

Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

REFERENCE:
AL DEU 1/2020

27 April 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the impact of **Akelius Germany's business model on the right to housing of tenants in Akelius' apartment blocks in Berlin and Hamburg, which illustrates the negative impact of financialization of housing in Germany.**

According to the information received:

Akelius Germany is a subsidiary of the Swedish multi-national corporation Akelius, which owns apartments in both Berlin and Hamburg and rents these out in order to generate profits, which are eventually passed through to three Bahamian registered foundations. Akelius Germany is generating vast sums of money from its property holdings and as of December 2019 owns 18,106 apartments in Germany.¹ Between 2014 and 2019, it has seen yearly growth in both the rental incomes generated from its business activities, and the average residential rents that its tenants pay.²

Akelius Germany's business model is highly dependent on a process of acquisition, renovation and re-rental. In this regard, Akelius Germany purchases blocks of flats in London and subsequently commences renovations on empty flats and communal areas, despite no substantial work being regarded as required by tenants. Having completed these renovations, Akelius Germany then finds new tenants for the newly renovated flats, charging them higher rents as a result of the modernisation works. This model is putatively designed primarily to increase the profits of Akelius Germany, and is seen in most, if not all, of the cities which Akelius operates in around the world.

¹ Akelius, year to end-2019 report, 26 online at: <https://mb.cision.com/Main/3302/3025691/1186841.pdf>; Akelius, Annual Report 2018, 97, online at: <https://mb.cision.com/Main/3302/2798336/1033090.pdf>

² Akelius, year to end-2019 report, 26 online at: <https://mb.cision.com/Main/3302/3025691/1186841.pdf>; Akelius, Annual Report 2018, 97, online at: <https://mb.cision.com/Main/3302/2798336/1033090.pdf>

However, this profit-making model comes at a significant cost to tenants' enjoyment of their human rights, with a number of highly publicised examples of Akelius Germany's tenants suffering highly detrimental impacts on their enjoyment of their human right to housing as a result.

Akelius's activities having a highly detrimental impact on the affordability and habitability of the homes it owns, with many tenants being subjected to long periods of disruptive construction works and some informed that they will be required to pay higher rents as a result of building improvements that they never requested, wanted, deemed necessary, and, in some cases, were even sufficiently consulted about.

In 2008, for example, Akelius Germany purchased a Berlin apartment building called Hansa-Ufer 5, containing 66 small apartments, which was owned by the Berlin government and operated as a retirement home for the elderly. In 2014, Akelius Germany contacted tenants notifying them that it planned to commence construction work on the block in order to substantially modernize it. This involved renovating communal areas and outside spaces and moving a common room which is vital to the lives of the residents to a smaller laundry room. Announcing its renovation plans, Akelius Germany informed tenants that it planned to charge them 40 to 65 per cent more rent once the works were completed. Tenants were mostly living on pensions and the proposed increases in their rents would have left them with no or very little money to live on after meeting their housing costs. Following persistent activism on the part of the residents, Akelius Germany eventually offered to substantially decrease the rent hike, however the residents eventually rejected this offer on the basis that it would allow Akelius Germany to undertake the renovations and because it had not been put into legally binding terms. Whilst the persistence of the residents and public outcry eventually led Akelius Germany to postpone the proposed renovations, evidence suggests, however, that renovations have since commenced at Hansa-Ufer 5, including the modernization of individual apartments within the complex. One modernized apartment within the Hansa-Ufer 5 block has recently been advertised online for a base rent of €17.16 per square meter. Whilst apparently reflective of the market rate as it currently is, it has been noted that this has increased from €9 per square meter in only a few years, with it being suggested that the number of luxury apartments that have been introduced to the area is the cause of this dramatic rise.³

Similarly, in another Berlin apartment complex, located on Anton Saefkow Straße in Prenzlauer Berg and containing around 200 individual apartments, Akelius Germany commenced construction work in 2018 with a view to expanding the top floor of one of the blocks on the site. Tenants have been strongly complaining about the impact of Akelius Germany's construction work, which has included removing the roof of the building, and which has lasted for over a year. As part of the plans, Akelius Germany is installing balconies on existing tenants'

³ See, <http://needleberlin.com/move-5/>

apartments, with the stated aim of ensuring that existing apartments match those being added on the top floor. Tenants have been informed that over four years this will eventually cost them between €25 and €100 extra per month in rent, despite many not wanting balconies installed or consenting to their installation.⁴ Akelius Germany has suggested that the addition of the balconies will be of benefit to both current and future tenants, and that they should therefore be accepted. Additionally, it has noted that the increases in rents that result from the addition of balconies is below the level that would be legally permissible under Berlin's rent control regulations, due to the fact that they will be introduced gradually over four years.⁵ However, this fails to acknowledge that tenants have had these renovations forced on them without sufficient consultation, and resultantly are having their housing costs increased without their consent, with a detrimental impact on their housing affordability. Whilst some concessions have apparently been made to allow tenants who would suffer hardship from having to pay the additional rent for the balcony to declare as such and consequently not have to pay extra. However, it is unclear what Akelius deems to constitute hardship for the purpose of removing liability for the additional rent payment and it apparently places the burden on the tenant to prove they will suffer hardship in order to avoid additional rent. Equally, it is highly exclusionary and discriminatory as those who cannot afford the additional rent increase still have a balcony installed on their apartment but are not allowed to use it.

In addition to the decrease in affordability caused by Akelius Germany's renovation works, tenants living in the Anton Saefkow Straße blocks have further complained about the horrendous living conditions that the works have exposed them to, which have led some to feel that their homes are uninhabitable. Residents have complained they are living on a noisy, dirty and unsafe construction site, and that the works have caused damage to their homes and putatively led to other issues such as mould. This decrease in habitability has resulted entirely from Akelius Germany's drive to increase the profit-making potential of the blocks, without due regard being paid to the tenants who live there.

Examples similar to the allegations above highlight the deeply detrimental impact of the financialization of housing, which leads to decision-making and housing provision which is devoid of consideration for the human right to housing, of which affordability based on household income is a key aspect, focusing instead on profit-making.

⁴ Julia Schmitz, 'When craftsmen break through the ceiling' (24th January 2020) Prenzlauer Berg Nachrichten, online at: https://www.prenzlauerberg-nachrichten.de/2020/01/24/wenn-handwerker-durch-die-decke-brechen/#scroll_to_steady_paywall

⁵ Thomas Schubert, 'Dispute over expensive balconies: Prenzlauer Berger against renovation' (23rd January 2020) Berliner Morgenpost, online at: <https://www.morgenpost.de/bezirke/pankow/article228226921/Streit-um-teure-Balkone-Prenzlauer-Berger-gegen-Umbau.html>

The lack of sufficient safeguards to prevent institutional investors from utilising peoples' homes to generate vast amounts of wealth has caused a detriment impact on vital facets of the right to adequate housing, including habitability and affordability. Investment in housing in Germany has disconnected housing from its core social purpose of providing people with a place to live in security and dignity.

The Government of Berlin has recently introduced important new rent-control measures that are aimed at significantly enhancing the protections afforded to tenants in the city. As they are understood, under the new rent-cap legislation, rents for the majority of apartments will be frozen for five years with a cap on monthly rents at €9.80 per square meter. Additionally, landlords will be prohibited from charging new tenants more than the previous tenant paid and from 2022, landlords will only be able to increase the rent in line with inflation.

While I do not wish to prejudge the accuracy of the information made available to me, I wish to express my concern for the effects of the financialization of housing in the Germany, which has been facilitated, in part, by your Government's inaction and in particular by the ineffective legal and regulatory framework which allows housing to be turned into a mere investment and vehicle for profitmaking. This is despite adequate housing being recognised in international law as a human right. I invite you to consider the concerns outlined in this letter, with a view to developing a human rights-based response to them.

The financialization of residential real estate undermines the enjoyment of the rights to non-discrimination, equality and housing. The business model associated with financialization demands short-term profits, meaning there is heightened pressure placed on purchasing affordable housing, or housing that is itself regarded as "undervalued" or in 'undervalued' areas, often those with rent guidelines or controls in place. This is often where the most vulnerable communities are located. The financialized housing model necessitates securing the highest possible return on investment through the persistent extraction of profits through monthly rents, which results in the constant escalation of housing costs for tenants and a degradation in living conditions generated by renovations, which have been commenced for the primary purpose of pursuing profit. Turning housing into an investment thus leads to decision-making that is investor-driven rather than tenant centred. When the focus is on maximizing profits, housing becomes less affordable, less available, less secure, and less habitable. It can result in increased evictions or constructive displacement.

I use this opportunity to encourage Germany to recognize the impact of the financialization of housing on the enjoyment of the right to adequate housing and to take concerted legislative steps towards regulating Akelius and other actors and returning housing to its core function as a social good. Failure to do so can only be regarded as a retrogressive step, and accordingly puts the State at odds with its obligations under international human rights law.

I would like to acknowledge that recently introduced rent-control measures in Berlin, aimed at significantly enhancing the protections afforded to tenants in the city, represent a significant step forward in the protection of affordability for tenants and in capping rents they may also assist in ensuring habitability by curtailing the profitability of unnecessary renovation work, thus making it less likely that such modernisations will be undertaken. The necessity for the introduction of legislation such as this is made clear at article 2.1 of the International Covenant on Economic, Social and Cultural Rights wherein notes that States Parties have a responsibility to realize Covenant rights using ‘all appropriate means, including particularly the adoption of legislative measures.’

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on any legislative measure, including with respect to tax laws, or laws governing companies that operate through tax havens or any other measures taken by the Government to prevent the negative human rights impact of the financialization of housing.
3. Please provide detailed information on any investigation undertaken on the business practices of Akelius Germany and their impact on the human right to housing of residents in buildings owned by the company.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I intend to publicly express my concerns about the human rights impact of Akelius’ business practices in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I

have been in contact with your Excellency's Government's to clarify the issues in question.

Please note that a letter with a similar content has been sent to other countries concerned, and to Akelius Germany's parent company, Akelius Residential, highlighting its human rights obligations as a private actor to avoid any harm and to take positive steps to realize the right to housing.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights ratified by Germany on 17 September 1973, and more specifically article 11.1 which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

In addition, I would like to bring to your Government attention the UN Guiding Principles on Business and Human Rights, which remind States that they must protect against human rights abuse by business enterprises within their territory and/or jurisdiction. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). In addition, according to the Guiding Principles, business entities also have an independent responsibility to respect human rights, including the right to adequate housing.

According to international human rights law, your Excellency's Government is required to take progressive measures, to the maximum of available resources, to ensure access to adequate housing for all without discrimination. To address the issue of financialization and its impact on the enjoyment of the right to housing, your Government must develop policies and laws that include a full range of taxation, regulatory and planning measures in order to re-establish housing as a human right, promote an inclusive housing system, prevent speculation and limit the extraction of profits at the expense of tenants. It is necessary, as well, to ensure that loopholes within rent control regulations do not incentivise institutional property investors commodifying housing by allowing above-guideline rent increases where they undertake, even when unnecessary, substantial renovations to properties. Achieving this will require a transformation of the relationship between your Government and the financial and private sectors, whereby human rights implementation becomes the overriding goal in all activities and processes. In this regard, we would draw to your attention to the Special Rapporteur's report on the financialization of housing (A/HRC/34/51).



Permanent Mission
of the Federal Republic of Germany
to the Office of the United Nations and
to the other International Organizations
Geneva



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Ref.: Pol-10-381.70/24
Note No.: 177/2020

Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit herewith the observations by the Federal Republic of Germany in reply to the communication of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (AL DEU 1/2020), dated 27 April 2020.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 6 October 2020



To the
Office of the High Commissioner for Human Rights
Palais Wilson
Geneva

Response by the Federal Republic of Germany to the communication of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (AL DEU 1/2020):

The Government of the Federal Republic of Germany herewith provides, as requested by the Special Rapporteur, the following observations.

Modernising the housing stock – particularly in terms of improved energy efficiency, with an eye to achieving climate change targets – is of great importance to the Federal Government. Section 555d of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) therefore provides that lessees are in principle to tolerate modernisation measures

1. by means of which final energy is saved with lasting effect in relation to the leased property,
2. by means of which non-renewable primary energy is saved with lasting effect or the climate is protected with lasting effect,
3. by means of which water consumption is reduced with lasting effect,
4. by means of which the utility value of the leased property is increased with lasting effect,
5. by means of which the general living conditions are permanently improved,
6. which are carried out due to circumstances for which the lessor is not responsible, and which do not constitute structural maintenance measures, or
7. by means of which new residential space is created.

In order that lessors have an incentive to modernise their property, they may, pursuant to section 559 of the Civil Code, increase the annual rent by a percentage of the costs spent on the dwelling if they have carried out modernisation measures within the meaning of numbers 1, 3, 4, 5 or 6 above. However, a rent increase is ruled out where, also taking account of the likely future operating costs, it would signify a hardship for the lessee which cannot be justified, even taking account of the legitimate interests of the lessor (section 559 (4) of the Civil Code). No such consideration shall take place if the property was merely restored to a generally customary condition or if the modernisation measure was carried out as a result of circumstances for which the lessor was not responsible.

Despite this hardship provision, the rules on rent increases following modernisation in force until 31 December 2018 led in some instances to unacceptable burdens for some lessees and therefore prompted them to make use of their special right of termination on receipt of the modernisation notice (section 555e of the Civil Code). The reason was that – in particular – the extent of modernisation measures had in practice increased greatly. This meant that in many cases the absolute amount of the rent increase following modernisation rose substantially.

The Act adapting tenancy law (*Mietrechtsanpassungsgesetz*) of 18 December 2018 (Federal Law Gazette I p. 2648) therefore reduced the rate at which the costs of modernisation can be added to the annual rent from eleven percent to eight percent. In addition, section 559 (3a) of the Civil Code introduced a cap on rent increases following modernisation. It states that the monthly rent may only rise by a maximum of three euro per square metre of floor space within six years. If the monthly rent

prior to the rent increase is less than seven euro per square metre, it may only rise by a maximum of two euro per square metre. Moreover, a provision was added to the 1954 Economic Offences Act (*Wirtschaftsstrafgesetz*) stating that abusive modernisation designed to make lessees end their leases can in future be punished as an administrative offence by a fine of up to one hundred thousand euro. Legal presumptions for violations of duty in connection with constructional changes were introduced in section 559d of the Civil Code; these impact in particular if the lessor is instrumentalising the announcement or implementation of a modernisation measure in order to make the lessee end the tenancy.

The Act adapting tenancy law entered into force on 1 January 2019. The Federal Government has not been made aware of any cases of the abusive modernisation of residential accommodation since then.

At the Housing Summit on 21 September 2018, the Federation, Länder and municipalities took key steps for more affordable housing and agreed on an unprecedented package of measures in the Joint Federal, State and Local Government Housing Strategy. This covers not only investment impetus for housing construction and measures to ensure affordability but also the reduction of construction costs and the development of a skilled labour force. Two years on, we can say that the implementation of the Joint Housing Strategy has been extremely successful, because all key decisions of the Housing Summit have been realised or set in motion.

With building-related child benefit, we are helping families to buy or build owner-occupied housing. KfW has already received around 250,600 applications with a volume of over five billion. We have strengthened social housing with an amendment to the Basic Law. From 2020, the Federation is granting the Länder earmarked financial assistance. From 2018 to 2021, the Federation is making available a total of five billion euro for social housing. In addition, in 2020 we have again kept urban development assistance at the high level of 790 million euro.

At the same time, the aim must be to ensure that housing is affordable. In an unprecedented move, we have already improved housing benefit twice during this legislative term. From 2022, housing benefit is to be brought into line with changes in rents and incomes at two-year intervals. We have also further developed the framework of tenancy law, for example by extending the reference period for the local rent comparison index from four to six years and extending the rent control mechanism to 2025.

The fundamental prerequisite for affordable housing is affordable building land. Measures to mobilise building land are therefore a very high priority. Working from the recommendations of the commission of experts on “sustainable mobilisation of building land and land policy”, we are revising the Federal Building Code to include various provisions that will help the municipalities to mobilise more land for housing construction more quickly.

Construction, too, must be affordable, if housing is to be affordable. In response to the Housing Summit and the report on the implementation of the recommendations of the commission for building cost reduction, we therefore defined a package of measures to limit building costs. In this context we are committed to serial and modular construction, the opportunities offered by digitisation, restricting the follow-up costs of standardisation, and the development of a skilled labour force.