

OSCE/ODIHR Submission of Information about an OSCE Participating State under Consideration in the Universal Periodic Review Process

Participating State: Germany

UPR Working Group Session and Date of Review: 44th Session, October-November 2023

Background

1. Germany has been a participating State (pS) Organization for Security and Co-operation in Europe (OSCE) since 1973, and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.¹
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE pSs, including Germany, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Germany and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Germany.

Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE pS or of an OSCE entity, ODIHR reviews draft or enacted legislation of OSCE pSs to analyze conformity with OSCE commitments and international law.² In 2017-2022, this opinion (on topics other than elections) was issued:

*Opinion on Acts of Germany on Prostitution and Trafficking in Human Beings*³

5. On 15 December 2022, ODIHR issued a review of German legislation (provisions in Prostitution Act, the Prostitution Protection Act and the Criminal Code) on Trafficking in Human Beings (THB) and prostitution, following a request from the Chairperson of the Committee for Family, Seniors, Women and Youth in the German Bundestag. The requesting party asked, in particular, to examine the compatibility of the said legislation with Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter, “Palermo

¹ OSCE ODIHR, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, and *Volume 2, Chronological Compilation (third edition)*, 2011; OSCE *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010.

² The legal reviews and opinions, often produced in co-operation with the CoE’s Venice Commission, are available at www.legislationline.org, along with basic information about the constitutional system and human dimension-related legislation of Germany (in English).

³ *Opinion on Acts of Germany on Prostitution and Trafficking in Human Beings*, 15 December 2022.

Protocol”).⁴

6. The apparent aim of the Prostitute Protection Act from 2017 and norms of the Criminal Code is to strike a balance between allowing a more liberal regulation of prostitution while, at the same time, making sure to prevent and counter sexual exploitation that leads to THB. Exploitation that leads to THB is a violation of international law, regional treaties, European Union Law and OSCE commitments. However, the legislation does not seem to include sufficient safeguards for vulnerable persons engaged in prostitution, as well as those who are outside the system of registration, thus potentially undermining the efforts to prevent trafficking. In particular ODIHR recommends to consider legislation to reduce demand, in line with Article 9(5) of the Palermo Protocol by addressing the root cause of prostitution that fosters exploitation that leads to THB. Furthermore, ODIHR welcomed the recent introduction of Article 232a, para. 6 (2) of the Criminal Code relating to the “careless” conduct (*“Leichtfertigkeit”*) on the part of the purchaser of sexual acts, but also recommended that this provision and all relevant legislation, to be assessed after being in force for some time as to whether this is an effective tool to discourage demand that fosters exploitation that in turn leads to THB.

Election-related activities

Background

7. Following an invitation from the Permanent Mission of the Federal Republic of Germany to observe the 26 September 2021 elections to the Federal Parliament (Bundestag), and based on the conclusions of the Needs Assessment Mission (NAM) undertaken between 2 and 5 June 2021, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET).⁵

Parliamentary Elections on 26 September 2021

8. The EET to the Bundestag Elections found that elections were generally well organized, and the election administration enjoyed stakeholder confidence notwithstanding the procedural issues reported and observed in Berlin. Overall, the postal voting system contains sufficient safeguards against fraud, and enjoys confidence among the majority of the ODIHR EET interlocutors. The regulation, reporting requirements, and oversight of political party finance do not provide for sufficient transparency, and were raised as concerns by many ODIHR EET interlocutors.
9. The mission made the following priority recommendations:
 - Ensure the election contestants enjoy legal certainty, municipal regulations of the campaign should be clearly defined and easily accessible for the contestants.
 - To fully guarantee the freedom of expression, provisions that foresee criminal liability for defamation should be removed.
 - The legal framework should be amended to clearly define sponsorship and require unambiguous reporting of its origin and amounts.

⁴ *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol)*, supplementing the *United Nations Convention against Transnational Organized Crime*, 15 November 15 2000, T.I.A.S. No. 13127, 2237 U.N.T.S. 319 (the Palermo Protocol was ratified by Germany on 14 June 2006); *United Nations Convention Against Transnational Organized Crime*, opened for signature on 12 December 2000, T.I.A.S. 13127, 2225 U.N.T.S. 209 (ratified by Germany on 14 June 2006).

⁵ The report of the EET to the 2021 Parliamentary Elections in Germany is available [here](#). According to paragraph 25 of the 1999 OSCE Istanbul Document, OSCE pSs committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

- Consideration should be given to introducing detailed rules regulating loans for political parties including provisions on their disclosure and reporting.
- Increase transparency and accountability in campaign finance, the involvement of third-parties in campaigning should be regulated in the law.
- In line with international good practice, consideration should be given to requiring more timely disclosure of party and campaign finances, including before Election Day. To allow for proper oversight of campaign finances, reports should include itemized disclosure of campaign expenditures. The limit of the donations for immediate disclosure should be lowered.
- Consideration should be given to amending the legislation to provide for the presence of observers, to fully meet the commitments made in paragraph 8 of the 1990 OSCE Copenhagen Document.

Tolerance and non-discrimination issues

10. OSCE pSs have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and ODIHR supports states in their implementation of those commitments.⁶ In this context, ODIHR produces an annual report on hate crime⁷ to highlight the prevalence of hate crimes and good practices that pSs and civil society have adopted to tackle them. ODIHR also helps pSs design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of pSs' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.
11. In respect of the 2021 Hate Crime Report⁸ and ODIHR's key observations,⁹ ODIHR recognizes Germany's efforts to address the prosecution of hate crimes, including by improving co-operation among relevant stakeholders, including civil society, as well as by submitting information on police records. However, based on the available information, it observes that Germany has not reported data on hate crimes recorded by the prosecution and judiciary to ODIHR. In addition, ODIHR observes that Germany would benefit from raising awareness among and building the capacity of criminal justice officials to address hate crime.
12. With regard to support for hate crime victims ODIHR observes that Germany's victim support system provides both general victim support services and specialized assistance to the victims of hate crime. Victims of hate crime are included in the category of vulnerable victims under German law. The primary responsibility for victim support rests with federal states, but the adopted measures are similar across the country.¹⁰

⁶ OSCE pSs have committed to strongly condemn racial and ethnic hatred, xenophobia, discrimination, anti-Semitism and intolerance against Muslims, Christians and other religions, and have committed to address these phenomena in all their forms (Copenhagen Document, 1990). Since 2003, the OSCE pSs have established a normative framework of OSCE Ministerial Council (MC) decisions to reflect their commitments to address these phenomena: MC Decisions 4/03, 12/04, 10/05, 13/06, 10/07 and 9/09. Additionally, a number of OSCE human dimension commitments recognize the vital importance of pSs' realization of their binding human rights obligations under international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁷ <http://hatecrime.osce.org>.

⁸ Germany | HCRW (osce.org)

⁹ Findings on the information available to ODIHR on hate crimes in a particular pS in relation to OSCE commitments are presented as Key Observations. There are, in total, 13 Key Observations linked to OSCE pSs' commitments in the area of addressing hate crime. This methodology has been in place since the 2020 Hate Crime Report.

¹⁰ <https://hatecrime.osce.org/national-frameworks-germany#victimSupport>

13. ODIHR's 2020 publication "*OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic*"¹¹ reported that intolerance and discrimination was significantly directed towards people of, or perceived to be of, Asian descent in the early phase of the pandemic, including cases in Germany. Individuals perceived to be of Asian descent also appear to have been particularly and highly disproportionately targeted in hate incidents, including some more serious cases in Germany. There were also examples of discrimination of persons of East Asian descent in access to shops, restaurants, hotels and public transportation, or obstacles in access to healthcare, education and housing, including in Germany. Refugees and migrants were also blamed for the spread of Covid-19 in many pSs, including in Germany. In Germany, there were also reports of LGBTI migrants quarantined in collective centres suffering abuse from other migrants and they could not access either safe shelter or legal aid.
14. ODIHR's recommendations to Germany on this basis of this publication include:
- Condemn any form of discrimination and hate crime and abstain from any statement or action that exacerbates vulnerabilities.
 - Respond swiftly to hate crimes, including those motivated by gender or sex, to record and investigate them so that the perpetrators can be brought to justice and adequate penalties imposed. Support victims as they report their experiences, and ensure the availability of all necessary psychological, social and legal support for victims, including through close co-operation with civil society. Relevant authorities should also publicly condemn any such acts and ensure that perpetrators are brought to justice.
 - Consider, where states have not done so, providing the possibility to report hate crimes online and allowing third-party reporting to police by civil society groups and equality bodies.
 - Assess and improve relevant mechanisms for hate crime recording and data collection, including gender disaggregated data and assess the existing current victim support systems.
 - Ensure that the consequences of the current pandemic, including the economic crisis, do not affect states' capacities to provide support to victims of hate including through appropriate funding to non-state actors and civil society organizations.
 - Build law enforcement and justice sector capacities to recognize and effectively investigate hate crimes and to ensure that specialized training, focused on hate crime victims and their needs, is provided for officials and civil society organizations within the victim support structures.
 - Enact policies, through inter-agency co-operation, to address hate crimes in a comprehensive manner.
 - In collaboration with civil society, celebrate and harness the strength of diversity within the country, including through awareness-raising programmes, as a means of overcoming current and forthcoming social and economic challenges of the pandemic.

¹¹ Organization for Security and Co-operation in Europe, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 17 July 2020.