INSECURITY OF TENURE AND PREVENTION OF HOMELESSNESS IN GERMANY

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1. INTRODUCTION

At first sight the German provisions concerning protection of tenants against notice to quit with their intricate details, which cannot all be spared to the readers of this report, seem to provide a very extensive protection against homelessness. Local administrations seem to have various promising possibilities of helping households threatened by homelessness and avoiding imminent homelessness .

On closer inspection, however, it becomes apparent that a considerable number of tenancies is excluded from these various protective provisions and that even in cases of "regular tenancies" the safety net is not meshed as tightly as it seems. Whether the possibilities of securing tenancies and avoiding homelessness are actually used is not least dependent on the institutional organization of the prevention of homelessness within local authorities.

The following survey on insecurity of tenure in Germany as well as the other issues of this national report on homelessness in 1995 are mainly structured along the guidelines of the European Observatory on Homelessness. In some points the report could only rely on studies on the situation in West Germany, because data on the problem of homelessness in East Germany is even scarcer than it is in West Germany. The terms "East" and "West Germany" always describe the former territory of the Federal Republic of Germany (West Germany) and the territory of the former GDR (East Germany).

2. METHODOLOGY

The parts of the text that describe the legal framework mainly refer to a legal expertise by two jurists, Prof. Dr. Peter Derleder and John von Aken, who have published a study on the securing of housing provision of socially and economically deprived persons (v. Aken/Derleder 1994). Concerning legal practice, the author can also refer to information from expert interviews with judges of lower district courts and with representatives of tenants' associations (comp. Busch-Geertsema/Ruhstrat 1994 a, p. 83-106).

Data on the socio-economic background is mainly taken from official sources like publications of the Federal Office of Statistics and the Federal Office of Employment as well as the Housing Allowance Report and the Rent Report of the Federal Government.

The account on the practice of local authority in preventing homelessness refers to the results of two studies published by the "Institute for Innovative Social Research and Social Planning" (Gesellschaft für Innovative Sozialforschung und Sozialplanung) in 1994. The questions of the studies are similar, but they are applied to different regions. While one of them (Evers/Ruhstrat 1994) exclusively describes the situation of Schleswig-Holstein, the other one (Busch-Geertsema/Ruhstrat 1994 a) has its emphasis on Northrhine-Westphalia, but five other West German towns are included. Both studies have employed quantitative as well as qualitative research methods. Beside the expert interviews with judges and representatives of tenants' associations that have been mentioned above, in seven

municipalities of intensified research (per study) interviews were made with employees of different municipal offices and of different nongovernmental welfare institutions. 31 local authorities questioned for the study with emphasis on North Rhine-Westphalia and 167 local authorities in Schleswig-Holstein gave detailed written information about the practice of prevention of homelessness, about the practice of temporary accommodation of homeless households and about the reintegration of these households into permanent housing (the number of local authorities questioned for the study on North Rhine-Westphalia is smaller because of a preselection for the questioning with a higher degree of differentiation). Concerning occasions and reasons of homelessness a special investigation has been carried out at 35 lower district courts in North Rhine-Westphalia. In Schleswig-Holstein the question of reasons for first-time homelessness was part of interviews with 267 single homeless persons who had contacted governmental and non-governmental institutions of support during the 25th week in 1992.

As it has already been mentioned, the statements of this report for example about the practice of prevention of local authorities but also about reasons of homelessness and about the quantitative extent of threatening homelessness, are in most cases restricted to West Germany. There exist only a few descriptions of the situation in East Germany and just one empirical survey on the financial burden of rents (Hentschel 1993) to which this report could refer.

3. INSECURITY OF TENURE. THE SOCIAL AND LEGAL CONTEXT IN GERMANY

3.1 The socio-economic context

3.1.1 The rented housing market as main provision of housing for low-income households in Germany

Even before the German Unification the rate of owner-occupied houses and flats in West Germany was the lowest among member states of the European Community (Matznetter 1994), and the German rate has even decreased after the unification because in East Germany only an extremely small part of flats and houses is owner-occupied. According to the first survey on housing including data from East Germany, 38.9 p.c. of altogether 32.3 million inhabited flats and houses in Germany were occupied by their owners (Statistisches Bundesamt 1995 a). Much more than in other European countries the ownership of a house indicates the economic prosperity of its occupants. People with a low income do not usually own the houses or flats they live in, and the percentage of homeless persons that have lost owner-occupied homes is very small.

Although the number of compulsory auctions of housing property is not irrelevant in Germany, the problem of threatening homeloss prevails in the sector of rented housing. Therefore the main part of the following account will focus on the legal framework and insecurity of tenure.

3.1.2 Unemployment, poverty and the problem of overindebtedness

The number of unemployed persons and of recipients of social assistance has increased steadily in recent years. In 1994 the annual average of officially registered unemployed persons was at 2,556,000 in West Germany and at 1,142,000 in East Germany, so altogether 3,698,000 persons were officially unemployed (BFA 1995, p. 11, 245; see also table 1).

TABLE 1
Registered unemployed in Germany

	Unemployed		
	West Germany	**East Germany**	**Germany**
1991	1,689,365	912,838	2,602,203
1992	1,808,310	1,170,261	2,978,570
1993	2,270,349	1,148,792	3,419,141
1994	2,555,967	1,142,090	3,698,057

Source: BFA (1995)

In 1993 altogether 4,269,000 persons received social assistance in West Germany and 749,000 in East Germany, the total number of recipients of social assistance in Germany therefore amounted to 5,018,000 (Statistisches Bundesamt 1995 b; see also table 2; these numbers are annual total numbers, the numbers for a fixed day would be lower by about one third). If the poverty line is set at 50 p.c. of the net income of different sizes of households (net equivalence income), the data of the socio-economical panel (annual representative interviews with about 6,000 households in West Germany and about 2,200 households in East Germany) reveals a rate of poverty of 11.5 p.c. in West Germany and of 7.3 p.c. in East Germany for one month in 1993 (Hauser 1995, p. 11). So about 8.6 million inhabitants of Germany were affected by poverty in 1993. (In 1993 the total number of inhabitants of Germany was at about 81.1 million.)

TABLE 2
Recipients of subsistence benefit

	Recipients of subsistence benefit		
	West Germany	East Germany	Germany
1991	3,738,000	488,800	4,226,800
1992	4,033,000	685,000	4,718,000
1993	4,269,000	748,600	5,017,600
1994	n. a.	n. a.	n. a.

Source: Statistisches Bundesamt (1995 b)

Overindebtedness is a growing problem in Germany. A household is considered as overindebted if financial liabilities can no longer be paid from the household's current income, because otherwise the disposable means would not be sufficient to cover the fundamental costs of living. According to this definition in 1989 about 4.2 p.c. of all West German households were indebted, that is 1.2 million households in West Germany (BMFUS 1992, p. 112). In a note from 15th March 1995 the German Association of Saving Banks and Giro (Deutscher Sparkassen- und Giroverband) projected this data to the whole German population in 1993 and came to the number of 1.6 million of overindebted households (Deutscher Sparkassen- und Giroverband 1995, p. 3).

3.1.3 Increase in rent prices and the development of the rent burden

For many years the increase in rent prices in West Germany has been above the increase in prices for general costs of living. Between 1985 and 1994 the rent increase was at 37.1 p.c., while the general costs of living only increased by 23.5 p.c. (Wirtschaft und Statistik 7/1995, p. 496). In particular additional housing costs have increased dramatically, mainly as a consequence of increases in fees for municipal services like refuge disposal, street cleaning, water supply and sewage disposal. Between 1985 and 1993 these prices increased by up to 100 p.c. (refuge disposal) (BMBAU 1994, p. 23). Whereas between 1985 and 1991 the disposable income of West German private households had increased more than housing costs, this trend was reversed in following years: since 1992 the increase in rents has been stronger than the increase in disposable incomes (BMBAU 1994, p. 20). Therefore it can be assumed that the average rent burden (part of the income spent on rent costs) has grown. However, statements on the average rent burden do not tell much about the number of households with an excessive rent burden. German statisticians realized a long time ago that the rent burden of low-income households is always higher than the rent burden of households with higher incomes. The latest available assessment concerning this question, which unfortunately had to refer to data of an income-and-consumption-sample from as long ago as 1988, revealed that 30.2 p.c. of low-income households with a net income of 800 to 1,200 DM (about 423 to 635 ECU) and 12.8 p.c. of households with an income of 1,200 to 1,600 DM (about 635 to 847 ECU) had a rent burden of 35 p.c. or more of their income. The same is true for 10.2 p.c. of all West German single households (Euler 1994, p. 21). Small households are most likely to be affected by rent burdens of that amount.

In East Germany the rent burden has increased enormously since the German Unification (in comparison to the first half-year of 1991 the rents of all households of employed persons have risen by 600 p.c.; Wirtschaft und Statistik 7/1995), but the original level of rents used to be very low. In the former GDR the rent burden was at 3 p.c. of the disposable income, in 1993 it was already at 19 p.c. already (part of income spent on rent and additional housing costs including heating after deduction of housing allowance). According to a study from 1993, however 29 p.c. of East German tenants had to bear a rent burden of more than 25 p.c., and for 7.4 p.c. of all East German households the rent burden exceeded 35 p.c. of the household income (Hentschel 1993, p. 223).

3.1.4 The shrinking market of affordable housing for socially and economically deprived groups

Social housing in Germany is generally directed to a limitation of social obligations (like rent control - comp. 3.3.2 - and restriction of access to such households whose income is below a certain limit) to a certain time. After this time former social flats can be handled like free-financed flats (e. g. they can be sold, landlords may choose their tenants without any restriction and rent prices may be increased according to the regulations of free-financed housing). As very many social flats were built in the 1950s and 1960s, the period of social obligation has run out for them or is running out automatically in the 1980s and 1990s automatically. So at the moment the shrinking of the social housing supply is especially extreme. In addition, those flats for which the period of social obligations is running out used to be relatively cheap. After the turn of the millennium mainly those social flats with relatively high rents will be left, and many of them will be parts of disagreeable large estates. In North Rhine-Westphalia about 687,000 social flats became free of social obligations between 1982 and 1993, while 1.4 million still belonged to the supply of social housing in 1993. The average decrease in social housing had been 3 p.c. a year since 1982, but was at 3.6 p.c. in 1993, and it will accelerate in spite of the construction of new social flats (WFA 1994, p. 2). In 1992, towns in North Rhine-Westphalia reckoned a reduction of the social housing supply by 40 p.c. until the year 2000 (without newly constructed flats) (comp. Busch-Geertsema/Ruhstrat 1994 a, p. 142). In the town of Bremen only 17,400 of 58,000 social flats existing in 1993 will be subject to social obligations in the year 2000 (Busch-Geertsema 1995, p. 27.) In Hamburg it is expected that the supply of social housing will be shrinking to half of the existing supply between 1993 and 2000 (Mutschler 1995, p. 243).

There is no exact survey on the total number of social flats in Germany. In 1993 the Federal Government estimated the supply at "approximately" 3 million flats (BMBAU 1993, p. 17). However, among them is a growing number of flats with high rent costs which low-income households cannot afford and which institutions of social assistance do not assume either.

The destruction of cheap rented flats in old buildings by demolition, combination of flats, luxury redevelopment and conversion into freehold-flats is part of the reduction of low-priced housing. In spite of criticism from various sides, the purchase of old buildings with the purpose of using the flats for owner-occupation is still promoted by tax rebates.

3.2 The legal framework of financial support for housing costs

3.2.1 Housing costs and the system of social assistance

Local authorities take over the full amount of housing costs for people who receive social assistance (Sozialhilfe) "as far as they (the costs) are appropriate" (para. 3 implementing order to para. 22 Federal Welfare Act). However, neither the Federal Welfare Act nor the corresponding implementing order give a definition of the meaning of "appropriate". Many local authorities as authorities responsible for

social assistance keep to the regulations of the national Housing Allowance Law which defines the maximum amount a subsidized rent may have (see below) when deciding whether the rent costs of a social assistance recipient are appropriate. The Federal Welfare Act does not allow the routine application of the schedules of the Housing Allowance Law for defining the maximum amount of rents assumed as part of social assistance, all the more since the particularities of individual cases and the real situation of the housing market have to be taken into account when deciding about social assistance. However, many local authorities proceed along these schedules. This is especially problematic because the regulations concerning housing allowance are updated only at long intervals (for the last time in 1990), so that rent increases since the last reform cannot be considered. Anyhow, the regulations on housing allowance are meant to grant only a subsidy to the rent. They depend to a large extent on what is thought to be affordable and politically acceptable.

Nevertheless, the assumption of housing costs helps most recipients of social assistance to keep their flats. Problems with the definition of "appropriate" arise in particular if a change in a person's occupational or familiar situation (e. g. unemployment, death of marital partner, divorce, separation) leads to income losses and therefore to a need for social assistance and if his or her housing costs are then considered as "inappropriate" according to the standards of social assistance. The flats of persons who have already been recipients of social assistance and whose familiar situation changes (death of partner or his moving out of the flat) may also be considered as "inappropriate" concerning their size and therefore very often concerning their price. These recipients of social assistance may then be asked to lower their housing costs within "reasonable" time by moving into a cheaper flat, subletting the flat or in other ways. If they do not follow this request their housing costs have to be assumed only to the amount that is considered as "appropriate". If a recipient is self-confident enough to object against this procedure and if it comes to a lawsuit, the institution of social assistance has to prove that the recipient would have actually been able to find a cheaper flat or that he really had the opportunity of finding a lodger and that these ways of lowering the housing costs could have been realized at tolerable conditions (LPK-BSHG 1994: p. 177-183).

Usually social assistance institutions refuse to assume rent arrears of social assistance recipients if they regard the amount of the rent as inappropriately high.

Since contributions by social assistance are "subordinated" to other forms of income and social support (principle of subsidiarity), only that part of the rent which is not covered by housing allowance is assumed by social assistance. Many recipients of social assistance get their housing allowance, which covers a fixed part of the rent, together with their social assistance payment. The portion of the rent covered by housing allowance is fixed by regulations of the Federal States and differs between 41 to 53 p.c. of the officially accepted rent costs.

3.2.2 Housing costs and the housing allowance system

Households that are not entitled to social assistance may nevertheless receive housing allowance, if their income is below a fixed ceiling. In areas with the highest level of rent costs this ceiling is at a gross income of 4,660 DM (about 2,450 ECU) for a family consisting of four persons and at a gross income of 2,030 DM (about 1,070 ECU) for a single person. The amount of housing allowance depends on the number of family members belonging to the household, on the total sum of the family income and on the amount of officially accepted housing costs. As mentioned above, there are ceilings for the officially accepted rents to be subsidized which are laid down in schedules. These schedules distinguish six different categories of local rent levels and also consider the age of buildings, the standard of equipment and the size of households. As a matter of principle housing allowance may only be a contribution to the rent and may never cover its full amount.

Owner-occupiers may also receive housing allowance as a contribution to the financial burden caused by capital and managing costs. However, according to the latest statistics on housing allowance, concern less than 5 p.c. of all recipients of housing allowance. This demonstrates again that housing property is of little importance to people with a low income.

In 1993 about 1.84 million households in Germany received housing allowance, that is 6.3 p.c. of all private households (Seewald 1995 a, p. 479). In East Germany, where more generous regulations concerning housing allowance have been introduced for a transitional period to alleviate the burden of rapidly increasing rents after the German Unification, 1,37 million households (about 20 p.c. of all households) received housing allowance at the end of 1993 (Seewald 1995 b, p. 244).

Although there is a legal claim on housing allowance, it is only granted on the application of the entitled person. It is a serious problem that many persons entitled to housing allowance do not realize their legal claims, similar to many people who do not apply for social assistance, although they are entitled to it. This part is estimated by experts at 40 to 50 p.c. (Ulbrich 1992; Hauser/Hübinger 1993, p. 151). Another problem concerning the regulations on housing allowance is the fact that they are only updated at long intervals, so that the financial burden of the recipients of housing allowance grows with increasing rents during these intervals. In 1990 the ceilings for officially accepted rents and the rates of state contribution were adjusted for the last time, and another reform is appointed only for 1997.

3.3 The legal framework of the control of rent prices

In Germany the development of rent costs is neither completely left to the market nor is it subject to a strict state control. When describing the existing legal regulations exerting a certain control on the development of rent costs one has to distinguish between free-financed housing and social housing.

3.3.1 Rent control in free-financed housing

In free-financed housing landlord and tenant are usually free to agree on any amount of rent at the beginning of a tenancy. A ceiling is only fixed by penal clauses concerning the charging of exorbitant rents (para. 302 Criminal Code) and the charging of excessive rents (para. 5 Penal Law on Commerce).

A case of charging exorbitant rent is usually assumed by courts if the contractual rent exceeds the amount of rent locally customary for flats with comparable standards ("comparative rent" = "Vergleichsmiete") by more than 50 p.c. If a landlord also takes advantage of his tenant's lack of experience or lack of judgement or of his extremely weak will, he may even be punished with imprisonment or with a fine. The tenant does not have to pay the part of the rent above the amount of the comparative rent, and if he has already done so, he can reclaim it.

A charging of excessive rents as laid down in paragraph 5 Penal Law on Commerce is already assumed, if a rent exceeds the amount of the comparative rent by 20 p.c. and if a local shortage is exploited at the same time. Courts may impose fines up to 100,000 DM (about 55,600 ECU) for this offence. But landlords may justify rents which are up to 50 p.c. above the comparative rent with high costs of financing and purchase of the flats. Only in rare cases the fines provided by law are actually imposed, because it is difficult for tenants to fulfil all legal requirements and because most tenants affected by excessive rents do not take action against their landlords either because they do not know their legal rights or because they are afraid of losing the flat.

Whereas legal provisions to restrict the first-time rent are of little practical importance, the scope of rent increases within existing tenancies is limited more clearly. The corresponding regulations are part of a special law (Law Concerning the Amount of Rents = "Miethöhegesetz" = MHG). In its first paragraph this law states that it is impossible to give notice to quit with the purpose of raising the rent. One of the most important restrictions of the Law Concerning the Amount of Rents (called "Kappungsgrenze") rules out any rent increases by more than 30 p.c. within a period of three years. For certain flats this restriction ("Kappungsgrenze") was tightened up in 1993 so that these rents may be increased only by 20 p.c. within three years at a maximum. However, for this regulation a time limit is set until September 1, 1998. Paragraph 2 MHG also says that before rents may be increased the amount of the rent must have been unchanged for at least one year and that the new amount of the rent shall not exceed the comparative rent ("Vergleichsmieten"). Comparative rents are rents for flats which are comparable in their kind, size, condition, equipment and location for which the amount of rent has been increased within the last four years. Many local authorities regularly bring out rent tables ("Mietspiegel") with comparative rents. A landlord may also name three comparable flats or refer to expert opinion to justify a rent increase. This procedure meets the formal requirements of a rent increase, which, however, is only valid, if an increase in locally comparable rents can be proved.

Beside the restrictions mentioned above a landlord may also increase the rent if he has carried out constructional improvements e. g. to save energy and water or to increase the value of the flat by modernization. He is allowed to transfer parts of the costs in form of a rent increase to his tenant. He can also apportion increased

capital costs caused by financing, e. g. by purchase, construction, restoration or extension of living space, among his tenants.

Since the introduction of the Law Concerning the Amounts of Rents ("Miethöhegesetz") in 1975 there have been several changes with the intention of facilitating rent increases. The introduction of graduated rents and index-tied rents are part of these efforts. On certain conditions they enable landlords and tenants to disregard the restrictions mentioned above (limit to rent increases = "Kappungsgrenze" and reference to comparative rents = "Vergleichsmiete") and to agree either on fixed rent increases within a longer period of tenancy or on a linkage of rents to price changes of other products and services.

3.3.2 Rent control in social housing

In that sector of social housing which is still prevailing rents are regulated by laws and decrees different from rent control in free-financed housing. According to the "Housing Control Law" (Wohnungsbindungsgesetz) tenancies in social housing are ruled by the principle of the so-called cost-induced rent, which means that rents must not exceed the expenditure of current costs of landlords or housing organizations. However, this is only true as long as social flats are subject to legal obligations concerning rent and occupation of the flat ("Sozialbindungen"). Since the German system of social housing usually limits these social obligations for publicly subsidized flats to the period of subsidization, the termination of this period means that these flats are treated like free-financed flats afterwards. This fact is crucial, because at present the period of social obligations is running out for many flats of social housing constructed in earlier years so that the supply of social housing has been shrinking for years and will be shrinking further. By now diverse ways of subsidization have been developed within the social housing sector. Flats are either subsidized by building loans, the subsidization of expenditure or loans on expenditure or - and sometimes both is the case - by tax rebates. Periods of social obligation for subsidized flats differ depending on the form of subsidies and on special regulations of the Federal States (Bundesländer). As a result of new legal provisions the share of newly constructed flats for which the period of social obligation takes only 10 to 25 years at the most has increased in previous years. The period of social obligation used to be much longer (25 to 50 years) for "classical" social housing which is now on the decrease. Besides, more and more newly constructed social flats are explicitly excluded from the principle of cost-induced rent. Instead, the amount of rents is determined or limited by contractual agreements, and the legal provisions concerning free-financed housing are valid from the very beginning.

As soon as state subsidies are applied for the construction of a "classical" social flat with a cost-induced rent, a profitability calculation is made up to determine the amount of the cost-induced rent. The Federal States (Bundesländer) have fixed different rent ceilings which must not be exceeded, otherwise state subsidization will be denied. When granted subsidies are taken into account, the calculated cost-induced rent must not exceed these limits. The calculation of cost-induced rents is regulated in details by a federal decree. It takes into account all the expenditures for capital and managing costs (write-offs, administration, maintenance,

risk of rent losses). If a calculated cost-induced rent is approved and costs included in the profitability calculation rise at a later time, a landlord may make up a new calculation and raise the rent (principle of "dynamic cost-induced rent"). This may be the case e. g. if interest rates of granted subsidies or of outside loans rise, if subsidies for expenditure are reduced or if flat rates for administration and maintenance are increased etc.

There is also an obligation concerning the occupation of a social flat ("Belegungsbindung"). Social flats may only be occupied by households whose total income is below a fixed limit. Since these income limits were raised in 1994, about 40 p.c. of all households are now entitled to occupy a social flat. If the income of a household living in a social flat increases after some time and therefore exceeds the income limit, the Federal States (Länder) may on certain conditions impose a fee for inappropriate occupation of the flat ("Fehlbelegungsabgabe") on the household. These fees came to 0.50 to 9 DM (0.30 to 4.80 ECU) per square meter and month in 1993 depending on the amount of exceeding income and varying in the different Federal States (Länder) (BMBAU 1994, p. 18).

3.3.3 Additional housing costs: a "second rent"

Apart from the rent, tenants of social flats as well as of free-financed flats have to pay so-called "Nebenkosten" - additional housing costs. These "Nebenkosten" include e. g. costs of municipal services (like refuse disposal, street cleaning, water, sewage disposal), costs of maintenance and operation of shared services (central heating, lifts, shared aerials, cleaning of staircases, gardening) and diverse insurance costs as well as land tax. Usually tenants have to pay a flat charge for these costs, and once a year an exact calculation of the actual costs is made up. Additional housing costs have become a more important part of housing costs in recent years, because costs of municipal services have increased greatly. Therefore they are also called a "second rent".

3.3.4 Special regulations in East Germany

In the former GDR rents were normally determined by the state and extremely low in comparison to rents in West Germany. After the German Unification the rent level of price-controlled housing was raised in two steps (on October 1st, 1991 and on January 1st, 1993) by the Federal government. A third step towards the West German model of comparative rents ("Vergleichsmieten") was done by the Rent Transition Act ("Mietüberleitungsgesetz") of June 11th, 1995 - however, with a transitional period until the end of 1997. Among flats constructed at the time of the GDR all three interventions created more differentiation of rents. By the first step the possible extent of rent increases was made conditional on the equipment of flats (e. g. bathroom, central heating or lavatory inside the flat), by the second and third step it was also made conditional on the state of flats respectably on ascertainable faults of construction and on the location of flats (number of residents of the municipality). The apportionment of managing costs and of costs of heating and warm water has been already possible since October 1st, 1991 (at first only to a certain limit, which was later abolished). The second provision of January 1st,

1993 enables landlords to apportion costs of considerable maintenance works to a certain extent among tenants (up to 5.5 p.c. of the maintenance costs that fall to the flat) (comp. Derleder 1993). Finally the Rent Transition Act of 1995 was a fundamental step towards a transition to West German legislation and to the model of the comparative rent ("Vergleichsmiete") (Eisenschmid 1995). This act again allowed a rather general increase by 10, 15 or 20 p.c. of the rent, according to quality and location of the flat and graduated in time.

In spite of special interventions which aimed at alleviating the consequences of the rapid increase in rents in East Germany for low-income households (in particular special regulations concerning housing allowance in East Germany), as early as after the second decree on rent increases 29 p.c. of all East German tenant households spent more than 25 p.c. of their net income (including housing allowance) on housing costs (including rent, additional housing costs and costs for heating) (Hentschel 1993).

3.4. The German system of protection against unwarranted notice to quit

In Germany most legal provisions concerning tenancies are founded on written laws that belong to the Civil Code of Law (BGB). The Code of Civil Procedure (ZPO) contains regulations determining court procedures and prescribed periods as part of tenants' protection and potential prevention of homelessness. The legal provisions mentioned below are mandatory and cannot be undermined by contractual agreements.

The following account is based in its main points on a legal expertise by Prof. Dr. Peter Derleder and John Cecil van Aken, jurists at the University of Bremen, with the title "Legal aspects and the legal frame affecting housing emergencies" (in: Busch-Geertsema/Ruhstrat 1994 a, p. 207-243). The author of this report takes the responsibility for any oversimplification due to the necessary condensation of parts of the expertise and has added some facts concerning recent developments in German legislation.

3.4.1 Tenancies without any or with restricted protection against notice to quit

Some tenancies are excluded from the rather extensive protective provisions of German tenancy law. For example paragraph 564 b BGB which warrants protection for tenants in ruling that landlords are not permitted to give notice without "justified interest" does neither apply to flats and rooms that are rented for a temporary use like sailors' homes and accommodation for workers on field jobs nor to furnished rooms for single persons within the landlord's flat nor to rooms in students' and young people's homes. Tenancies about rooms rented by local governments with the purpose of sub-letting them to people in urgent need of housing or to people in job training are equally excluded from any protection against notice. Limited-term leases with a time limit up to five years are also excepted from protection against notice if the landlord has announced his intention to either use the flat or house for himself or for members of his family or to redevelop,

modernize or pull down the building or to rent the rooms to another employee if the rental object is a company flat. This intention has to be announced at the time of conclusion of the tenant contract and it has to be confirmed in writing three months before the expiration of the lease (para. 564 c BGB).

All the tenancies mentioned above do not only deny their tenants any protection against notice to quit as provided by so-called "regular tenancies", but make it impossible for them to take advantage of the Social Clause as well (see 3.4.4) - the only exception here are residents of students' and young people's homes. Some of these tenancies offer no protection against rent increases and include shorter periods of notice. The above-mentioned cases of limited-term leases and leases about flats that have been rented by local governments and are sub-let to special groups of persons do not even give their tenants the chance of being granted a stay of eviction (comp. 3.4.7.1).

Only a restricted form of protection against notice applies to so-called "Einliegerwohnungen" - separate flats built into a one-family house. The law (para. 564 b, 4 BGB) defines "Einliegerwohnungen" as flats in an owner-occupied building that may not contain more than two flats altogether. (If, however, a building with one "Einliegerwohnung" has been extended by another flat since June 1990, the third flat is also considered as an "Einliegerwohnung".) A landlord may give notice to quit to a tenant in an "Einliegerwohnung" without having to name a "justified interest" of his own. In this case the regular period of notice (see 3.4.2.2) is prolonged for another three months. A tenant who tries to oppose the notice to quit can only refer to the Social Clause (comp. 3.4.4) and, if he fails, ask for a stay of eviction (comp. 3.5.1.1).

Apart from the exceptional cases mentioned above tenants in flats which are rented for a limited time may demand the prolongation of their leases. They have to state their demand in writing two months before the expiration of the limited-term lease. Landlords may refuse the continuation of tenancy if they have a "justified interest" in the flat (for the definition of this term see 3.4.2.1.). If a tenant misses the deadline, the tenancy will continue tacitly, if the landlord does not oppose its prolongation within two weeks after the lease has expired.

3.4.2 Protection of tenants in "regular tenancies"

3.4.2.1 "Justified interest" as a necessary precondition for giving notice to quit

In cases of regular tenancies (not belonging to the exceptions mentioned under 3.4.1) a landlord may only give notice to quit if he has a "justified interest" in doing so. This rule is an essential part of the protection of tenants against notice. The law (para. 564 b BGB) names in particular the following grounds for giving notice as forms of a landlord's "justified interest": offences against the tenant's contractual obligations ("Vertragspflichtverletzung"), the owner's personal needs of his flat ("Eigenbedarf") and "prevention of a reasonable economic exploitation" of the flat ("Hinderung der wirtschaftlichen Verwertung").

An offence against the tenant's contractual obligations is any significant offence against the obligations laid down in the tenant contract for which the tenant can be made responsible, for example if the tenant does not pay his rent regularly or if he has been late with his rent payments several times, if he disturbs the domestic peace severely, or if he uses the rooms in a way that is contrary to the regulations of the contract (if he makes incisive changes in the construction of the building without the landlord's agreement or if he causes an overcrowding of the flat by taking in too many people etc.). If offences against the tenant's contractual duties are especially aggravating, the landlord is entitled to give notice to quit without conceding the otherwise mandatory period of notice. The Civil Code of Law defines the preconditions for this procedure in separate paragraphs (see 3.4.3).

"Personal needs of the owner" (Eigenbedarf) exist if the landlord needs the rented rooms for himself, for persons belonging to his household or for members of his family. There has been considerable disagreement among jurists and within jurisdiction about the definitions of the terms "family members" and "needs". Basic ruling about this matter has determined that the owner's personal needs of his flat must be assumed if the landlord has announced his intention to occupy the rented rooms himself or to let them to a member of his family and if he can give sound and understandable reasons for his plan. The tenant's interest in keeping the flat has to be taken into account and to be weighed against the landlord's interest in gaining it.

An exceptional case of notice on the ground of the owner's personal needs exists if the rented flat has been changed into a freehold flat and if it has been sold (case of conversion). The new owner of the flat has to wait for at least three years, in some areas with housing shortage even for five years (or for ten years, comp. 3.4.4), before he is entitled to give notice on the ground of his personal needs of the flat.

According to the law "prevention of a reasonable economic exploitation" (Hinderung der wirtschaftlichen Verwertung) means that the landlord is prevented from gaining a reasonable profit from his property and that this leads to substantial losses on his side. Giving notice with the purpose of raising the rent when letting the flat again is explicitly ruled out. Typical examples for giving notice on the ground of "prevention of reasonable economic exploitation" are cases when a landlord intends to sell or to pull down the building, when he wants to let the rooms henceforth as business or industrial premises or when buildings in a dilapidated state are to be extensively renovated. However, the requirements of courts are rather strict when assessing the question whether the losses a landlord might have to suffer are "substantial". If a rented flat in an area with housing shortage is converted into a freehold flat and then sold the new owner moreover has to wait for five years (and sometimes for ten years, comp. 3.4.4) after the purchase until he is entitled to give notice on the ground of "prevention of a reasonable economic exploitation" of the flat.

3.4.2.2 Periods of notice in cases of regular notice to quit

If a landlord gives notice to quit for a flat with an indefinite-term lease on the ground of "justified interest", or if the tenant gives notice, a statutory period of notice has to be observed - as far as the tenancy does not belong to those exceptional cases mentioned under 3.4.3, which allow giving notice without a period of notice . Normally this period is just under three months at the beginning of a tenancy and is extended to another three months after five years and again after eight and after ten years, so that it may amount to one year at the most. In principal this rule affects all indefinite-term leases. However, periods of notice for single subtenants in furnished rooms are restricted to 15 days at best, and in cases of tenancies about rooms rented for temporary use and about company flats, the contracting parties may agree on deviating periods of notice at the disadvantage of the tenant.

3.4.3 Extraordinary termination of tenancies

The following grounds for giving notice are defined by the law as especially aggravating breaches of tenant contracts. If they occur, the landlord is entitled to give extraordinary notice to quit without having to observe any periods of notice.

3.4.3.1 Arrears of rent

In Germany most actions for eviction are taken by landlords against tenants who are in arrears for rent and have therefore been given notice to quit (comp. 4.1.1). So arrears of rent belong to the most common reasons for homelessness. According to para. 554 BGB a landlord is entitled to give notice to quit without any period of notice, if the tenant is in arrear for his rent (or even only for parts of his rent) on two succeeding dates and if the amount of his rent debts exceeds the amount of one monthly rent. If a tenant's arrears of rent amount to at least two monthly rents, a landlord may give notice even if the rent debts have been caused by default of payment on different dates not succeeding each other. He does not have to remind the tenant first. It is not important whether the tenant is personally responsible for the default of payment or whether he has suffered an income loss due to unemployment or illness. The notice to quit will nevertheless become void if the arrears of rent are settled later within a statutory period ("Heilungsfrist") or if a public institution, e. g. the social welfare office, takes the obligation of settling the rent arrears (para. 554 II no. 2 BGB). However, this procedure is only admitted once within two years. The conceded period of repayment ("Heilungsfrist") is one month starting with the delivery of a copy of the landlord's action for eviction to the tenant by the court of competent jurisdiction.

In correspondence to this regulation the Federal Welfare Act contains provisions which allow the payment of rent arrears from social assistance funds (comp. 3.5).

3.4.3.2 Unacceptability of tenants' behaviour

A landlord may also give notice to quit without observing any period of notice if a tenant offends against his contractual obligations to such an extent that a continuation of the tenancy is unacceptable (para. 554 a BGB). As an example the law mentions especially the disturbance of domestic peace caused for instance by perpetual noisemaking or by drastic nuisances. If a tenant is frequently late with his rent payments, this may also justify a landlord to give notice without period of notice even if the preconditions for giving notice on the ground of arrears of rent (as mentioned above) are not fulfilled.

3.4.3.3 Use of the flat contrary to tenancy agreement

A tenant can be given notice without period of notice if he leaves a flat to a third party without permission in spite of a first warning. If he causes an overcrowding of a flat by taking in too many persons he may also be given notice without period of notice as far as the interest of the landlord is considerably impaired, for example by an increased wear of the flat, by the disturbance of domestic peace or by increased noisemaking.

3.4.4 The Social Clause

If the termination of tenancy means hardship to the tenant and his family, he can oppose a notice to quit and ask for a continuation of the tenancy even if the notice to quit is justified according to the general provisions about giving notice, on the condition that the tenant's hardship is not justifiable even in appreciation of the landlord's justified interest (para. 556 a, so-called "Social Clause"). The law points out that hardship must also be assumed if no adequate substitute permanent accommodation at tolerable conditions can be provided. If the requirements for hardship are given, the tenant may demand the continuation of the tenancy for a time that is supposed to be reasonable in consideration of all the circumstances of the case. Under certain conditions courts may even rule that a tenancy is to be continued for an indefinite time. A continuation of tenancy, however, is out of the question if one of the grounds for giving extraordinary notice as mentioned above is existent. Besides, a number of tenancies with a limited protection against notice are also excluded from the application of the "Social Clause" (comp. 3.4.1). Even if the "Social Clause" is applicable in principle, several formalities have to be observed, and the tenant has to fulfil certain legal requirements: the tenant's opposition including his demand for a continuation of the tenancy has to be presented in a written form two months before the termination of the tenancy, unless the landlord has not informed the tenant about the possibility of an opposition. Besides, the tenant has to prove that he has looked intensively for substitute accommodation. He is not allowed to restrict his efforts to find a flat to his former residential area and he has to be willing to accept a higher rent and worse living conditions than before.

In 1993 a special law was enacted as a reaction to the increasing number of conversions aiming at the sale of flats. These conversions from rented flats to freehold

flats endanger many tenancies, because the new owners might give notice on grounds of personal needs ("Eigenbedarfskündigung") or of "prevention of a reasonable economic exploitation" of the flat ("Verwertungskündigung"). The new law says that in areas with a housing shortage it is impossible to give notice to quit on these grounds within ten years after the purchase of a flat, if the rented flat was converted into a freehold flat before the purchase and if the tenancy had already existed at that time. After this period of ten years the effect of the Social Clause is reinforced by the regulation that in cases of hardship caused by giving notice the landlord has to prove that there is adequate substitute accommodation at tolerable conditions for the tenant, if he wants to be successful with his notice to quit.

3.4.5 Protection for tenants without lease

Persons not belonging to the tenant's family but living in his flat without a lease contract (e. g. unmarried partners or friends) do not enjoy protection against notice and are in most points unprotected if the tenancy is terminated or if they are evicted by the tenant. Only in some cases they may be granted protection against eviction by procedural rules.

3.4.6 Special regulations concerning tenancy law in East Germany

Basically the same rules of the BGB have applied to East and West Germany since the German Unification. However, there have been several exceptions, which however will lose their validity on 1st January 1996. For example notice to quit on the ground of the landlord's personal needs in the flat has only been possible on certain specified conditions. This transitory provision was supposed to stop a threatening wave of notices to quit on the ground of landlords' personal needs of the flats. Among other reasons this was particularly imminent, because original owners of houses or flats or their legal successors claimed repossession of a great number of flats which had been expropriated after the foundation of the GDR. It remains to be seen what effect the adjustment of legal provisions concerning notice to quit on the ground of a landlord's personal needs to West German standards will have on the number of notices to quit and homelosses. In cases of "Einliegerwohnungen" (separate apartments built into one-family flats, comp. 3.4.1) the termination of tenancy by giving notice to quit has been made harder until 31st December 1995 and will be adjusted to West German regulations on 1st January 1996 (which means that giving notice will be facilitated).

There is no time limit for the regulation that tenancies in East Germany which had existed before the German Unification may not be terminated by notice to quit on the ground of prevention of reasonable economic exploitation of the flat.

3.4.7 Procedural Law

If a tenant has been given notice to quit but does not leave the flat, the landlord has to apply to a court to enforce the eviction. He is not allowed to evict the tenant himself. If he nevertheless tries to, his tenant may defend himself in seeking an

urgency interim injunction obliging the landlord under threat of punishment to leave the flat to the tenant until an eviction order valid in law can be provided. Even then the landlord must not execute the eviction himself but has to entrust a bailiff.

To get an eviction order the landlord has to take action against the tenant at a lower district court.

3.4.7.1 Stay of eviction

If a landlord has obtained an eviction order by court, the tenant may be granted a stay of eviction (para. 721 ZPO; if an eviction settlement has been achieved, paragraph 794 ZPO is applicable). This stay of eviction may take a period of altogether one year at the most. If a shorter period has been set at first, it can be extended or abridged later. A stay of eviction does not mean the continuation of tenancy, but only an impediment to the landlord of entrusting a bailiff with the execution of the eviction order. It is a matter of discretion of the court whether a stay of eviction is granted and for how long, and it depends on a consideration of the interests of both tenant and landlord. If a tenant has difficulties to find a new flat, this fact has to be taken into special account. Again it is conditional that the tenant makes efforts to find a substitute flat and that he is ready to accept a deterioration of his living standards.

There is protection against eviction for some of the tenancies excluded from protection against notice to quit, but neither for limited-term tenancies without any protection against notice nor for rooms which have been rented by municipalities in order to sublet them to special groups of people (comp. 3.4.1).

3.4.7.2 Stay of enforcement of eviction

Even when the period of stay of eviction has run out, the procedural law provides a last chance for a stay of enforcement of eviction (para. 765 a ZPO). Courts may grant a stay of execution of an eviction order on the application of a tenant. This last chance of tenants concerns all tenancies, however, it depends on very strict criteria and is restricted to extremely exceptional cases: It requires that an execution of the eviction order at the designated time is contra bonos mores because of extraordinary circumstances, even after full consideration of the landlord's interests. Here again, tenants have to make strong efforts to find substitute flats.

3.5 The legal framework of preventive action: The assumption of rent arrears and guaranties against potential losses of rent under the Federal Welfare Act

One regulation central to the prevention of homeloss is laid down in paragraph 15 a Federal Welfare Act (BSHG). According to this it is possible to grant social assistance in order to "secure an accommodation" even if other regulations of the Federal Welfare Act forbid the granting of social assistance. So it is possible to assume rent arrears in cases of threatening homeloss, and in addition these rent

arrears can be assumed though the applicant is not entitled to receive other forms of social assistance. This regulation of the Federal Welfare Act is the complementary counterpart of paragraph 554 of the Civil Code which in cases of notice to quit on the ground of rent arrears allows a "cure" ("Heilungsmöglichkeit") (comp. 3.4.3.1). If the institution of social assistance promises an assumption of rent arrears to the landlord, the notice to quit can be made void. As it has already been mentioned above, it is conditional that the landlord receives this announcement by the institution of social assistance within one month after he has taken legal action against his tenant and that the tenant has not availed himself of this right within the previous two years. The institution of social assistance may either pay the rent arrears from its own funds or assume the rent arrears by granting a loan to the tenant which may later be charged from the tenant, possibly in instalments. Up to now paragraph 15 a Federal Welfare Act has been an optional regulation, which means that the institutions of social assistance may assume rent arrears in cases of threatening homeloss but can also decide against it. However, as part of a reform of the Federal Welfare Act which is under discussion at the moment, it is intended to introduce an obligation of social assistance institutions to assume rent arrears.

If tenants are threatened by homeloss, the Federal Welfare Act also enables institutions of social assistance to secure their flats in guaranteeing the assumption of potential rent arrears and of repair costs for any damages of the flat to the landlord. However, institutions of social assistance rarely use this possibility.

3.6 The legal obligation to provide temporary accommodation according to police laws

In Germany there is no legal right to housing. But municipalities are obliged to prevent rooflessness by temporary accommodation. This obligation is a consequence of police laws or corresponding laws concerning public security and order in the different Federal states of Germany. These laws consider rooflessness as a "disturbance of public security and order" and as a "threat" to the physical health and human dignity of the roofless person. Neither the inconsistency of arguments in this context can be discussed here nor the question whether it makes sense that the obligation of accommodating roofless persons is assigned to police laws (concerning this point see Steinmeier 1992; Lübbe 1993; LPK 1994, p. 556-557). It is to be pointed out, however, that an increasing number of jurists take the view that it makes more sense to assign the obligation of temporary accommodation of homeless persons to the Federal Welfare Act and to the institutions competent for its execution. They also plead for the entitlement of homeless persons to a flat as a payment in kind by social welfare on the condition that these homeless persons have not found a regular flat after some time. An interpretation of the Federal Welfare Act in this way is, however, controversial. Anyhow, according to the ruling interpretation of the law German municipalities are obliged to prevent rooflessness in taking measures to "avert danger"(i.e. by accommodating homeless persons temporarily). This obligation is very strict. It cannot be made conditional on the question whether the roofless person is "responsible" for his situation or not (but he must have made efforts to find an accommodation and failed) or on the amount of costs of temporary accommodation. Measures to prevent rooflessness usually

mean that roofless persons are committed to hostels, shelters or other forms of temporary accommodation for the homeless. If there are not enough hostels and if there is no other temporary accommodation, local authorities may seize vacant flats or, in case of threatening enforcement of eviction, may assign the tenant threatened with homeloss to the flat he has occupied up to the present. The legal status of persons assigned to their flats is no longer that of tenants. They use the flat under public law and are seriously restricted in their rights (for example they have no right to stay in a certain accommodation and can be removed to different accommodations if required). If local authorities intend to seize private flats against the will of flat-owners, German jurisdiction has set close limits to their action: The capacities of temporary accommodation available for local authorities must be exhausted completely, and local authorities have to record their strong efforts to gain additional municipal accommodation. They first have to consider the possibilities of putting up containers or caravans, of using vacant hotel rooms or of renting derelict houses as well as of a more intensive use of existing hostels and shelters by reducing the assigned space per person. The standards required for an accommodation fit for human beings are extremely low. Even when these efforts have failed, courts as a rule only accept the seizure of private flats for a limited period (4 to 6 months). However, it is possible to seize flats by agreement with the landlord. In several German towns a greater number of social flats belonging to housing organizations with participation of municipalities are being seized in mutual agreement. After all, for flat owners this seizure means that local authorities compensate for rent losses and for potential damages of the flat.

4. CAUSES AND CONSEQUENCES OF HOMELOSS OR THREAT OF HOMELOSS IN GERMANY

4.1 The quantitative extent of cases of threatening homeloss

4.1.1 Reasons and the estimated number of legal actions for eviction in West Germany

There is no data on the number of annual homelosses in Germany. Not even the number of annual actions for eviction is recorded by the national judicial statistic. On the basis of questionings of local authorities it is, however, possible to estimate the number of households against which legal action for eviction was taken in 1992: In this year legal action for eviction was taken against about 86,000 households comprising about 200,000 persons (Busch-Geertsema/Ruhstrat 1994 a, p. 61-63). Unfortunately we neither know how often an action for eviction led to the actual eviction of the flat and how often households became homeless as a consequence nor the number of persons who left their flats because of notice to quit or because of conflicts with other residents (comp. 4.1.4) before any legal action for eviction was taken.

On the basis of investigations at lower district courts having jurisdiction over minor civil and criminal cases ("Amtsgerichte") in North Rhine-Westphalia during the first half of 1993 the grounds of legal actions for eviction were analyzed. From a total number of 2,218 legal actions for eviction 67.9 p.c. were justified by default of payment. 9.6 p.c. were justified by a personal interest of the owner in the flat,

8.1 p.c. by intolerable demeanour of tenants and 4.8 p.c. by use of the flat contrary to tenancy agreement (Busch-Geertsema/Ruhstrat 1994 a, p. 86-89). The results of these investigations are similar to the results of surveys of the 1980s (Koch 1984, p. 38): It becomes apparent that in more than two third of all cases of evictions arrears of rent are the cause of evictions.

TABLE 3
Causes of actions for eviction in the first months of 1993
35 selected lower district courts in Northrhine-Westphalia

cause of action	number of actions for eviction	
	absolut	p.c.
default of payment	1,506	67.9
notice to quit on the ground of tenants behaviour	179	8.1
use of flat contrary to tenancy agreement	107	4.8
notice to quit on the ground of landlord's personal interest in the flat	212	9.6
other causes	214	9.6
total	**2,218**	**100.0**

Source: Busch-Geertsema/Ruhstrat (1994 a): 87

4.1.2 The development of eviction procedures in East Germany

There is no scientifically safe data on the development of the number of actions for eviction and enforcements of eviction in East Germany. In August 1995 the state of Saxony-Anhalt was the first East German Federal state to order a scientific study on these problems (homelosses, prevention of and remedy for homelessness, temporary accommodation of homeless households etc.) together with the "Diakonisches Werk" of the church province of Saxony. The results will not be due before the end of 1996. It is reported about individual East German towns, however, that the number of actions of eviction and enforcements of eviction has increased enormously from a previously low level. According to these reports there is additionally a large number of tenant households with rent arrears which would justify actions for eviction, while housing associations as landlords have not yet taken the necessary steps (e. g. against 6,000 households as tenants of the municipal housing association of Leipzig).

The few existing reports (comp. Hinze 1993; Reis 1995) about the problems in East Germany assume that a part of these arrears of rent, which are sometimes extremely high, goes back to the time before the German Unification when default of rent payment often had no consequences. After the unification the financial burden of rent and energy costs on East German households has strongly increased, but tenants are not aware of possible consequences of rent arrears (notice to quit, enforcement of eviction, homelessness). The financial scope of

many households is seriously restricted by debts caused by consumer credits and unemployment, and finally there often is a lack of knowledge and activity or self-confidence to enforce existing rights granted by the social state (like housing allowance, unemployment benefit, social assistance etc.).

4.1.3 Compulsory auctions

Whereas data on legal actions for eviction and compulsory evacuations is insufficient, this is even more the case for data concerning compulsory auctions of owner-occupied flats. In 1994 the latest data the National Office of Statistics published were those of the judicial statistics of 1991. Only the number of "compulsory auctions of immobile objects" has been recorded by lower district courts. The term "immobile objects", however, comprises rooms for housing as well as industrial or business premises and for example vacant premises. In 1991 about 35,000 proceedings of compulsory auctions were initiated altogether (Statistisches Bundesamt 1994, p. 25). While the number of compulsory auctions increased strongly between 1978 and 1985 (1978: 32,800 proceedings; 1985: 66,000), it has decreased steadily since 1985. According to press reports, an increase in the number of compulsory auctions is assumed for 1995 (Schuldenreport II 1995, p. 43-45). Unfortunately it is not possible to assess either the ratio of proceedings concerning owner-occupied flats or houses or the ratio of proceedings that actually resulted in a compulsory auction (some of the proceedings have been stayed later and a compulsory auction has not taken place; Biehusen 1989, p. 26). Finally judicial statistics do not say anything about the number of cases in which owner-occupied housing property had to be resold due to difficulties of financing without the courts being called in. It is to be pointed out, however, that in Germany homelessness is much more often caused by homeloss in the sector of rented flats than by compulsory sales of owner-occupied houses or flats.

4.1.4 Homeloss and insecurity of tenure without intervention of the courts

Beside cases of homeloss in which courts are called in by actions of eviction or proceedings of compulsory auction, there are many other ways to homelessness which are not known to the courts.

Many tenants who have been given notice to quit leave their flats without any opposition and without any longer delay. It is known from former interviews with tenants who faced notice to quit that at the end of the 1970s more than two thirds (69 p.c.) of them did nothing against these notices (Deutscher Bundestag 1979, p 49). However, according to expert opinion there is a growing part of tenants who oppose notices to quit, in particular because of the present housing shortage and because of first-time rents which are usually clearly higher than other rents (Niederberger 1994, p. 61). While this is mainly true for tenants who are organized in local tenants' associations and who fight for their rights, there is good reason to be doubtful about changes in the reactions to notices to quit by households which are especially at risk of homelessness, in particular single persons. There seems to be a great number of tenants who either do not know their rights and how to enforce them sufficiently or lack the energy necessary for legal opposition against

an action of eviction or soon leave their former flats after having been given notice without being aware of the threat of longer-term homelessness (comp. 4.2.1). However, the absolute annual number of these cases is not known.

The different ways to homelessness without any involvement of courts become apparent from interviews with homeless persons who were asked for the reasons of their first homelessness. Unfortunately there are no late results concerning homeless households as a whole. Concerning homeless families and single persons accommodated temporarily in municipal temporary accommodation in accordance with police law, one can expect a comparatively high portion of such households which became homeless as a result of eviction and enforced eviction, because local authorites put particularly these households into temporary accommodations. Existing results of the investigations mentioned above refer quite predominantly to single homeless persons who do not belong to this group, but were counselled and accommodated by institutions and advice centres of non-governmental welfare organizations.

TABLE 4
Reason/occasion for first-time homelessness of single people in Schleswig-Holstein[1)]

Reason/occasion	number	p.c. (n = 254)
leaving without notice to leave / notice to quit	116	45.7
- separation of partnership	60	23.6
- leaving of parental home	37	14.6
- death of relative	5	2.0
- problems in paying the rent	4	1.6
- intolerable housing conditions	4	1.6
- other reasons	6	2.4
notice to quit by landlord	73	28.7
- arrears of rent	37	14.6
- landlords personal interest in the flat	16	6.3
- tenants behaviour	13	5.1
- other reasons	7	2.8
notice to leave by tenant	21	8.3
- financial problems	6	2.4
- conflicts with landlord	4	1.6
- intended change of residence or flat	4	1.6
- other reasons	7	2.7
after stay in institutions	24	9.4
- imprisonment	12	4.7
- psychiatric clinic	2	0.8
- home	3	1.2
- hospital	4	1.6
- other institutions	3	1.2
after tied accommodation (in company flat etc.)	17	6.7
other occasions/reasons	3	1.2
total	254	100.0

[1)] Source: Evers/Ruhstrat (1994): 224

Interviews with homeless persons from all parts of the Federal state of Schleswig-Holstein showed that just under 29 p.c. of 254 interviewed persons became homeless as a consequence of notice to quit by landlords. More than 40 p.c. became homeless for the first time without any notice to quit or notice to leave, but as a consequence of separation from (marital or quasi-marital) partners (23.6 p.c.), or of death of a relative (2 p.c.) or because they had left their parents' homes (14.6 p.c.). Finally 9.4 p.c. became homeless after they had left an institution (prison, hospital etc.) and 6.7 p.c. after the loss of tied accommodation (Evers/Ruhstrat 1994, p. 223-228).

The major part of homeless persons had occupied a flat of their own some time, but many of them did not become homeless in the "classical" way (notice to quit,

action for eviction, enforced eviction), but as a consequence of changes and conflicts in familiar, marital or quasi-marital relationships. Among the interviewed homeless women even almost 59 p.c. of first homelosses were caused by divorce or separation from a marital or quasi-marital partner (33 p.c.) or by leaving parents' homes (25.9 p.c.).

4.2 Juridical aspects

4.2.1 Practical relevance and deficits of regulations in tenancy law and procedural law in the context of threatening homelessness

At first sight the protection which German tenancy law provides seems to be extensive and in many cases apt to protect tenants effectively from the risk of homelessness as there are provisions concerning protection against notice to quit, protection against eviction and enforcement of eviction as well as the Social Clause. However, in a number of exceptional cases of tenancies these protective provisions are not applicable at all or only in parts, or in general practice they are not applied in the way that is suggested by the wording of the law.

Anyhow the effectiveness of the majority of protective provisions depends on the knowledge of tenants about their rights, on their ability to ask for help and support of their own accord and to speak up for their rights as well as to take the necessary initiatives and to observe formalities and dates of court hearings etc.

In Germany legal advice and support concerning tenancy law is mainly provided by tenants' associations. Their counselling and support is conditional on membership and payment of membership fees. Tenants' associations closely cooperate with lawyers specialized in tenancy law. They also regard themselves as lobby groups. But those tenants who are at a special risk of homelessness are rarely members of tenants' associations. Neither have they usually effected an insurance for legal protection which will cover the costs of legal action and defendance if they lose their case against the landlord. On the contrary employees of social administrations often report about cases of homeless persons who did not fully utilize their legal possibilities. After having been given notice to quit, in particular single persons often leave their flats without any opposition, sometimes in the mistaken hope of finding a new flat soon. In particular households with arrears of rent are reported to have given up because of financial straits. They often do not react to written offers of assistance by social administrations. Neither do they observe dates of court hearings, and so they often miss for example the chance of asking for a stay of eviction. In particular, actions for eviction on the ground of default of payment lead to an early (default) judgement, because tenants who have given up do not turn up in court or declare their preparedness for defence.

In many cases the persons concerned are not aware of the serious consequences of homeloss, and often they also do not have enough knowledge and motivation to prevent homeloss. Obviously there is a lack of sufficient and appropriate services to offer preventive information and help (Busch-Geertsema/Ruhstrat 1994 a, p. 103).

Persons with a low level of education and with a low income are particularly vulnerable victims of certain landlords who take advantage of their weaknesses and, disregarding any provisions of tenancy law, simply clear out their flats or rooms, fit new locks and soon rent the rooms to other tenants.

4.2.1.1 Tenancies without any protection or with limited protection

There is hardly any information concerning the number of tenancies with limited protection against notice to quit. As tenants' chances of defending themselves against notice to quit are particularly low in these cases, judges as well as tenants' lobby groups (tenants' associations) are hardly ever faced with them, irrespectively of their actual frequency. Even if it is taken for granted that a high percentage of tenancies are "regular tenancies", one can expect on the other hand that persons with a low income and with a relatively high risk of homelessness are affected by tenancies without or with limited protection to an over-proportional extent (comp. Derleder 1990, p. 200-202). One example are single lodgers in furnished rooms which are part of the landlord's flat. Though the rent has to be paid monthly, the landlord can give notice to quit with a period of only two weeks time. He is entitled to give notice to quit just verbally and without giving any reasons. Even if it is not possible for the tenant to find substitute rooms, the Social Clause is not applicable. Typical company flats for field and seasonal workers which are only rented for temporary use offer little protection as well (however, it is required that they provide a regular period of notice). Finally, limited-term tenancies for which the landlord's intention to occupy the flat himself, to pull down the building or to modernize the rooms completely has been announced at the time of conclusion of the tenancy contract probably also affect mainly such tenants who have no other chance of housing than in derelict houses or in flats in need of redevelopment and who are particularly vulnerable to homelessness after the termination of contract.

As conflicts between marital or quasi-marital partners have turned out to be a very important cause of homelessness, the precarious position of nonmarried partners of whom only one has signed the tenancy contract becomes clear. In cases of conflict the other partner can be thrown out of the flat without difficulties and is almost completely unprotected.

4.2.1.2 Notice to quit in cases of "regular tenancies"

As practice shows even regular tenancies have considerable legal gaps through which a sudden fall into homelessness is possible. For example it is not necessary to observe periods of notice if a tenant fails to pay his rent on two succeeding dates of payment or if he owes parts of the rent (amounting to more than one monthly rent). In cases like these a warning by the landlord is not required, and neither the question whether the tenant has the chance of finding a new flat nor other social hardships for which otherwise the Social Clause would be applicable will be considered. Particularly in cases concerning default of payment a stay of eviction is granted only for very short periods, if it is granted at all. To what extent tenants threatened by homeloss take advantage of the assistance of local administrations, as for example of the assumption of rent arrears or of other means

to prevent homeloss, is not least dependent on the administrative organization of preventive helps. The "period of cure" of one month after delivery of the statement of claim is short and requires prompt and active intervention. The practice of local authorities in preventing homelessness will be analyzed later in this report.

In recent years jurisdiction of the highest courts has made it easier to give notice on the ground of a landlord's personal needs of the flat. In case of litigation a landlord is no longer obliged to prove an objective need (that is deficiency or disadvantages of his present housing situation), but a landlord's subjective intention of claiming the rented rooms for himself or for relatives is sufficient. However, he has to give sound and understandable reasons for his intention. In the opinion of tenants' associations, but also of some judges, this has extended the scope of possible abuse of this ground of notice to quit. It is no rare incidence that a landlord justifies a notice to quit on the ground of his personal needs of the flat, though he actually wants to get rid of a disagreeable tenant or to obtain a considerably higher rent in renting the flat again. In most cases it is very difficult to prove a landlord's "falsely pretended personal needs of a flat" ("vorgetäuschter Eigenbedarf") (Niederberger 1994, p. 9-20; Busch-Geertsema/Ruhstrat 1994, p. 94-95).

4.2.1.3 Social Clause

In the wording of the law the Social Clause determines that it is possible to oppose an otherwise legitimate notice to quit and to demand the continuation of tenancy, if it is not possible for the tenant to procure appropriate substitute housing at tolerable conditions. So threat of homelessness is explicitly mentioned as a reason for extended protection against notice to quit. Still the Social Clause rather seldom helps to prevent acute homelessness. One reason for this is the fact that the great majority of legal actions for eviction are based on notice to quit without any period of notice (in particular because of default of payment, see above) for which the application of the Social Clause is not possible. The same is true for tenancies without protection against notice to quit, as mentioned above.

Although it happens rather often that e. g. in cases of notice to quit based on the landlord's personal needs of the flat, tenants oppose the notice with reference to the Social Clause, as tenants' associations point out, these proceedings very rarely lead to a continuation of tenancy. Many judges consider the imposition of a stay of eviction as sufficient and accept the argument of tenant's hardship, meaning that no substitute housing can be procured for him, only in very extreme cases when it is combined with other forms of social hardship (like very old age or serious illness) (Busch-Geertsema/Ruhstrat 1994, p. 97, 98). An analysis of court records for a former investigation in the effects of legal protection against notice showed that only in 14 from altogether 267 cases in which a tenant referred to the Social Clause the court ruled that the tenancy had to be continued (Deutscher Bundestag 1979, p. 9). Moreover, the requirements of courts concerning provable efforts of tenants to find substitute housing are often exaggerated: tenants have to start flat-hunting even before it is decided whether the notice to quit which they oppose for other reasons as well is legitimate, they have to push their flat-hunting in different ways (inserting advertisements into newspapers, calling on brokers and

housing offices etc.), they have to react to any perceptible offer, even if an application for a flat is apparently hopeless from the very beginning, and they also have to record all their efforts (Niederberger 1994, p. 36. Considering the tight situation of the housing market some courts have however reduced their requirements in this respect). Besides, the Social Clause becomes inoperative in any case of hardship if prescribed periods or formalities are not observed.

Actually the Social Clause rather helps tenants who are not threatened by homelessness but for example would otherwise be forced to move intermediately somewhere else before they could finally move into a new flat for which a lease has already been agreed on (Derleder 1990, p. 205).

4.2.1.4 Stay of eviction and stay of enforcement of eviction

Though a stay of eviction can also be imposed after notice to quit without period of notice, in these cases it is very often not imposed at all or the periods of stay of eviction are only very short. Tenants with limited-term contracts which are excluded from protection against notice to quit cannot claim a stay of eviction. After termination of their lease on e. g. a flat in a derelict house they might therefore end up on the streets.

Before a stay of eviction is granted or, at the latest, when a prolongation of the period of stay of eviction is claimed, the courts want evidence concerning the tenant's active flat-hunting. Moreover, when a prolongation is claimed, the tenant's statement that he could not find a flat is often countered with the argument that in a case as hopeless as this a prolongation even to the maximum period of one year would not be promising.

A stay of eviction as well as protection against enforcement of eviction (which is only granted in situations of extraordinary hardship, for example in cases of advanced pregnancy or very old age) is more likely if a tenant can procure a tenancy contract for a flat that will be ready for moving in within short notice. If there is no prospect of a flat and if a tenant can only bring forward his failed efforts to find a flat and the danger of long-term homelessness his chances are much worse. So people in urgent need of housing who are especially vulnerable are least protected by these provisions.

4.3 Financial aspects

4.3.1 Rent arrears

In West Germany the majority of landlords react rather quickly when rent payments are overdue. Since legal provisions allow giving notice to quit without period of notice as well as taking action for eviction when monthly rent payments are overdue for the second time, in many cases arrears of rent do not amount to more than two or three monthly rent payments when an action for eviction is filed. If local authorities assume rent arrears at this point of time, costs are still relatively low: according to

reports of 14 local authorities in North Rhine-Westphalia the average amount of one assumption of rent arrears (of 4,253 cases altogether) came to 1,856 DM (about 982 ECU) (Busch-Geertsema/Ruhstrat 1994 a, p. 125). However, if an assumption of rent arrears is not granted, several further weeks and sometimes even months may pass until an eviction order is imposed and an eviction is enforced. As no rent is paid during this time, the amount of rent arrears may increase considerably.

In East Germany rent arrears of sometimes extreme amounts are reported in cases of tenants who did not pay rent during the time of the former GDR and who also owe payment of the greatly increased rents since the German Unification. Many East German housing associations needed a long time to get an overview of their tenants' defaults of payment, and often they have hesitated to use the new possibilities of giving notice to quit and enforcing the eviction of tenants. In 1993 the total amount of rent arrears affecting East German housing economy was estimated to 340 million DM (about 180 million ECU) (Reis 1995, p. 20). In 1994 rent arrears only with East-German housing cooperatives and housing organizations owned by municipalities are supposed to come to 518 million DM (about 274 million ECU) (Der Spiegel 38/1995, p. 66).More exact calculations do not exist.

4.3.2 Costs of eviction procedures

The amount of lawyer's charges for legal proceedings depends on the value in dispute, which in cases of actions for eviction is determined by the annual rent. If the monthly rent for a flat comes to 1,000 DM (about 530 ECU), the lawyer's charges in the court of first instance including a hearing of evidence amount to 2,340 DM (about 1,240 ECU) for each lawyer. If both parties are represented by lawyers, the total costs of proceeding in the court of first instance amount to about 5,500 DM (about 2,900 ECU), including the costs of the lawsuit of about 800 DM or about 420 ECU. Usually the party which loses the case has to bear all the costs of proceeding. In cases of appeal, the additional costs of proceedings in the court of second instance come to about 6,900 DM altogether (about 3,700 ECU). If one loses the proceedings of both instances, the total costs may therefore amount to about 12,400 DM (about 6,600 ECU). On certain conditions households with a low income may however ask for financial aid for the costs of proceedings and may be partly or completely discharged from the costs.

The costs of an enforcement of eviction are assessed according to the number of rooms that are evicted and come to 800 to 1,000 DM per room (about 423 to 529 ECU). For a flat with four rooms the costs therefore amount to 3,200 to 4,000 DM (about 1,590 to 2,120 ECU).

The landlord also has to bear expenses and income losses caused by default of rent payment or damages of the flat

4.3.3 Costs of public assistance after eviction

If institutions of social assistance are successful in preventing homelosses, the costs of prevention are relatively cheap compared with costs that are caused by homelessness. The average costs of an assumption of rent arrears came to 1,856 DM (about 982 ECU) in 1992, as has already been mentioned under 4.3.1. Personnel expenditure has to be added to these costs of prevention. However, a good staff might prevent homelosses by negotiations and agreements with landlords and tenants without using additional financial means (for example they might arrange an agreement with a landlord which allows a tenant to repay his rent arrears himself in instalments whereas the landlord withdraws his notice to quit).

If the prevention of homelessness fails, local authorities are obliged to accommodate homeless people temporarily. Parts of these temporary accommodations are municipal flats for homeless people in special housing estates which were erected for that purpose with particularly low standards and often located at disagreeable parts of the town. In some municipalities, however, regular housing is rented for the temporary accommodation of homeless people as well. In particular single homeless people are also accommodated in hotels, hostels, night shelters and different institutions of nongovernmental welfare organizations. Finally many municipalities have introduced makeshift solutions for accommodation like containers or caravans, boats etc., because other forms of accommodation do not suffice.

The costs caused by these accommodations and by the necessary expenditure for special care for people concentrated in large numbers are considerable and exceed nearly always the costs that are spent on the prevention of homelosses. For example the city of Cologne had to pay about 370 DM (about 200 ECU) per month per head for providing and managing one accommodation in a municipal hostel in 1993 (Busch-Geertsema/Ruhstrat 1994 b, p. 28). Incoming fees of use by residents have already been deduced for this calculation, and personnel expenditure is not yet included. The costs for accommodating a family with two children come to 1,480 DM a month (about 780 ECU). The lower the standards of accommodations are, the more expensive costs of management and maintenance often are. Makeshift solutions like containers often cause extreme operating costs (especially high costs of heating).

Shared accommodations of single homeless people cause high costs, even if the homeless share one room with several persons, mainly because day-and-night presence of personnel has to be guaranteed. The local prices paid for this form of accommodation are very different. A survey on costs for accommodation revealed that different institutions paid per bed and day e. g. 56 DM (about 30 ECU), 80 DM (about 42 ECU) or 113 DM (about 60 ECU) (Busch-Geertsema/Ruhstrat 1994 b, p. 31). As to the costs of hotel accommodation see 4.4.

Beside the costs of temporary accommodation institutions of social assistance have to bear a lot of other subsequent costs resulting from homelessness, which usually cannot be assessed in detail. For example the stay of homeless persons in emergency accommodations very often has the consequence that they have no chance of getting a job and therefore depend on social assistance for a longer time. In addition the spatial marginalization and the concentration of homeless people at special places as well as the often very long duration of stay in emer-

gency accommodations reduce chances of a normalization of their situation. This has consequences for their behaviour. The state reacts for example with additional remedial schemes for children and young people, with sociotherapeutical measures and therapies for drug addicts and alcoholics and sometimes even with an enforcement of police control, which all has to be seen in context with deficits in the prevention of homelessness. Most of these measures are very expensive and all the same not very promising.

4.4 Between institutional accommodation and normal housing - the "grey housing market"

There is no data on a national basis about the "commercial circuit of cheap furnished rooms, hotels, boarding-houses etc.". On closer inspection this sector consists of two fundamentally different parts:

Firstly there are hostels and hotel accommodations used for temporary accommodation and paid on a day-to-day basis. However, this form of temporary accommodation is not cheap at all and is usually mainly financed by offices of social assistance, because homeless persons cannot afford it. Recipients of other forms of income, however, primarily have to use their income and only receive complementary payments of social assistance. In particular in large towns and cities hotel beds (seldom in single rooms, but mainly in rooms with more than one bed per room) and hostels are used to accommodate homeless persons (mainly single homeless persons) temporarily. Sometimes former hotels are rented en bloc. For example in 1993 the city of Cologne booked more than 1,000 beds daily for homeless persons and paid on average 35 DM (about 18.50 ECU) for each bed. These costs amount to 1,050 DM (about 556 ECU) per month and bed (Busch-Geertsema/Ruhstrat 1994 b, p. 30). In 1989 the city of Hamburg accommodated 1,700 to 2,000 single homeless persons (and almost twice as many immigrants and repatriates) in hotels. In 1990 about 100 million DM (about 52.6 million ECU) were spent on hotel accommodation by the city of Hamburg (Mehnert 1990, p. 6,8). Of 23,475 homeless persons accommodated temporarily in 59 municipalities of North Rhine-Westphalia on the 30.6.1992, 4.1 p.c. were accommodated in hotels and 28.1 p.c. in temporary hostels (Busch-Geertsema/Ruhstrat 1994 a, p. 138).

On the other hand there are furnished rooms rented on a monthly basis, with low standards and, if they belong to the landlord's flat and are rented to single persons, with only limited protection against notice to quit. Residents of these rooms do not officially count as homeless. It happens rather frequently that landlords split up family flats into several furnished rooms to let them to single persons threatened by homelessness, who then have to share bath and kitchen with other residents. However, there are considerable local differences in practice and there is no information about the extent of these forms of housing in Germany. In comparison with other European countries in which furnished rooms, hostels and boarding houses are a relevant sector of the housing provision of poor people, the extent of this sector is probably relatively small in Germany.

5. POSITIVE JURISPRUDENCE

Only very few court decisions have improved the protection of tenants against notice to quit and compulsory eviction in recent years. On the contrary the position of tenants has been deteriorated by different judgements before the court decision mentioned in the next paragraph, for example by judicial ruling in cases of notice to quit on the ground of a landlord's personal interest in the flat and by a judgement which has considerably facilitated the conversion of rented flats into free-hold flats with the purpose of selling the flats. Those special legal provisions for cases of conversion which have been mentioned before (see 3.4.4) are just a reaction to this judgement and the high number of conversions that have been caused by it.

Judicial ruling of the Federal Constitutional Court concerning notice to quit on the ground of a landlord's personal interest in the flat (Derleder 1993 b, judgement of 26.9.1993) and later concerning notice to quit on the ground of use contrary to tenancy agreement by overcrowding the flat (according to para. 553 BGB, judgement of 18.10.1993) has improved the tenant's position a little, because paragraph 14 of the German Constitution (Grundgesetz), which guarantees freedom of property, was also applied to the fundamental protection of a tenant's possessory rights. As a flat is the centre of any person's private life and as the majority of German people cannot cover their demand of housing by returning to their own property, tenants' possessory rights have functions that otherwise would be typical for property (WM 1993, p. 377; Franke 1994). Though this means a certain change in judicial interpretation (Derleder 1993 b), it has had no consequences for actual decisions on actions for eviction based on a landlord's personal needs of the flat, because the landlord's freedom of property is also protected by the constitution.

Nevertheless the Federal Constitutional Court has ruled with reference to the corresponding interpretation of possessory rights on a rented flat as property protected by paragraph 14 of the German constitution that an established overcrowding of a rented flat alone is no acceptable ground of notice to quit without period of notice according to paragraph 553 BGB. The overcrowding must rather impair justified interests of the landlord in a considerable way (NJW 1994, p. 41-43). This judgement was occasioned by the case of a couple who had put up their daughter's family in their rented flat with a size of 70 square meters, because the supply of electricity for the daughter's flat had been cut off. The family included the daughter's unemployed husband and their three children. For a first period they had spent the whole time in the couple's flat, later a considerable part of the day and finally only weekends. According to the decision of the court, tenants who put up relatives with the effect of overcrowding are indeed obliged to keep social and financial consequences for other tenants and for the landlord small. If they do so, they cannot easily be given notice without period of notice, even if the flat is overcrowded. As overcrowding still exists to a considerable degree in Germany (about 1,150,000 persons were affected by overcrowding in 1987, that is before the great wave of immigration, comp. Busch-Geertsema/Ruhstrat 1994, p. 63-69) and as in particular immigrants try to overcome homelessness by putting up relatives in their own flats with the effect of overcrowding, this judicial ruling might gain greater importance in future (Derleder 1995, p. 300).

Some individual court decisions have reduced a little the considerable extent of activities concerning flat-hunting required of tenants who have opposed a notice to quit with reference to the Social Clause (para. 556 a BGB) or who have claimed a stay of eviction according to paragraph 721 ZPO in cases of socially deprived households (Sonnenschein 1995, p. 44). For example the regional superior court of Mannheim decided on 26th November 1992 (WM 93, p. 62) that it is sufficient when a family with two children living on social assistance makes contact with the local housing office and rings up landlords after having studied housing ads in newspapers. The court considered it pointless to subject socially deprived tenants to the strict requirements of looking for substitute housing that are otherwise often demanded in connection with the Social Clause, as "families with children and with a low income anyhow have no chance on the urban housing market". However, requirements and court decisions vary to a considerable degree. Therefore it is impossible to establish a clear direction in judicial ruling.

6. SOCIAL POLICY FRAMEWORK OF (IN)SECURITY OF TENURE

6.1 Prevention of homelessness as a task of local administration

Although the Federal Welfare Act is a law with nationwide validity, local authorities and rural districts are responsible for its execution and financing. Usually local institutions of social assistance are responsible for the prevention of homelessness, though it is possible to charge other departments of administration or nongovernmental welfare organization with this duty.

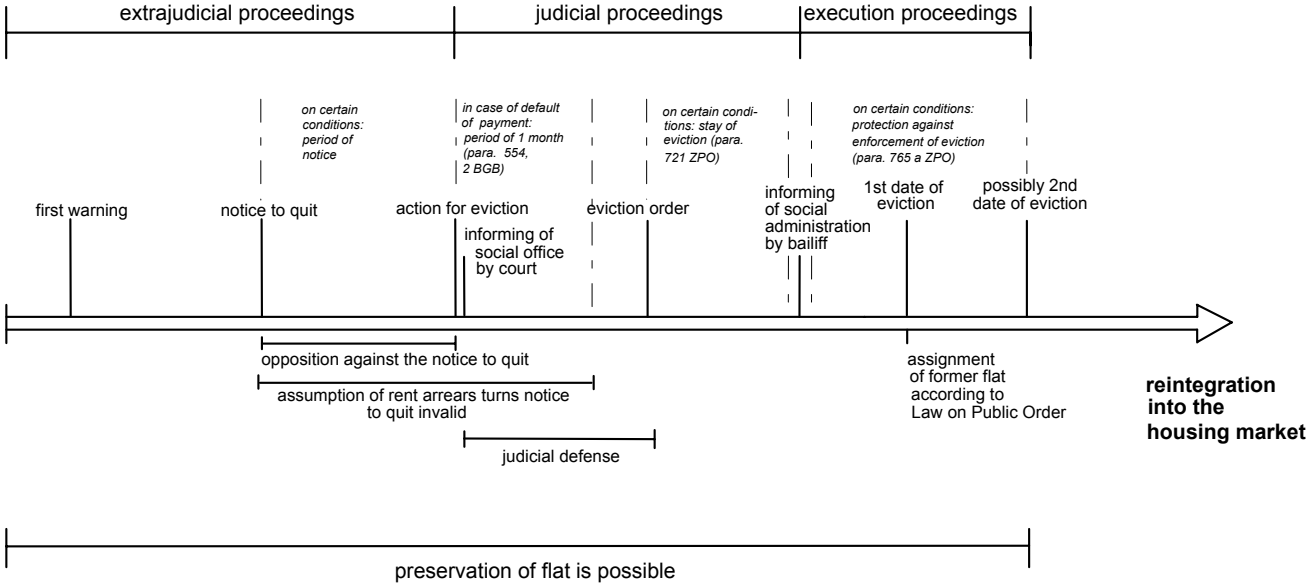
6.1.1 Essential preconditions of an effective prevention of homelessness

To discuss the possible ways of preventing homelessness of different institutions, it is useful to distinguish between cases of "classical homeloss" caused by notice to quit, a succeeding action for eviction and an enforcement of eviction on the one hand and situations of threatening homelessness caused by a stay in institutions or by housing conditions afflicted by interpersonal conflicts on the other hand. "Classical homeloss" is supposed to be the most frequent way to homelessness.

6.1.1.1 Ways of preventing homelessness in cases of "classical homeloss"

Chart no. 1 describes the course of a "classical homeloss" (notice to quit, action for eviction, enforcement of eviction) and makes clear which ways of intervention are given to the responsible offices of public administration (usually the institutions of social assistance) to avoid the loss of the flat and threatening homelessness.

CHART 1:
Stages of a classical case of homeloss



The whole course of homeloss may be subdivided into three stages: pre- or extra-judicial proceedings, judicial proceedings and finally execution proceedings. At any point this course may be terminated because the tenant leaves the flat or because a continuation of tenancy is secured (though the chances of such a continuation of tenancy vary according to the stage of proceedings). If neither is the case, the course is the following: threatening homeless is announced at the latest by warning of the landlord which is succeeded in many cases by notice to quit. If the notice to quit is grounded on default of payment, use of the flat contrary to tenancy contract or intolerable behaviour of the tenant, a period of notice is usually not granted (in cases of notice to quit on the ground of default of payment no warning is required either). In most other cases a period of notice has to be observed. After termination of this period of notice legal action for eviction is taken, in cases of notice to quit without period of notice action for eviction is often taken at the time of giving notice.

In cases of notice to quit without period of notice grounded on default of payment there is an internal judicial instruction for lower district courts to report the receipt of an action for eviction to the responsible institutions of social assistance. Some lower district courts do not do so, others even report the receipt of actions for evictions on other grounds than default of payment. As explained above, the period of "cure" (Heilungsfrist) during which a notice to quit without period of notice grounded on default of payment can be made invalid by paying the arrears of rent takes one month after the delivery of action for eviction to the tenant.

If it is not possible to save the flat during judicial proceedings, an eviction order follows. In cases of people extremely threatened by homelessness, default judgements are quite frequent, because many of these people do not declare their preparedness for defence or do not turn up at court hearings. When an eviction

order is imposed, the judge has to consider whether to grant a stay of eviction. As already mentioned, the period of a stay of eviction can take up to one year, but usually it is shorter, and in cases of default of payment a stay of eviction is granted only for a very short time or not at all.

When the period of stay of eviction has run out, a bailiff is instructed to clear the flat. Bailiffs do not only inform tenants who are affected by the eviction about the fixed date of eviction, but also the institutions responsible for temporary accommodation of homeless people (very often offices of public order and security or institutions of social assistance). If special circumstances allow a temporary stay of enforcement of eviction and if it is granted, in most cases a second date of eviction will be fixed when the period of stay of execution is over. If a household is not assigned its own flat by police law at the date of enforced eviction, it finally has to leave its flat and will become homeless, if no substitute housing is available.

As early as during the extrajudicial proceedings there are ways of intervention to prevent a threatening homeloss, and at that time they are especially promising. For example people threatened by notice to quit and by action for eviction can be supported in talks and negotiations with their landlords to avoid legal proceedings. In this way landlord and tenant may come to an agreement for example on a repayment of rent arrears in instalments. Finally it can be considered whether an assumption of rent arrears by institutions of social assistance might avoid a threatening notice to quit and action for eviction. A clarification of the financial situation and perhaps of other possible problems of a household threatened by homelessness might help to decide whether further aids are necessary. In many cases counselling about possible ways of securing a sufficient income will be necessary (about claims on social assistance or, if other forms of income do not suffice, complementary social assistance, housing allowance, pensions etc.) as well as counselling on reasonable ways of spending. If there is a need for personal aids in cases of psychic problems or problems of addiction etc., these aids might be initiated and organized. It is possible to give a guarantee to the landlord that future financial risks are taken over and that the care of the tenant is secured. In other cases a threatening homeloss can be avoided if the legal correctness of a notice to quit is examined and if the tenant is supported in opposing it. In this context for example the possible application of the Social Clause as a way of opposing a notice to quit has to be considered. All these measures usually have the aim of avoiding judicial proceedings.

It is true that these measures can also be taken during judicial proceedings (an opposition grounded on the Social Clause, however, is only possible in exceptional cases), but there is only a very short period of one month for a repayment or for a declaration of assumption of rent arrears by institutions of social assistance to turn a ground of an action for eviction invalid which is based on notice to quit without period of notice because of default of payment. After this period it is possible to negotiate about a repayment and about a continuation of tenancy until the end of execution proceedings, but if the landlord insists on an eviction, the tenant's homeloss can no longer be prevented. During judicial proceedings another way of supporting the tenant is to help him with his defendence in court and with his application for a stay of eviction (to gain time for further negotiations with the landlord or for the search of a substitute flat).

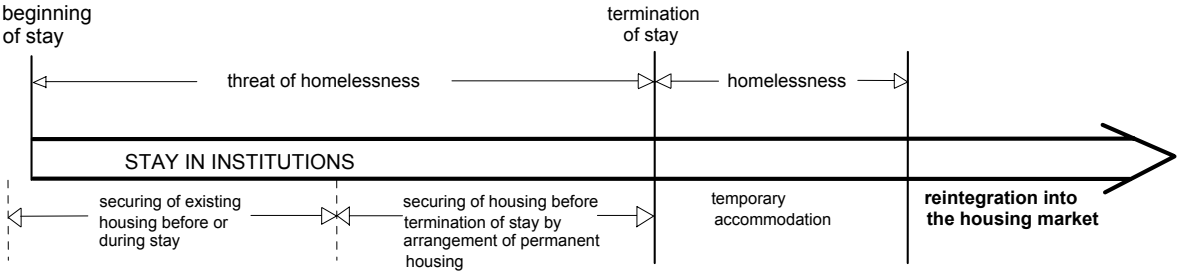
During execution proceedings it is finally to be considered whether it is possible to gain time by a stay of enforcement of eviction or to assign the own flat to the tenants by police law.

It has become apparent that chances of a prevention of homelessness are best during extrajudicial proceedings and during the period of up to one month after an action for eviction has been filed. All measures taken later may be useful, but their effect depends much more on the readiness to negotiate of landlords, judges or judicial officers.

6.1.1.2 Prevention of homelessness in other cases

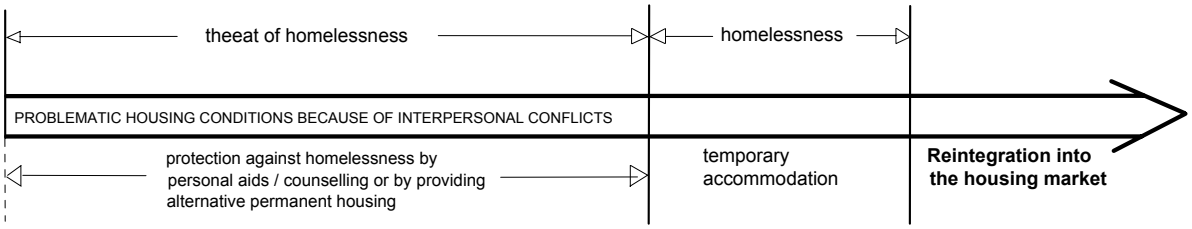
Charts no. 2 and 3 describe courses of homeloss which may result from a stay in an institution (imprisonment, stay in hospital, clinics, therapy centres, temporary homes etc.) and from housing conditions affected by interpersonal conflicts (problems of partnership, conflicts between young people and their parents).

CHART 2:
Threat of homelessness after stay in institutions



In cases of threatening homeloss caused by stay in an institution, forms of intervention to prevent homelessness may set in at two different points of time: If a tenancy exists before the stay in an institution it can be maintained during the time of stay, e. g. by limited-term subletting of the flat or by a temporary granting of rent by social assistance funds (this is possible according to the Federal Welfare Act. Many offices of social assistance limit the maximum period of this form of bridging grant to 6 to 12 months). If a maintenance of tenancy is not possible for the time of stay in an institution, intervention to prevent homelessness has to set in before the discharge of a person and has to aim at the arrangement of housing for the time of discharge. Usually efforts to arrange housing have to start as early as possible to prevent homelessness and the necessity of temporary accommodation.

CHART 3:
Threat of homelessness because of interpersonal conflicts



In cases of housing conditions affected by interpersonal conflicts personal aids and counselling may be offered to solve or to de-escalate conflicts, and, if this is rather pointless or impossible to achieve, alternative housing has to be arranged. If neither can be achieved, an escalation of the conflict often leads to homelessness because one of the partners or the young person leaves the flat. Local authorities are then obliged to arrange temporary accommodation for the homeless person. Like in other cases in which homelessness could not be prevented, the next step has to be the reintegration of homeless people into regular housing, which often meets with great difficulties.

6.1.1.3 Consequences for an effective practice of prevention

To increase the effectiveness of efforts to prevent homelessness all the necessary information has to be collected comprehensively and at an early time, concerning impending notices to quit and actions for eviction as well as threatening homelessness because of stay in institutions or housing situations affected by interpersonal conflicts. For that purpose a systematic and obligatory cooperation of all persons and institutions with information of this kind is necessary (for example of housing associations, private landlords, nongovernmental welfare organizations, tenants' associations etc.) as well as an extensive information policy concerning available aids of responsible institutions in cases of homelessness.

It has become apparent that an intervention of institutions of prevention at as early a time as possible is conditional for an optimal use of the existing possibilities of preventing homelessness. Since many people threatened by homelessness live in precarious situations, in which they do not react of their own accord to letters instructing them to call on the responsible institutions of social assistance, home visits are necessary in many cases. Institutions of prevention therefore have to be planned and equipped in personnel in a way that enables them to call on households threatened by homelessness and to offer support directly. Finally the existing possibilities of support have to be realized in practice (assumption of rent arrears, guarantees to landlords, counselling of indebted households, arrangement of personal aids, legal assistance, mediation between tenants and landlords or courts and, if necessary, arrangement of alternative housing).

For an effective help the distribution of responsibilities and competences within local administrations is also quite relevant, as well as the question whether the lo-

cal structure of administration allows a quick and effective reaction without "frictional losses" or clashes of competence.

6.1.2 The practice of prevention by local authorities: positive results, deficits and problems of organization

The following account on the practice of local authorities in preventing homelessness is mainly based on two empirical studies published in 1994 by Gesellschaft für innovative Sozialforschung und Sozialplanung and carried out in the Federal State of Schleswig-Holstein (Evers/Ruhstrat 1994) and with the main emphasis on North Rhine-Westphalia (Busch-Geertsema/Ruhstrat 1994 a). The sample of municipalities questioned in writing for the study with emphasis on North Rhine-Westphalia includes five cities in other Federal States of West Germany.

As a precondition of an effective prevention of homelessness the responsible social institutions have to be informed about cases of threatening homelessness in the first place. Though according to an internal judicial instruction local courts should report cases of actions for eviction on the ground of default of payment to responsible institutions of social administration, about 19 p.c. of all responsible offices of social administration in Schleswig-Holstein and about 2 p.c. in North Rhine-Westphalia do not get this information. Therefore it is part of a reform of the Federal Welfare Act to create a legal obligation for courts to pass on this information. Unfortunately the passing-on of information about actions of eviction on other grounds or about actions of eviction following a regular notice to quit is often refused on the ground of protection of the privacy of personal data. However, a number of courts obviously report such actions of eviction to the responsible institutions of social assistance (about one quarter in North Rhine-Westphalia and even 60 p.c. in Schleswig-Holstein). Almost all local authorities are informed about appointed dates of enforced eviction (irrespectively of the grounds of actions for eviction or eviction orders). However, at that point the maintenance of tenancy is only possible on very restricted terms. Whether institutions of social assistance get information from other institutions, e. g. from housing construction associations, private landlords or institutions of social work, depends very much on the existence of respective obligatory agreements on a local level. Often the passing-on of information is refused with reference to protection of the privacy of personal data here as well. For about 60 p.c. of the institutions of prevention that were questioned for the study with emphasis on North Rhine-Westphalia and for about 42 p.c. in Schleswig-Holstein it is most likely to get information about threatening homelosses from housing associations - mostly from housing associations belonging partly to local authorities. It happens less often that local authorities are informed by private landlords (study on North Rhine-Westphalia: 47 p.c.; Schleswig-Holstein: 35 p.c.) and less than 10 p.c. up to one third of all local authorities are informed about cases of impending dismissals from institutions without arrangements of accommodation. To sum it up in a simplified way one can say that at best one third of local authorities is rather well-informed about threatening homelessness, while at least one quarter to one third of them get this information only very late and incomplete.

70 p.c. of all local authorities questioned for the study on North Rhine-Westphalia and 42 p.c. of local authorities in Schleswig-Holstein declared that they generally react in any case of threatening homelessness as soon as they are informed about it. The rest of them decide in particular cases (North Rhine-Westphalia: 10 p.c.; Schleswig-Holstein: 42.3 p.c.) or they only react when an eviction order is imposed or when they are informed about a date of enforcement of eviction.

In almost every municipality households threatened by homelessness receive letters which request them to call on the responsible local institutions of prevention. However, there are local authorities that only write to families but not to single persons. In interviews with experts in some selected towns it became apparent that the percentage of households reacting to these letters, which are often shaped like official forms, is in most towns less than 50 p.c. of all households that receive letters. Therefore local authorities were also asked whether they make other efforts to get into contact with households threatened by homelessness, if these households do not react to the first letter. About half of all local authorities declare that they try to contact these households by telephone. Home visits are paid in 60 p.c. of the interviewed municipalities of the study on North Rhine-Westphalia and in 35 p.c. of those in Schleswig-Holstein. The percentage of cases in which these efforts of contact are made is not known. Interviews with experts, however, have shown that home visits often are only paid to families with children. One reason for this is the fact that institutions of social assistance often do not pay home visits themselves but charge local social services belonging to the sector of youth welfare offices with this duty.

It very much depends on the different local authorities to what extent arrears of rent are assumed and other means to prevent homelessness are used, and it is difficult to analyze because statistical returns of most local authorities concerning their efforts of prevention are very incomplete. In some municipalities with a well-developed system of prevention the number of assumptions of rent arrears is even higher than the number of actions for eviction based on default of payment, because intervention sets in before legal action for eviction is taken so that notices to quit and actions for eviction can be avoided. However, in many other municipalities the number of reported actions for eviction is a great deal higher than the number of assumptions of rent arrears. In those municipalities in which local authorities have recorded the number of applications for an assumption of rent arrears that were turned down, this portion amounts to 27 p.c. (study on North Rhine-Westphalia) respectively to 31 p.c. (Schleswig-Holstein) of all applications. That means that almost one third of all applications for an assumption of rent arrears were turned down.

Considering the problems of fixing a local ceiling of "appropriate" rents for recipients of social assistance, it is especially problematic if an assumption of rent arrears is refused because the amount of rent is regarded as not "appropriate" and if this leads to homelessness. As local authorities point out, the "appropriateness" of rents is usually conditional for an assumption of rent arrears as well as the prospect of a lasting security of tenancy (security of future rent payment, assurance of landlord that he does not intend to give notice on other grounds).

According to para. 15 a BSHG institutions of social assistance may also guarantee the assumption of future rent arrears to landlords, but these guarantees are rarely granted. 60 p.c. (Schleswig-Holstein) to 68 p.c. (study on North Rhine-Westphalia) of institutions of social assistance never grant them at all.

Whether other ways of support are used, like negotiations with landlords, the organization of further personal aids or assistance in legal questions, depends very much on organization and commitment of local institutions of prevention. In particular in smaller municipalities, but in many big towns as well, there is much to be improved in this respect.

About three quarters of local authorities in both areas of investigation made more or less use of the possibility of assigning persons threatened by eviction their own flats.

A special problem are cases of threatening homelessness in which the maintenance of tenancy is either not possible or pointless. Usually the responsible institutions have no grip on alternative substitute housing. Only in very few German municipalities institutions responsible for the prevention of homelessness are integrated into housing offices (in most municipalities the institutions of social assistance are responsible for the prevention of homelessness). However, usually housing offices are the only municipal institutions which have influence on the assignment of flats. The extent of this influence depends on local conditions of subsidization of social housing construction as well as on respective provisions of the different Federal States. Since the greatest part of social housing is usually not owned by local authorities, the influence of local authorities is in most cases only a right to proposal.

If prevention of homelessness fails, either because of lack of information or because of an administrative organization that is not adequate to the problem or because interventions set in too late or because of restrictive application of possible aids, the persons concerned will become homeless and have to be provided with temporary accommodation by local authorities. In particular in cases of single homeless persons not all local authorities meet their liabilities of temporary accommodation. Many local authorities still keep temporary accommodations for "vagrants", who are only allowed to stay there for one to three days. A great part of homeless families are accommodated temporarily in municipal emergency flats for the homeless. These measures of temporary accommodation are often expensive and housing conditions are nevertheless bad. The duration of stay is long, and chances of reintegration into the regular housing market are relatively low.

The problems of rehousing homeless families show how limited the influence of housing offices is in assigning social flats. However, even if there is some influence, it is used only to a limited degree to give homeless households priority in proposals concerning the assignment of social flats. Opponents of a consistently given priority to persons in urgent need of housing often refer to the legal duty to supply "wide sections of the population" with social flats (para. 1, II Housing Construction Act), to the fear of a concentration of "problematic cases" in social housing estates and to the marginalization of a great part of homeless people as "unfit for living in flats on their own" ("nicht wohnfähig").

The splitting-up of responsibilities within local authorities, between different levels of local and regional responsibilities and between state administration and non-governmental welfare institutions is especially problematic for the organization of support for persons threatened or affected by homelessness. The different tasks of preventing homelessness, accommodating homeless people temporarily and rehousing homeless households are often split up to four or even more offices, and in addition there are special nongovernmental welfare institutions responsible for subgroups of homeless persons. For example the institution of social assistance is responsible for the granting of an assumption of rent arrears, the youth welfare office has to pay home visits, the responsibility for temporary accommodation lies with the office for public order and security, and the housing office is responsible for rehousing. Other offices are involved especially in the management of temporary accommodations. Beside the support of potentially or actually homeless people each of the offices involved has many other responsibilities which have nothing to do with the problem of homelessness. Often nongovernmental welfare institutions are charged with the accommodation and counselling of special groups of homeless people like so-called "people without a settled way of life", people discharged from prison, single homeless women etc. The majority of local authorities with split-up responsibilities, however, organize a cooperation of the different offices only in exceptional or particular cases. In many cases clashes of competence and a lack of cooperation prevent that homelessness is avoided by adequate and well-timed interventions and that people in urgent need of housing are provided with normal permanent housing.

6.1.3 A model for a better organization: concentration of resources and responsibilities for the prevention of homelessness, provision of temporary accommodation and rehousing in one special agency

To overcome the splitting-up of responsibilities for different sections of the duty of "securing housing and housing provision for people in urgent need of housing" on a local level, the Standing Conference of German Municipalities suggested as early as 1987 to bundle all the important responsibilities and resources for this duty in one agency ("Fachstelle") (Deutscher Städtetag 1987). The plans mainly aim at a connection of activities in the fields of social policy and housing policy. It contains five main points:

- the securing and provision of housing for all households that are threatened by homelessness,
- the closure of existing institutions of temporary accommodation for homeless people,
- the provision of housing for other households living in unacceptable housing conditions,
- the improvement of living conditions in state-run temporary housing concentrated in certain areas of towns or cities ("soziale Brennpunkte"),
- cooperation with the housing economy.

In 1989 the joint institution of municipalities for a simplification of administration (KGST) developed a model of organization based on the mentioned proposals and defined particular tasks of a "central agency" ("zentrale Fachstelle") (KGST 1989). In many points the KGST referred to the successful work of a similar agency belonging to the housing office of the city of Cologne (Schleicher 1988).

The combination of all resources and responsibilities concerning the securing and provision of housing as well as temporary accommodation in one "integrated agency for the prevention of and remedy for homelessness" (= "integrierte Fachstelle zur Vermeidung und Behebung von Wohnungslosigkeit") (Evers/Ruhstrat 1993) also means that there is a central institution which homeless people or people threatened by homelessness can contact as clients and which remains responsible and competent for them until permanent appropriate housing is achieved. Finally in an agency of this kind the financial advantage of an offensive policy of preventing homelessness in comparison to the costs that are otherwise caused by necessary temporary accommodation and by efforts of rehousing have an obvious and direct effect. By now most experts recommend an allocation of this "agency" to the local housing office to ensure that socio-political aspects have a strong enough influence on local housing policy.

Though it has been recommended time and again by their own top organizations and by many experts, only few municipalities have realized the model of an "integrated agency" so far. When 31 local authorities, most of them in North Rhine-Westphalia, were questioned, only 4 of them declared in 1992 that they had followed the recommendations of the Standing Conference of German Municipalities. The allocation of responsibilities by law on public order which concern temporary accommodation of homeless people to institutions of social assistance (and no longer to offices of public order and security) has been carried out more frequently. But about two thirds of local authorities that were interviewed declared that the existing splitting-up of responsibilities still prevailed (Busch-Geertsema/Ruhstrat 1994 a: p. 21; p. 113-117). However, in most municipalities a reorganization of housing aids has meanwhile been considered.

6.2 Recommendations for changes in the legal framework

There is a number of proposals how to improve protection of socially and economically deprived persons against threatening homelessness. However, there is also an influential opposition which suggests a drastic restriction of tenants' protection to increase the readiness to invest of housing construction companies. It is argued that many landlords and potential investors consider the existing protection against notice as too extensive (Niederberger 1994). On the other hand an over-regularization of tenancy law caused by many previous reforms is criticized (Sonnenschein 1995). In 1994 an expert commission at the Federal Ministry for Regional Planning, Building and Urban Development, which had worked out proposals for a reform of housing policy, presented a catalogue of amendments to tenancy law, which are for example supposed to facilitate rent increases and to reduce formal and substantial requirements for giving notice to quit. Finally the commission also proposed to abolish any protection against notice to quit for the first 12 months of tenancy of inhabitants of such flats that are rented by local

authorities and sublet to them (tenure on probation) and to allow limited-term tenancies without any protection against notice for a period of up to 10 years. According to the will of the expert commission those legal provisions are to be abolished which have been introduced to delay and make harder the conversion of rented flats into freehold flats and subsequently lead to giving notice to tenants (Expertenkommission 1994 a, p. 150-277, 498-537). The proposals, which were published shortly after the last election of the Federal Government, met with harsh public protest. The newly-elected government commented on this expert opinion in a rather reserved manner (Rips 1995, p. 283; Rips gives an extensive comment on these proposals from the point of view of tenants' lobbies). It remains to be seen which of the proposals will actually be enacted.

To achieve a more effective prevention of homelosses, the mentioned proposals of the expert commission are not only inadequate and counterproductive, but an opposite development of legislation and jurisdiction would be necessary. Social Clause, stay of eviction and protection against enforced eviction are means which could provide an effective protection against threatening homelessness if their legal scope was extended and defined more clearly and if they were applied consistently, especially in cases in which adequate substitute housing cannot be procured. However, it is conditional that Social Clause and provisions on protection against eviction do not exclude just those groups of tenants which are especially vulnerable. For those tenants which are threatened by homelessness and by resignation requirements concerning the observation of formalities and prescribed periods have to be reduced as well as requirements demanding an active and extensive approach to flat-hunting and the recording of the tenant's efforts. An extension of the maximum period of a stay of eviction to two years would also be desirable.

In cases of notice to quit without period of notice on the ground of default of payment, the "period of cure" during which a payment of arrears (e. g. by declaration of assumption by social welfare offices) makes the notice to quit invalid should be prolonged (e. g. to two months instead of one month as it is at present), so that administrations have time enough to intervene. The same "period of cure" should be introduced for regular notices to quit on the ground of default of payment. To make social administrations use the possibility of a "cure" of rent arrears, the corresponding provision of paragraph 15 a Federal Welfare Act has to become mandatory (up to now it is a discretionary provision). A mandatory provision is planned as part of the present reform of the Federal Welfare Act, but it shall be restricted by additional amendments.

It should be considered whether in cases of notice to quit grounded on tenants' intolerable behaviour the legal possiblity of a continuation of tenancy as a tenancy "on probation" could be introduced.

To use the existing possibilities of preventing homelessness, households threatened by homeloss as well as the responsible local administrations have to be informed comprehensively and at an early time about available aids concerning cases of threatening homelessness. Legal regulations should ensure that lower district courts inform tenants about their rights and about available aids of local institutions for the prevention of homelessness as soon as an action for eviction is

delivered, or better: as soon as a landlord gives notice he should inform his tenant about the available aids. On the other hand lower district courts should be obliged to inform these local institutions for the prevention of homeless about all incoming actions for eviction. As part of the reform of the Federal Welfare Act this obligation is planned at least for cases of notice to quit without period of notice on the ground of rent arrears. But in other cases there is a need for early information and support of households threatened by homeloss as well.

It is necessary to improve the protection of persons affected by action for eviction against default judgements. For example it would be possible to oblige courts to examine the facts of a case of action for eviction even if a tenant does not defend himself in court, and a stay of eviction should always be conceded automatically.

It has become apparent that threatening homeloss is very often caused by financial problems. Therefore it is urgently necessary to adapt financial aids for housing costs (housing allowance and assumption of rents by social welfare institutions) to the needs of tenants and to adjust them regularly to the rising level of rents. It cannot be accepted that in spite of high rent increases long periods pass until the Federal regulations on housing allowance are reformed. It should be prescribed by law that housing allowance has to be adjusted in much shorter periods (for example every two years) to the changing level of rents. It cannot be accepted at all that institutions of social assistance keep to rent ceilings of housing allowance that were fixed five years ago when determining the maximum amount of "appropriate" rents. As temporary accommodation of homeless persons is usually a great deal more expensive than the provision of regular housing, institutions of social assistance have to allow an exceeding of rent ceilings especially in cases of threatening homeloss, and they must not refuse an assumption of rent arrears because the amount of rent is not appropriate (unless adequate substitute housing is available). It is often argued against these recommendations that they will lead to an acceleration of rent increases, because landlords may take advantage of an extended scope for rent increases. However, neither the legislation on housing allowance nor the provisions concerning the assumption of rent by institutions of social assistance are suitable means to restrict the increase in rents. It is rather necessary to introduce separate legal provisions to restrict it, for example a restriction of rent increases in cases of first-time rent. The recommendations of the expert commissions have to be objected when they demand an abolition of present restrictions to rent increases for existing tenancies (comp. 3.3.1) and an actual decontrol of first-time rents up to the limit of exorbitant rents (50 p.c. above locally comparable rents) (Expertenkommission 1994 a, p. 175, 235). An increasing number of homelosses because of rent arrears would be the consequence.

If institutions of prevention do not achieve to avoid an eviction order, an assignment of the flat to the household threatened by eviction (by legal seizure) should be facilitated. It should not be conditional on exaggerated requirements to local authorities concerning the creation of temporary accommodations as it is now (Günther/Traumann 1993). Finally it has to be accepted as a duty of institutions of social assistance to provide a regular flat as a "payment in kind" of social assistance to those homeless people who have tried in vain to find a flat for a certain time.

It is urgently necessary to improve the state of information on extent and development of homelessness and threatening homelessness. A regular recording of the number of actions for eviction and of compulsory auctions of housing would be a minimum requirement.

7. MODELS OF GOOD PRACTICE FOR REINTEGRATION OF HOMELESS PEOPLE

7.1 A new type of intermediate organizations: Soziale Wohnraumhilfe Hannover

As homeless people have poor chances of being reintegrated into permanent housing, in many German towns associations or special branches have been founded under the roof of nongovernmental welfare organizations with the purpose of taking concrete steps to improve the access of homeless people to permanent housing. In Hanover such a special department was founded in 1991 as part of the advisory bureau for homeless people of the "Diakonisches Werk": the "Soziale Wohnraumhilfe Hannover"[1)] (SWH).

The purpose of this department was to concentrate the efforts to acquire permanent housing for homeless people by different institutions of nongovernmental welfare in Hanover (hostels, advisory bureaus etc.) which are responsible for accommodation, care and counselling of the homeless. The department was also supposed to organize the lease and administration of housing for homeless people. It was intended to share responsibilities: while the SWH was to take over the part of a landlord, the institutions mentioned above were to provide the necessary care for residents.

Originally the main task of SWH was to rent housing for the homeless and to sublet it to them. But since cheap housing is scarce, the department has started to organize the creation of housing for homeless people. Above all things this means the construction of new houses or flats, the building of rooms into existing houses or the reconstruction of buildings which had not been inhabited before. The separation of functions of landlords and functions of care does not always work. SWH has taken over the care for an increasing number of their tenants.

The work of SWH aims at

- coordinating resources of the church as well as private and public resources, the interest in investment of housing associations and public subsidies for social housing construction or redevelopment in a conception of housing provision which is useful for all parties involved,
- the creation and securing of long-term availability of price-controlled and occupancy-controlled housing for homeless people and

[1] Soziale Wohnraumhilfe Hannover, Fachgruppe der Zentralen Beratungsstelle des Diakonischen Werkes e. V., Hagenstraße 36, D 30161 Hannover

- taking the risks housing associations fear when letting to homeless people. This means in particular that SWH is responsible for the management of the flats and for counselling and personal care for the tenants.

SWH works on the principle of shared responsibilities: everybody does what he can do best to promote the common cause. So SWH does not act as a agency of financing or construction. Therefore the department does not need an extensive apparatus and large funds. Instead it organizes the cooperation of different parties (housing associations, church, housing and property owners, private sponsors, governmental institutions). SWH does not intend to become owner of the newly-created housing, but just wants to secure its long-time availability for homeless people. So it functions as a mediator or as an intermediary organization.

In September 1995 SWH worked on 110 housing units at 19 different places in and around the town of Hanover. 47 flats had been finished and were rented, 29 were under construction or shortly before construction, and another 34 flats are to be finished by the end of 1996. 99 of these 110 flats were created or are being created by construction, reconstruction or extension of buildings, 11 have been procured from existing housing.

For the procurement of these 11 housing units procured from existing housing SWH for example rents flats belonging to churches or other owners and sublets them to homeless people for whom they guarantee personal care. SWH also advises social-minded private persons with financial means on the purchase of flats, makes calculations of profitability for them with a rate of interest of 4 p.c. of the own capital and takes responsibility for the letting and for the personal care of tenants.

For the creation of additional housing SWH usually works out plans for financing and realization and gives advice on questions of conception and economic development. After the flats have been finished they rent the flats, sublet them with regular leases to homeless people and organize the care of tenants.

The special department is part of a non-profit organization and has a staff of 5 employees: one architect, one housing economist, one social worker and as part-time employees one accountant and one janitor. SWH is subsidized with 300,000 DM per annum (about 158,700 ECU) granted to one third each by the Protestant Church, the Federal State Lower Saxony and the administrative district ("Kreis") Hanover and the town of Hanover. For letting the flats SWH also gets the major part of a flat charge for the management of the flats and a fixed sum of money as a compensation for the risk of rent arrears.

7.2 Unemployed homeless persons build flats. The construction of loam houses in Bielefeld

The old idea that unemployed persons without a flat should be involved into the construction of flats and than have the opportunity of moving into these flats has been taken up and is being realized in several places in Germany. As one example a small construction project in Bielefeld shall be described in which homeless recipients of social assistant build four small terraced houses. The twelve partici-

pants of this project are employed under the scheme "Employment instead of Social Assistance" and receive standard wages. The small houses (each with 52 square meters of living space) are constructed as a combined fabric of loam and wood. This way of construction is not only very favourable from an ecological point of view, but it also allows a wide participation of persons who are not very much experienced and qualified in construction work. Therefore it is especially suitable for a connection of employment and housing construction projects. The development of projects which combine the procurement of employment and housing for risk groups of the housing and job market is presently subsidized by a model scheme of the Ministry of Employment, Health and Social Affairs of the Federal State of North Rhine-Westphalia. In this context the Bielefeld project among others is scientifically evaluated.

In Bielefeld mainly wood and loam construction works, but also a part of other construction works are carried out by homeless who are employed and trained by a non-profit organization called FAMIB (Förderung der Arbeitsmarktintegration in Bielefeld gGmbH). FAMIB is also responsible for the instruction and care of participants during the time of training and construction. The remaining construction works are carried out by other non-profit agencies of employment and by commercial companies. Beside FAMIB, a regional company for the development of personnel (REGE) and the town of Bielefeld (Department for Housing Construction and Housing Aids) play a prominent part in the preparation, financing and management of the project. The building site belongs to a Bielefeld welfare organization with a long tradition in aids for homeless persons (Von Bodelschwinghsche Anstalten, Teilanstalt Eckhardsheim) and was left as a hereditary leasehold to the managing agency of construction respectively the later owner of the building, the housing company "Ravensberger Heimstätte"[2)].

The project is financed by a combination of means of the scheme "Employment instead of Social Assistance" of the Federal State of North Rhine-Westphalia, of municipal means, of means of the Federal Office for the Unemployed, of means for social housing construction of the Federal State North Rhine-Westphalia and of own resources of the housing company.

Each house is designed for two persons and has two rooms, a kitchen, a bathroom and a storeroom. The houses are subject to the usual obligations of social housing in Germany (concerning rent prices and occupation) for 25 years and conform to the constructional standards of social housing as well.

Even during the time of construction some homeless participants of the project have found permanent accommodation in other flats. It is the aim of the project to provide everybody of the homeless participants with permanent accommodation, either in the houses constructed by themselves or in other flats of social housing. The employment project started in January 1995. In August 1995 the roof framework was finished, in spring 1996 the house is to be ready for moving in.

2 Contact address: Ravensberger Heimstättengesellschaft mbH, Herr Brunzel, Postfach 10 22 13, D-33522 Bielefeld

8. TRENDS IN HOMELESSNESS

8.1 New data on single homeless service users

The 1994 National Report on Homelessness in Germany presented some data about (mainly single) homeless service users from 1992 (Specht-Kittler 1994, p. 19-21). Meanwhile the registration systems of the nongovernmental welfare organizations for the homeless have provided new data for 1993 (BAG Wohnungslosenhilfe 1995). They do not reveal drastic changes in the social composition of the group of homeless service users, and the gradual changes which can be observed are confined to minor percentages.

It can be stated that the change of trend in the age distribution of homeless persons (decline of ratio of younger homeless persons and increase of ratio of higher age groups), which was assumed in the 1995 National Report, has not continued. The ratio of 20- to 29-year-old homeless persons increased again between 1992 and 1993 (from 16.6 p.c. to 17.6 p.c.), and the ratio of 30- to 39-year-old persons shows a slight increase as well (from 28.5 p.c. to 29 p.c.), while the ratio of 50- to 59-year-old persons fell slightly (from 22.8 p.c. to 21.3 p.c.). The relative part of unemployed persons among homeless service users increased again between 1992 and 1993 (from 79. p.c. to 82. p.c.). Another increase can be observed concerning the already large group of homeless service users who express their wish of living on their own in a flat or in a furnished room (1992: 86. p.c.; 1993: 82. p.c.).

8.2 New data on the number of homeless people in the Federal State of Hessen

In 1994 the Institute for Housing and Environment (Institut für Wohnen und Umwelt) in Darmstadt published a survey of local authorities in the Federal State of Hesse concerning homelessness in Hesse (IWU 1994). Estimates of the number of homeless persons in their tendency support the estimates that had been given by GISS before for West Germany, based on the study with emphasis on North Rhine-Westphalia. This study was the basis of an estimate of the extent of homelessness in Germany for the previous National Report (comp. Specht-Kittler 1994, p. 22). The survey of the institute for housing and environment (IWU) confirms the estimated total number of homeless (51,400 homeless persons on 30th September 1994 as fixed date in Hesse) as well as the supposition that half of the total number of homeless people are homeless immigrants (in Hesse they come to exactly half of the total number) as it was stated for the year 1992 for West Germany by GISS (see Busch-Geertsema/Ruhstrat 1994a).

9. HOMELESSNESS AS A SOCIAL PROBLEM IN THE NATIONAL CONTEXT

9.1 Is there still a housing crisis in Germany?

Since the end of 1993 it has sometimes been reported that the situation of the German housing marked has "relaxed". In its housing allowance and rent report the Federal Ministry for Regional Planning, Building and Urban Development sees

the fact that since the end of 1993 rent prices have not increased as much as before as an indication of "an emerging relaxation of the housing market" as well. This is mainly explained by the extension of housing caused by new construction of housing, but also with lower expectations concerning income as a result of the present decline in economic activity (BMBAU 1994, p. 21).

Looking at housing offers in newspapers, an extension of housing offers can mainly be stated for the section of expensive rented and freehold flats with high standards. An obvious connection between the economic development and the demand for living space was already established in the past (comp. Ulbrich 1991). However, this also means that an economic upswing will lead to an increasing demand for living space and therefore to an enforced shortage of housing for socially and economically deprived households. Anyhow, a drastic reduction of housing offers especially in the sector of cheap housing (comp. 3.1.4) is to be expected for the next years. It is true that the demand for cheap housing has been reduced a little because of the decrease in the annual number of immigrating repatriates. (Whereas the immigration of repatriates increased between 1985 and 1990 and arrived at a maximum of 421,000 persons in 1990, it then fell back to about 260,000 to 280,000 persons per year (comp. Fleischer/Sommer 1995, p. 33).) On the other hand competition for social flats has become harder because income limits were raised on 1st October 1994 and because the supply of flats has shrunk dramatically (comp. Busch-Geertsema 1995). Meanwhile even the Ministry for Regional Planning, Building and Urban Development warns against too much optimism. In a statement to the press a considerable surplus of demand for cheap housing is pointed out as well as the fact that the German population will grow by half a million persons until the year 2000 and that the size of households will further shrink, which will have a direct effect on the demand for housing (BMBAU 1995).

9.2. Debates on homelessness

In 1994 and 1995 homelessness was several times subject to the consideration of parliamentary bodies. For example the "Bundestag" commission for regional planning, building and urban development has dealt with the problem on a parliamentary motion, and on 24th January 1995 there was a debate in the German "Bundestag" on the problem of homelessness. Finally a team of representatives of Federal Ministries and the Federal States worked out proposals for a reduction of homelessness and for an improvement of aids for homeless people.

Though many experts emphasize structural reasons for homelessness time and again, this dimension is neglected in debates as well as in a motion of all political parties (with the exception of the Green Party which had failed with a more extensive motion), which was finally passed by parliament. Instead, individual causes of homelessness are pointed out. Though the motion that was finally passed falls short of original proposals, it makes some suggestions concerning the improvement of information about threatening and existing homelessness and the improvement of effectiveness of prevention of homelessness. In July 1996 a report on the newly introduced measures it to be presented to the Bundestag.

The proposals of the expert commission on housing policy which aim at a decontrol of the housing market, at the abolishment of important provisions concerning protection against notice to quit and at the abandonment of social housing construction have already been commented in the context of recommendations for a change in legislation. The proposals concerning a reform of the Federal Welfare Act have been mentioned repeatedly elsewhere in this report. Beside some positive changes concerning aids for households affected or threatened by homelessness, they also contain drastic cuts in the financial security of social assistance recipients. Among other things the actual level of social assistance is to be lowered (in relation to the expected average increase of prices) and considerable reductions might be made mandatory in single cases, especially in cases of refusal to work.

A commission of the Federal Government (Notlagenkommission) is charged with the consideration of measures to improve the prevention and removal of special emergencies like homelessness, consequences of addiction, imprisonment etc. After specialists presented expert opinions on several aspects of this theme in September 1995, the high-ranking commission is to present an account of reform proposals to the Federal Government in spring 1996.

In 1995 the Federal Government for the first time allocated a part of the Federal funds for the construction of social housing (50 million DM = 26.5 million ECU) to the specific task of combating homelessness. The Ministers for Social Affairs and Employment of the Federal States have asked the Federal Government to act accordingly in the following years.

10. CONCLUSIONS

Households in "regular tenancies" are relatively well protected against homelessness, as long as they do not get into personal, social or economical difficulties. This relative security of tenure does not exist or does exist only to a limited degree for a number of tenancies that are excluded from protection against notice to quit and for households that get into financial and social trouble. In these cases neither the legal framework of protection nor the interpretation of existing laws by jurisdiction suffice to prevent homelessness. Finally existing possibilities of supporting households threatened by homelessness are not used effectively enough. This is not exclusively, but in part a problem of the organization of local administrations. Beside the provision of sufficient affordable housing available for socially and economically deprived households, an improvement of the legal framework as well as an improvement of effectivity of local preventive efforts is necessary to reduce the extent of homelessness in Germany. Anyhow one has to bear in mind that homelessness is an extreme expression of poverty in our society and that the prevention and removal of homelessness are closely connected to necessary measures against poverty - on the level of municipalities, Federal States and the Federal Republic, but also on a European level.

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