

Caritas Germany

Department:
Sozialraum, Engagement
und Besondere LebenslagenPO Box 4 20, 79004 Freiburg
Karlsruhe 40, 79104 Freiburg
Central telephone: +49761 200-0Contact:
Theresa Schmidt
Cornelius Wichmann
telephone: +49761 200-121
Email: Cornelius.Wichmann@caritas.de
www.caritas.de

Date: 31st July 2019

Contribution to the Thematic Report on Private Debt and Human Rights

Private Debt and Human Rights in Germany

Introductory remarks

Caritas is the largest welfare association in Germany. Among many other services, Caritas' members provide around 300 debt counselling centres. The following statements are based on our experiences and our participation in national expert groups.

Distinguishing between indebtedness and over-indebtedness

In order to examine the relationship between private debt and the full enjoyment of human rights, it is vital to draw a distinction between indebtedness and over-indebtedness. Debt is not a problem per se. The ability to borrow within manageable limits and within the limits of one's own financial capacity improves living standards and supports the economy. It should also be noted that consumer credit debts are one of the most common types of credit. According to the SCHUFA Kredit-Kompass 2019¹, 97.9 percent of all consumer loans are repaid properly.

Debt becomes problematic if a situation of over-indebtedness arises from an originally bearable debt. The transition from indebtedness to over-indebtedness is fluid: "Over-indebtedness exists when for an unforeseeable period of time, after deduction of the fixed cost of living plus food and other necessary living necessities, the remaining balance of the entire household income is not sufficient to service the current liabilities."²

Attachments:

1. Empirical study on private borrowing in Germany

SCHUFA Holding AG (2019): *Kredit-Kompass. Empirische Untersuchung der privaten Kreditaufnahme in Deutschland*, Verlag: FRANKFURT BUSINESS MEDIA GmbH.

¹ Schufa Kredit-Kompass 2019, https://www.schufa.de/media/editorial/ueber_uns/bilder/studien_und_publicationen/kredit_kompass/skk_2019/SCHUFA_Kredit-Kompass-2019_ES_web.pdf

² Ulf Groth u.a. (Hrsg.): *Praxishandbuch Schuldnerberatung* (2008), S. 4 – 8, Verlag: Luchterhand.

1. Human rights concerns arising in connection with private debt

1.1 Electricity debt and power cuts

An interruption of the energy supply has serious consequences. No light, no hot water, no clean laundry, no possibility of cooking or refrigerating food, to name just a few examples. Without the supply of energy, the subsistence level is no longer secured and social participation is endangered. Even a delay in payment of 100 euros can result in the supplier cutting off electricity. People with low incomes are particularly affected.³

Power cuts in Germany

Almost 343,900 households had their electricity switched off in 2017 because bills had not been paid.⁴ Electricity prices for private households in Germany have risen significantly in recent years.⁵ Also, the allowances for electricity included in basic social security are often not sufficient to cover the real costs.

Practices and regulations for consumer protection to ensure access to energy

- Consumers who receive benefits can have their social service provider transfer the payments directly to the energy provider.
- In the case of small pensions and low incomes, there may be a supplementary entitlement to state aid (housing benefit, basic income support, etc.).
- The social welfare office and the job centre can cover rent and energy debts (usually in the form of a loan) if there is an emergency situation. However a repeated assumption of rent and energy debts is only possible in very few exceptional cases under special circumstances.

Attachments:

2. Discussion paper on the electricity consumption of households receiving basic social security, an empirical analysis for Germany

Aigeltinger et al (2015): Discussion Paper No. 15-075. Zum Stromkonsum von Haushalten in Grundsicherung: Eine empirische Analyse für Deutschland, Center for European Economic Research.

3. Problem report regarding the assessment of the demand for household energy and the additional demand for decentralised hot water preparation in households of basic social security and social assistance

Deutscher Verein für öffentliche und private Fürsorge e.V.(2019): Problemanzeige des Deutschen Vereins zur Bemessung des Bedarfs an Haushaltsenergie und des Mehrbedarfs bei dezentraler Warmwasserbereitung in Haushalten der Grundsicherung und Sozialhilfe – Lösungsperspektiven.

³ <https://www.verbraucherzentrale.de/wissen/geld-versicherungen/kredit-schulden-insolvenz/stromsperre-was-nun-11674>

⁴ Deutscher Bundestag Drucksache 19/8879, 02.04.2019: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Sven Lehmann, Dr. Julia Verlinden, Dr. Wolfgang Strengmann-Kuhn, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 19/8383 – Ausmaß und Auswirkungen der Energiearmut.

⁵ Aigeltinger et al (2015): Discussion Paper No. 15-075. Zum Stromkonsum von Haushalten in Grundsicherung: Eine empirische Analyse für Deutschland, Center for European Economic Research.

1.2 Loss of the apartment due to rent arrears

Rent arrears in Germany

In 2018, two out of ten over-indebted people in Germany who sought help from a debt counselling service were struggling with unpaid rent. The corresponding liabilities of all advised persons to landlords amounted to an average of 870 euros in 2018. Accordingly, over-indebted persons throughout Germany were on average with around 1.8 monthly rents in arrears.⁶

Finding housing

People in situations of over-indebtedness, but also people with regulated debt relief (insolvency proceedings, settlements), have hardly any chance of finding an (affordable) flat on the overheated housing market. A SCHUFA⁷ credit information with negative characteristics usually prevents them from even being considered by potential landlords.⁸

Preserving housing

Beginning with a rent arrear of two months, the landlord has the right to terminate the lease. "Over-indebted people often endanger the continuation of their tenancy agreement by paying instalments to other creditors. They quickly lose the overview and set wrong payment priorities. The assumption of rent arrears is usually associated with high bureaucratic hurdles, such as the failure of timely application processing. Those affected are often not aware of the counselling services available or services have long waiting times."⁹

Even if over-indebted people can avert the termination of their lease due to rent arrears through repayments, landlords often submit an orderly notice of termination in parallel to the termination due to rent arrears as they fear further arrears in the future. If tenants fail to take action against the orderly notice, they must move out nevertheless.

High rents

"High rents and high deposit and brokerage fees place an extreme burden on the household budget and require restrictions on other daily expenses. This greatly restricts the quality of life and can lead to over-indebtedness. Also those receiving unemployment benefits are affected by rising rents. The job centres only accept accommodation costs if they are reasonable. However, the limits of appropriateness set by the municipalities do not always cover the actual demand. The entitled persons, whose rent costs are not recognized as appropriate, must pay the difference."¹⁰

⁶ Statistisches Bundesamt (Destatis), Pressemitteilung Nr. 207 vom 03.06.2019, https://www.destatis.de/DE/Presse/Pressemitteilungen/2019/06/PD19_207_635.html

⁷ Most credit institutions and mail order companies are affiliated with SCHUFA (protection association for general credit security). SCHUFA gathers information of all its members about the creditworthiness of their customers. So-called negative features (e.g. termination of credit, submission of asset information) mean that customers will no longer receive any credit from the affiliated companies until their issues have been rectified.

⁸ Arbeitsgemeinschaft Schuldnerberatung der Verbände (2019): Forderungspapier zur Aktionswoche der AG SBV 2019 „Albtraum Miete“.

⁹ Ibidem.

¹⁰ Ibidem.

Consequences of the loss of housing

The loss of an apartment does not have to lead to homelessness. There is for example, transitional communal accommodation. Most cities also have contact points for so-called housing emergencies (at the housing or social welfare office). These contact points are informed by the court in the event of an action for eviction and will then usually contact those affected to help them find a new home.¹¹ However, people may still become homeless for a variety of reasons, for example if dogs are prohibited in communal accommodation or if they are not aware of the options available to them.

Practices and regulations for consumer protection to ensure access to and the preservation of housing

There are ways to avert the loss of an apartment, but they often require swift action and for the corresponding applications to be made. The knowledge of existing rights and the timely filing of applications are hurdles that arise in practice.

- Persons who do not receive unemployment benefits but can also not pay rent in full from their low wages can apply to the social welfare office for payment of their rent arrears. They may also be entitled to a housing allowance.
- People who receive unemployment benefits and are behind on their rent can apply for the assumption of rent debts. However, this is only done on a loan basis, meaning that those affected must repay the amount.
- The approval of loans to pay rent arrears is at the discretion of the job centre and is not granted in all cases. The beneficiary can be asked to reduce the cost of the accommodation by subletting or moving.¹²

Attachments:

4. Working Group of Debt Counselling Services of Welfare Associations: Position Paper "Nightmare Rent"

Arbeitsgemeinschaft Schuldnerberatung der Verbände (2019): Forderungspapier zur Aktionswoche der AG SBV 2019 „Albtraum Miete“.

1.3 Debts with the public sector

According to federal statistics on the situation of over-indebtedness in Germany, 57% of those seeking advice have debts with the public sector¹³, i.e. with local authorities or social welfare offices. A considerable proportion of these people also have debts with the job centre. Receivables are collected from recipients of social benefits by means of loans or reimbursements. In

¹¹ Wollschläger, Dr. Karin (2017): Was tun bei Mietschulden?, <https://www.caritas.de/hilfeundberatung/ratgeber/wohnungslosigkeit/lebenaufderstrasse/was-tun-bei-mietschulden>.

¹² Mietschulden: Bei Hartz-4-Bezug manchmal nicht vermeidbar, <https://www.hartz4.de/mietschulden/>.

¹³ https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Einkommen-Konsum-Lebensbedingungen/Vermoegen-Schulden/Publikationen/Downloads-Vermoegen-Schulden/ueberschuldung-2150500187004.pdf?__blob=publicationFile (Tabelle 5.1)

order to repay the claims, instalments (up to 30% of the standard benefits) are regularly deducted from social benefits. This represents an undermining of the minimum subsistence level established by the state through forced debt repayment.

1.4 Intimidation and threats by debt collection companies

Some debt collection agencies exert considerable psychological pressure on debtors. The consequences of non-payment of invoices are not presented objectively. The consumer advice centre reports that "payment demands by debt collection agencies put the recipients under enormous pressure. Companies often threaten considerable costs for court proceedings and garnishment of wages and salaries or other compulsory enforcement. [...] The threats of the companies also represent an immense mental burden for the often older consumers.¹⁴ Around three-quarters of the consumers surveyed by the consumer advice centre "felt threatened and intimidated by the collection letters".¹⁵

Practices and regulations to protect consumers from dubious debt collection

- At the consumer advice centre, consumers can have collection claims checked free of charge.
- In addition, the "law against dubious business practices"¹⁶ lays down detailed information and disclosure obligations for collection companies and limits the amount of collection fees.

Attachments:

5. Consumer Advice Centre: Evaluation of consumer complaints regarding collection companies' payment requests

Verbraucherzentrale (2011): Auswertung von Verbraucherbeschwerden zu Zahlungsaufforderungen von Inkassounternehmen.

1.5 Job loss due to over-indebtedness

In the course of a foreclosure, creditors can seize part of a debtor's earned income directly from his employer. For the employer, this entails administrative effort and he is liable to the creditors for the correctness of the calculation. This can lead to employers not renewing or even terminating temporary contracts with debtors.

¹⁴ <https://www.verbraucherzentrale.de/aktuelle-meldungen/digitale-welt/inkassoforderungen-per-sms-oft-unserioes-13286>.

¹⁵ Verbraucherzentrale (2011): Auswertung von Verbraucherbeschwerden zu Zahlungsaufforderungen von Inkassounternehmen.

¹⁶ Bundesgesetzblatt, Jahrgang 2013, Teil I, Nr. 59, ausgegeben am 08.10.2013, Seite 3714: Gesetz gegen unseriöse Geschäftspraktiken vom 01.10.2013.

Practices and regulations to protect debtors from termination

The Dismissal Protection Act (Kündigungsschutzgesetz) provides relatively strong employee protection and limits the possibility of dismissing over-indebted employees to cases in which they are in a special position of trust and their personal suitability for the position is in question, or cases in which the over-indebtedness of the employee leads to a significant disruption of the employer's business operations.¹⁷

1.6 Stigmatisation through SCHUFA credit information

The SCHUFA Holding AG is a service provider that provides credit-relevant information about consumers. This is particularly interesting for companies that want to provide credit to consumers. In addition, however, SCHUFA creditworthiness features also play an important role in various types of contracts.

Should a consumer actually exhibit a negative SCHUFA entry due to payment difficulties, this is associated with drastic consequences. In many cases, negative SCHUFA information represents an exclusion criterion for numerous contracts:

- conventional mobile phone contracts are rejected
- the granting of credit by banks is made more difficult or impossible
- banks refuse to open a normal current account
- credit cards with credit function are often excluded
- there may be problems with new rental contracts
- in the mail-order business, deliveries are only made against prepayment
- banks can even cancel some or all of a consumer's overdraft facilities he/she has used to date
- instalment purchases in shops will be rejected¹⁸

Credit checks can be justified, as they protect providers and consumers to a certain extent. They become problematic, when consumers are excluded from participation for longer periods of time. In rural areas, mail-order can be the only way to access certain goods. As a result, a person's participation in society can be restricted for years, since the basic storage period for personal data is three years after settlement, i.e., for example, three years after settlement of the claim or termination of the insolvency proceedings.¹⁹

1.7 Debt and imprisonment

Imprisonment as substitution for non-recovery of the financial penalty

Over-indebtedness does not in itself constitute a reason for arrest. It can nevertheless indirectly lead to imprisonment. "While the number of custodial sentences served has declined overall in

¹⁷ <https://www.juraforum.de/ratgeber/arbeitsrecht/kuendigungsgrund-lohnpfaendung-ist-die-kuendigung-eines-arbeitnehmers-wegen-lohnpfaendung-moeglich>

¹⁸ <https://www.sozialleistungen.info/news/31.05.2015-schufa-eintrag-und-dann-tipps-fuer-betroffene/>

¹⁹ Die Wirtschaftsauskunfteien e.V. (2018): Code of Conduct. <https://www.schufa.de/de/ueber-uns/daten-scoring/verhaltensregeln-loeschfristen/verhaltensregeln-loeschfristen.jsp>

recent years²⁰, the proportion of substitute custodial sentences has risen and now accounts for seven per cent of the capacity of the prison system.²¹ If a convicted person cannot pay a fine, if it is "irrecoverable" and if it cannot be paid off through community service, the person is charged with a substitute custodial sentence".²² Especially people with low incomes and over-indebted people are often overburdened with the payment of a fine.²³

Arrest warrant for debts

If a debtor refuses to submit information on his assets without reason or fails to meet the deadline for submitting this information without giving notice, a local court may issue an arrest warrant at the creditor's request.²⁴

Attachments:

6. German Caritas Association: Statement. Avoidance of substitute custodial sentences for minor offences (fare evasion, etc.)

Deutscher Caritasverband e.V. (2018): Stellungnahme. Vermeidung von Ersatzfreiheitsstrafen bei Bagatelldelikten (Schwarzfahren u.a.)

1.8 Debt and illness

Debt as a trigger of illness

A situation of over-indebtedness can also lead to illness. "Psychosomatic stress factors, lifestyle changes (e.g. social withdrawal, changes in diet) or obstacles to the use of the health system play an important role in this context. A number of international studies have shown a link between over-indebtedness and mental and physical morbidity [...]: Studies have shown, for example, increased prevalence of depression [...] and suicidal tendencies [...] among debtors whose long-term expenditure exceeds their disposable income and assets".²⁵

Debt and access to health care

"There are first indications that over-indebted people in Germany are refraining from redeeming prescriptions by a doctor and from seeking medical attention that requires them to pay a part by themselves due to their financial situation".²⁶ In Germany, health insurance is compulsory. "Unlike in the past, private and statutory health insurance companies can no longer exclude their members from insurance if those do not pay their contributions. However, the obligation to pro-

²⁰ <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Rechtspflege/Tabellen/Strafgefangene.html>

²¹ www.destatis.de/DE/Publikationen/Thematisch/Rechtspflege/StrafverfolgungVollzug/BestandGefangeneVerwaehrtePDF_5243201.pdf

²² Deutscher Caritasverband e.V. (2018): Stellungnahme. Vermeidung von Ersatzfreiheitsstrafen bei Bagatelldelikten (Schwarzfahren u.a.).

²³ Andreas Fauth (2018): Damit eine Geldstrafe nicht ins Gefängnis führt, <https://www.caritas.de/hilfeundberatung/ratgeber/haft/knastunddiefolgen/damit-eine-geldstrafe-nicht-ins-gefaengnis>

²⁴ <https://ratgeber.advoneo-schuldnerberatung.de/haftbefehl-wegen-schulden/>

²⁵ Münster et al. (2018): ArSemü-Studie Abschlussbericht. Arzneimittelkonsum, insbesondere Selbstmedikation bei überschuldeten Bürgerinnen und Bürgern in Nordrhein-Westfalen.

²⁶ Ibidem.

vide benefits then only applies to a limited extent and the contract is suspended. The defaulting payers only receive emergency care. ²⁷

Attachments:

7. Study on drug consumption, especially self-medication for over-indebted citizens in North Rhine-Westphalia.

Münster et al. (2018): ArSemü-Studie Abschlussbericht. Arzneimittelkonsum, insbesondere Selbstmedikation bei überschuldeten Bürgerinnen und Bürgern in Nordrhein-Westfalen.

2. The impact of private indebtedness on macroeconomic conditions and public indebtedness and the State's obligation to use the maximum available resources to achieve human rights

Private over-indebtedness can have a negative impact on public debt, as over-indebted people contribute little to tax revenues. At the same time, illnesses resulting from over-indebtedness or the ensuing dependence on social benefits strain the state budget. If the budget items the state has to invest in cushioning the consequences of over-indebtedness (social benefits, assumption of rent and energy debts, administrative and court costs) increase, the state will have less leeway to invest in improving living conditions in a proactive way, investing in future-oriented projects and policies. Even from an economic perspective, it can thus be worthwhile for the state to invest in the prevention of over-indebtedness instead of paying for the consequences.

3. Private over-indebtedness and the enjoyment of human rights by especially protected groups (women, people with disabilities, indigenous peoples, minorities, LGBTI)

Over-indebted women

With increasing frequency, women find themselves in financial crises. While the share of men among over-indebted private individuals has fallen since 2004, the proportion of women has risen. The reason for this is discrimination on the labour market. More and more women are employed in the low-wage sector. In order to ensure the upbringing of their children, they enter into temporary and part-time employment contracts. Even though men are still significantly more often over-indebted than women, "the number of cases of over-indebtedness continued to increase markedly among women (2.7 million; + 21,000 cases), and it decreased slightly among men (4.2 million; - 2,000 cases)."²⁸

²⁷ <https://www.n-tv.de/ratgeber/Was-droht-wenn-man-keine-Versicherung-hat-article16064241.html>.

²⁸ Creditreform Wirtschaftsforschung (2018): Pressemitteilung. Schuldneratlas Deutschland 2018, <https://www.creditreform.de/aktuelles-wissen/pressemeldungen-fachbeitraege/show/schuldneratlas-deutschland-2018>

"Single parents are particularly at risk because they lack the time and energy to concentrate on a possible financial crisis," explains Nicolas Mantseris, debt counsellor at Caritas in Neubrandenburg. The debtors are often overburdened, and the children suffer with them.²⁹

Attachments:

8. Debtor Atlas 2018: Overindebtedness of consumers

Creditreform Boniversum GmbH, microm Micromarketing- Systeme und Consult GmbH, Creditreform Wirtschaftsforschung: Schuldneratlas 2018. Überschuldung von Verbrauchern.

4. Practices and rules on consumer protection, monetary, financial, banking and bankruptcy law which should regulate and regulate private indebtedness in order to ensure the effective protection of human rights

Generally speaking, there are various instruments intended to ensure the protection of the human rights of over-indebted persons. Nevertheless, there is a partial lack of knowledge among debtors about the existence of these instruments and the conditions and procedures for the corresponding applications. Also, debtors must be able to master the necessary bureaucratic procedures and requirements.

In Germany there are various legal rules that strengthen and protect consumers in their rights. These are in particular:

Consumer credit law (BGB)

Consumer credit law is intended to make the credit market more transparent and clearer for consumers. It entails, inter alia, a 14-day right of withdrawal for consumer loans.

Provisions on protection against seizure (ZPO)

These regulations are intended to ensure a dignified life for the debtor. They ensure that only parts of a debtor's assets and income can be seized, so that he can continue to support himself and his family. For example, household items that are indispensable for a simple life and for debtors' gainful employment cannot be seized. Luxury items, on the other hand, can be seized.³⁰ In the context of protection against seizure, there is, among other things, the *Pfändungsschutzkonto* – an account, on which certain assets are protected from seizure. The amount of assets that are protected is calculated on the basis of various factors, such as the monthly salary of the debtor and maintenance obligations for other persons.³¹

²⁹ <https://www.caritas.de/hilfeundberatung/ratgeber/schulden/ich-hatte-die-rosarote-brille-auf>

³⁰ <https://www.schuldnerberatung.de/pfaendungsschutz/>

³¹ Institut für Finanzdienstleistungen e.V. (2016): Evaluierung des Gesetzes zur Reform des Kontopfändungsschutzes vom 7. Juli 2009.

Consumer insolvency proceedings with the possibility of obtaining residual debt discharge

These proceedings allow over-indebted persons to be debt-free after a certain amount of time.

The Residential Real Estate Credit Directive

This Directive aims to strengthen consumer protection in the granting of real estate loans. It establishes an obligation to check the creditworthiness of a consumer before concluding a consumer loan agreement and a mandatory advisory service for a long-term and substantial use of an overdraft facility.

Additional mechanisms already mentioned:

- Basic social security
- housing allowances
- Loans for rental and energy debts
- Free verification of collection claims at the consumer advice centre
- Law against dubious business practices
- Provisions on protection against dismissal
- Ensuring emergency care in the event of non-payment of health insurance contributions
- 3-year period for the deletion of SCHUFA entries

Nationwide counselling centres

Most importantly, there are nationwide counselling centres run by the associations of independent welfare organisations which offer free social debtor and consumer insolvency counselling. The right to debt counselling is laid down in law and financed by the state. The counselling centres do not only advise debtors on legal and economic matters, but take the social aspects that come with being over-indebted into account. In addition, the welfare associations provide education and engage in lobbying to tackle the problem of over-indebtedness on a structural level as well.³²

Attachments:

9. Institute for Financial Services: Evaluation of the law on the reform of account seizure protection of 7 July 2009

Institut für Finanzdienstleistungen e.V. (2016): Evaluierung des Gesetzes zur Reform des Kontopfändungsschutzes vom 7. Juli 2009.

10. Association of Debt Counselling Associations: Concept of social debt counselling

Arbeitsgemeinschaft Schuldnerberatung der Verbände (2018): Konzept einer Sozialen Schuldnerberatung.

11. Association of Debt Counselling Associations: Statement. Draft law on the implementation of the Federal Government's Housing Real Estate Credit Directive of 15 July 2015.

Arbeitsgemeinschaft Schuldnerberatung der Verbände (2015): Stellungnahme. Entwurf eines Gesetzes zur Umsetzung der Wohnimmobilienkreditrichtlinie der Bundesregierung vom 15. Juli 2015.

³² Arbeitsgemeinschaft Schuldnerberatung der Verbände (2018): Konzept einer Sozialen Schuldnerberatung.