

## **“Legal security of tenure, including protection from forced eviction:**

*1. Are there laws/regulations recognizing or ensuring legal security of tenure for all the population, and/or for specific individuals or groups?*

- *Does national legislation (or legislative proposals) spell out various forms of tenure that can ensure secure housing or land (such as tenancy, individual or collective ownership, limited rights to use)? Please list and explain those forms of tenure protected in law*

In Germany, security of tenure is guaranteed for all forms of tenure and for all persons. The right to property is enshrined in Article 14 (1) of the German Constitution<sup>1</sup>. According to the German Constitutional Court, the right to property extends to the tenant’s right of ownership.

Apart from home ownership and apartment ownership, the main form of tenure is tenancy.

German tenancy law is embodied in sect. 535 et seq. German Civil Code.<sup>2</sup> One of its predominant features is security of tenure. Usually, lease agreements are concluded for an indefinite period of time. The tenant is protected by sect. 573 (1) German Civil Code from the termination of the contract, as termination by the landlord is limited to specific cases: “The lessor may only give notice if he has a justified interest in the termination of the lease. Notice of termination for the purpose of increasing the rent is excluded.” According to subsection (2), a justified interest exists especially in cases where the tenant has severely violated his contractual duties, or where the landlord needs the premises as a dwelling for himself or his family. Besides that form of termination, termination of the contract for cause is always possible. This requires that the landlord prove the existence of a compelling reason. Compelling reasons exist e.g. in cases where the tenant endangers the property, or where he is in default, on two successive dates, of payment of the rent (sect. 543 German Civil Code). Sect. 569 German Civil Code provides further rules for the protection of the tenant in this case. Security of tenure is also ensured through provisions with respect to the period of the termination notice: The period is at least three months and “is extended, by three months in each case, five and eight years after the lessee is permitted to use the residential space” (sect. 573c German Civil Code).

Lease agreements that are concluded for a definite period of time may only be terminated for cause, sect. 542 (2) et seq. German Civil Code.

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<sup>1</sup> See English version provided by the German Federal Ministry of Justice: [http://www.gesetze-im-internet.de/englisch\\_gg/index.html](http://www.gesetze-im-internet.de/englisch_gg/index.html).

<sup>2</sup> See English version provided by the German Federal Ministry of Justice: [http://www.gesetze-im-internet.de/englisch\\_bgb](http://www.gesetze-im-internet.de/englisch_bgb).

Moreover, security of tenure is also guaranteed in cases where the landlord sells his property to a third person. Sect. 566 German Civil Code states that “the acquirer, in place of the lessor, takes over the rights and duties that arise under the lease agreement during the period of his ownership.”

Besides tenancy, persons may decide to become member of a housing cooperative. The members of the cooperative hold cooperative shares and acquire the right to residence in a co-operative flat, usually for an indefinite period of time. Once they have been accepted for a specific dwelling, the protective provisions of tenancy law apply as well.

*2. Are there laws or regulations offering protection from forced eviction or involuntary resettlement? Describe briefly the content of the laws/regulations.*

A creditor can only initiate enforcement proceedings if he has obtained an enforceable title, which allows the forced eviction. This can be a judgment, a court settlement or an authentic instrument (a document which has been formally drawn up or registered by a public authority or other authority empowered for that purpose).

Moreover, sect. 765a of the German Code of Civil Procedure<sup>3</sup> entails a protective provision for the defendant, who will be a tenant or a homeowner with mortgage default:

(1) Upon a corresponding petition being filed by the debtor, the court responsible for execution may reverse a measure of compulsory enforcement in its entirety or in part, may prohibit it, or may temporarily stay such measure if, upon comprehensively assessing the creditor’s justified interest in protection, the court finds that the measure entails a hardship that due to very special circumstances is immoral (contra bonos mores). (...)

(3) In matters pertaining to the vacation of premises, the petition pursuant to subsection (1) is to be filed at the latest within two (2) weeks prior to the date set for the vacation of the premises, unless the grounds on which the petition is based came about only after this time or the debtor was prevented from filing the petition in due time through no fault of his own.

The court will stay or reverse the enforcement measure if the balance of interests will be in favor of the debtor. But even in the absence of such order and in case the vacation would result in the debtor’s homelessness, the enforcement officer has to inform the competent administrative authority. The authority may then order, at its own expense, the debtor to stay

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<sup>3</sup> English version: [http://www.gesetze-im-internet.de/englisch\\_zpo/englisch\\_zpo.html](http://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html).

in the rooms. As long as the administrative order is valid, any further execution is not possible.<sup>4</sup>

3. Which groups/individuals does the legislation mentioned in questions 1. and 2. protect? For instance:

- Tenants
- Informal settlers
- Those with mortgage defaults
- Other groups mentioned in questions 4

We refer to the answers of questions 1 und 2.

#### **Data on those with insecure tenure:**

4. Is there any data or estimated figure for the number of those with insecurity of tenure? For instance:

- Households living in informal settlements
- Minorities living in informal settlements (e.g. Roma)
- Internally displaced persons
- Undocumented migrants, refugees or asylum seekers
- Households that were evicted or are under eviction orders due to mortgage default

There is no comprehensive data for the number of persons with insecurity of tenure. This is due to the variety of reasons from which insecurity of tenure may result. In 2011, the number of compulsory auctions amounted to 62.690. However, there is no data relative to the number of evictions.

#### **Urban poor living in informal arrangements (in particular informal settlements):**

5. What kind of tenure rights are foreseen or recognized in legal or administrative instruments for those informally occupying land or housing (e.g. temporary permits, right to possession, leasehold rights over a definite or indefinite period, etc.)?

- Can informal settlers accrue rights to their land or housing over time (e.g. through “adverse possession”)? Please cite relevant regulations and instruments.
- Are there conflicting claims between formal (private and public) owners of the land and people having informally settled on that same land, or conflicts between informal

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<sup>4</sup> § 181 Geschäftsanweisung für Gerichtsvollzieher.

*settlers and environmental or planning laws/regulations? Please refer to regulations and administrative and judicial case law addressing those conflicts, if available.*

*6. Are there any policy, project, or program in place or being developed to recognize record, register or regularize tenure rights of urban poor living in informal tenure arrangements, including in informal settlements?*

- Do these policies/projects/programs include “slum upgrading” or other in-situ urbanization investments?*
- What have been the results of such policies/programs? For instance, number of households who have been regularized/whose rights were registered; types of tenure rights acquired after regularization (e.g. individual ownership; long-term formal rental; collective ownership); etc.*
- Provide information on private/community initiatives aiming at regularizing tenure rights of informal settlers which are supported by the Government.*

Answer to questions 5 and 6:

Informal settlement, as defined by this questionnaire, is a virtually unknown phenomenon in Germany. In 2010, the number of households amounted to 40.3 million. At the same time, the number of dwellings accounted for 40.5 million. The German housing market offers an adequate number of private rented dwellings for the population. Individuals who live on social welfare and who cannot afford to rent housing with their own means will either be assigned an accommodation by the German social security office or can rent an accommodation on their own discretion and are later reimbursed by public welfare. Moreover, the federal Government, the federal states and the municipalities spend approximately € 17 billion p.a. in support of 5 million households: The expenses cover housing subsidies for low income households and accommodation costs for persons living on social welfare.

Additionally, the federal states support public housing accommodation for those who experience problems with regard to housing, such as households with low income, families and other households with children, pregnant women, elderly people, homeless persons and other.

Apart from public support, private actors, such as churches and associations, play a key role in the assistance of persons with insecurity of tenure.

It is against this factual background that German private law does not recognize rights for individuals "informally" occupying land or housing. Similarly, there are no state policies, projects, or programs as referred to in question 6.

*7. Is there any land reform program or policy in place or being developed (for instance, land management systems, changing land regimes)? Does it include specific provisions or*

*processes to recognize and register the rights of urban poor, in particular those living in informal settlements?*

With its "Social City" program, the Federal Government supports towns and cities to improve the living conditions in neighborhoods that are physically run-down, economically disadvantaged and socially deprived. In areas where problems overlap, physical regeneration is accompanied by measures from various policy areas, such as housing policy, economic policy, labor policy, integration policy, education policy and social policy, which are consolidated to form an integrated urban development policy at the local authority level.

**For those States with international development aid agencies/programs:**

*8. Does the State development agency/program finance and support the development and implementation of policies/projects/programs that explicitly recognize record, register or regularize the tenure rights of urban poor, in particular those living in informal settlements? Please refer to relevant initiatives and programs.*

Germany does not fall into the category of States to which question 8 refers.

**Urban planning and housing policies:**

*9. Do urban planning laws/regulations, at national or local level, include pro-poor land use instruments, such as inclusionary zoning, quota for social housing in residential developments or other?*

German urban planning law includes regulations with respect to social housing. According to sect. 9 (1) no. 7 of the Federal Building Code<sup>5</sup>, the legally binding land-use plan may on urban-planning grounds make designations regarding spaces which have been wholly or partly set aside for publicly subsidized housing developments.

Sect. 11 of the Federal Building Code governs the law on urban development contracts. According to sect. 11 (1) no. 2 of the Federal Building Code, suitable subjects for urban development contracts include promoting and safeguarding the aims pursued by urban land-use planning, "in particular (...) supplying the housing needs both of groups within society who experience special problems with regard to housing supply and of the local community."

The issue of quota for social housing is a question which falls into the competence of the municipalities. Some German cities have introduced quotas for social housing, e.g. the cities of Munich, Stuttgart and Hamburg. Based on urban development contracts or regulations regarding the sale of land, investors have to provide a certain amount of space for social housing dwellings. Usually, these quotas amount to 30 % of the building's floor space.

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<sup>5</sup> German version: <http://www.gesetze-im-internet.de/bbaug/index.html>.

*10. Please provide information on any housing policies or programs aimed at promoting forms of tenure alternative to individual freehold, such as rental, communal or cooperative tenure.*

In Germany, more than 50% of the population live in rented dwellings. Rental tenure is promoted by the government through the set of regulations described in question 1, which offer an effective security of tenure for the tenant. Cooperative tenure is promoted through its inclusion in various government support programs relative to the construction or renovation of buildings. Moreover, Germany supports the acquisition of cooperative shares by individuals through loans granted by the government-owned development bank KfW<sup>6</sup>.”

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<sup>6</sup> See:

<https://www.kfw.de/inlandsfoerderung/Privatpersonen/Neubau/Finanzierungsangebote/Wohneigentumsprogramm-Genossenschaftsanteile-%28134%29/>.