 2015).

With respect to the implementation of migration and asylum laws, it is important to note that the enforcement of national legislation varies due to different administrative rules, practices and jurisdictions at the level of the 16 federal states and subordinate administrative authorities. These differences affect the level of rights' guarantee and the interpretation of rules in various respects, for instance, in terms of residence permits, the enforcement of deportation, forms of accommodation and benefit allowances and entitlements to health care (Classen 2013, 20-23; BAMF 2014, 5; Müller 2013, 12).

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Against this backdrop, both the existing laws and the administrative practice are regarded as insufficient by many observers and practitioners in the field. With regard to legislation, civil society organisations criticise that the solidarity principle is largely lacking in German asylum legislation:

> "*A huge problem is the fact that the German legislation follows the idea 'we actually do not want them here'. […] Legislation and bureaucracy are impeding this. […] During the past year, the pace of restrictions in asylum law has been so rapid that not even lawyers manage to keep up in order to know which laws are actually valid. And they do not mean improvements. On the contrary, they are basically a deterrent, signalling 'we don't want you here'. […] I believe that the government is using the situation of the arrival of one million refugees and turning it into a catastrophe. […] That a local government is not able to cope with such a situation is a sign of political unwillingness. […] They have used their chances to take countermeasures against the [developments] of the past years*." (Interview 1, 27/10/2016)
>
> "*The German law clearly distinguishes between good and bad refugees. […] I cannot see that the German legislation is primarily geared to help people who are fleeing, but instead to select who is advantageous for Germany, for instance, in terms of labour market integration. […] It is not really in the interest of the people. […] Overall, Germany is not very solidaristic, but tries to seek its own advantage."* (Interview 11, 11/10/2016).

Moreover, the considerable scope for interpretation and discretion in the way laws are implemented and applied at the regional and municipal administrative levels are seen as highly problematic. In this respect, civil society representatives explain:

> "*There are laws that we do not approve of very much and which we would like to change. However, this is beyond our power. But if [the local authorities] are not even acting in accordance with the existing laws, how can we improve these laws? This is a major issue we have to deal with. That at least the existing rights are enforced. But not even this is the case here*." (Interview 7, 10/10/16).
>
> "*New asylum packages are adopted. Local ways of execution change, partly with the climate of public opinion. This is handled in a very arbitrary manner. […] There is a lack of a clear and reliable legislation on which we can count and to which we can refer*." (Interview 4, 07/10/2016)
>
> "*The legislation is quite a catastrophe. […] Is creates more uncertainties than helping anyone. … It works in some federal states, in others it does not work at all. Basically, it is a huge patchwork. Everybody implements it differently and it is completely disparate. And as regards the level of the administrative staff, […] if no one gives them clear guidance, then this leads to a lot of gut decisions*." (Interview 6, 12/10/2016)

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Overall, the German migration and asylum legislation remains a highly contested field, since a considerable divide between proponents and opponents of solidarity with refugees has emerged over the past two years both among policymakers and within society. Thus, the question of insufficiencies in law and administrative implementation is itself subject to the conflict between different political and societal groups and positions.

Unemployment

Similar to disability and asylum law, German social law does not refer explicitly to the principle of solidarity. Nonetheless, the solidarity principle is indirectly enshrined in social law because it can be derived from the basic constitutional rights and principles, particularly the constitutional vision of humanity, fundamental rights and the welfare state principle. In Germany, the rights and entitlements of the unemployed are regulated by a multi-pillar system. First of all, there are unemployment benefits in the form of wage replacement benefits (Unemployment Benefit I). These are governed by Book III of the Social Code and are part of the unemployment insurance system. Secondly, there are basic security benefits for job seekers (Unemployment Benefit II/Social Benefit). Those are governed by Book II of the Social Code and are part of a tax-funded social benefit system. Thirdly, social assistance is set up as a basic safety net according to Book XII of the Social Code.

Unemployment Benefit I

In order to be eligible for Unemployment Benefit I in terms of Book III of the Social Code, a person must be unemployed, have registered as unemployed, have completed the qualifying period within the unemployment insurance system, be actively searching for work and be available for work and the jobs offered by the Employment Agency (Art. 16 and 136 SGB III; BMAS 2015b, 25). An unemployed person is entitled to these unemployment benefits if she or he has worked for a minimum of 12 months during the past two years in an employment relationship subject to social security contributions (Art. 142 SGB III). Hence, the entitlement to Unemployment Benefit I requires membership in the solidarity-based community of contributors (BMAS 2015a, 52). The benefit entitlement

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period is dependent upon the duration of previous employment and insurance periods. After a minimum of 12 months in regular employment, the entitlement period is six months, after 16 months of employment 8 months, after 20 months of employment ten months and after 24 months of employment, twelve months (BMAS 2015b, 26; Art. 142; Art. 439 SGB III).[1] If unemployment continues after these periods, unemployed persons are able to claim basic security benefits for job seekers (Unemployment Benefit II, see below). Unemployment I benefits are income-related and correspond to 60% of the claimant's net monthly salary earned during the qualification period. They are equivalent to 67% of the previously earned salary for those with children (Art. 149 SGB III).

Basically, unemployment benefits are part of the employment promotion policies governed by Book III of the Social Code. These policies have the purpose to avoid or reduce unemployment, to improve the earning prospects of the unemployed and to match labour market supply and demand. Therefore, unemployment benefits are linked to the requirement to cooperate with the Federal Employment Agency, its local employments agencies and their placement and activation measures, to be available for employment or re-education and skill training offers, to actively seek a new job and to pursue all opportunities to regain employment. A written work integration agreement with the Employment Agency has to be signed in this regard. Non-compliance can be sanctioned with a withdrawal of benefits (BMAS 2015a, 77-82; 2015b, 17; Art. 138 SGB III).

Furthermore, the employment promotion policies under Book III include a range of services and subsidies. For instance, the Federal Agency of Employment provides start-up grants to help people become self-employed and set up one's own business (Art. 93-94 SGB III). Moreover, there is a range of services and measures geared to facilitate the job search and to improve people's chances on the labour market (e.g., advice, vocational orientation and guidance, application coaching, traineeship placement, skills training) (BMAS 2015b, 17-19).

1 Unemployed beneficiaries older than 50 years can claim additional benefit months. People aged 50 and older are entitled to benefits for a period of 15 months after 30 months of employment, people aged 55 and older to 18 months of benefits after 36 months of employment and people aged 58 and older to 24 months of benefits after 48 months of employment. Since 2015, under certain circumstances, six months of previous employment can be sufficient (BMAS 2015b, 26; Art. 142; Art. 439 SGB III).

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Unemployment Benefit II: Basic Security Benefits for Job-Seekers

People who are not or no longer entitled to Unemployment Benefit I but are capable of work can claim Basic Security Benefits for Job Seekers (Unemployment Benefit II). In addition, their relatives who are incapable of earning a living can receive Social Benefit. These specific benefits (also known as "Hartz IV") were introduced in 2005 by the so-called Hartz reforms that merged the former unemployment aid and social assistance aid. The basic security benefits for job seekers enacted in Book II of the Social Code constitute a tax-funded and means-tested basic safety net for employable beneficiaries. Hence, these basic security benefits are granted if the claimant is in need of help; previous contributions to the system or qualifying periods are not required. A claimant is in need of help if he or she is not able to ensure his or her subsistence at all or to an adequate degree from own income or property, with the help of household members or the assistance of other social benefit providers. Moreover, beneficiaries have to be between the age of 15 and the age for entering the old-pension scheme (65-67 years depending on the year of birth) and capable of working a minimum of three hours a day on the general labour market (Art. 7-9 SGB II; BMAS 2015b, 34). Basic security benefits for job seekers consist of employment integration assistance and benefits for covering their living expenses. The scheme follows the principle of combining support and assistance with the requirement to take one's own initiative and actively seek employment ("demanding and supporting"). The overriding aim is that beneficiaries return to employment and cover their living expenses from own income as quickly as possible. To this purpose, the scheme comprises a range of empowerment and employment activation measures, including advice, training, placement and occupational integration services. Beneficiaries are required to enter into an integration agreement that defines a binding commitment to participate in labour market integration activities and to take all opportunities to find new employment (BMAS 2015b, 33). This also stipulates that beneficiaries are required to participate in training and integration measures and to accept reasonable employment offers. The rejection of reasonable (re)integration measures, employment, job or traineeship offers can be sanctioned with a reduction or withdrawal of benefits (BMAS 2015b, 35; Art. 31a SGBII).

Basic security benefit for job seekers (Unemployment benefit II and Social Benefit for household members incapable of earning) is a means-tested, needs-oriented form of social assistance. The entitlement to these

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benefits is dependent on the claimant's needs and his or her household members. Therefore, own income and property are taken into account and can affect the sum of benefits received. Entitlements are based on a standard rate to cover the social-cultural subsistence minimum. Moreover, beneficiaries receive support to cover their living expenses, e.g. for accommodation and heating.[2]

Social Assistance

In addition to the social security benefits of SGB II, there is social assistance as a basic safety net against poverty, hardship and social exclusion for those who do not meet the requirements in order to receive Unemployment Benefit I, basic security benefit for job seekers, social benefit or other forms of income support. The provisions for social assistance were part of the fundamental social reforms that came into force in 2005. Social assistance is now governed as a separate scheme under Book XII of the Social Code. It is provided to persons unable to secure their living by own income, savings or other property assets, the help of relatives or household members or by other income support entitlements. In particular, social assistance aims to ensure the subsistence and "human minimum needed to maintain a socially acceptable living standard" (BMAS 2015b, 114) for people under 65 who are either temporarily or permanently incapable of working or whose capabilities are diminished due to medical reasons or disabilities, or for people over 65 who are incapable of covering their living expenses at all or adequately on grounds of old-age pensions, own means or help of others (ibid., 114-116). Benefit entitlements are based on standard rates equivalent to those of basic security benefits for job seekers (Art. 27-40 SGB XII). Social assistance is granted to any person in need who meets the above state requirements and who is resident in Germany (Art. 23, para. 1 SGB XII).

2 From January 2017, the standard rate of benefits for a single adult or single parent is 409 € per month. For unemployed partners age 18 or above it is 368 € for each person, for children up to six years old 237 €, for children between 6 and 13 years 291 €, for children between 14 and 17 years 311 € and for dependent children without their own income between the ages 18 and 24 years, 327 € per month (BMAS 2017).

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Laws' Enforcement and the Crisis

When it comes to the rights and entitlements of unemployed persons, the ruling of the Federal Constitutional Court has been of particular importance in recent years. Most importantly, in its verdict of 9 February 2010 (BVerfG, Judgement of the First Senate of 09 February 2010 – 1 BvL 1/09 – "Hartz IV-judgement") the Federal Constitutional Court came to the conclusion that the benefits granted under SGB II (Unemployment Benefit II/Social Benefit), hence the so-called Hartz IV benefits, were substantially too low to guarantee a subsistence minimum that allows a person to live a life in human dignity. According to the court, the existing benefits system was unconstitutional and in conflict with the fundamental right to human dignity (Art. 1 para. 1 GG) and the constitutional "welfare-state principle" (Art. 20 para. 1 GG). Moreover, it claimed that the amount of benefits must be established by means of a transparent and appropriate procedure that takes realistic, de facto needs into account. Against this background, the German government was obliged to reform the respective legal provisions and to implement a procedure capable of assessing and determining a subsistence amount concordant with the right to human dignity. In consequence, the standard benefits rate under Book II of the Social Code is annually adjusted in order to guarantee the adequate minimum subsistence allowance (Art. 20 para. 5 SGB II). In addition, in its verdict of 23 July 2014, the Federal Constitutional Court reemphasised that the Hartz IV benefits have to secure *de facto* a dignified existence, in line with the requirements of the Basic Constitutional Law (BVerfG, Order of the First Senate of 23 July 2014 – 1 BvL 10/12).[3] In fact, practitioners consider the courts as vital authorities that counterbalance the decisions of the executive authorities:

> "*In particular the social courts put the Job Centres in their place. We can certainly say that the decisions of the social courts are much more favourable [for the beneficiaries] than the practice of the administrative authorities. Therefore, they have an important function*." (Interview 16, 30/08/2016).

Yet, while the possibility of enforcing social entitlements through the court route is appreciated and widely used, legal action is seen only as the

3 Moreover, the legislator was asked to examine how to guarantee that certain specific basic needs (e.g. expensive durable goods like refrigerators or washing machines) are in fact covered (for instance, through individual entitlements).

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second best option. Many unemployment organisations find the laws themselves to be insufficient and unsocial, and aim for political change:

> "*I believe that it is crucial to improve things at the political level. […] There are many things I would consider politically wrong or insufficient in terms of the benefit rates. But they are not necessarily unconstitutional. It would be wrong to expect jurisdiction to solve the deficits of the social policy. This can only be done by political struggle. […]. Overall, I would say that with regard to the securing of a livelihood both the legal basis and the administrative practice are bad. And as regards the latter, a key issue is that the authorities do not have enough or sufficiently-trained personnel."* (ibid.)

With regard to the impact of the global economic crisis, the area of unemployment was affected in different ways in Germany. On the one hand, the extension of short-term allowances substantially helped the county's economy to overcome the recession between 2008 and 2010 relatively quickly and smoothly. Together with other measures of the government's economic stimulus packages, short-term allowances were an important means to stabilise employment and to avoid a growth in unemployment during the economic crisis. Hence, they have widely received positive feedback from different groups within society. Representatives of unemployment organisations, for instance, perceive some parts of the scheme positively:

> "*I would indeed say that the short-term allowances have helped to mitigate the problem. As well as the car scrapping bonus. […]. We would have liked more of such a public investment programme that creates jobs and stimulates demand through public intervention*." (Interview 16, 30/08/2016).
> "*What the federal government did at the time was a completely different detour, taking the approach 'Let's not leave it to the market. Instead, we need to massively intervene in order to maintain industrial structures and workforces'. Or at least for certain branches. Compared to the quasi market-liberal programme that was previously introduced with Hartz IV and the Agenda 2010, this was almost a Keynesian market-regulating programme.*" (Interview 12, 03/09/2016)

On the other hand, the most recent development is viewed much more critically by unemployment organisations. In particular, they observe a growing divide between people in employment and the long-term unemployed. While the remarkable economic growth of the past years has contributed to an overall rise in employment, the long-term unemployed have largely not benefited from this development. According to unemployment organisations, the chances of the long-term unemployed re-entering the job market have decreased, while the social benefit system has become more rigid:

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> "*We see that parts of society do indeed benefit from this boom. And other parts remain completely excluded from it. As regards how Germany dealt with the crisis: In contrast to the promise of earlier times that society is permeable and that everybody can make it, now there is the experience and the practice that one cannot make it anymore. That not everybody can get there. This has been further stabilised in my eyes, because support instruments have been greatly reduced in the Job Centres. And penalty instruments for people who do not comply with the requirements have been increasingly intensified. […] Hence, I think that this situation, in which certain parts are doing very well, while other parts are completely side-lined, is the German response to the crisis. Following the approach 'we are open to the highly qualified and fresh labour forces [from other European countries], while demonstrating that other people do not have a chance here'*." (Interview 12, 03/09/2016).

With the latest reform of the Hartz IV benefit system of August 2016, the trend of increased sanctions and restrictions for benefit receivers and the long-term unemployed seems to be further corroborated (cf. Deutscher Bundestag 2016). The main concerns with the new legislation are the tightening of penalties and controls and the limitation of the right to have incorrect administrative decisions corrected (e.g. Thomé 2016). Accordingly, the new Hartz IV reform was heavily criticised by social welfare and unemployment organisations and the mass media:

> "*The dominance of 'demanding' and a lack of support remain. The corset of low standard rates and accommodation expenses, linked with rigid reasonability and penalty rules, is too tight and forces people in any kind of employment. This way, it fosters precarious employment and devalues existing professional qualifications*." (DGB 2016, 22/06/2016)
> "*In the Hartz IV system, millions of people continue to be regarded as potential social spongers. […] The state controls even in the most private spheres and punishes strictly. Harassment by law. This is unworthy of a good social welfare state.*" (Zahn 2016)

Against this backdrop, it seems that the latest reform of the Hartz IV system is a further step that contributes to undermining the solidarity principle of the social welfare state and the chances of all people to live an equal, dignified life.

Conclusions

In many European countries, the crises of the past years have had a considerable impact on the legal entrenchment of the solidarity principle and its implementation in administrative practice. Across Europe, this impact

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has been very differential, depending on each country's specific crisis experience.

Overall, Germany witnessed the impact of the global economic crisis mostly during the initial stages, particularly in 2009. But the effects of the crisis were absorbed in a short-term period so that general government finances, the economy and the labour market recovered quickly and sustainably since 2010. Most strikingly, unemployment rates declined steadily and have currently reached their lowest level since German reunification. To a significant extent, the quick recovery and economic and financial stabilisation were promoted by Federal government growth packages. In fact, the German response to the crisis consisted mainly of short-term interventions, while there were no substantial crisis-driven reforms. Notable policy changes, like the introduction of the minimum wage, had their origins before the crisis.

Despite the good economic situation and the resulting improvements for larger parts of society, Germany presents a mixed picture when it comes to the question of how the country shows solidarity with the most vulnerable groups and people in need. Similar to the Basic Constitutional Law, the principle of solidarity is mostly indirectly enshrined in German disability, asylum and unemployment law. Solidarity is not expressly a leading principle in any of the three fields. Nevertheless, it is of relevance for rights and entitlements in disability, asylum and unemployment law to the extent that it can be derived from the basic constitutional rights and principles, in particular from the constitutional vision of humanity, the fundamental rights and the welfare state principle. Above all stands the right to live a life in human dignity, to which all other rights are subordinate. This also means that they have to be interpreted in light of the overriding right to a dignified life. Moving beyond this general legal framework, disability law is led by the principles of equal treatment, equal participation, equal opportunities, inclusion and self-determination, which have become increasingly important in the past decades. Moreover, disability law is traditionally built on the social welfare state principle. Asylum law is guided by the principle of international human rights and humanitarian reasoning, as well as by the welfare state principle. Finally, unemployment law is based on the welfare state principle and the idea of providing for more social justice in light of the social inequalities produced on free markets. In addition, the guiding principles vary depending on the kind of unemployment entitlements. On the one hand, unemployment regulations targeting the short-term unemployed entitled to Unem-

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ployment Benefit I within the unemployment insurance system are guided by the principle of social security and the protection of the standard of living, which varies with different status groups. On the other hand, regulations for the long-term unemployed, the working poor and other people in need of the means-tested Basic Security Benefits for Job-seekers are based on the idea of ensuring a sufficient subsistence minimum for a dignified human life. In this respect, the guiding ideas underlying unemployment law are not fully coherent and to some extent are controversial since social security and income protection for well-defined status groups as insiders of the insurance system potentially contradict the idea of protecting the subsistence minimum, and in this respect, the principles of social equality and solidarity with the outsiders of the insurance system (cf. also Zacher 1981, 729).

Irrespective of the missing explicit reference to solidarity, German law foresees a broad range of instruments and mechanisms to support the unemployed, asylum seekers and disabled people. Yet, the laws themselves and their administrative application are not always perceived as sufficient in order to grant solidarity. Unemployment law was substantially reformed a decade ago in the context of the so-called Hartz reforms. At the time, the reforms reduced the – comparatively high – benefit allowances for the long-term unemployed, and merged the previously contribution-based long-term unemployment benefits with the means-tested social assistance system. Simultaneously, unemployment benefits were linked to the sanctionable obligation to actively seek a job and to accept the job offers or training measures presented by the Employment Agency. Moreover, the regulations on dismissal protection and on temporary work were relaxed, and contractual flexibility enhanced. Over the following years, unemployment declined markedly, however at the cost of a growing group of working poor (working in parallel employment or requiring benefit top-ups despite full-time employment) and the rise of precarious employment. The negative effects of the Hartz IV reforms were partly mitigated by the recently introduced general statutory minimum wage. While this catalysed an improvement for people in employment, the long-term unemployed continue to feel excluded from and left behind the generally positive development. On the one hand, sanctions and controls on beneficiaries have become even more rigid. On the other hand, unemployment organisations claim that support measures promoting reintegration into the labour market were reduced or insufficiently provided. In this respect, the divide between the insiders and the outsiders of the employment system and exist-

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ing status differences seems to be further cemented. Consequently, social cohesion and social solidarity with people in need appear rather weak, particularly when taking into account the country's economic prosperity.

As regards refugees and asylum seekers, the development of legislation has been very dynamic in recent years. In particular, the various measures and reform acts of the past two years were a reaction to the unprecedented influx of large numbers of refugees and asylum seekers into Germany. At first, the suspension of the Dublin procedures and the opening of the borders for refugees who arrived via the Balkan route in the late summer of 2015 offered a sign of solidarity towards refugees and the European countries of first arrival. But this new "welcoming policy" was soon followed by a step-wise tightening of legislation that brought about stricter rules in terms of recognition, deportation and entitlements to social welfare benefits. At the same time, the reforms introduced a liberalisation in the regulations on labour market access for asylum seekers and refugees. Since autumn 2015, the various reforms have thus contributed to the weakening of the solidarity principle in asylum law, while opening-up the possibilities for those refugees who are employable on the German job market and able to become self-sufficient, and hence, beneficial to the country. Similar to the unemployment field, the German asylum system is thus characterised by a growing divide between those people who meet the requirements in order to participate in the employment market and those excluded from it and in need of social benefits. Again, this indicates a weakening of the solidarity principle. This development took place against the backdrop of growing populism among sectors of society and a shift towards right-wing arguments in public discourse.

In comparison, various improvements have been made in recent years in order to strengthen the rights of disabled persons, even if there is still a long way to go in order to realise full inclusion and equality of persons with disability in society. German law and administrative practice have not yet met the requirements and level of rights' guarantees stipulated by the 2009 UN Disability Rights Convention. Nevertheless, over the last decade, several reforms were adopted that aimed to implement a more comprehensive, participation-based approach, and to improve particularly employment and social integration assistance schemes. However, the solidarity principle is often challenged through the administrative application of disability laws and the restrictive procedures of the different service providers which often force disabled people to claim their rights through legal action.

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Overall, German constitutional law and the sector-specific legislation grant protection and help for vulnerable groups in various ways. Nevertheless, solidarity with people in need is not a given. This is particularly true given that the solidarity principle needs to be derived from the fundamental constitutional rights and principles, but in actuality remains otherwise quite vague in the three fields. This opens the door for policymaking to downplay the role of solidarity and to increase the conditionality of solidarity with vulnerable groups, as has happened particularly in the asylum and unemployment fields in recent years. Indeed, recent policy reforms have shown that solidarity is highly contested and subject to political struggles between different interests and groups in society. Interestingly, the conditions underlying such a development vary considerably. In the field of unemployment, solidarity towards the long-term unemployed seems to have decreased due to the generally good economic situation and the remarkable increase of employment and, in consequence, a weakened public awareness of the structural reasons for unemployment. In contrast, in the field of migration, solidarity towards refugees and asylum seekers was limited by a series of restrictive reforms against the backdrop of the so-called “refugee crisis” because of the perception of an overburdening of the asylum and welfare system and growing resentments among parts of society which feel themselves disadvantaged.

At the same time, the vague legal entrenchment of the solidarity principle shifts importance to the role of the courts and case law. In fact, both the field-specific courts (e.g. the social courts) and the Federal Constitutional Court are playing an important part in the enforcement of rights and entitlements in the spirit of the solidarity principle; however, once again without explicitly using the term solidarity. This is well exemplified by the various judgements of the Federal Constitutional Court on a sufficient subsistence minimum for both recipients of Hartz-IV benefits and asylum seeker benefits where the Court pointed to the constitutional right to a subsistence minimum that is in line with human dignity regardless of the target group. Overall, the case law of the courts is an important means to uphold a rights-based approach and to defend and enforce the rights and entitlements covering the solidarity principle. Interestingly enough, affected social groups and the representatives themselves often abstain from putting the solidarity principle centre stage. Similar to the courts, they follow a rights-based approach, arguing that the unemployed, disabled people or refugees and asylum seekers are not in need of charity, but of the proper enforcement and implementation of existing human and fundamental con-

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stitutional rights and legally enshrined entitlements. These insights corroborate the primary role of basic rights and the subordinate role of the solidarity principle in Germany.

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